

**(a) H17-004 & ER20-262 – Site Development Permit on Certain Real Property Located at 439-451 South 4<sup>th</sup> Street. – TO BE HEARD IMMEDIATELY AFTER CONSENT**

**Recommendation:**

(1) Adopt a resolution certifying the South Fourth Street Environmental Impact Report, and making certain findings concerning significant impacts, mitigation measures, alternatives, and adopting a statement of overriding considerations and a related Mitigation Monitoring and Reporting Plan, in accordance with the California Environmental Quality Act (CEQA).

(2) Adopt a resolution approving, subject to conditions, a Site Development Permit to allow the demolition of an existing single-family residence and 30-unit multifamily apartment building totaling approximately 21,792 square feet and the removal of 10 trees (3 ordinance-size, 7 non-ordinance-size, 11 replacement trees) for the construction of a 25-story, 210-unit multifamily residential building with a 20% parking reduction and an alternative parking arrangement (mechanical lifts) on an approximately 0.52-gross-acre site.

CEQA: South Fourth Street Project Supplemental Environmental Impact Report (File No. H17-004/ER20-262). Council District 3. Planning Commission recommends approval (11-0-0) (Item 5.b on the 2/14/2024 Planning Commission agenda). (Planning, Building and Code Enforcement)

**TO BE HEARD IMMEDIATELY AFTER CONSENT**

# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Planning Commission

**SUBJECT:** SEE BELOW

**DATE:** February 26, 2024

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**COUNCIL DISTRICT: 3**

**SUBJECT: FILE NOS. H17-004 & ER20-262. SITE DEVELOPMENT PERMIT TO ALLOW THE DEMOLITION OF AN EXISTING SINGLE-FAMILY RESIDENCE AND 30-UNIT MULTIFAMILY APARTMENT BUILDING (SUBJECT TO ELLIS ACT ORDINANCE) AND THE REMOVAL OF 10 TREES (3 ORDINANCE-SIZE, 7 NON-ORDINANCE-SIZE, 11 REPLACEMENT TREES) FOR THE CONSTRUCTION OF A 25-STORY, 210-UNIT MULTIFAMILY RESIDENTIAL BUILDING WITH A 20% PARKING REDUCTION AND AN ALTERNATIVE PARKING ARRANGEMENT (MECHANICAL LIFTS) ON AN APPROXIMATELY 0.52-GROSS-ACRE SITE ON THE WEST SIDE OF SOUTH 4<sup>TH</sup> STREET, APPROXIMATELY 170 FEET SOUTH OF EAST SAN SALVADOR STREET (439-451 SOUTH 4<sup>TH</sup> STREET).**

## **REASON FOR REPLACEMENT**

A replacement memorandum is required because a late comment letter needs to be included for the record.

## **RECOMMENDATION**

The Planning Commission voted 11-0-0 to recommend that the City Council take the following action:

1. Adopt a resolution certifying the South Fourth Street Environmental Impact Report, and making certain findings concerning significant impacts, mitigation measures, and alternatives, and adopt a statement of overriding considerations and a related Mitigation Monitoring and Reporting Plan, in accordance with the California Environmental Quality Act (CEQA); and
2. Adopt resolution approving, subject to conditions, a Site Development Permit to allow the demolition of an existing single-family residence and 30-unit multifamily apartment building totaling approximately 21,792 square feet and the removal of 10 trees (3 ordinance-size, 7

non-ordinance-size, 11 replacement trees) for the construction of a 25-story, 210-unit multifamily residential building with a 20% parking reduction and an alternative parking arrangement (mechanical lifts) on an approximately 0.52-gross-acre site.

### **SUMMARY AND OUTCOME**

If the City Council approves the actions listed above as recommended by the Planning Commission, the applicant would be able to apply for building permits to demolish an existing single-family residence and 30-unit multifamily apartment building totaling approximately 21,792 square feet and the removal of 10 trees (3 ordinance-size, 7 non-ordinance-size, 11 replacement trees) for the construction of a 25-story, 210-unit multifamily residential building with a 20% parking reduction and an alternative parking arrangement (mechanical lifts) on an approximately 0.52-gross-acre site. Prior to the issuance of building permits for demolition or construction, the project will be required to conform with the City's Ellis Act Ordinance found in Title 17, Chapter 23, Part 11 of the San José Municipal Code. The ordinance requires owners to follow a standardized process for issuing notices to tenants, providing relocation benefits, and restricting the future use of the property by requiring former tenants the right to return to the same unit if brought back to the rental market or if recontrolled new apartments are built on site. Pursuant to the Ellis Act Ordinance, the project will require the re-control of 50% (105) of the new units built. Alternatively, the applicant may provide 20% (42) of the newly constructed units as on-site restricted affordable rental housing pursuant to the City's Inclusionary Housing Ordinance (IHO).

### **BACKGROUND**

On February 14, 2024, the Planning Commission held a Public Hearing to consider the CEQA determination and Site Development Permit. Commissioner Cantrell made a motion to approve the recommendation. Commissioner Oliverio seconded the motion. The motion passed unanimously 11-0-0. The Planning Commission recommended that the City Council approve the adoption of the CEQA resolution and Site Development Permit.

### **ANALYSIS**

Analysis of project impacts pursuant to CEQA, and analysis of the Site Development Permit, including conformance with the General Plan, Municipal Code, and City Council policies, is contained in the attached staff report.

The recommendation in this memorandum aligns with one or more Climate Smart San José energy, water, or mobility goals. The project would increase the density of new residential development within the City limits by providing 210 new multifamily residential units.

## **EVALUATION AND FOLLOW-UP**

The City Council is the final decision-making body for this project. Following a decision by the City Council, no additional evaluation would be conducted. The City Council has the option to approve, deny, or defer the project to a later City Council meeting. If denied, the project would not be able to proceed. If approved, the applicant would be able to proceed with applications for grading and building permits to construct the project.

## **COORDINATION**

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

## **PUBLIC OUTREACH**

This memorandum is posted on the City's Council Agenda website for the March 12, 2024, City Council meeting. Staff followed City Council Policy 6-30 Public Outreach Policy in order to inform the public of the proposed project. Three community meetings were held for the project. A Community Meeting was held on April 3, 2017, at Lowell Elementary School. A joint EIR Scoping and Community Meeting was held on Thursday, July 11, 2019, at Horace Mann Elementary School. A joint EIR Scoping and Community Meeting was held via Zoom on Monday, March 21, 2022. Community concerns included neighborhood compatibility, building height, building setbacks, parking impacts on the surrounding neighborhood, trash pick-up operations, sewage capacity, the need for on-site guest parking, the unit mix, the projected rental cost, and shade impacts on surrounding properties. An on-site sign was posted on the project frontage on January 9, 2019. A notice of the public hearing was distributed to the owners and tenants of all properties located within 1,000 feet of the project site and posted on the City website. The notice was also published in a newspaper of record (San Jose Post Record) on January 22, 2024. The staff report is also posted on the City's website. Staff has also been available to respond to questions from the public.

## **COMMISSION RECOMMENDATION AND INPUT**

As discussed in the Background section above, the Planning Commission unanimously approved the project (11-0-0) as a public hearing calendar item at the February 14, 2024 meeting. The Planning Division Staff provided a brief presentation on the project which included the site description, project components, conformance with applicable standards and policies, and the environmental review process in accordance with CEQA. The applicant's representative, Sal Caruso, spoke briefly, requesting that the Planning Commission support the project. There were no public comments.

### Commissioner Discussion

Commissioner Bickford expressed concern over the height of the proposed building in the surrounding area. The applicant responded that there are numerous high-rise buildings that were recently approved in the immediate area. Staff also confirmed that there is another high-rise building, “The Mark,” which was approved directly adjacent to the project site to the south.

Commissioner Cantrell asked the applicant why the project took so long. The applicant noted that there was a constant turnover in staff that slowed the project review process down.

Commissioner Ornelas-Wise asked if there was any proposed fencing around the occupied roof deck and pool area. She also asked if there was any proposed play area for children. The applicant responded that there would be glass fencing around the rooftop, and Commissioner Oliverio stated there is a new park nearby that the residents could utilize.

Commissioner Tordillos asked if the project is intended for student housing. The applicant confirmed that the project is marketed towards students. Commissioner Tordillos asked if there were any design requirements for high-rise window placement. Staff responded that there are not any requirements for window placement. The Commissioner also requested additional bicycle parking as the design is finalized.

Commissioner Oliverio expressed his support for the project, noting that this type of development in this part of Downtown San Jose is long overdue.

Commissioner Cantrell made a motion to recommend that City Council approve the project. Commissioner Oliverio seconded the motion. The motion passed unanimously 11-0-0.

### CEQA

The City of San José, as the lead agency for the project, prepared a Draft Supplemental Environmental Impact Report (Draft SEIR) to the Downtown Strategy 2040 Environmental Impact Report (Resolution No. 78942). The Notice of Preparation (NOP) for the SEIR was circulated from April 1, 2022, to March 25, 2022, and the Draft SEIR was circulated for public review and comment from May 30, 2023, to July 14, 2023. An environmental scoping meeting for the SEIR was also held on March 21, 2022, via a virtual conference meeting.

### Summary of Environmental Impacts Reduced to Less than Significant with Mitigation

The Draft SEIR identified potential environmental impacts related to construction air quality, migratory nesting birds, and vibration from construction activities on fragile historic buildings. With the implementation of the mitigation measures specified in the Mitigation Monitoring and Reporting Program and prepared for the project, these impacts are reduced to less than significant levels. As part of the certification of the Final SEIR, the City Council will need to approve the associated Mitigation Monitoring and Reporting Program for the project.

### Significant and Unavoidable Impacts and Statement of Overriding Considerations

The Draft SEIR also found that the project would result in a significant and unavoidable impact from construction noise which would exceed the exterior threshold of 80 dBA at adjacent residential land uses. The mitigation measures to be adopted for the proposed project would not reduce this impact to below the significance threshold.

If the City Council were to approve the proposed project as proposed, in compliance with CEQA Guidelines Section 15093, a Statement of Overriding Considerations must be adopted with findings that the specific economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposed project outweigh the unavoidable adverse environmental effects if an environmentally superior alternative is not chosen.

The Statement of Overriding Considerations found that the economic and social benefits of construction of the proposed project which consists of providing 210 housing units, some of which would be affordable, to address the City's current housing shortage, all of which are downtown and accessible to jobs, retail and entertainment, and has access to various modes of public transit reducing vehicle miles traveled, would outweigh the temporary construction noise impact that would occur for a period that may potentially exceed 12 months.

### Project Alternatives

The Draft SEIR analyzed two project alternatives, including a No Project – No Development Alternative, and a Preservation Alternative/Reduced Development Redesign. The environmentally superior alternative would be the No Project/No Development Alternative, which would avoid the identified significant impacts of the proposed project; however, CEQA requires that another alternative be chosen when the No Project Alternative is environmentally superior. The Preservation Alternative/Reduced Development Redesign is therefore the environmentally superior alternative. This alternative would reduce the height of the building from 25 stories to six stories, and result in a reduction of 176 units compared to the proposed project. With the reduction in building height, the project would be constructed in a shorter timeframe, and pile driving, which is the primary cause of the significant and unavoidable impact of the proposed project, would not be required. Therefore, this alternative would avoid the significant and unavoidable noise impact.

### Summary of Comments Received

The City received one comment letter during the public circulation period of the Draft SEIR. The comment letter was submitted by Santa Clara Valley Water District. The main concerns raised by commenters are as follows:

- The Municipal Regional Permit was re-issued in May 2022 and becomes effective in July 2023, the discussion in the Draft SEIR needs to be consistent with the new Municipal Regional Permit.
- The site-specific Geotechnical Report that would be prepared for the project should discuss recommendations for waterproofing for the subgrade parking structure.

- Clarify flood hazard zones.
- If any wells are found on the project site, they must be properly destroyed under a permit from Santa Clara Valley Water District or registered with Santa Clara Valley Water District and protected from damage.

None of the comments received address an issue of deficiency or adequacy of the Draft SEIR, or the mitigation measures to be adopted as part of the Final SEIR.

The City responded to all comments received on the Draft SEIR and incorporated them into the First Amendment to the Draft SEIR. The SEIR text revisions were included in the First Amendment to address clarifications to the text of the Draft SEIR and other suggested text revisions from the commenter. The First Amendment, taken together with the Draft SEIR, and the Mitigation Monitoring and Reporting Program constitutes the Final SEIR. The Draft SEIR and First Amendment to the Draft SEIR (Final SEIR) are available for review on the project page on the City's Active EIR website at: <https://www.sanjoseca.gov/your-government/departments-offices/planning-building-code-enforcement/planning-division/environmental-planning/environmental-review/active-eirs/south-fourth-mixed-use-project>. A copy of the Mitigation Monitoring and Reporting Program is included in the proposed CEQA resolution.

The City received a letter from Lozeau-Drury, LLP representing Laborers International Union of North America, Local Union 270 and its members living in the City of San Jose the day of the Planning Commission. While the letter raised numerous concerns, those concerns were either unfounded, incorrect, or otherwise addressed by the City's responses. There were no new significant impacts revealed in the letter, and recirculation of the SEIR is not required. The letter and responses are posted on the City's website at: <https://www.sanjoseca.gov/your-government/departments-offices/planning-building-code-enforcement/planning-division/environmental-planning/environmental-review/active-eirs/south-fourth-mixed-use-project>.

#### EIR Recirculation Unnecessary

The comments received do not identify substantive inadequacies in the Draft SEIR or present new previously unidentified significant impacts that require recirculation. The recirculation of an EIR is required when significant new information is added to the EIR after public notice is given of the availability of the Draft EIR for public review but before certification. Information can include changes in the project or environmental setting as well as additional data or other information. New information added to a Draft EIR is not significant unless the Draft EIR is changed in a way that deprives the public of meaningful opportunity to comment on a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect, including a feasible project alternative that the project's proponents have declined to implement (CEQA Guidelines Section 15088.5). No such conditions have occurred. Therefore, the Draft SEIR does not need to be recirculated.

HONORABLE MAYOR AND CITY COUNCIL  
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**PUBLIC SUBSIDY REPORTING**

This item does not include a public subsidy as defined in section 53083 or 53083.1 of the California Government Code or the City's Open Government Resolution.

/s/  
Chris Burton  
Secretary, Planning Commission

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

Attachment: Planning Commission Staff Report





# Memorandum

**TO:** PLANNING COMMISSION

**FROM:** Christopher Burton

**SUBJECT:** File Nos. H17-004 & ER20-262

**DATE:** February 14, 2024

## COUNCIL DISTRICT: 3

<b>Type of Permit</b>	Site Development Permit
<b>Proposed Land Use</b>	Multifamily Residential
<b>New Residential Units</b>	210 units
<b>New Non-residential Square Footage</b>	Not applicable
<b>Demolition</b>	31 residential units
<b>Tree Removals</b>	10 trees (3 ordinance-size, 7 non-ordinance-size, 11 replacement trees)
<b>Project Planner</b>	Alec Atienza
<b>CEQA Clearance</b>	South Fourth Street Project Environmental Impact Report
<b>CEQA Planner</b>	Reema Mahmood

## RECOMMENDATION

Staff recommends that the Planning Commission recommend that the City Council take all of the following actions:

1. Adopt a Resolution certifying the South Fourth Street Environmental Impact Report, and making certain findings concerning significant impacts, mitigation measures, alternatives, and adopting a statement of overriding considerations and a related Mitigation Monitoring and Reporting Plan, in accordance with the California Environmental Quality Act (CEQA).
2. Adopt a Resolution approving, subject to conditions, a Site Development Permit to allow the demolition of an existing single-family residence and 30-unit multifamily apartment building totaling approximately 21,792 square feet and the removal of 10 trees (3 ordinance-size, 7 non-ordinance-size, 11 replacement trees) for the construction of a 25-story, 210-unit multifamily residential building with a 20% parking reduction and an alternative parking arrangement ("puzzle lifts") on an approximately 0.52-gross-acre site.

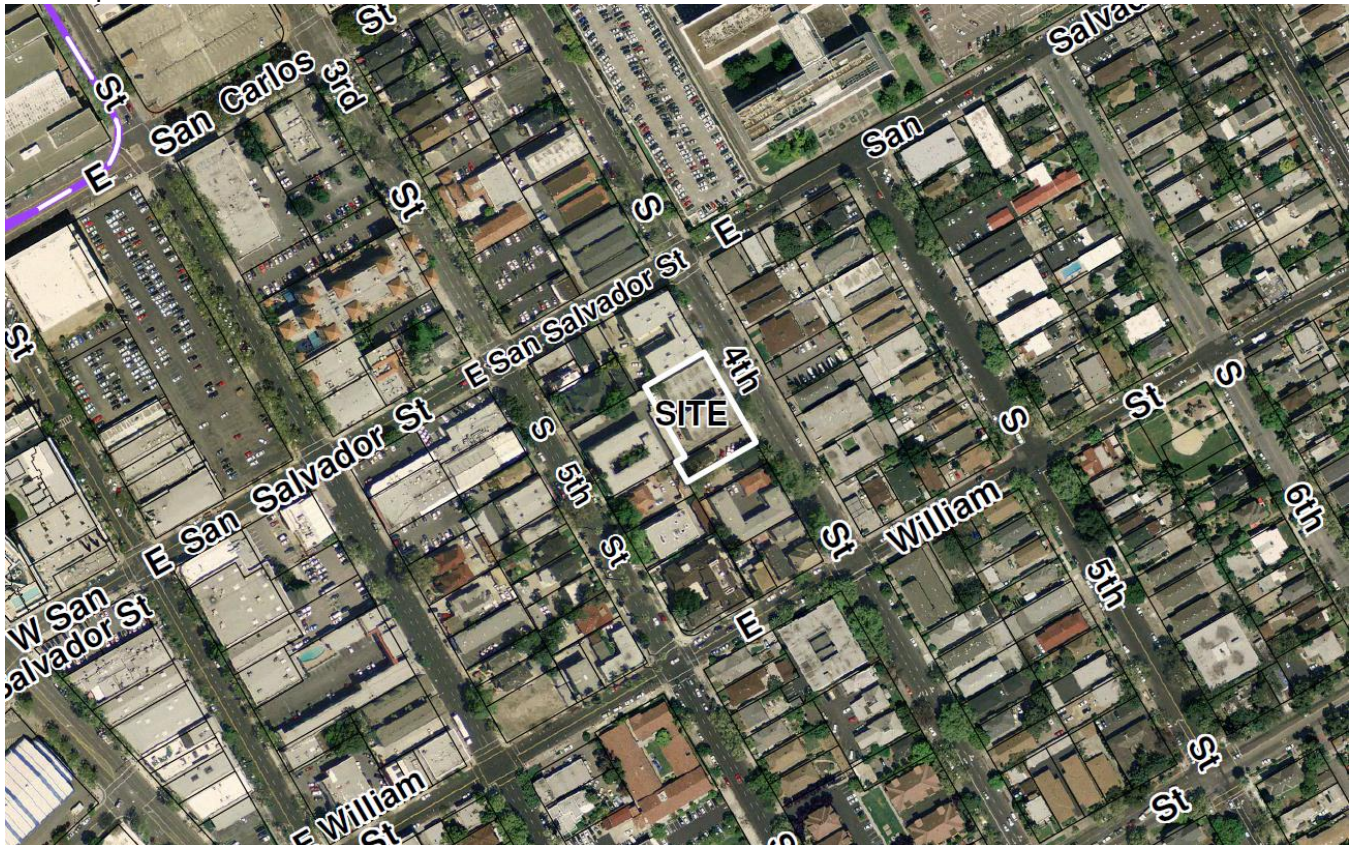
## PROPERTY INFORMATION

<b>Location</b>	Westerly of South 4 <sup>th</sup> Street, approximately 170 feet south of East San Salvador Street (439-451 South 4 <sup>th</sup> Street)
<b>Assessor Parcel No.</b>	467-47-058 & 467-47-096
<b>General Plan</b>	Downtown
<b>Growth Area</b>	Downtown
<b>Zoning</b>	DC Downtown Primary Commercial
<b>Historic Resources</b>	N/A

<b>Annexation Date</b>	Original City (March 27, 1850)
<b>Council District</b>	3
<b>Acreage</b>	0.52 gross acres
<b>Allowed Density</b>	800 DU/AC
<b>Proposed Density</b>	403 DU/AC
<b>Allowed FAR</b>	12.0
<b>Proposed FAR</b>	4.31

### PROJECT SETTING AND BACKGROUND

As shown on the attached Aerial Map (Exhibit A and Figure 1 below), the subject site is comprised of two parcels located on the west side of South 4<sup>th</sup> Street approximately 170 feet south of the intersection with East San Salvador Street. The site is currently developed with a 30-unit, three-story apartment building on the northern parcel and a two-story single-family residence on the southern parcel. Vehicular access to the site is provided by four driveways along South 4<sup>th</sup> Street. The site is bordered by multifamily residential uses on all sides. To facilitate the construction of the project, a Lot Line Adjustment is required to be approved to merge the two existing parcels into one parcel. The recordation of a Lot Line Adjustment is included as a condition of approval in the draft Site Development Permit Resolution.



**Figure 1 Aerial Map**

SURROUNDING USES			
	General Plan	Zoning District	Existing Use
<b>North</b>	Downtown	DC Downtown Primary Commercial	Multifamily Residential
<b>South</b>	Downtown	DC Downtown Primary Commercial	Multifamily Residential
<b>East</b>	Urban Residential	UR Urban Residential	Multifamily Residential
<b>West</b>	Downtown	DC Downtown Primary Commercial	Multifamily Residential

On January 18, 2017, property owner and applicant Nelly Amas, submitted an application for a Site Development Permit to allow the demolition of an existing single-family residence and 30-unit rent-stabilized multifamily building for the construction of a 12-story, 138-foot-high, 101-unit multifamily residential building.

On October 15, 2018, the applicant resubmitted the project with an updated design consisting of an 18-story, 207-foot-high, mixed-use building consisting of 1,345 square feet of retail and 218 multifamily residential units.

On November 8, 2019, the applicant resubmitted the project with another updated design consisting of a 19-story, 215-foot-high, mixed-use building consisting of 11,157 square feet of commercial space and 218 multifamily residential units.

On October 4, 2021, the applicant resubmitted the project with the currently proposed design consisting of a 25-story, 210-unit multifamily residential building totaling approximately 430,738 square feet. As the project includes an alternative parking arrangement (“puzzle lifts”), the Municipal Code Conformance section below provides an alternative parking arrangement analysis.

In the plan's final version, the building's ground floor consists of a lobby, mail room, office space, bicycle storage, and utility rooms. Floors two through four consist of structured parking. The fifth through 25<sup>th</sup> floors consist of residential units, associated study rooms, common open space, and utility rooms. The project includes a mix of two-bedroom (63), three-bedroom (21), four-bedroom (84), and five-bedroom (42) units. The roof level consists of a rooftop patio/lounge, community room, gym, dog park, bathroom, utility rooms, and mechanical equipment.

The site is accessible from two 26-foot-wide vehicle driveways and a newly constructed 12-foot-wide sidewalk along South 4<sup>th</sup> Street. Vehicle parking is provided on one underground level and four levels of above-ground structured parking. A total of 168 vehicle parking spaces are provided, including a mix of puzzle lifts, tandem spaces, and standard vehicle parking spaces.

This project is subject to the requirements of the City’s Ellis Act Ordinance 29902, adopted April 25, 2017 (Ellis Act Ordinance), as it involves the demolition or repurposing of existing multifamily residential units built before September 7, 1979. The ordinance requires owners to follow a standardized process for issuing notices to tenants, providing relocation benefits, and restricting future use of the property by requiring former tenants the right to return to the same unit if brought back to the rental market or if recontrolled new apartments are built on site. The right to return is governed by [Section 17.23.1170](#) of the Municipal Code. The Site Development Permit Resolution (Exhibit E) includes



conditions requiring compliance with the Ellis Act Ordinance including the following requirements for all 30 tenant households at 439 South 4<sup>th</sup> Street:

- **Noticing Requirements.** The owner must serve to the City of San Jose and to all residents a minimum 120 days' notice of intent to withdraw for every rent stabilized unit in the building. The notice must contain specific information as set forth in San Jose Municipal Code subsection C. of [Section 17.23.1140](#). For qualifying tenants, an owner must provide a minimum one years' notice to tenants of the owner's intent to withdraw the rental unit pursuant to subsection B of [Section 17.23.1160](#); and
- **Relocation Assistance.** Tenant Households are entitled to relocation assistance at the time they receive notice that their unit is intended to be withdrawn from the rental market. The amount of relocation assistance is based upon the number of bedrooms in the rent stabilized unit and is adjusted and set by the City Council via resolution each year. The relocation assistance fee schedule for fiscal year 2023-2024 is:

	Studio	1-Bedroom	2-Bedroom	3-Bedroom
<b>Base Assistance</b>	\$6,925	\$8,400	\$10,353	\$12,414
<b>Qualified Assistance</b>	\$2,770	\$3,360	\$4,141	\$4,966
<b>Total Base + Qualified Assistance</b>	\$9,696	\$11,760	\$14,494	\$17,380

- **Record a Memorandum in Official Records of Santa Clara County.** An owner must record a memorandum on a City approved form in the official records of Santa Clara County within ten days of delivery of the notice of intent to withdraw, or at least one day prior to sale or transfer of any property on which a building containing a covered unit to be withdrawn is located.
- **Filing Fee.** No less than one hundred twenty (120) days prior to the date upon which the building is intended to be withdrawn from the rental market, the owner shall pay to the City the fee set pursuant to [Section 17.23.1130](#). For 2023-2024, the filing fee is \$2,833 for the first 10 units and \$951 per additional unit after 10 units.

Additionally, the Ellis Act Ordinance requires the recontrol of half of the new units built where prior rent-controlled units existed. The Ellis Act Ordinance provides that if a building containing a rent stabilized unit is demolished and new units are built on the same property and offered for rent or lease within five (5) years of the effective date of withdrawal of the building with rent stabilized units, the number of newly constructed rental units equal to or greater of (i) the number of Covered Units or (ii) fifty percent (50%) of all newly constructed rental units located on the property where the Covered Unit was demolished shall be deemed Rent Stabilized Units subject to the Apartment Rent Ordinance (ARO). If the project requires the demolition of the 30 rent stabilized units, then of the 210 residential units built, one-half of those units (105 units) will be re-controlled and subject to the ARO, unless the owner chooses to provide onsite affordable rental units.

The recontrol requirements discussed above are waived if the owner chooses to provide 20% (42 units) of the newly constructed units as on-site as restricted affordable rental housing, under the standards consistent with the requirements of the City's Inclusionary Housing Ordinance (IHO).



**Figure 2 – Proposed 4<sup>th</sup> Street Elevation**

## ANALYSIS

The Site Development Permit is analyzed with respect to conformance with:

1. Envision San José 2040 General Plan
2. San José Municipal Code
3. Downtown Design Guidelines
4. Permit Findings
5. California Environmental Quality Act (CEQA)
6. City Council Policies

### Envision San José 2040 General Plan Conformance



**Figure 3 - General Plan Land Use Map**

#### Land Use Designation

As shown in the attached General Plan Map (Exhibit B and Figure 3 above), the project site has an [Envision San José 2040 General Plan](#) Land Use/Transportation Diagram designation of **Downtown**. The Downtown designation supports office, retail, service, residential, and entertainment uses that enhance the "complete community" in Downtown. The designation supports increased transit ridership and promotes bicycle circulation. Residential projects within the Downtown designation should incorporate ground-floor commercial uses.

*Analysis: The maximum allowable Floor Area Ratio (FAR) for projects with the Downtown land use designation is 30. The project has a FAR of approximately 19.5, in conformance with this requirement. The maximum allowed residential density is 800 Dwelling Units per Acre (DU/AC). The proposed project has a density of approximately 403 DU/AC, in conformance with this requirement. The project site is located along South 4<sup>th</sup> Street, a major Downtown thoroughfare providing transit services via VTA Bus Routes 66 and 68. The project site is also approximately 1,500 feet from the San Antonio VTA Light Rail Station, which further supports transit use of future residents.*

The proposed project is consistent with the following General Plan Policies:

#### General Plan Goals and Policies

1. **Major Strategy #9 – Destination Downtown:** Support continued growth in the Downtown as the City's cultural center and as a unique and important employment and residential neighborhood. Focusing growth within the Downtown will support the Plan's economic, fiscal, environmental, and urban design/ placemaking goals.

2. Land Use Policy LU-3.1: Provide maximum flexibility in mixing uses throughout the Downtown area. Support intensive employment, entertainment, cultural, public/quasi-public, and residential uses in compact, intensive forms to maximize social interaction; to serve as a focal point for residents, businesses, and visitors; and to further the Vision of the Envision General Plan.
3. Land Use Policy LU-3.5: Balance the need for parking to support a thriving Downtown with the need to minimize the impacts of parking upon a vibrant pedestrian and transit oriented urban environment. Provide for the needs of bicyclists and pedestrians, including adequate bicycle parking areas and design measures to promote bicyclist and pedestrian safety.
4. Land Use Policy LU-10.3 Develop residentially designated lands adjacent to major transit facilities at high densities to reduce motor vehicle travel by encouraging the use of public transit.
5. Community Design Policy CD-1.11: To create a more pleasing pedestrian-oriented environment, for new building frontages, include design elements with a human scale, varied and articulated facades using a variety of materials, and entries oriented to public sidewalks or pedestrian pathways. Provide windows or entries along sidewalks and pathways; avoid blank walls that do not enhance the pedestrian experience. Encourage inviting, transparent façades for ground-floor commercial spaces that attract customers by revealing active uses and merchandise displays.
6. High Quality Facilities and Programs Policy PR-2.6: Locate all new residential developments over 200 units in size within 1/3 of a mile walking distance of an existing or new park, trail, open space or recreational school grounds open to the public after normal school hours or shall include one or more of these elements in its project design.

*Analysis: The proposed project provides a high-density residential development in an area planned for intensive residential and commercial growth. To promote walking and transit use, the project provides 168 vehicle parking spaces, less than the minimum required 210 spaces. The proposed project also provides 70 bicycle parking spaces, greater than the 53 spaces required. Bicycle parking is provided in a secure bicycle room that is accessible from the pedestrian-only entrance along South 4<sup>th</sup> Street.*

*The project site is located along South 4<sup>th</sup> Street, a major Downtown thoroughfare providing transit services via VTA Bus Routes 66 and 68. The project site is also approximately 1,500 feet from the San Antonio VTA Light Rail Station. The ground floor of the building has a clear glass storefront, glass garage door entries, and granite walls. While the project does not include commercial space, office space and lobby space with clear windows are provided at the ground level along South 4<sup>th</sup> Street. The building entry is highlighted with a canopy and a self-illuminated glass wall flanks the building entry in order to create an active and inviting street frontage. The project is located approximately one-half block from the San Jose State University Campus, that are open for recreational purposes after normal school hours and includes several parks and paseos.*

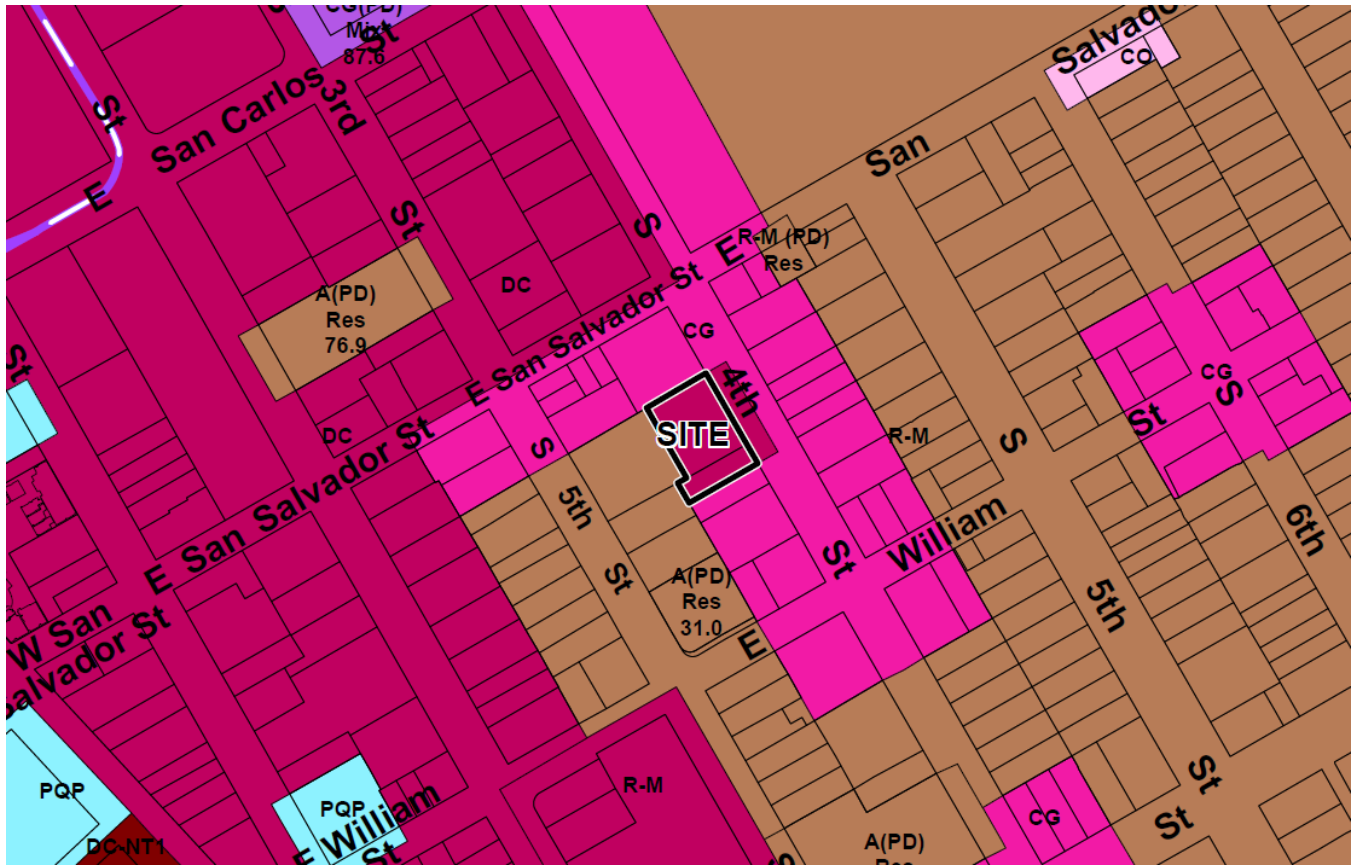
## **Municipal Code Conformance**

### Land Use

The attached Zoning District Map (Exhibit C and Figure 4 below) shows that the project is located within the **DC Downtown Primary Commercial** Zoning District. Pursuant to [Section 20.70.100](#) of the Zoning Code, multifamily residential uses are permitted in the DC Zoning District. Pursuant to [Section 20.100.600](#) of the San José Municipal Zoning Code, a Site Development Permit is required for the erection or construction of a building. An alternative parking arrangement (puzzle lifts) is also permitted in the DC Downtown Primary Commercial Zoning District. Additional findings to allow an



alternative parking arrangement are made below pursuant to Section 20.90.220 of the Zoning Code.



**Figure 4 Zoning Map**

#### Setbacks and Height

Development Standard	Requirement	Proposed
Front setback	None	None
Side setback	None	9 feet 2 inches (south), 10 feet 3 inches (north)
Rear setback	None	7 feet, 2 inches
Maximum height	295 feet per Federal Aviation Administration (FAA)	274 feet

[Section 20.70.210](#) of the Municipal Code does not establish minimum setback requirements for developments in the DC Downtown Primary Commercial Zoning District. The height of development in the Zoning District is only limited to the height limitations necessary for the safe operation of the San José International Airport and Federal Aviation Regulations Part 77. As shown on the project plans, the project's height is 274 feet. The maximum allowed height for the subject property per the Federal Aviation Administration is 295 feet. Conditions of approval would require the applicant to secure appropriate FAA and aviation clearances for the building's height before construction.

#### Vehicle Parking



Use	Ratio	Number of Units
Multifamily Residential	1 per unit	210 units
<b>Total Required</b>		210 spaces
<b>Total Provided</b>		168 spaces
<b>Parking Reduction</b>		20%

The project was submitted on January 18, 2017. Therefore, the project is subject to the previously adopted parking requirements in effect prior to April 10, 2023. Pursuant to [Chapter 20.70](#) of the Zoning Code, one vehicle parking space per unit is required for multifamily residential uses in the DC Zoning District. Therefore, a total of 210 vehicle parking spaces are required. A total of 168 vehicle parking spaces are provided, resulting in an approximately 20% parking reduction. [Section 20.90.220](#) of the Zoning Code authorizes a parking reduction of up to 20% of the required parking spaces for sites within a Growth Area without the implementation of a Transportation Demand Management (TDM) Plan if the project provides the code required number of bicycle spaces. The subject property is located within Downtown, a growth area, and provides the required bicycle parking spaces, as shown below. Therefore, the project is eligible for a 20% vehicle parking reduction. Vehicle parking is provided in standard vehicle parking spaces, tandem spaces, and puzzle lifts. Tandem and puzzle lift parking is considered an alternative parking arrangement permitted by right in the DC Downtown Primary Commercial Zoning District pursuant to [Section 20.70.100](#) of the Zoning Code.

#### Bicycle Parking

Use	Ratio	Number of Units
Multifamily Residential	1 per 4 units	210 units
<b>Total Required</b>		53 spaces
<b>Total Provided</b>		70 spaces

Pursuant to [Section 20.90.060](#) of the Zoning Code, multifamily residential are required to provide one bicycle parking space per four residential units. Therefore, the project is required to provide 53 bicycle parking spaces. A total of 70 bicycle parking spaces are provided, exceeding the requirement, and further supporting Land Use Policy LU-3.5.

#### Loading Spaces

Use	Ratio	Required
Multifamily Residential	Multiple dwelling residential uses of 200 units or greater and less than 500 units shall provide at least 2 off-street loading spaces	2 loading spaces
<b>Total Provided</b>		<b>2 loading spaces</b>

Pursuant to [Section 20.70.435](#) of the Zoning Code, multifamily residential uses with 200-500 units are required to provide two off-street loading spaces. The project provides two 10-foot by 30-foot loading

spaces on the ground floor of the parking garage in conformance with this requirement.

### **Downtown San Jose Design Guidelines (2004) Conformance**

The project was submitted on January 18, 2017, before adopting the Downtown Design Guidelines, which became effective on April 23, 2019. Therefore, the project was reviewed for conformance with the original Downtown Design Guidelines, adopted by the City Council on July 1, 2004. While residential projects only require conformance with objective, quantifiable standards pursuant to Senate Bill 330 (SB330), the project is consistent with the following key design guidelines as analyzed below:

- **Building Height and Massing**

- Skyline Height:

- Specify and compose a palette of materials with distinctive texture, pattern, transparency or light reflectivity or color
- Provide or enhance a specific architectural rooftop element

- Massing and Scale:

- Buildings that are over 150 feet, tall or more than 9 stories, should have a discernible treatment that distinguishes the base, middle and top of each building on all facades.

*Analysis: The building includes a variety of colors and materials that are arranged in a cohesive design. The 25-story building includes a discernible base, middle, and top. The ground floor has a clear glass storefront, glass garage door entries, and granite walls. The lower levels of the building also include garage screening elements, including perforated metal paneling and illuminated opaque glass. The middle level of the building is dominated by the residential units, with the façade broken up through minimum two-foot-deep breaks in the wall plane, materials, colors, and window shape. The middle portion of the building includes a mix of white, gray, and black stucco, wood-colored accent panels, and clear glass windows. The middle portion of the building is dominated by two painted stucco panels that wrap around the front façade to the north and south. The north panel extends 13 feet beyond the roof line, creating a rooftop architectural element that distinguishes the upper level of the building from the base and middle. The rooftop includes a patio/lounge, community room, gym, dog park, bathroom, utility rooms, and mechanical equipment.*

- **Architectural Elements**

- Buildings taller than 75 feet must have at least two vertical breaks or reveals greater than 2 feet in depth to divide the bulkiness of the mass.
- Avoid continuous massing longer than 100 feet that is not articulated with shadow relief, projections, and recesses. If massing extends beyond this length, it should be made permeable and visibly articulated as several smaller masses using different materials, vertical breaks, such as expressing bay widths, or with other architectural elements.

*Analysis: Above the second floor to the roof, the materials on the exterior emphasize verticality. Two painted stucco panels wrap around the front façade to the north and south. The vertical elements break up the long rows of windows in the middle portion of the building. Minimum two-foot-deep breaks in the wall plane coincide with the changes in color and material.*

- **Facades**

- For street wall continuity below 50 feet, 80% of the building facade must be within 2 feet of the property line or building face line established by the Streetscape Master Plan

*Analysis: The entirety of the building is placed at the lot line along South 4<sup>th</sup> Street in compliance with this requirement.*

- **Building Elements**

- Reinforce the building's entry with one or more of the following architectural treatments:
  - extra-height lobby space;
  - distinctive doorways;
  - decorative lighting;
  - distinctive entry canopy;
  - projected or recessed entry bay;

*Analysis: The building entry includes a self-illuminated glass wall flanking the main entry doors. The building entry is recessed, and a canopy is incorporated into the entry areas to create a distinctive building entry canopy.*

- **Parking Facilities**

- Recess the garage entry portion of the façade or extend portions of the structure over the garage entry to help subordinate its impact;
- Emphasize other facade elements to reduce the visual prominence of the garage entry;
- Incorporate pedestrian-oriented uses at street level to reduce the visual impact of parking structures;
- Visually integrate the parking structure with building volumes above, below, and adjacent.

*Analysis: The ground floor and above-ground garage levels are screened with perforated metal paneling and decorative glass garage doors. While the project does not include commercial space, office space and lobby space with clear windows are provided at the ground level along South 4<sup>th</sup> Street, between the garage entries. The building entry is highlighted with a canopy and a self-illuminated glass wall flanks the building entry in order to create an active and inviting street frontage..*

## **Permit Findings**

In order for this application to be approved, the City Council must be able to make all required findings for a Site Development Permit, Tree Removal Permit, and Demolition Permit.

### **Site Development Permit Findings**

To make the Site Development Permit findings pursuant to San José Municipal Code [Section 20.100.630](#), and recommend approval to the City Council, the Planning Commission must determine that:

1. The Site Development Permit, as approved, is consistent with and will further the policies of the General Plan, applicable specific plans and area development policies; and

*Analysis: Multifamily residential uses are consistent with the Downtown General Plan land use designation. The project is consistent with the Major Strategy for supporting the continued growth of*

*Downtown as a residential neighborhood. The project provides a high-density residential development in an area planned for intensive residential and commercial growth. The maximum allowable Floor Area Ratio (FAR) for projects with the Downtown land use designation is 30. The project has a FAR of approximately 19.5, in conformance with this requirement. The maximum allowed residential density is 800 Dwelling Units per Acre (DU/AC). The project has a density of approximately 403 DU/AC, in conformance with this requirement.*

2. The Site Development Permit, as approved, conforms with the Zoning Code and all other Provisions of the San José Municipal Code applicable to the project; and

*Analysis: Multifamily residential uses are permitted in the DC Downtown Primary Zoning District. The project is consistent with all applicable setback, height, and parking standards of the DC Zoning District. Additionally, the project is consistent with all applicable tree removal and tree replacement requirements of the Municipal Code, as discussed below in the Tree Removal Findings.*

3. The Site Development Permit, as approved, is consistent with applicable City Council policies, or counterbalancing considerations justify the inconsistency; and

*Analysis: Staff followed Council Policy 6-30: Public Outreach Policy to inform the public of the proposed project. Three community meetings were held for the project. A Community Meeting was held on April 3, 2017 at Lowell Elementary School. A joint EIR Scoping and Community Meeting was held on Thursday July 11, 2019 at Horace Mann Elementary School. A joint EIR Scoping and Community Meeting was held via Zoom on Monday March 21, 2022. An on-site sign has been posted on the project frontage since January 9, 2019. A notice of the public hearing was distributed to the owners and tenants of all properties located within 1,000 feet of the project site. The notice was also published in a newspaper of record on January 22, 2024. The staff report is also posted on the City's website. Staff has also been available to respond to questions from the public.*

4. The interrelationship between the orientation, location, and elevations of proposed buildings and structures and other uses on-site are mutually compatible and aesthetically harmonious.
5. *Analysis: The project consists of a single 25-story building with a single use of multifamily residential. In addition to the residential units, the project includes lobby and office space, a mailroom, structured parking, rooftop amenities, utility and mechanical equipment, stormwater control improvements, and a new 12-foot-wide sidewalk along the project frontage. The uses within the building are organized in a coherent manner with lobby, office, mailroom, and utility space located on the ground floor. Structured parking is well screened and provided in both subterranean and upper levels. The primary recreation facilities for residents are provided on the rooftop and include a pool and lounge area. Therefore, the orientation, location, and elevation of the uses on-site are mutually compatible and aesthetically harmonious. The orientation, location, and elevation of the proposed buildings and structures and other uses on the site are compatible with and are aesthetically harmonious with adjacent development or the character of the neighborhood.*

*Analysis: The subject site is surrounded entirely by multifamily residential uses. The project design is consistent with the 2004 Downtown Design Guidelines and the surrounding Downtown neighborhood, which includes similar existing and proposed high rise multifamily buildings. The site is surrounded by multifamily residential uses to the north, south, east, and west. The project includes modern contemporary architecture including glass, granite, stucco, metal panels and variations in massing and pattern.*

6. The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the

California Environmental Quality Act (CEQA), will not have an unacceptable negative effect on adjacent property or properties.

*Analysis: The project is located within an urbanized area and is served by all necessary public and private utilities. The project will be required to adhere to standard building and grading permit conditions as well as standard cultural and tribal cultural resources conditions and mitigation measures during the construction phase, which will minimize related impacts during the project phase. The operation of the project is entirely residential and therefore would not be a generating source for excessive noise or odor. Additionally, the project construction hours are limited to Monday through Friday 7:00 am to 7:00 pm. The project is conditioned to appoint a Construction Disturbance Coordinator to address any construction related concerns from surrounding neighbors and businesses. Therefore, the project would not contribute any significant adverse effects to the surrounding environment.*

7. Landscaping, irrigation systems, walls and fences, features to conceal outdoor activities, exterior heating, ventilating, plumbing, utility and trash facilities are sufficient to maintain or upgrade the appearance of the neighborhood.

*Analysis: Landscaping is provided along the sidewalk, 5<sup>th</sup> floor podium level courtyard at the rear of the building, and rooftop deck. Utilities associated with the building are located inside of the building and fully shielded from view. The trash room is also interior to the building. Based on the existing condition of the site, this would be an upgrade to the appearance of the neighborhood.*

8. Traffic access, pedestrian access and parking are adequate.

*Analysis: Vehicular access to the site is provided from two 26-foot-wide driveways along South 4<sup>th</sup> Street. To facilitate the construction of the multifamily residential building, the project is conditioned to construct public improvements including a 12-foot-wide sidewalk along South 4<sup>th</sup> Street. The project is served by multiple transit lines including VTA Bus Routes 66 and 68. The project site is also approximately 1,500 feet from the San Antonio VTA Light Rail Station. The project provides all required vehicle, bicycle, and loading spaces in conformance with Chapter 20.90 of the Zoning Code.*

#### Alternative Parking Arrangement Findings

[Section 20.90.200.B](#) of the Municipal Code establishes the required findings for the provision of alternative parking arrangements for off-street parking facilities.

1. The number of off-street parking spaces provided in such parking facilities adequately meets the parking requirements of the individual buildings and uses as specified in [Chapter 20.90](#) of this title;
2. It is reasonably certain that the parking facility shall continue to be provided and maintained at the same location for the service of the building or use for which such facility is required, during the life of the building or use; and
3. The parking facility is reasonably convenient and accessible to the buildings or uses to be served.

*Analysis: A total of 168 vehicle parking spaces are provided on site, which entails approximately 20% vehicle parking reduction, as permitted by [Sections 20.70.100](#) and [20.90.200](#) of the Zoning Code. The project includes 87 puzzle lift spaces, 20 tandem spaces, and 61 standard vehicle parking spaces. The spaces are accessible from one of the four parking levels accessible to residents from the interior of the building. The property owner is responsible for providing and*

*maintaining all portions of the building, including the operation of the puzzle lifts and assignment of vehicle parking spaces to tenants.*

### Demolition Permit Findings

[Chapter 20.80](#) of the Municipal Code establishes evaluation criteria for the issuance of a permit to allow for demolition. These criteria are made for the project based on the above stated findings related to General Plan, Zoning and CEQA conformance and for the reasons stated below, and subject to the conditions set forth in the Resolution.

1. The failure to approve the permit would result in the creation or continued existence of a nuisance, blight or dangerous condition;
2. The failure to approve the permit would jeopardize public health, safety or welfare;
3. The approval of the permit should facilitate a project that is compatible with the surrounding neighborhood;
4. The approval of the permit should maintain the supply of existing housing stock in the City of San José;
5. Both inventoried and non-inventoried buildings, sites and districts of historical significance should be preserved to the maximum extent feasible;
6. Rehabilitation or reuse of the existing building would not be feasible; and
7. The demolition, removal, or relocation of the building without an approved replacement building should not have an adverse impact on the surrounding neighborhood.

*Analysis: The proposed project includes the demolition of all buildings and structures on site. As discussed in Site Development Permit Findings 4 and 5, the project is compatible with the surrounding neighborhood and would not have an adverse impact. The demolition would facilitate a multifamily residential project planned for high-density residential growth in a downtown area. Reusing the buildings would not be feasible to implement the project's goals. The existing housing supply would be maintained by providing a greater number of residential units than the current housing on the site provides.*

*A [City Landmarks Evaluation Review](#) was prepared by Treanor HL, dated March 1, 2023. The 439 South Fourth Street apartment building was found ineligible for listing in the California Register of Historical Resources (CRHR) and ineligible as a Candidate City Landmark. The house at 451 South Fourth Street is listed in the Historic Resources Inventory as a Structure of Merit as a rare vernacular residence associated with early San José industrial development (San José brewery) and would continue to be listed as a Structure of Merit. However, the house was found ineligible for listing in the California Register of Historical Resources (CRHR) and ineligible as a Candidate City Landmark because it was relocated and remodeled and no longer represents its historical era. Therefore, the demolition of the buildings would not result in the destruction of a historic resource. The demolition of any existing buildings on-site would not be approved until a grading or building permit application is filed, whichever comes first, as conditioned in this Site Development Permit Resolution.*

### Tree Removal Permit Findings

Tree Replacement Ratios		
Circumference of Tree to be	Type of Tree to be Removed	Minimum Size of Each

Removed	Native	Non-Native	Orchard	Replacement Tree
38 inches or more	5:1	4:1	3:1	15-gallon
19 up to 38 inches	3:1	2:1	none	15-gallon
Less than 19 inches	1:1	1:1	none	15-gallon

x:x = tree replacement to tree loss ratio

Note: Trees greater than or equal to 38-inch circumference shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees. For Multifamily residential, Commercial and Industrial properties, a permit is required for removal of trees of any size. A 38-inch tree equals 12.1 inches in diameter.

A 24-inch box tree = two 15-gallon trees

In order to make the Tree Removal findings pursuant to [Section 13.32.100](#) of the San José Municipal Code and recommend approval to the City Council, Planning Commission must determine that:

1. That the condition of the tree with respect to disease, danger of falling, proximity to an existing or proposed structure, and/or interference with utility services, is such that preservation of the public health or safety requires its removal.
2. That the location of the tree with respect to a proposed improvement unreasonably restricts the economic development of the parcel in question; or

*Analysis: Based on the South Fourth Street Project Environmental Impact Report, the project includes the removal of 10 trees. Of the trees to be removed three are ordinance-size, and seven are non-ordinance-size. None of the trees are native species and two of the trees are identified as orchard trees. The trees were identified as part of a tree survey completed by David J. Powers & Associates, Inc. in September 2015. The trees proposed to be removed are located within the proposed building footprint or within the excavation area for the project. The preservation of the trees to be removed would restrict the development of the project at the intensity allowed by the General Plan and Zoning Code.*

*The trees to be removed would be replaced at the required ratios based on the tree mitigation table above. The trees to be removed include three English Laurel trees, two Mt. Fuji Flowering Cherry trees, one Locust, one Canary Island Date Palm, one Plum, one Lemon, and one Variegated Pittosporum tree. There are three non-native trees to be removed that are 38 inches or greater in circumference, requiring a replacement ratio of 4 to 1. There are two non-native trees to be removed that are 19 to 38 inches in circumference, requiring a replacement ratio of 2 to 1. There are three non-native trees to be removed that are less than 19 inches in circumference, requiring a replacement ratio of 1 to 1. Two orchard trees less than 19 inches in circumference do not require replacement. Therefore, the proposed project requires the replacement of either 19 (15-gallon) or 10 (24-inch box) trees on site. Based on the landscaping plan provided, the project includes planting 11 (24-inch box) trees on site, exceeding the mitigation requirement. Trees to be planted on-site include a mix of Dwarf Strawberry, Crape Myrtle, and Swan Hill Fruitless Olive trees.*

#### **CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

The City of San José, as the lead agency for the project, prepared a Draft Supplemental Environmental Impact Report (Draft SEIR) to the Downtown Strategy 2040 Environmental Impact Report (Resolution No. 78942). The Notice of Preparation (NOP) for the SEIR was circulated from April 1, 2022 to March



25, 2022, and the Draft SEIR was circulated for public review and comment from May 30, 2023 to July 14, 2023. An environmental scoping meeting for the SEIR was also held on March 21, 2022 via virtual conference meeting.

#### Summary of Environmental Impacts Reduced to Less than Significant with Mitigation

The Draft SEIR identified potential environmental impacts related to construction air quality, migratory nesting birds, and vibration from construction activities on fragile historic buildings. With implementation of the mitigation measures specified in the Mitigation Monitoring and Reporting Program (MMRP) and prepared for the project, these impacts are reduced to less than significant levels. As part of the certification of the Final SEIR, the City Council will need to approve the associated MMRP for the project.

#### Significant and Unavoidable Impacts and Statement of Overriding Considerations

The Draft SEIR also found that the project would result in a significant and unavoidable impact from construction noise which would exceed the exterior threshold of 80 dBA at adjacent residential land uses. The mitigation measures to be adopted for the proposed project would not reduce this impact to below the significance threshold.

If City Council were to approve the proposed project as proposed, in compliance with CEQA Guidelines Section 15093, a Statement of Overriding Considerations must be adopted with findings that the specific economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposed project outweigh the unavoidable adverse environmental effects if an environmentally superior alternative is not chosen.

The Statement of Overriding Considerations found that the economic and social benefits of construction of the proposed project which consists of providing 210 housing units, some of which would be affordable, to address the City's current housing shortage, all of which are downtown and accessible to jobs, retail and entertainment, and has access to various modes of public transit reducing vehicle miles traveled, would outweigh the temporary construction noise impact that would occur for a period that may potentially exceed 12 months.

#### Project Alternatives

The Draft SEIR analyzed two project alternatives, including a No Project – No Development Alternative, Preservation Alternative/Reduced Development Redesign. The environmentally superior alternative would be the No Project/No Development Alternative, which would avoid the identified significant impacts of the proposed project; however, CEQA requires that another alternative be chosen when the No Project Alternative is environmentally superior. The Preservation Alternative/Reduced Development Redesign is therefore the environmentally superior alternative. This alternative would reduce the height of the building from 25 stories to six stories, and result in a reduction of 176 units compared to the proposed project. With the reduction in building height, the project would be constructed in a shorter timeframe and pile driving, which is the primary cause of the significant and unavoidable impact under the proposed project, would not be required. Therefore, this alternative would avoid the significant and unavoidable noise impact.

#### Summary of Comments Received

The City received one comment letter during the public circulation period of the Draft SEIR. The comment letter was submitted by Valley Water. The main concerns raised by commenter are as follows:



- The Municipal Regional Permit (MRP) was re-issued in May 2022 and becomes effective in July 2023, the discussion in the Draft SEIR needs to be consistent with the new MRP.
- The site-specific Geotechnical Report that would be prepared for the project should discuss recommendation of waterproofing for the subgrade parking structure.
- Clarify flood hazard zones.
- If any wells are found on the project site, they must be properly destroyed under permit from Valley Water or registered with Valley Water and protected from damage.

None of the comments received address an issue of deficiency or adequacy of the Draft SEIR, or the mitigation measures to be adopted as part of the Final SEIR.

The City responded to all comments received on the Draft SEIR and incorporated them into the First Amendment to the Draft SEIR. SEIR text revisions were included in the First Amendment to address clarifications to the text of the Draft SEIR and other suggested text revisions from the commenter. The First Amendment, taken together with the Draft SEIR, and the Mitigation Monitoring and Reporting Program (MMRP) constitutes the Final SEIR. The Draft SEIR and First Amendment to the Draft SEIR (Final SEIR) are available for review on the project page on the City's Active EIR website at:

<https://www.sanjoseca.gov/your-government/departments-offices/planning-building-code-enforcement/planning-division/environmental-planning/environmental-review/active-eirs/south-fourth-mixed-use-project>. A copy of the MMRP is included in the proposed CEQA resolution.

#### EIR Recirculation Unnecessary

The comments received do not identify substantive inadequacies in the Draft SEIR or present new previously unidentified significant impacts that require recirculation. The recirculation of an EIR is required when significant new information is added to the EIR after public notice is given of the availability of the Draft EIR for public review but before certification. Information can include changes in the project or environmental setting as well as additional data or other information. New information added to a Draft EIR is not significant unless the Draft EIR is changed in a way that deprives the public of meaningful opportunity to comment on a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect, including a feasible project alternative that the project's proponents have declined to implement (CEQA Guidelines Section 15088.5). No such conditions have occurred.. Therefore, the Draft SEIR does not need to be recirculated.

#### **PUBLIC OUTREACH**

Staff followed [Council Policy 6-30: Public Outreach Policy](#) in order to inform the public of the proposed project. Three community meetings were held for the project. A Community Meeting was held on April 3, 2017 at Lowell Elementary School. A joint EIR Scoping and Community Meeting was held on Thursday July 11, 2019 at Horace Mann Elementary School. A joint EIR Scoping and Community Meeting was held via Zoom on Monday March 21, 2022. Community concerns included neighborhood compatibility, building height, building setbacks, parking impacts on the surrounding neighborhood, trash pick-up operations, sewage capacity, the need for on-site guest parking, the unit mix, the projected rental cost, and shade impacts on surrounding properties. An on-site sign was posted on the project frontage on January 9, 2019. A notice of the public hearing was distributed to the owners and tenants of all properties located within 1,000 feet of the project site and posted on the City website. The notice was also published in a newspaper of record (San Jose Post Record) on January 22, 2024. The staff report is also posted on the City's website. Staff has also been available to respond to questions from the public.

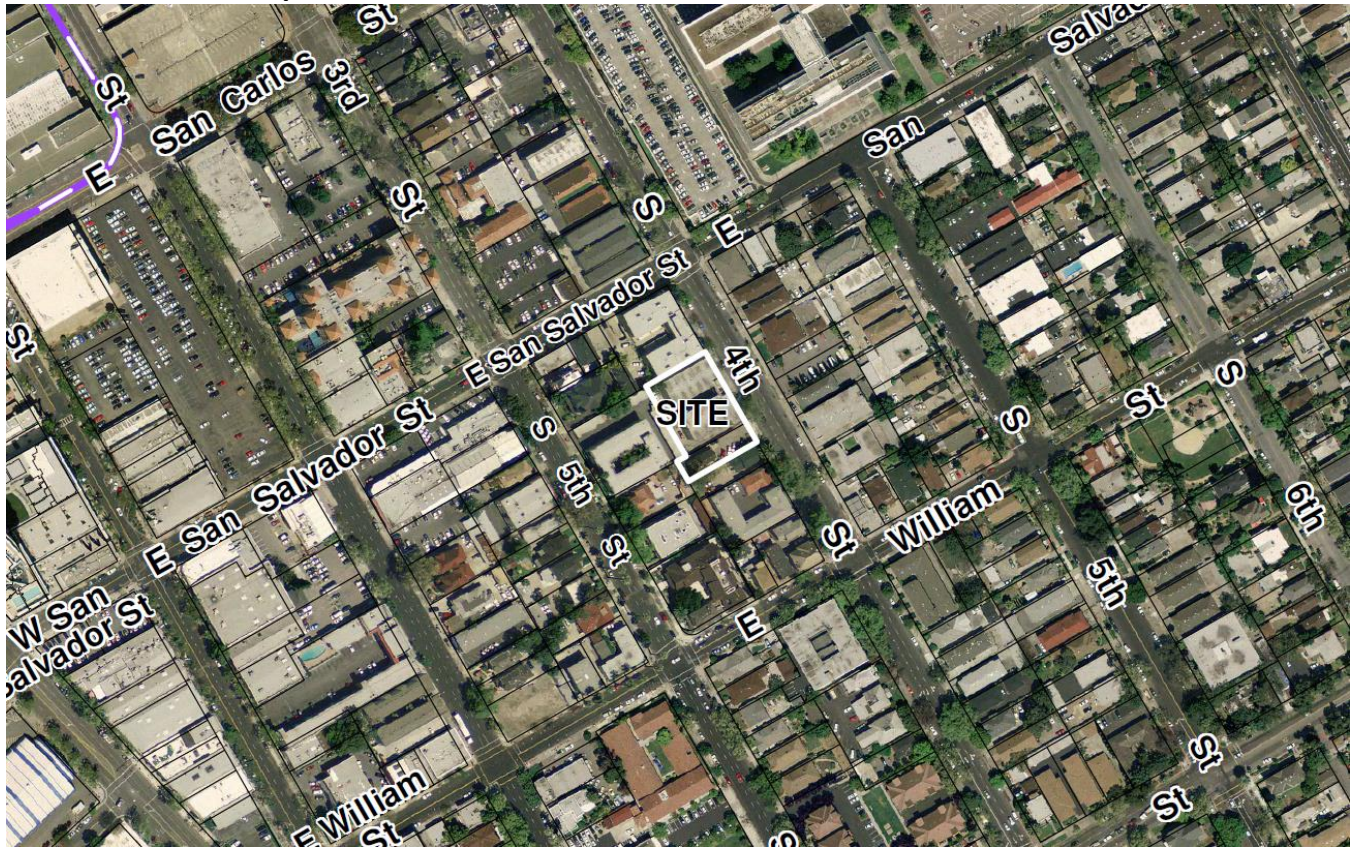
**Project Manager:** Alec Atienza

**Approved by:** /s/ , Robert Manford, Deputy Director for Christopher Burton, Director

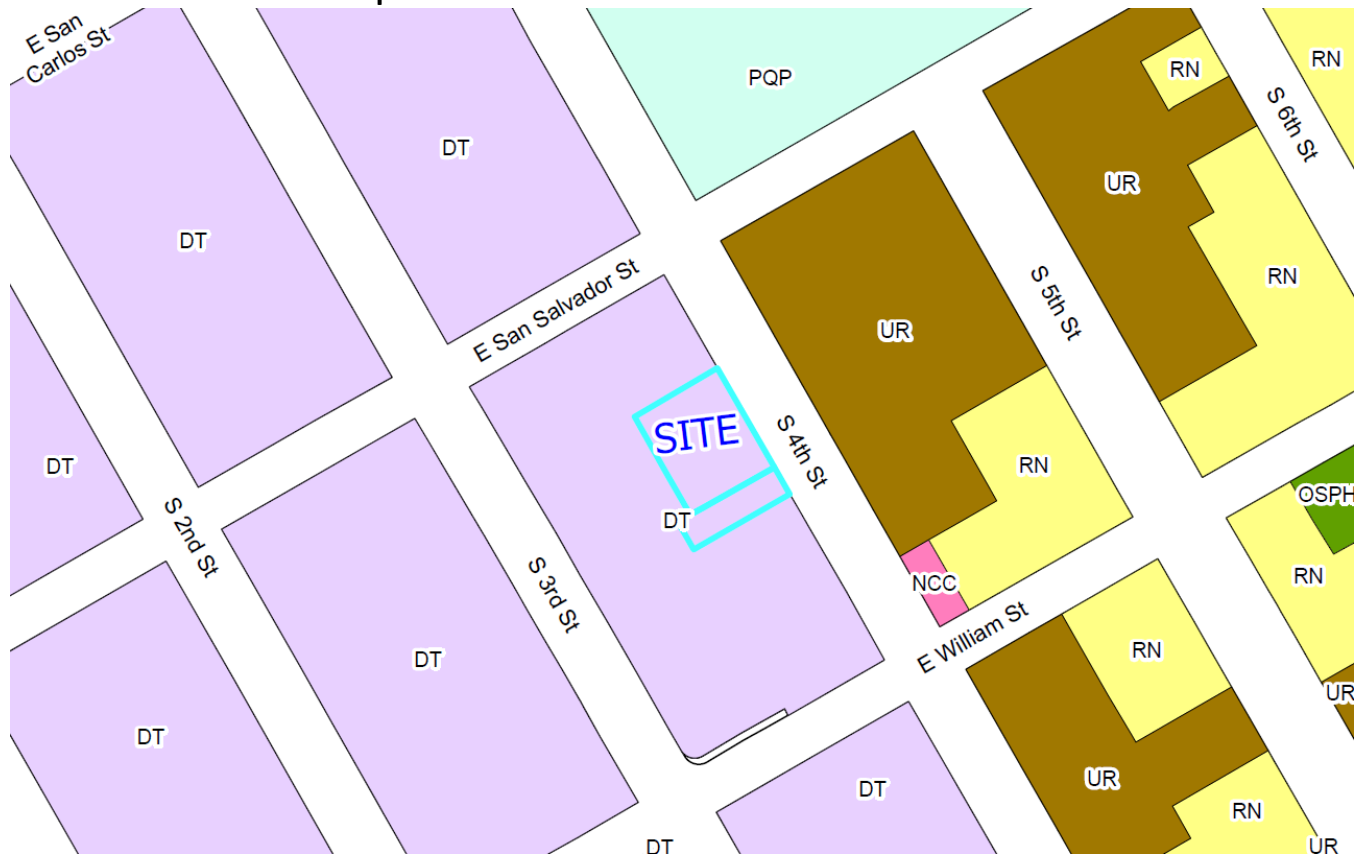
<b>ATTACHMENTS:</b>	
Exhibit A:	Aerial Map
Exhibit B:	General Plan Map
Exhibit C:	Zoning Map
Exhibit D:	Draft EIR Resolution and MMRP
Exhibit E:	Draft Site Development Permit Resolution
Exhibit F:	Site Development Permit Plan Set
Exhibit G:	Public Comments

<b>Owner/Applicant:</b>	<b>Applicant's Representative</b>
Nelly Amas 439 S. 4 <sup>th</sup> Street, LLC P.O Box Z	Salvatore Caruso Caruso Design 980 El Camino Real, Unit 200 Santa Clara, CA 95050

**EXHIBIT A: Aerial Map**

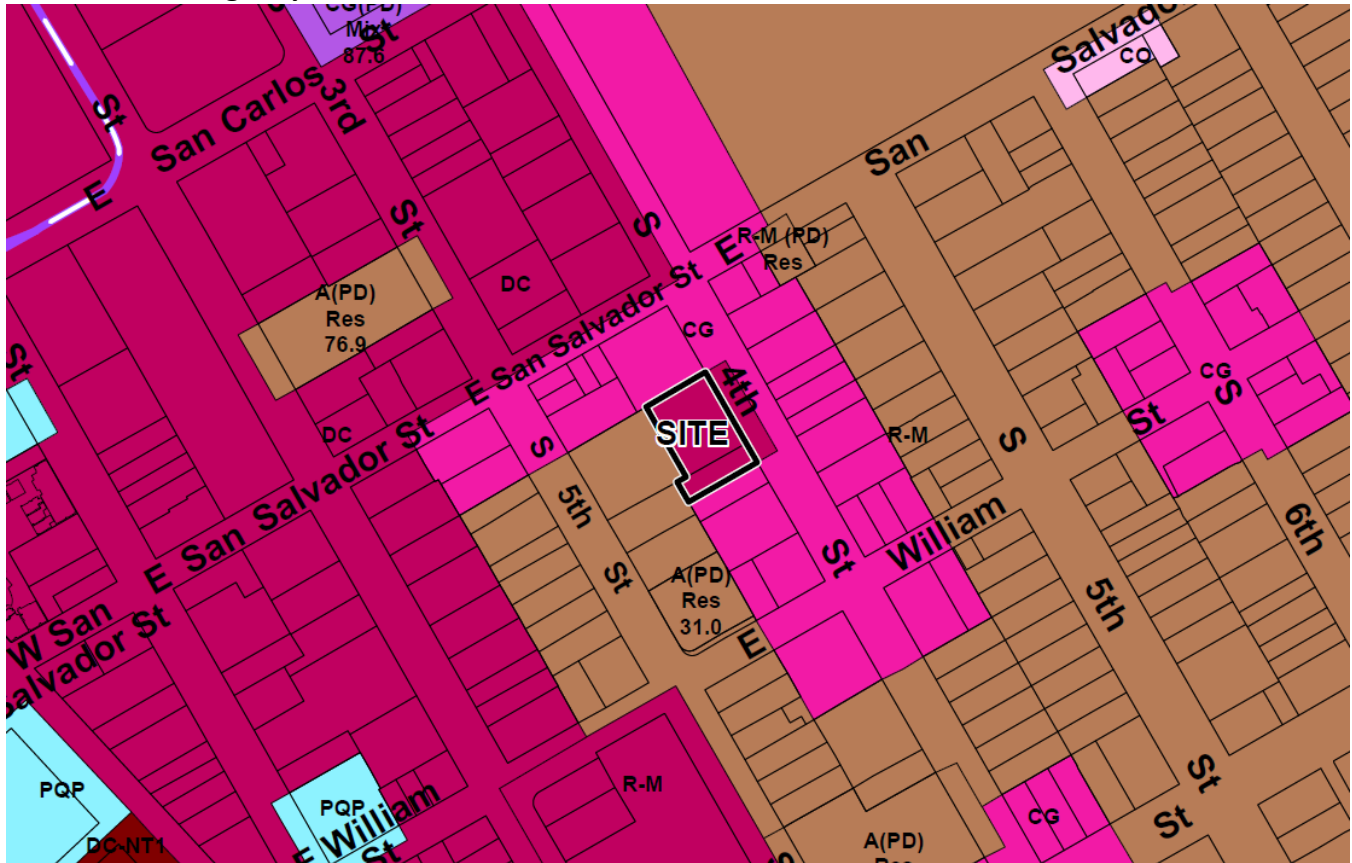


**EXHIBIT B: General Plan Map**





**EXHIBIT C: Zoning Map**



## **H17-004 & ER20-262**

### **Links to Attachment D - G**

Click on the title to view document.

<a href="#"><u>Exhibit D: Draft EIR Resolution and MMRP</u></a>
<a href="#"><u>Exhibit E: Draft Site Development Permit Resolution</u></a>
<a href="#"><u>Exhibit F: Site Development Permit Plan Set</u></a>
<a href="#"><u>Exhibit G: Public Comments</u></a>

[Correspondence Received After 2/7/24](#)

**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:

---

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.

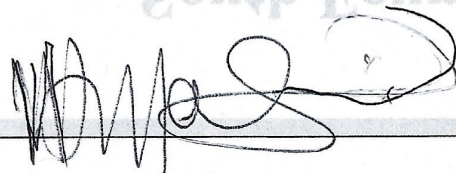
The Supplemental Environmental Impact Report (SEIR) prepared for the South Fourth Street project concluded that the implementation of the project could result in significant effects on the environment and mitigation measures were incorporated into the proposed project or are required as a condition of 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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<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>					



*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
<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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**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
<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>		and the City's Historic Preservation Officer.	specifications, and monitoring reports if pile driving is proposed.	whichever occurs earliest.



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	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
<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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**South Fourth Street Project  
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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.

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

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, A SITE DEVELOPMENT PERMIT TO ALLOW THE DEMOLITION OF AN EXISTING SINGLE-FAMILY RESIDENCE AND A MULTIFAMILY APARTMENT BUILDING AND THE REMOVAL OF 10 TREES (THREE ORDINANCE-SIZE, SEVEN NON-ORDINANCE-SIZE, 11 REPLACEMENT TREES) FOR THE CONSTRUCTION OF A 25-STORY, 210-UNIT MULTIFAMILY RESIDENTIAL BUILDING WITH A 20% PARKING REDUCTION AND AN ALTERNATIVE PARKING ARRANGEMENT (PUZZLE LIFTS) ON AN APPROXIMATELY 0.52-GROSS-ACRE SITE, LOCATED ON THE WESTERLY SIDE OF SOUTH 4TH STREET APPROXIMATELY 170 FEET SOUTH OF EAST SAN SALVADOR STREET (439-451 SOUTH 4TH STREET) (APNS 467-47-058 & 096)**

**FILE NO. H17-004**

**WHEREAS**, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on January 18, 2017, an application (File No. H17-004) was filed by the applicant's representative, Salvatore Caruso, on behalf of property owner Nelly Amas, to the City of San José for a Site Development Permit to allow the demolition of an existing single-family residence and multifamily-residential building and the removal of 10 trees (three ordinance-size, seven non-ordinance-size) for the construction of a 25-story, 210-unit-multifamily-residential building with a 20% parking reduction and an alternative parking arrangement ("puzzle lifts") on an approximately 0.52-gross-acre site, on that certain real property situated in the DC Downtown Primary Commercial Zoning District located on the west side of South 4<sup>th</sup> Street approximately 170 feet south of East San Salvador Street (439-451 South 4<sup>th</sup> Street), San José, which real property is sometimes referred to herein as the "subject property"); and

**WHEREAS**, the subject property is all that real property more particularly described in Exhibit "A" entitled "Legal Description," which is attached hereto and made a part hereof by this reference as if fully set forth herein; and

**WHEREAS**, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, the Planning Commission conducted a Public Hearing on said application on February 14, 2024, notice of which was duly given; and

**WHEREAS**, at said hearing, the Planning Commission gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and

**WHEREAS**, at said hearing, the Planning Commission made a recommendation to the City Council respecting said matter based on the evidence and testimony; and

**WHEREAS**, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, this City Council conducted a hearing on said application, notice of which was duly given; and

**WHEREAS**, at said hearing this City Council gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and

**WHEREAS**, at said hearing this City Council received and considered the reports and recommendations of the Planning Commission and the City's Director of Planning, Building and Code Enforcement; and

**WHEREAS**, at said hearing, this City Council received in evidence a plan for the subject property entitled, "Site Development Permit for 439 & 451 South 4<sup>th</sup> Street" dated March 30, 2022, said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested herein, and said plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

**WHEREAS**, said public hearing before the City Council was conducted in all respects as required by the San José Municipal Code and the rules of this City Council; and

**WHEREAS**, this City Council has heard and considered the testimony presented to it at the public hearing, and has further considered written materials submitted on behalf of the project applicant, City staff, and other interested parties;

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

After considering evidence presented at the public hearing, the City Council finds that the following are the relevant facts and findings regarding this proposed project:

1. **Site Description and Surrounding Uses.** The subject 0.52-gross-acre site is comprised of two parcels located on the west side of South 4<sup>th</sup> Street approximately 170 feet south of the intersection with East San Salvador Street. The site is currently developed with a 30-unit, three-story apartment building on the northern parcel and a two-story single-family residence on the southern parcel. Vehicle access to the site is provided by four driveways along South 4<sup>th</sup> Street. The site is bordered by multifamily residential uses on all sides.
2. **Project Description.** The project consists of a Site Development Permit to allow the demolition of an existing single-family residence and a 30-unit rent-stabilized multifamily apartment building totaling approximately 21,792 square feet and the removal of 10 trees (3 ordinance-size, 7 non-ordinance-size, 11 replacement trees) for the construction of a 25-story, 210-unit multifamily residential building with a 20% parking reduction and an alternative parking arrangement (i.e., puzzle lifts) on an approximately 0.52-gross-acre site.

The ground floor of the building consists of a lobby, mail room, office space, bicycle storage, and utility rooms. Floors two through four consist of structured parking. The fifth through 25<sup>th</sup> floors consist of residential units, associated study rooms, common open space, and utility rooms. The project includes a mix of two-bedroom (63), three-bedroom (21), four-bedroom (84), and five-bedroom (42) units. The roof level consists of a rooftop patio/lounge, community room, gym, dog park, bathroom, utility rooms, and mechanical equipment.

The site is accessible from two 26-foot-wide vehicle driveways and a newly constructed 12-foot-wide sidewalk along South 4<sup>th</sup> Street. Vehicle parking is provided in one subterranean level and four levels of above ground structured parking. A total of 168 vehicle parking spaces are provided, including a mix of puzzle lifts, tandem spaces, and standard vehicle parking spaces.

This project is subject to the requirements of the City's Ellis Act Ordinance 29902, adopted April 25, 2017 (Ellis Act Ordinance) as it involves the demolition or repurposing of existing multifamily residential units built before September 7, 1979. The Ellis Act Ordinance requires owners to follow a standardized process for issuing notices to tenants, providing relocation benefits, and restricting future use of the property by requiring former tenants the right to return to the same unit if brought back to the rental market or if recontrolled new apartments are built on site. The right to return is governed by Section 17.23.1170 of the Municipal Code. This Site Development Permit Resolution includes conditions requiring compliance with the Ellis Act Ordinance including the following requirements for all 30 tenant households at 439 South 4<sup>th</sup> Street:

- Noticing Requirements. The owner must serve to the City of San Jose and to all residents a minimum 120 days' notice (notice) of intent to withdraw for every rent stabilized unit in the building. The notice must contain specific information as set forth in San Jose Municipal Code subsection C. of section 17.23.1140. For qualifying tenants, an owner must provide a minimum one years' notice to tenants of the owner's intent to withdraw the rental unit pursuant to subsection B of section 17.23.1160; and
- Relocation Assistance. Tenant Households are entitled to relocation assistance at the time they receive notice that their unit is intended to be withdrawn from the rental market. The amount of relocation assistance is based upon the number of bedrooms in the rent stabilized unit and is adjusted and set by the City Council via resolution each year. The relocation assistance fee schedule for fiscal year 2023-2024 is:

	<b>Studio</b>	<b>1-Bedroom</b>	<b>2-Bedroom</b>	<b>3-Bedroom</b>
<b>Base Assistance</b>	\$6,925	\$8,400	\$10,353	\$12,414
<b>Qualified Assistance</b>	\$2,770	\$3,360	\$4,141	\$4,966
<b>Total Base + Qualified Assistance</b>	\$9,696	\$11,760	\$14,494	\$17,380

- Record a Memorandum in Official Records of Santa Clara County. An owner must record a memorandum on a city approved form in the official records of Santa Clara County within ten days of delivery of the notice of intent to withdraw, or at least one day prior to sale or transfer of any property on which a building containing a covered unit to be withdrawn is located.<sup>7</sup>
- Filing Fee. No less than one hundred twenty (120) days prior to the date upon which the building is intended to be withdrawn from the rental market, the owner shall pay

to the City the fee set pursuant to Section 17.23.1130. For 2023-2024, the filing fee is \$2,833 for the first 10 units and \$951 per additional unit after 10 units.

Additionally, the Ellis Act Ordinance requires the recontrol of half of the new units built where prior rent-controlled units existed. The Ellis Act Ordinance provides that if a building containing a rent stabilized unit is demolished and new units are built on the same property and offered for rent or lease within five (5) years of the effective date of withdrawal of the building with rent stabilized units, the number of newly constructed rental units equal to or greater of (i) the number of Covered Units or (ii) fifty percent (50%) of all newly constructed rental units located on the property where the Covered Unit was demolished shall be deemed Rent Stabilized Units subject to the Apartment Rent Ordinance (“ARO”).

If the project requires the demolition of the 30 rent stabilized units, then of the 210 residential units built, one-half of those units (105 units) will be re-controlled and subject to the ARO, unless the owner chooses to provide onsite affordable rental units.

The recontrol requirements discussed above are waived if the owner chooses to provide 20% (42 units) of the newly constructed units as on-site as restricted affordable rental housing, under the standards consistent with the requirements of the City’s Inclusionary Housing Ordinance (IHO).

To facilitate the construction of the project, a Lot Line Adjustment is required to merge the two existing parcels into one parcel. The recordation of a Lot Line Adjustment is included as a condition of approval in this Site Development Permit Resolution.

3. **General Plan Conformance.** The project site has an Envision San José 2040 General Plan land use designation of Downtown. The Downtown designation supports office, retail, service, residential, and entertainment uses that enhance the “complete community” in Downtown. The designation supports increased transit ridership and promotes bicycle circulation. Residential projects within the Downtown designation should incorporate ground floor commercial uses.

*Analysis: The project allows the construction of a high-density residential project in the Downtown core. The maximum allowable Floor to Area Ratio (FAR) for projects with the Downtown land use designation is 30. The project has an FAR of approximately 19.5, in conformance with this requirement. The maximum allowed residential density is 800 Dwelling Units per Acre (DU/AC). The project has a density of approximately 403 DU/AC, in conformance with this requirement. The project site is located along South 4<sup>th</sup> Street, a major Downtown thoroughfare providing transit services via VTA Bus Routes 66 and 68. The project site is also approximately 1,500 feet from the San Antonio VTA Light Rail Station, which further supports transit use of future residents.*

The project is consistent with the following General Plan Goals and Policies:

- a. Major Strategy #9 – Destination Downtown: Support continued growth in the Downtown as the City's cultural center and as a unique and important employment and residential neighborhood. Focusing growth within the Downtown will support the Plan's economic, fiscal, environmental, and urban design/ placemaking goals.
- b. Land Use Policy LU-3.1: Provide maximum flexibility in mixing uses throughout the Downtown area. Support intensive employment, entertainment, cultural, public/quasi-public, and residential uses in compact, intensive forms to maximize social interaction; to serve as a focal point for residents, businesses, and visitors; and to further the Vision of the Envision General Plan.
- c. Land Use Policy LU-3.5: Balance the need for parking to support a thriving Downtown with the need to minimize the impacts of parking upon a vibrant pedestrian and transit oriented urban environment. Provide for the needs of bicyclists and pedestrians, including adequate bicycle parking areas and design measures to promote bicyclist and pedestrian safety.
- d. Land Use Policy LU-10.3 Develop residentially-designated lands adjacent to major transit facilities at high densities to reduce motor vehicle travel by encouraging the use of public transit.
- e. Community Design Policy CD-1.11: To create a more pleasing pedestrian-oriented environment, for new building frontages, include design elements with a human scale, varied and articulated facades using a variety of materials, and entries oriented to public sidewalks or pedestrian pathways. Provide windows or entries along sidewalks and pathways; avoid blank walls that do not enhance the pedestrian experience. Encourage inviting, transparent façades for ground-floor commercial spaces that attract customers by revealing active uses and merchandise displays.
- f. High Quality Facilities and Programs Policy PR-2.6: Locate all new residential developments over 200 units in size within 1/3 of a mile walking distance of an existing or new park, trail, open space or recreational school grounds open to the public after normal school hours or shall include one or more of these elements in its project design.

*Analysis: The project provides a high-density residential development in an area of Downtown San Jose that is planned for intensive residential and commercial growth. The project provides 168 vehicle parking spaces, less than the minimum required 210 spaces in order to promote walking and transit use. The project also provides 70 bicycle parking spaces, greater than the 53 spaces required. Bicycle parking is provided in a secure bicycle room that is accessible from the pedestrian-only entrance along South 4<sup>th</sup> Street. The project site is located along South 4<sup>th</sup> Street, a major Downtown thoroughfare, which provides transit services via VTA Bus Routes 66 and 68. The project site is also approximately 1,500 feet from the*

*San Antonio VTA Light Rail Station. The ground floor of the building consists of clear glass storefront, glass garage door entries, and granite walls. While the project does not include commercial space, office space and lobby space with clear windows are provided at the ground level along South 4<sup>th</sup> Street. The building entry is highlighted with a canopy and a self-illuminated glass wall flanks the recessed building entry in order to create an active and inviting street frontage. The project is located approximately one-half block from the San Jose State University Campus, that is open for recreational purposes after normal school hours and includes several parks and paseos.*

#### 4. Zoning Ordinance Consistency.

##### Land Use

Pursuant to Section 20.70.100 of the Zoning Code, multifamily residential uses are permitted in the DC Downtown Primary Commercial Zoning District. Pursuant to Section 20.100.600 of the San José Municipal Zoning Code, a Site Development Permit is required for the erection or construction of a building. Additionally, this resolution also includes findings for an alternative parking arrangement (i.e., puzzle lifts) pursuant to Section 20.90.220 of the Zoning Code.

##### Setbacks and Height

Development Standard	Requirement	Proposed
Front setback	None	None
Side setback	None	9 feet 2 inches (southerly side), 10 feet 3 inches (northerly side)
Rear setback	None	7 feet, 2 inches
Maximum height	295 per Federal Aviation Administration (FAA)	274 feet

*Analysis: Section 20.70.210 of the Municipal Code does not establish minimum setback requirements for developments in the DC Downtown Primary Commercial Zoning District. The height of development in the Zoning District is only limited to the height limitations necessary for the safe operation of the San José International Airport and Federal Aviation Regulations Part 77. As shown on the project plans, the height of the project is 274 feet. The maximum allowed height for the subject property, per the Federal Aviation Administration, is 295 feet. Conditions of approval would require*



*the applicant to secure appropriate FAA and aviation clearances for the building's height prior to construction.*

Vehicle Parking

Use	Ratio	Number of Units
Multifamily Residential	1 per unit	210 units
<b>Total Required</b>		210 spaces
<b>Total Provided</b>		168 spaces
<b>Parking Reduction</b>		20%

*Analysis: The project was submitted on January 18, 2017. Therefore, the project is subject to the previously adopted parking requirements in effect prior to April 10, 2023. Pursuant to Chapter 20.70 of the Zoning Code, one vehicle parking space per unit is required for multifamily residential uses. Therefore, a total of 210 vehicle parking spaces are required. A total of 168 vehicle parking spaces are provided, resulting in an approximately 20% parking reduction. Section 20.90.220 of the Zoning Code authorizes a parking reduction of up to 20% of the required parking spaces for sites within a Growth Area without the implementation of a Transportation Demand Management (TDM) Plan if the project provides the code required number of bicycle spaces. The subject property is located in Downtown, a growth area, and provides the required number of bicycle parking spaces, as shown below. Therefore, the project is eligible for a 20% vehicle parking reduction. Vehicle parking is provided in the form of standard vehicle parking spaces, tandem spaces, and puzzle lifts. Tandem and puzzle lift parking is considered an alternative parking arrangement, which is permitted by right in the DC Downtown Primary Commercial Zoning District pursuant to Section 20.70.100 of the Zoning Code.*

Bicycle Parking

Use	Ratio	Number of Units
Multifamily Residential	1 per 4 units	210 units
<b>Total Required</b>		53 spaces
<b>Total Provided</b>		70 spaces

*Analysis: Pursuant to Section 20.90.060 of the Zoning Code, multifamily residential are required to provide one bicycle parking space per four residential units. Therefore, the project is required to provide 53 bicycle parking spaces. A total of 70 bicycle parking spaces are provided, exceeding the requirement and further supporting LU-3.5.*

#### Loading Spaces

Use	Ratio	Required
Multifamily Residential	Multiple dwelling residential uses of 200 units or greater and less than 500 units shall provide at least 2 off-street loading spaces	2 loading spaces
	<b>Total Provided</b>	<b>2 loading spaces</b>

*Analysis: Pursuant to Section 20.70.435 of the Zoning Code, multifamily residential uses with 200-500 units are required to provide two off-street loading spaces. The project provides two 10-foot by 30-foot loading spaces on the ground floor of the parking garage in conformance with this requirement.*

#### **5. Downtown Design Guidelines (2004) Conformance**

The project was submitted on January 18, 2017, prior to the adoption of the Downtown Design Guidelines, which became effective on April 23, 2019. Therefore, the project was reviewed for conformance with the original Downtown Design Guidelines, adopted by City Council on July 1, 2004. While residential projects only require conformance with objective quantifiable standards pursuant to Senate Bill 330 (SB330), the project is consistent with the following design key guidelines as analyzed below:

##### Building Height and Massing

###### a. Skyline Height:

- i. Specify and compose a palette of materials with distinctive texture, pattern, transparency or light reflectivity or color
- ii. Provide or enhance a specific architectural rooftop element

###### b. Massing and Scale:

- i. Buildings that are over 150 feet, tall or more than 9 stories, should have a discernible treatment that distinguishes the base, middle and top of each building on all facades.

*Analysis: The building includes a variety of colors and materials that are arranged in a cohesive design. The 25-story building includes a discernible base, middle, and top. The ground floor consists of clear glass storefront, glass garage door entries, and granite walls. The lower levels of the building also include garage screening elements, including perforated metal paneling and illuminated opaque glass. The middle level of the building is dominated by the residential units, with the façade broken up through minimum two-foot-deep breaks in the wall plane, materials, colors, and window shape. The middle portion of the building includes a mix of white, gray, and black stucco, wood color accent panels, and clear glass windows. The middle portion of the building is dominated by two painted stucco panels that wrap around the front façade to the north and south. North panel extends 13 feet beyond the roof line, creating a rooftop architectural element that distinguishes the upper level of the building from the base and middle. The rooftop includes a patio/lounge, community room, gym, dog park, bathroom, utility rooms, and mechanical equipment.*

#### Architectural Elements

- c. Buildings taller than 75 feet must have at least two vertical breaks or reveals greater than 2 feet in depth to divide the bulkiness of the mass.
- d. Avoid continuous massing longer than 100 feet that is not articulated with shadow relief, projections and recesses. If massing extends beyond this length, it should be made permeable and visibly articulated as several smaller masses using different materials, vertical breaks, such as expressing bay widths, or with other architectural elements.
- e. *Analysis: Above the second floor to the roof, the materials on the exterior emphasize verticality. Two painted stucco panels wrap around the front façade to the north and south. The vertical elements serve to break up the long rows of windows in the middle portion of the building. Minimum two-foot-deep breaks in the wall plane, coincide with the changes in color and material.*

#### Facades

- f. For street wall continuity below 50 feet, 80% of the building facade must be within 2 feet of the property line or building face line established by the Streetscape Master Plan
- g. *Analysis: The entirety of the building is placed at the lot line along South 4<sup>th</sup> Street in compliance with this requirement.*

#### Building Elements

- h. Reinforce the building's entry with one or more of the following architectural treatments:
  - i. extra-height lobby space;

- ii. distinctive doorways;
- iii. decorative lighting;
- iv. distinctive entry canopy;
- v. projected or recessed entry bay;

*Analysis: The building entry includes a self-illuminated glass wall flanking the main entry doors. The building entry is recessed, and a canopy is incorporated into the entry areas to create a distinctive building entry canopy.*

#### Parking Facilities

- i. Recess the garage entry portion of the façade or extend portions of the structure over the garage entry to help subordinate its impact;
- j. Emphasize other facade elements to reduce the visual prominence of the garage entry;
- k. Incorporate pedestrian-oriented uses at street level to reduce the visual impact of parking structures;
- l. Visually integrate the parking structure with building volumes above, below, and adjacent.

*Analysis: The ground floor and above ground garage levels are screened with perforate metal paneling and decorative glass garage doors. While the project does not include commercial space, office space and lobby space with clear windows are provided at the ground level along South 4<sup>th</sup> Street, between the garage entries. The building entry is highlighted with a canopy and a self-illuminated glass wall flanks the building entry in order to create an active and inviting street frontage.*

#### **6. City Council Policy 6-30: Public Outreach Policy for Pending Land Use Development Proposals**

Staff followed Council Policy 6-30: Public Outreach Policy in order to inform the public of the proposed project. Three community meetings were held for the project. A Community Meeting was held on April 3, 2017 at Lowell Elementary School. A joint EIR Scoping and Community Meeting was held on Thursday July 11, 2019 at Horace Mann Elementary School. A joint EIR Scoping and Community Meeting was held via Zoom on Monday March 21, 2022. Community concerns included parking impacts on the surrounding neighborhood, trash pick-up operations, the need for on-site guest parking, the unit mix, the projected rental cost, and shade impacts on surrounding properties. An on-site sign was posted on the project frontage on January 9, 2019. A notice of the public hearing was distributed to the owners and tenants of all properties located within 1,000 feet of the project site and posted on the City website. The notice was also published in a newspaper of record on January 22, 2024. The staff report is

also posted on the City's website. Staff has also been available to respond to questions from the public.

## **7. Environmental Review.**

The City of San José, as the lead agency for the project, prepared a Draft Supplemental Environmental Impact Report (Draft SEIR) to the Downtown Strategy 2040 Environmental Impact Report (Resolution No. 78942). The Notice of Preparation (NOP) for the SEIR was circulated from April 1, 2022 to March 25, 2022, and the Draft SEIR was circulated for public review and comment from May 30, 2023 to July 14, 2023. An environmental scoping meeting for the SEIR was also held on March 21, 2022 via virtual conference meeting.

### **Summary of Environmental Impacts Reduced to Less than Significant with Mitigation**

The Draft SEIR identified potential environmental impacts related to construction air quality, migratory nesting birds, and vibration from construction activities on fragile historic buildings. With implementation of the mitigation measures specified in the Mitigation Monitoring and Reporting Program (MMRP) and prepared for the project, these impacts are reduced to less than significant levels. As part of the certification of the Final SEIR, the City Council will need to approve the associated MMRP for the project.

### **Significant and Unavoidable Impacts and Statement of Overriding Considerations**

The Draft SEIR also found that the project would result in a significant and unavoidable impact from construction noise which would exceed the exterior threshold of 80 dBA at adjacent residential land uses. The mitigation measures to be adopted for the proposed project would not reduce this impact to below the significance threshold.

If City Council were to approve the project as proposed, in compliance with CEQA Guidelines Section 15093, a Statement of Overriding Considerations must be adopted with findings that the specific economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposed project outweigh the unavoidable adverse environmental effects if an environmentally superior alternative is not chosen.

The Statement of Overriding Considerations found that the economic and social benefits of construction of the project which consists of providing 210 housing units, some of which are affordable, to address the City's current housing shortage, all of which are downtown and accessible to jobs, retail and entertainment, and has access to various modes of public transit reducing vehicle miles traveled, would outweigh the temporary construction noise impact that would occur for a period that may potentially exceed 12 months.

### **Project Alternatives**

The Draft SEIR analyzed two project alternatives, including a No Project – No Development Alternative, Preservation Alternative/Reduced Development

Redesign. The environmentally superior alternative would be the No Project/No Development Alternative, which would avoid the identified significant impacts of the proposed project; however, CEQA requires that another alternative be chosen when the No Project Alternative is environmentally superior. The Preservation Alternative/Reduced Development Redesign is therefore the environmentally superior alternative. This alternative would reduce the height of the building from 25 stories to six stories, and result in a reduction of 176 units compared to the proposed project. With the reduction in building height, the project would be constructed in a shorter timeframe and pile driving, which is the primary cause of the significant and unavoidable impact under the proposed project, would not be required. Therefore, this alternative would avoid the significant and unavoidable noise impact.

Summary of Comments Received

The City received one comment letter during the public circulation period of the Draft SEIR. The comment letter was submitted by Valley Water. The main concerns raised by commenter are as follows:

- a. The Municipal Regional Permit (MRP) was re-issued in May 2022 and becomes effective in July 2023, the discussion in the Draft SEIR needs to be consistent with the new MRP.
- b. The site-specific Geotechnical Report that would be prepared for the project should discuss recommendation of waterproofing for the subgrade parking structure.
- c. Clarify flood hazard zones.
- d. If any wells are found on the project site, they must be properly destroyed under permit from Valley Water or registered with Valley Water and protected from damage.

None of the comments received address an issue of deficiency or adequacy of the Draft SEIR, or the mitigation measures to be adopted as part of the Final SEIR.

The City responded to all comments received on the Draft SEIR and incorporated them into the First Amendment to the Draft SEIR. SEIR text revisions were included in the First Amendment to address clarifications to the text of the Draft SEIR and other suggested text revisions from the commenter. The First Amendment, taken together with the Draft SEIR, and the Mitigation Monitoring and Reporting Program (MMRP) constitutes the Final SEIR. The Draft SEIR and First Amendment to the Draft SEIR (Final SEIR) are available for review on the project page on the City's Active EIR website at: <https://www.sanjoseca.gov/your-government/departments-offices/planning-building-code-enforcement/planning-division/environmental-planning/environmental-review/active-eirs/south-fourth-mixed-use-project>. A copy of the MMRP is included in the proposed CEQA resolution.

### EIR Recirculation Unnecessary

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

In accordance with CEQA Guidelines Section 15088, the First Amendment to the Draft SEIR for the project includes written responses to all comments received during the public review period for the Draft SEIR. As required by Section 15132 of the CEQA Guidelines, the responses in the First Amendment to the Draft SEIR address significant environmental points and comments on the content and adequacy of the SEIR. The responses and comments provide clarification and refinement of information presented in the Draft SEIR and, in some cases, correct or update information in the Draft SEIR. No significant new information requiring recirculation has been added to the SEIR since publication of the Draft SEIR, and the mitigation measures to be adopted with the Final SEIR would not result in a new significant environmental impact and feasible mitigation measures requested by commenters would be adopted as part of project approval. Therefore, the Draft SEIR does not need to be recirculated.

8. **Site Development Permit Findings.** Section 20.100.630 of the San José Municipal Code specifies the required findings for the approval of a Site Development Permit.
  - a. The Site Development Permit, as approved, is consistent with and will further the policies of the General Plan and applicable specific plans and area development policies.

*Analysis: Multifamily residential uses are consistent with the Downtown General Plan land use designation. The project is consistent with the Major Strategy for supporting the continued growth of Downtown as a residential neighborhood. The project provides a high-density residential development in an area that is planned for intensive residential and commercial growth. The maximum allowable Floor to Area Ratio (FAR) for projects with the Downtown land use designation is 30. The project has an FAR of approximately 19.5, in conformance with this requirement. The maximum allowed residential density is 800 Dwelling Units per Acre (DU/AC). The project has a density of approximately 403 DU/AC, in conformance with this requirement.*

- b. The Site Development Permit, as approved, conforms with the zoning code and all other provisions of the San José Municipal Code applicable to the project.

*Analysis: Multifamily residential uses are permitted in the DC Downtown Primary Zoning District. The project is consistent with all applicable setback, height, and parking standards of the DC Zoning District. Additionally, the project is consistent with all applicable alternative parking requirements and tree removal and tree replacement requirements of the Municipal Code.*

- c. The Site Development Permit, as approved, is consistent with applicable City Council Policies or counterbalancing considerations justify the inconsistency.

*Analysis: Staff followed Council Policy 6-30: Public Outreach Policy in order to inform the public of the proposed project. Three community meetings were held for the project. A Community Meeting was held on April 3, 2017 at Lowell Elementary School. A joint EIR Scoping and Community Meeting was held on Thursday July 11, 2019 at Horace Mann Elementary School. A joint EIR Scoping and Community Meeting was held via Zoom on Monday March 21, 2022. An on-site sign was posted on the project frontage on January 9, 2019. A notice of the public hearing was distributed to the owners and tenants of all properties located within 1,000 feet of the project site. The notice was also published in a newspaper of record on January 22, 2024. The staff report is also posted on the City's website. Staff has also been available to respond to questions from the public.*

- d. The interrelationship between the orientation, location, and elevations of proposed buildings and structures and other uses on-site are mutually compatible and aesthetically harmonious.

*Analysis: The project consists of a single 25-story building with a single use of multifamily residential. In addition to the residential units, the project includes lobby and office space, a mailroom, structured parking, rooftop amenities, utility and mechanical equipment, stormwater control improvements, and a new 12-foot-wide sidewalk along the project frontage. The uses within the building are organized in a coherent manner with lobby, office, mailroom, and utility space located on the ground floor. Structured parking is well screened and provided in both subterranean and upper levels. The primary recreation facilities for residents are provided on the rooftop and include a pool and lounge area. Therefore, the orientation, location, and elevation of the uses on-site are mutually compatible and aesthetically harmonious.*

- e. The orientation, location and elevation of the proposed buildings and structures and other uses on the site are compatible with and are aesthetically harmonious with adjacent development or the character of the neighborhood.

*Analysis: The subject property is surrounded entirely by multifamily residential uses. The project design is consistent with the 2004 Downtown Design Guidelines and the surrounding Downtown neighborhood, which includes similar existing and*



*proposed high rise multifamily buildings. The site is surrounded by multifamily residential uses to the north, south, east, and west. The project includes modern contemporary architecture including glass, granite, stucco, metal panels and variations in massing and pattern.*

- f. The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative affect on adjacent property or properties.

*Analysis: The project is located within an urbanized area and is served by all necessary public and private utilities. The project will be required to adhere to standard building and grading permit conditions as well as standard cultural and tribal cultural resources conditions and mitigation measures during the construction phase, which will minimize related impacts during the project phase. The operation of the project is entirely residential and therefore would not be a generating source for excessive noise or odor. Additionally, the project construction hours are limited to Monday through Friday 7:00 a.m. to 7:00 p.m. The project is conditioned to appoint a Construction Disturbance Coordinator to address any construction related concerns from surrounding neighbors and businesses. Therefore, would not contribute any significant adverse effects to the surrounding environment.*

- g. Landscaping, irrigation systems, walls and fences, features to conceal outdoor activities, exterior heating, ventilating, plumbing, utility and trash facilities are sufficient to maintain or upgrade the appearance of the neighborhood.

*Analysis: Landscaping is provided along the sidewalk, 5<sup>th</sup> floor podium level courtyard at the rear of the building, and rooftop deck. Utilities associated with the building are located within the building and fully shielded from view. The trash room is also interior to the building.*

- h. Traffic access, pedestrian access and parking are adequate.

*Analysis: Vehicular access to the site is provided from two 26-foot-wide driveways along South 4<sup>th</sup> Street. To facilitate the construction of the multifamily residential building, the project is conditioned to construct public improvements including a 12-foot-wide sidewalk along South 4<sup>th</sup> Street. The project is served by multiple transit lines including VTA Bus Routes 66 and 68. The project site is also approximately 1,500 feet from the San Antonio VTA Light Rail Station. The project provides all required vehicle, bicycle, and loading spaces in conformance with Chapter 20.90 of the Zoning Code.*

9. **Alternative Parking Arrangement Findings.** Section 20.90.200.B of the Municipal Code establishes the required findings for the provision of alternative parking arrangements for off-street parking facilities.

- a. The number of off-street parking spaces provided in such parking facilities adequately meets the parking requirements of the individual buildings and uses as specified in this Chapter 20.90 of this title;
- b. It is reasonably certain that the parking facility shall continue to be provided and maintained at the same location for the service of the building or use for which such facility is required, during the life of the building or use; and
- c. The parking facility is reasonably convenient and accessible to the buildings or uses to be served.

*Analysis: A total of 168 vehicle parking spaces are provided on site with the implementation of an approximately 20% vehicle parking reduction, as permitted by Sections 20.70.100 and 20.90.200 of the Zoning Code. The project includes 87 puzzle lift spaces, 20 tandem spaces, and 61 standard vehicle parking spaces. The spaces are accessible from one of the four parking levels accessible to residents from the interior of the building. The property owner is responsible for the provision and maintenance of all portions of the building including the operation of the puzzle lifts and assignment of vehicle parking spaces to tenants.*

**10. Tree Removal Permit Findings.** Section 13.32.100 of the San José Municipal Code specifies the required findings for live tree removals.

- a. That the condition of the tree with respect to disease, danger of falling, proximity to an existing or proposed structure, and/or interference with utility services, is such that preservation of the public health or safety requires its removal.
- b. That the location of the tree with respect to a proposed improvement unreasonably restricts the economic development of the parcel in question; or
- c. That the tree affected is of a size, type and condition, and is in such surroundings, that its removal would not significantly frustrate the purposes of Section 13.32.010 of the San José Municipal Code.

Tree Replacement Ratios				
Circumference of Tree to be Removed	Type of Tree to be Removed			Minimum Size of Each Replacement Tree
	Native	Non-Native	Orchard	
38 inches or more	5:1	4:1	3:1	15-gallon
19 up to 38 inches	3:1	2:1	none	15-gallon
Less than 19 inches	1:1	1:1	none	15-gallon
x:x = tree replacement to tree loss ratio				
Note: Trees greater than or equal to 38-inch circumference shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees. For				

Multi-Family residential, Commercial and Industrial properties, a permit is required for removal of trees of any size.

A 38-inch tree equals 12.1 inches in diameter.

A 24-inch box tree = two 15-gallon trees

*Analysis: Based on the South Fourth Street Project Environmental Impact Report, the project includes the removal of 10 trees. Of the trees to be removed three are ordinance-size, and seven are non-ordinance-size. None of the trees are native species and two of the trees are identified as orchard trees. The trees were identified as part of a tree survey completed by David J. Powers & Associates, Inc. in September 2015. The trees proposed to be removed are located either within the proposed building footprint, or within the area of excavation for the project. The preservation of the trees to be removed would restrict the development of the project at the intensity allowed by the General Plan and Zoning Code. The trees to be removed would be replaced at the required ratios based on the tree mitigation table above. The trees to be removed include three English Laurel trees, two Mt. Fuji Flowering Cherry trees, one Locust, one Canary Island Date Palm, one Plum, one Lemon, and one Variegated Pittisporum tree. There are three non-native trees to be removed that are 38-inches or greater in circumference requiring a replacement ratio of 4 to 1. There are two non-native trees to be removed that are 19 to 38-inches in circumference requiring a replacement ratio of 2 to 1. There are three non-native trees to be removed that are less than 19 inches in circumference requiring a replacement ratio of 1 to 1. There are two orchard trees less than 19 inches in circumference that do not require replacement. Therefore, the project requires the replacement of either 19 (15-gallon) or 10 (24-inch box) trees on site. Based on the landscaping plan provided, the project includes the planting of 11 (24-inch box) trees on site, exceeding the mitigation requirement. Trees to be planted on site include a mix of Dwarf Strawberry, Crape Myrtle, and Swan Hill Fruitless Olive trees.*

**11. Demolition Permit Findings.** Chapter 20.80 of the San José Municipal Code establishes evaluation criteria for the issuance of a permit to allow demolition.

- a. The failure to approve the permit would result in the creation or continued existence of a nuisance, blight or dangerous condition;
- b. The failure to approve the permit would jeopardize public health, safety or welfare;
- c. The approval of the permit should facilitate a project that is compatible with the surrounding neighborhood;
- d. The approval of the permit should maintain the supply of existing housing stock in the City of San José;

- e. Both inventoried and non-inventoried buildings, sites and districts of historical significance should be preserved to the maximum extent feasible;
- f. Rehabilitation or reuse of the existing building would not be feasible; and
- g. The demolition, removal or relocation of the building without an approved replacement building should not have an adverse impact on the surrounding neighborhood.

*Analysis: The project includes the demolition of all buildings and structures on site. The buildings to be demolished include a single-family residence and a 30-unit multifamily apartment building. As discussed in Site Development Permit Findings d and e, the project is compatible with the surrounding neighborhood, and would not have an adverse impact. The demolition would facilitate a multifamily residential project in an area of downtown that is planned for high density residential growth. Re-use of the buildings would not be feasible to implement the goals of the project. Existing supply of housing would be maintained through the provision of a greater number of residential units than the current housing on the site provides. A City Landmarks Evaluation Review was prepared by Treanor HL, dated March 1, 2023. The apartment building at 439 South Fourth Street was found ineligible for listing in the California Register of Historical Resources (CRHR) and ineligible as a Candidate City Landmark. The house at 451 South Fourth Street is listed in the Historic Resources Inventory as a Structure of Merit as a rare vernacular residence associated with early San José industrial development (San José brewery) and would continue to be listed as a Structure of Merit. However, the house was found ineligible for listing in the California Register of Historical Resources (CRHR) and ineligible as a Candidate City Landmark because it was relocated and remodeled and is no longer representative of its historical era. Therefore, the demolition of the buildings would not result in the destruction of a historic resource. The demolition of any existing buildings on-site would not be approved until the filing of a grading or building permit application, whichever comes first, as conditioned in this Site Development Permit. The demolition of any existing buildings on-site would not be approved until the filing of a grading or building permit application, whichever comes first, as conditioned in this Site Development Permit.*

In accordance with the findings set forth above, a Site Development Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby **granted**. This City Council expressly declares that it would not have granted this Permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

**APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:**

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the permittee fail to file a timely and valid appeal of this Site Development Permit (collectively "Permit") within the applicable appeal period, such inaction by the permittee shall be deemed to constitute all of the following on behalf of the permittee:
  - a. Acceptance of the Permit by the permittee; and
  - b. Agreement by the permittee to be bound by, to comply with, and to do all things required of or by the permittee pursuant to all of the terms, provisions, and conditions of this Permit or other approval and the provisions of Title 20 of the San José Municipal Code applicable to such Permit.
2. **Permit Expiration.** This Permit shall automatically expire four (4) years from and after the date of issuance hereof by the City Council, if within such time period, the proposed use of the site or the construction of buildings (if a Building Permit is required) has not commenced, pursuant to and in accordance with the provision of this Permit. The date of issuance is the date this Permit is approved by the City Council. However, the Director of Planning may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.
3. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this Permit shall be deemed acceptance of all conditions specified in this Permit and the Permittee's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described in the Building Code shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San José Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
4. **Sewage Treatment Demand.** Pursuant to Chapter 15.12 of Title 15 of the San José Municipal Code, acceptance of this Permit by Permittee shall constitute acknowledgement of receipt of notice by Permittee that (1) no vested right to a Building Permit shall accrue as the result of the granting of this Permit when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José - Santa Clara Regional Wastewater Facility represented by approved land uses in the area served by said Facility will cause the total sewage treatment demand to meet or exceed the capacity of San José - Santa Clara Regional Wastewater Facility to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region; (2) substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority; (3) issuance of a Building Permit to implement this Permit may be suspended, conditioned or denied where the City Manager makes a determination that such action is necessary

to remain within the aggregate operational capacity of the sanitary sewer system available to the City of San José or to meet the discharge standards of the sanitary sewer system imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region.

5. **Conformance to Plans.** The development of the site and all associated development and improvements shall conform to the approved Site Development Permit plans entitled, "Site Development Permit for 439 & 451 South 4<sup>th</sup> Street" dated March 30, 2022, on file with the Department of Planning, Building and Code Enforcement ("Approved Plans"), and to the San José Building Code (San José Municipal Code, Title 24), with the exception of any subsequently approved changes.
6. **Demolition Permit.** A demolition permit may be issued for the demolition of all existing buildings including a single-family residence and 30-unit multifamily apartment building only upon confirmation from the City's Housing Department that the requirements of the Ellis Act have been met (see Condition #34) and the submittal of a complete Public Works Grading Permit application or the submittal of a complete Building Permit application for new construction.
7. **Lot Line Adjustment.** Prior to the issuance of a Building Permit for vertical construction, the Permittee shall secure approval and provide proof of recordation of a Lot Line Adjustment to consolidate the two existing lots.
8. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City of San José.
9. **Compliance with Local, State, and Federal Laws.** The subject use shall be conducted in full compliance with all local, and, state, and federal laws.
10. **Discretionary Review.** The City maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of the San José Municipal Code.
11. **Refuse.** All trash and refuse storage areas are approved as designed and shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the trash or refuse container(s). Trash areas shall be maintained in a manner to discourage illegal dumping.
12. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the Approved Plan Set.
13. **Utilities.** All new on-site telephone, electrical, and other service facilities shall be placed underground.
14. **Anti-Graffiti.** All graffiti shall be removed from buildings and wall surfaces, including job sites for projects under construction, within 48 hours of defacement.

15. **Anti-Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris. Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts, and garbage.
16. **No Sign Approval.** Any signage shown on the Approved Plan Set are conceptual only. No signs are approved at this time. Any signs shall be subject to review and approval by the Director of Planning through a subsequent Permit Adjustment.
17. **Building and Property Maintenance.** The property shall be maintained in good visual and functional condition. This shall include, but not be limited to, all exterior elements of the buildings such as paint, roof, paving, signs, lighting, and landscaping.
18. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
19. **Required Vehicular and Bicycle Parking.** This project shall conform to the vehicular and bicycle parking requirements of the Zoning Ordinance, as amended. Any changes to the required vehicular or bicycle parking requires the issuance of a Permit Adjustment or Amendment to the satisfaction of the Director of Planning.
20. **No Generators Approved.** This Permit does not include the approval of any stand-by/backup electrical power generation facility. Any future stand-by/backup generators shall secure appropriate permits and shall conform to the regulations of Title 20 of the Municipal Code.
21. **Mechanical Equipment.** The location and type of mechanical equipment shall be as shown on the Approved Plans and shall be screened from view. Changes to the mechanical equipment requires the issuance of a Permit Adjustment or Amendment to the satisfaction of the Director of Planning.
22. **No Extended Construction Hours.** This Permit does not allow any construction activity on a site located within 500 feet of a residential unit before 7:00 a.m. or after 7:00 p.m., Monday through Friday, or at any time on weekends.
23. **Construction Disturbance Coordinator.** Rules and regulation pertaining to all construction activities and limitations identified in this Permit, along with the name and telephone number of a permittee-appointed disturbance coordinator, shall be posted in a prominent location at the entrance to the job site.
24. **Green Building Requirements.** This development is subject to the City's Green Building Ordinance for Private Sector New Construction as set for in Municipal Code Section 17.84. Prior to the issuance of any shell permits, or complete building permits, for the construction of buildings approved through the scope of this Permit, the Permittee shall pay a Green Building Refundable Deposit. In order to receive a refund of the deposit, the project must achieve the minimum requirements as set forth in Municipal Code Section 17.84. The request for the refund of the Green Building Deposit together with evidence demonstrating the achievement of the green building standards indicated in Municipal Code Section 17.84 shall be submitted within a year

after the building permit expires or becomes final, unless a request for an extension is submitted to the Director of Planning, Building, and Code Enforcement in accordance with Section 17.84.305D of the Municipal Code.

- 25. Timing of Tree Removals.** Trees that are proposed for removal to accommodate new development shall not be removed until the related complete Public Works Grading Permit Application or Building Permit Application has been filed.
- 26. Tree Protection Standards.** The Permittee shall maintain the trees and other vegetation shown to be retained in this project and as noted on the Approved Plan Set. Maintenance shall include pruning and watering as necessary and protection from construction damage. Prior to the removal of any tree on the site, all trees to be preserved shall be permanently identified by metal numbered tags. Prior to issuance of the Grading Permit or removal of any tree, all trees to be saved shall be protected by chain link fencing, or other fencing type approved by the Director of Planning. Said fencing shall be installed at the dripline of the tree in all cases and shall remain during construction. No storage of construction materials, landscape materials, vehicles or construction activities shall occur within the fenced tree protection area. Any root pruning required for construction purposes shall receive prior review and approval and shall be supervised by the consulting licensed arborist. Fencing and signage shall be maintained by the Permittee to prevent disturbances during the full length of the construction period that could potentially disrupt the habitat or trees.
- 27. Tree Replacement Enforcement.** Failure to plant trees in conformance with the approved plan set may be subject to in-lieu fees for trees not planted.
- 28. Verification of Payment and/or Planting of Replacement Tree(s).** After payment of the in-lieu fee and/or the planting of replacement trees on-site, the permittee shall provide appropriate evidence such as, but not limited to, photographs and/or receipts to the Planning Project Manager to verify compliance with the mitigation requirements. Such evidence shall be uploaded to [www.sjpermits.org](http://www.sjpermits.org) using these instructions:
- How to set up an account: <https://www.sanjoseca.gov/business/development-services-permit-center/online-permits-at-sjpermits-org>, and
  - How to upload: <https://www.sanjoseca.gov/home/showpublisheddocument/88853/638088605255430000>. Such evidence shall also be emailed to the Planning Project Manager and labeled (File No. H17-004)
- 29. Landscaping.** Planting and irrigation are to be provided by the Permittee, as indicated, on the final Approved Plans.
- 30. Irrigation Standards.** Irrigation shall be installed in accordance with Part 3 of Chapter 15.11 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping, the City of San José Landscape



and Irrigation Guidelines and the Zonal Irrigation Plan in the Approved Plans. The design of the system shall be approved and stamped by a California Registered Landscape Architect.

**31. Certification.** Pursuant to San José Municipal Code, Section 15.11.1050 certificates of substantial completion for landscape and irrigation installation shall be completed by a licensed or certified professional and included on the Landscape Sheets in the plan set submitted to the Department of Planning, Building and Code Enforcement prior to approval of the final inspection of the project.

**32. Conformance to Mitigation Monitoring and Reporting Program.** This project shall conform to all applicable requirements of the Mitigation Monitoring and Reporting Program (MMRP) approved for this development by City Council Resolution No. March 12, 2024.

**33. Standard Environmental Permit Conditions**

**a. Air Quality**

**i. Construction Related Air Quality:**

- a) Water active construction areas at least twice daily or as often as needed to control dust emissions.
- b) Cover trucks hauling soil, sand, and other loose materials and/or ensure that all trucks hauling such materials maintain at least two feet of freeboard.
- c) Remove visible mud or dirt track-out onto adjacent public roads using wet-power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- d) Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.).
- e) Pave new or improved roadways, driveways, and sidewalks as soon as possible.
- f) Lay building pads as soon as possible after grading unless seeding or soil binders are used.
- g) Limit all vehicle speeds on unpaved roads to 15 mph.
- h) Replant vegetation in disturbed areas as quickly as possible.
- i) Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
- j) Minimize idling times either by shutting off equipment when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations). Provide clear signage for construction workers at all access

points.

- k) All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified visible emissions evaluator.
- l) Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints.

**b. Biological Resources**

- i. Santa Clara Valley Habitat Plan. The project may be subject to applicable SCVHP conditions and fees (including the nitrogen deposition fee) prior to issuance of any grading permits. The project applicant shall submit the Santa Clara Valley Habitat Plan Coverage Screening Form (<https://www.scv-habitatagency.org/DocumentCenter/View/151/Coverage-Screening-Form?bidId=>) to the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee for approval and payment of all applicable fees prior to the issuance of a grading permit. The Habitat Plan and supporting materials can be viewed at <https://scv-habitatagency.org/178/Santa-Clara-Valley-Habitat-Plan>.
- ii. Tree Replacement

Tree Replacement Ratios				
Circumference of Tree to be Removed	Type of Tree to be Removed			Minimum Size of Each Replacement Tree
	Native	Non-Native	Orchard	
38 inches or more	5:1	4:1	3:1	15-gallon
19 to 38 inches	3:1	2:1	None	15-gallon
Less than 19 inches	1:1	1:1	None	15-gallon
x:x = tree replacement to tree loss ratio Note: Trees greater than or equal to 38-inch circumference measured at 54 inches above natural grade shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees. For Multi-Family residential, Commercial and Industrial properties, a permit is required for removal of trees of any size. A 38-inch tree equals 12.1 inches in diameter. A 24-inch box replacement tree = two 15-gallon replacement trees				

- a) 10 trees onsite would be removed. 3 trees would be replaced at a 4:1 ratio, 2 trees would be replaced at a 2:1 ratio, 3 trees would be replaced at a 1:1 ratio, and the remaining 2 trees are orchard trees that are less than 19 inches in circumference and do not require replacement. The total number and size of replacement trees required to be planted on-site is either 19 (15-gallon) trees or 10 (24-inch box trees). A total of 11 24-inch box trees are to be planted on site.
- b) If there is insufficient area on the project site to accommodate the required replacement trees, one or more of the following measures shall be implemented, to the satisfaction of the Director of Planning, Building and Code Enforcement or Director's designee. Changes to an approved landscape plan requires the issuance of a Permit Adjustment or Permit Amendment
- c) The size of a 15-gallon replacement tree may be increased to 24-inch box and count as two replacement trees to be planted on the project site.
- d) Pay Off-Site Tree Replacement Fee(s) to the City, prior to the issuance of building permit(s), in accordance with the City Council approved Fee Resolution in effect at the time of payment. The City will use the off-site tree replacement fee(s) to plant trees at alternative sites.

**c. Cultural Resources**

- i. Subsurface Cultural Resources. If prehistoric or historic resources are encountered during excavation and/or grading of the site, all activity within a 50-foot radius of the find shall be stopped, the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee and the City's Historic Preservation Officer shall be notified, and a qualified archaeologist in consultation with a Native American Tribal 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 shall examine the find. The archaeologist in consultation with the Tribal representative shall 1) evaluate the find(s) to determine if they meet the definition of a historical or archaeological resource; and (2) make appropriate recommendations regarding the disposition of such finds prior to issuance of building permits. Recommendations could include collection, recordation, and analysis of any significant cultural materials. A report of findings documenting any data recovery shall be submitted to the Director of PBCE or the Director's designee, the City's Historic Preservation Officer and the Northwest Information Center (if applicable). Project personnel shall not collect or move any cultural materials.
- ii. Human Remains. If any human remains are found during any field

investigations, grading, or other construction activities, all provisions of California Health and Safety Code Sections 7054 and 7050.5 and Public Resources Code Sections 5097.9 through 5097.99, as amended per Assembly Bill 2641, shall be followed. If human remains are discovered during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The project applicant shall immediately notify the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee and the qualified archaeologist, who shall then notify the Santa Clara County Coroner. The Coroner will make a determination as to whether the remains are Native American. If the remains are believed to be Native American, the Coroner will contact the Native American Heritage Commission (NAHC) within 24 hours. The NAHC will then designate a Most Likely Descendant (MLD). The MLD will inspect the remains and make a recommendation on the treatment of the remains and associated artifacts. If one of the following conditions occurs, the landowner or his authorized representative shall work with the Coroner to reinter the Native American human remains and associated grave goods with appropriate dignity in a location not subject to further subsurface disturbance:

- a) The NAHC is unable to identify a MLD or the MLD failed to make a recommendation within 48 hours after being given access to the site.
  - b) The MLD identified fails to make a recommendation; or
  - c) The landowner or his authorized representative rejects the recommendation of the MLD, and mediation by the NAHC fails to provide measures acceptable to the landowner.
- iii. Paleontological Resources. If vertebrate fossils are discovered during construction, all work on the site shall stop immediately, Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee shall be notified, and a qualified professional paleontologist shall assess the nature and importance of the find and recommend appropriate treatment. Treatment may include, but is not limited to, preparation and recovery of fossil materials so that they can be housed in an appropriate museum or university collection and may also include preparation of a report for publication describing the finds. The project applicant shall be responsible for implementing the recommendations of the qualified paleontologist. A report of all findings shall be submitted to the Director of PBCE or the Director's designee.

**d. Greenhouse Gas Emissions/Energy**

- i. Proof of Enrollment in SJCE. Prior to issuance of any Certificate of Occupancy for the project, the occupant shall provide to the Director of the Department of Planning, Building, and Code Enforcement (PBCE), or Director's designee, proof of enrollment in the [San Jose Community Energy (SJCE) GreenSource

program (approximately 95% carbon free power) or TotalGreen program (approximately 100% carbon free power)] assumed in the approved environmental clearance for the project in accordance with the California Environmental Quality Act (CEQA). If it is determined the project's environmental clearance requires enrollment in the TotalGreen program, neither the occupant, nor any future occupant, may opt out of the TotalGreen program.

**e. Geology and Soils**

- i. A Geotechnical Report shall be submitted, reviewed, and approved by the City Geologist. The Geotechnical Report shall determine the site-specific soil conditions and identify the appropriate design and construction techniques to minimize risks to people and structures, including but not limited to: foundation, earthwork, utility trenching, retaining and drainage recommendations. The investigation should be consistent with State of California guidelines for the preparation of seismic hazard evaluation reports (CGS Special Publication 117A, 2008, and the Southern California Earthquake Center report, SCEC, 1999). A recommended minimum depth of 50 feet should be explored and evaluated in the investigation. The City Geologist will review the Geotechnical Report and issue a Geologic Clearance.
- ii. All excavation and grading work shall be scheduled in dry weather months or construction sites shall be weatherized.
- iii. Stockpiles and excavated soils shall be covered with secured tarps or plastic sheeting.
- iv. Ditches shall be installed to divert runoff around excavations and graded areas if necessary.
- v. The project shall be constructed in accordance with the standard engineering practices in the California Building Code, as adopted by the City of San José. A grading permit from the San José Department of Public Works shall be obtained prior to the issuance of a Public Works clearance. These standard practices would ensure that the future building on the site is designed to properly account for soils-related hazards on the site.
- vi. If dewatering is needed, the design-level geotechnical investigations to be prepared for individual future development projects shall evaluate the underlying sediments and determine the potential for settlements to occur. If it is determined that unacceptable settlements may occur, then alternative groundwater control systems shall be required.

**f. Hazards and Hazardous Materials**

- i. Asbestos and Lead-Based Paint.
  - a) In conformance with State and local laws, a visual inspection/pre-demolition

survey, and possible sampling, shall be conducted prior to the demolition of on-site building(s) to determine the presence of asbestos-containing materials (ACMs) and/or lead-based paint (LBP).

- b) During demolition activities, all building materials containing lead-based paint shall be removed in accordance with Cal/OSHA Lead in Title 8, California Code of Regulations (CCR), Section 1532.1, including employee training, employee air monitoring, and dust control. Any debris or soil containing lead-based paint or coatings shall be disposed of at landfills that meet acceptance criteria for the type of lead being disposed.
- c) All potentially friable asbestos containing materials (ACMs) shall be removed in accordance with National Emission Standards for Air Pollution (NESHAP) guidelines prior to demolition or renovation activities that may disturb ACMs. All demolition activities shall be undertaken in accordance with Cal/OSHA standards contained in Title 8, CCR, Section 1529, to protect workers from asbestos exposure.
- d) A registered asbestos abatement contractor shall be retained to remove and dispose of ACMs identified in the asbestos survey performed for the site in accordance with the standards stated above.
- e) Materials containing more than one-percent asbestos are also subject to Bay Area Air Quality Management District (BAAQMD) regulations. Removal of materials containing more than one-percent asbestos shall be completed in accordance with BAAQMD requirements and notifications.

**g. Hydrology and Water Quality**

**i. Construction-related water quality.**

- a) Burlap bags filled with drain rock shall be installed around storm drains to route sediment and other debris away from the drains.
- b) Earthmoving or other dust-producing activities shall be suspended during periods of high winds.
- c) All exposed or disturbed soil surfaces shall be watered at least twice daily to control dust as necessary.
- d) Stockpiles of soil or other materials that can be blown by the wind shall be watered or covered.
- e) All trucks hauling soil, sand, and other loose materials shall be covered and all trucks shall maintain at least two feet of freeboard.
- f) All paved access roads, parking areas, staging areas and residential streets adjacent to the construction sites shall be swept daily (with water sweepers).
- g) Vegetation in disturbed areas shall be replanted as quickly as possible.

- h) All unpaved entrances to the site shall be filled with rock to remove mud from tires prior to entering City streets. A tire wash system shall be installed if requested by the City.
- i) The project applicant shall comply with the City of San José Grading Ordinance, including implementing erosion and dust control during site preparation and with the City of San José Zoning Ordinance requirements for keeping adjacent streets free of dirt and mud during construction.

**h. Noise**

- i. Limit construction hours to between 7:00 a.m. and 7:00 p.m., 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.
- ii. Construct solid plywood fences around ground level construction sites adjacent to operational businesses, residences, or other noise-sensitive land uses.
- iii. Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment.
- iv. Prohibit unnecessary idling of internal combustion engines.
- v. 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.
- vi. Utilize “quiet” air compressors and other stationary noise sources where technology exists.
- vii. Control noise from construction workers’ radios to a point where they are not audible at existing residences bordering the project site.
- viii. 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 (if applicable).
- ix. 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.
- x. 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 shall 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 (if applicable)

regarding the construction schedule.

- xi. Interior Noise Standard for Residential Development. The project applicant shall prepare final design plans that incorporate building design and acoustical treatments to ensure compliance with State Building Codes and City noise standards. A project-specific acoustical analysis shall be prepared to ensure that the design incorporates controls to reduce interior noise levels to 45 dBA DNL or lower within the residential unit. The project applicant shall conform with any special building construction techniques requested by the City's Building Department, which may include sound-rated windows and doors, sound-rated wall constructions, and acoustical caulking.

#### 34. Housing Department.

- a. **Conditions of Approval for Inclusionary Housing Ordinance Requirements for Residential and Mixed-Use Developments.** The fee for qualifying Downtown High-Rise Rental Development, pursuant to Resolution No. 80766, the Inclusionary Housing Guidelines, and San José Municipal Code Section 5.08.520.D., that all Certificates of Occupancy before June 30, 2029, shall be as follows:
  - i. Fiscal Year 2023-2024
    - a) Building Permit by June 30, 2025 - \$0
    - b) Certificate of Occupancy by June 30, 2029 - \$0
- b. **For Projects Demolishing Dwelling Units or Removing them from the Market.** **This** project is subject to the requirements of the Ellis Act Ordinance 29902, adopted April 25 2017 (Ellis Act Ordinance), as it involves the demolition or repurposing of existing multi-family residential units built before September 7, 1979 or are otherwise subject to the City's Apartment Rent Ordinance. The Ordinance requires owners to follow a standardized process for issuing notices to tenants, providing relocation benefits, and restricting future use of the property by requiring former tenants the right to return to the same unit if brought back to the rental market or if recontrolled new apartments are built onsite. Prior to the issuance of a demolition permit, Planning staff should confirm with Housing Department the Owner's completion of all noticing and relocation obligations, including all other obligations under the Ellis Act Ordinance. Our records indicate that 439 S 4th St, San Jose, CA 95112 contains 30 rent stabilized apartments subject to the Ellis Act Ordinance. The following requirements apply:
  - i. Noticing, Relocation Assistance, and Recording of Memorandum. The Owner must provide noticing and relocation assistance to the 30 tenant households at 439 S 4th St, San Jose, CA 95112.
    - a) *Noticing Requirements.* The owner must serve to the City of San Jose and to all residents a minimum 120 days' notice (notice) of intent to withdraw for every rent stabilized unit in the building. The notice must contain specific



information as set forth in San Jose Municipal Code subsection C. of section 17.23.1140. For qualifying tenants, an owner must provide a minimum one years' notice to tenants of the owner's intent to withdraw the rental unit pursuant to subsection B of Section 17.23.1160; and

- b) *Relocation Assistance*. Tenant Households are entitled to relocation assistance at the time they receive notice that their unit is intended to be withdrawn from the rental market. The amount of relocation assistance is based upon the number of bedrooms in the rent stabilized unit and is adjusted and set by the City Council via resolution each year. The relocation assistance fee schedule for fiscal year 2023-2024 is:

	Studio	1-Bedroom	2-Bedroom	3-Bedroom
<b>Base Assistance</b>	\$6,925	\$8,400	\$10,353	\$12,414
<b>Qualified Assistance</b>	\$2,770	\$3,360	\$4,141	\$4,966
<b>Total Base + Qualified Assistance</b>	\$9,696	\$11,760	\$14,494	\$17,380

- c) *Record a Memorandum in Official Records of Santa Clara County*. An owner must record a memorandum on a city approved form in the official records of Santa Clara County within ten days of delivery of the notice of intent to withdraw, or at least one day prior to sale or transfer of any property on which a building containing a covered unit to be withdrawn is located.
- d) *Filing Fee*: No less than one hundred twenty (120) days prior to the date upon which the building is intended to be withdrawn from the rental market, the owner shall pay to the City the fee set pursuant to Section 17.23.1130. For 2023-2024, the filing fee is \$2,833 for the first 10 units and \$951 per additional unit after 10 units.
- ii. For New Residential Construction, Re-control Provisions Apply:
- a) *New Construction Subject to Rent Control*. The Ellis Act Ordinance requires the recontrol of half of the new units built where prior rent-controlled unit existed. The Ellis Act Ordinance provides that if a building containing a rent stabilized unit is demolished and new units are built on the same property and offered for rent or lease within five (5) years of the effective date of withdrawal of the building with rent stabilized units, the number of newly constructed rental units equal to greater of (i) the number of Covered Units or (ii) fifty percent (50%) of all newly constructed rental units located on the

property where the Covered Unit was demolished shall be deemed Rent Stabilized Units subject to the Apartment Rent Ordinance. The project description indicates that the owner proposes to build 210 residential rental units at the subject property. If the project requires the demolition of the 30 rent stabilized units, then of the 210 residential units built, one-half of those units 105 will be re-controlled and subject to the ARO, unless the owner chooses to provide onsite affordable rental units as described in the following section.

- b) *Waiver from Re-control for Projects with On-Site Affordable Units.* The recontrol requirements pursuant to Section 17.23.1180 of the San Jose Municipal Code, and discussed in 34.b.ii.a)., above, are waived if the owner chooses to provide 20% of the newly constructed units as on-site restricted affordable rental housing, under the standards consistent with the requirements of the City's Inclusionary Housing Ordinance. The owner may choose to provide 20% of the 210 units built as onsite affordable housing units. Based upon the project description, 20% of 210 rental units is 42 units. The affordability restrictions are based upon the Inclusionary Housing Ordinance requirements for 15% of the units, and the additional 5% of units are restricted to rents at 100% AMI (Area Median Income). The Inclusionary Housing Ordinance requires for a period of no less than 99 years, that:
- 1) 5% of the total project units be rented at 100% AMI
  - 2) 5% of the total units be rented at 60% AMI
  - 3) 5% of the total units be rented at 50% AMI

### 35. Airport.

- a. **Avigation Easement.** Prior to the issuance of a Building Permit for vertical construction, the property owner shall grant an Avigation Easement to the City of San José. Contact the San José Airport Department (408-392-1193) to initiate the easement dedication process.
- b. **FAA Clearance Required.** Prior to issuance of any Building Permit for construction, the permittee shall obtain from the Federal Aviation Administration a "Determination of No Hazard to Air Navigation" for each building high point. The permittee shall abide by any and all conditions of the FAA determinations (if issued) such as height specifications, rooftop marking/lighting, construction notifications to the FAA through filing of Form 7460-2, and "No Hazard Determination" expiration date. The data on the FAA forms shall be prepared by a licensed civil engineer or surveyor, with location coordinates (latitude/longitude) in NAD83 datum out to hundredths of seconds, and elevations in NAVD88 datum rounded off to the next highest foot.
- c. **FAA Clearance Permit Adjustment.** Prior to issuance of any Building Permit for construction, the permittee shall apply for and obtain a Permit Adjustment to

incorporate any and all FAA conditions identified in the Determinations of No Hazard (if issued), e.g., installation of roof-top obstruction lighting or construction-related notifications.

- d. **Construction Cranes.** Prior to issuance of any Building Permit for construction, the permittee shall coordinate with the San José Airport Department to sign a Construction Crane Agreement and provide a crane fee deposit for the expected duration project will operate construction cranes above the Downtown Building Height Limits. Compliance shall become a condition of Building Permit issuance for construction. Contact Ryan Sheelen, [rsheelen@sjc.org](mailto:rsheelen@sjc.org) (408-392-1193), of the San José Airport Planning and Development Division to initiate the construction crane agreement coordination.
- e. **Subsequent Permit Adjustments/Amendments.** Any Permit Adjustment/Amendment application filed by the permittee that proposes to increase the maximum structure elevations or change the location of the structure's highest point(s), will be referred by the Planning, Building, and Code Enforcement Department to the Airport Department for review prior to approval.
- f. **Solar Panels.** FAA guidance requires solar panels (and any other reflective materials) placed on the roof of any structure to be designed to minimize glare and to incorporate bird-safe design. A public-use solar glare hazard analysis tool is available at [www.forgesolar.com](http://www.forgesolar.com). The Airport requests the permittee provide a completed solar glare hazard analysis report for this project evaluating potential impacts to the Airport's existing and future Air Traffic Control Tower and to ensure there are no hazards to aviation. Contact the San José Airport Department at (408-392-1193), prior to preparing a solar glare hazard analysis report.

**36. Building Division Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:

- a. *Construction Plans.* This permit file number, H17-004 shall be printed on all construction plans submitted to the Building Division.
- b. *San José's Natural Gas Infrastructure Prohibition and Reach Code Ordinances.* The City's Natural Gas Infrastructure Prohibition and Reach Code Ordinances apply to this project and all requirements shall be met. For more information, please visit [www.sjenvironment.org/reachcode](http://www.sjenvironment.org/reachcode)
- c. *Americans with Disabilities Act.* The Permittee shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
- d. *Emergency Address Card.* The project Permittee shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
- e. *Construction Plan Conformance.* A project construction plan conformance review by the Planning Division is required. Planning Division review for project

conformance begins with the initial plan check submittal to the Building Division. Prior to any building permit issuance, building permit plans shall conform to the approved Planning development permits and applicable conditions.

- f. *Common Interest Development.* Prior to issuance of any certificate of occupancy, or release for occupancy, the Permittee shall provide a self-certified statement to the satisfaction of the City's Chief Building Official that the project, as constructed, meets the City of San José Common Interest Development standards.
  - g. *Project Addressing Plan.* Prior to issuance of a Building Permit, the following requirements shall be met to the satisfaction of the Chief Building Official: The project Permittee shall submit an addressing plan for approval for the subject development. The addressing plan should include proposed street names for the streets (as referenced on an approved tentative map) and the type of addressing (i.e., individual street addresses as compared to unit number off of a primary street).
  - h. *Other.* Such other requirements as may be specified by the Chief Building Official.
37. **Bureau of Fire Department Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the project must comply with the 2019 California Fire Code, or as may be amended or updated by the City.
38. **Public Works Clearance for Building Permit(s) or Map Approval:** Prior to the approval of the Tract or Parcel Map (if applicable) by the Director of Public Works, or the issuance of Building permits, whichever occurs first, the permittee will be required to have satisfied all of the following Public Works conditions. The applicant is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits. Standard review timelines and submittal instructions for Public Works permits may be found at the following: <http://www.sanjoseca.gov/devresources>.
- a. **Minor Improvement Permit:** The public improvements conditioned as part of this permit require the execution of a Minor Street Improvement Permit that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. The Minor Improvement Permit includes privately engineered plans, insurance, surety deposit, and engineering and inspection fees.
  - b. **Transportation:** A Local Transportation Analysis (LTA) has been performed for this project based on a net new 45 AM and 52 PM peak hour trips. See separate Traffic Memo dated 3/2/22. The following conditions shall be implemented:
    - i. Provide adequate stacking space of 50 feet between the sidewalk and the garage alternatively, the project could keep the entry gates open during the period when most inbound vehicle trips are likely to occur (generally from 2:00 PM to 7:00 PM).
    - ii. Provide painted red curbs along north side of the project driveways on Fourth Street to provide adequate sight distance. The exact length of the painted red

curb will be determined at the implementation stage.

**c. Grading/Geology:**

- i. A grading permit is required prior to the issuance of a Public Works Clearance. The construction operation shall control the discharge of pollutants (sediments) to the storm drain system from the site. An erosion control plan may be required with the grading application.
- ii. All on-site storm drainage conveyance facilities and earth retaining structures 4' in height or greater (top of wall to bottom of footing) or is being surcharged (slope of 3:1 or greater abutting the wall) shall be reviewed and approved under Public Works grading and drainage permit prior to the issuance of Public Works Clearance. The drainage plan should include all underground pipes, building drains, area drains and inlets. The project shall provide storm drainage calculations that adhere to the latest California Plumbing Code as adopted under the City of San Jose Municipal Code Section 24.04.100 or submit a stamped and signed alternate engineered design for Public Works discretionary approval and should be designed to convey a 10-year storm event.
- iii. The Project site is within the State of California Seismic Hazard Zone. A geotechnical investigation report addressing the potential hazard of liquefaction must be submitted to, reviewed and approved by the City Geologist prior to issuance of a grading permit or Public Works Clearance. The investigation should be consistent with the guidelines published by the State of California (CGS Special Publication 117A) and the Southern California Earthquake Center (SCEC, 1999). A recommended depth of 50 feet should be explored and evaluated in the investigation.

**d. Shoring:**

- i. Shoring plans will be required for review and approval as part of the Grading Permit for this project.
- ii. If tie-backs are proposed in the Public right-of-way as a part of the shoring operation, a separate Revocable Encroachment Permit must be obtained by the Developer or Contractor and must provide security, in the form of a CD or Letter of Credit, in the amount of \$100,000. All other shoring will not be allowed to encroach more than 12" within the public right-of-way (i.e., soldier beams).
- iii. If tie-backs are proposed for use along the adjacent property(ies) (APN 467-47-062, -048, -058), agreements between the Applicant and the adjacent property owner(s) will need to be secured, executed and provided to the Public Works Project Engineer prior to approval of the Grading Permit for this project.

- e. Stormwater Runoff Pollution Control Measures:** This project must comply with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of Best Management Practices (BMPs) which includes site

design measures, source controls and numerically-sized Low Impact Development (LID) stormwater treatment measures to minimize stormwater pollutant discharges.

- i. The project's Stormwater Control Plan and numeric sizing calculations have been reviewed and this project shall be in conformance with City Policy 6-29.
- ii. Final inspection and maintenance information on the post-construction treatment control measures must be submitted prior to issuance of a Public Works Clearance.
- iii. A post construction Final Report is required by the Director of Public Works from a Civil Engineer retained by the owner to observe the installation of the BMPs and stating that all post construction storm water pollution control BMPs have been installed as indicated in the approved plans and all significant changes have been reviewed and approved in advance by the Department of Public Works.
- iv. Media Filter Unit(s) located within Building footprints must conform to Building Division Directive P-005 located at the following:  
<https://www.sanjoseca.gov/home/showdocument?id=27405>
- f. **Stormwater Peak Flow Control Measures:** The project is located in a non-Hydromodification Management area and is not required to comply with the City's Post- Construction Hydromodification Management Policy (Council Policy 8-14).
- g. **Flood Zone D:** The project site is not within a designated Federal Emergency Management Agency (FEMA) 100-year floodplain. Flood Zone D is an unstudied area where flood hazards are undetermined, but flooding is possible. There are no City floodplain requirements for Zone D.
- h. **Sewage Fees:** In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable.
- i. **Parks:** This residential project is subject to either the requirements of the City's Park Impact Ordinance (Chapter 14.25 of Title 14 of the San Jose Municipal Code) or the Parkland Dedication Ordinance (Chapter 19.38 of Title 19 of the San Jose Municipal Code) for the dedication of land and/or payment of fees in-lieu of dedication of land for public park and/or recreational purposes under the "Formula for Dedication of Land" and/or "Schedule of Fees and Credits" contained within in the chapter.
- j. **Undergrounding:** The In-Lieu Undergrounding Fee shall be paid to the City for all frontage(s) adjacent to South 4<sup>th</sup> Street prior to issuance of a Public Works Clearance as the project's frontage is within an Underground District formed after July 1988. 100 percent (100%) of the base fee in place at the time of payment will be due. Currently, the 2022 base fee is \$574 per linear foot of frontage and is subject to change every January 31<sup>st</sup> based on the Engineering News Record's City

Average Cost Index for the previous year. The project will be required to pay the current rate in effect at the time the Public Works Clearance is issued.

k. **Street Improvements:**

- i. Construct new 12-foot-wide-attached City standard sidewalk with four-foot by five-foot tree wells behind back of curb along S. 4<sup>th</sup> Street project frontage. Dedication may be required to accommodate the 12' wide attached sidewalk.
- ii. Construct 26' wide City standard driveway at S. 4<sup>th</sup> Street project frontage.
- iii. Close unused driveway cut(s).
- iv. Doors shall not swing into the public right-of-way.
- v. Developer shall be responsible for adjusting existing utility boxes/vaults to grade, locating and protecting the existing communication conduits (fiber optic and copper) along the project frontage.
- vi. Dedication and improvement of the public streets to the satisfaction of the Director of Public Works.
- vii. Repair, overlay, or reconstruction of asphalt pavement may be required. The existing pavement will be evaluated with the street improvement plans and any necessary pavement restoration will be included as part of the final street improvement plans.
- viii. Project is situated in the SUN Residential Permit Parking zone (RPP), and tenants would be eligible to obtain RPP permits. See associated memo dated 7/6/21 from the Department of Transportation for information about the RPP program.

l. **Site Utilization Plan and Revocable Encroachment Permit (Street/Sidewalk Closures):** At the Implementation stage, Developer shall provide to the Public Works Project Engineer a Site Utilization Plan with the application of a Revocable Encroachment Permit for any proposed sidewalk and lane closures to support the onsite construction activities.

- i. The following should be included with the Site Utilization Plan and Revocable Permit application, but are not limited to:
  - a) **Site Utilization Plan and Letter of Intent:** The site utilization plan should provide a detailed plan of the location of the temporary facilities within the boundary of the construction site. The Letter of Intent should provide a description operations of the site as well as the reasons for the sidewalk/lane closures and why the activities/uses that are proposed within the Public right-of-way can't occur within the construction site. These include the use of the right of way for temporary facilities and activities such as man lifts, baker

tanks, staging area, concrete pumping activities, etc. This would also provide a discussion as to the reasons why covered pedestrian walkways will not be provided (ex. swinging loads over sidewalk not safe for pedestrians).

- b) **Multi-Phased Site Specific Sketches:** These sketches should show the phased closures during the course of construction with a provided timeframe estimate of when each phase would be implemented. These sketches should include the type and location of the work to be accomplished within the right-of-way. The exhibit should show in detail the vehicular and/or pedestrian diversion route that shows the appropriate safety equipment, such as barricades, cones, arrow boards, signage, etc.
- ii. Developer shall minimize the potential impact to vehicular and pedestrian traffic by:
  - a) Implementing the closures at the time the onsite activities dictate the need for the closure.
  - b) Minimizing the closure timeframes to accomplish the onsite tasks and implement the next phase of the closure as outlined in condition i.b) above.
- iii. If proposed lane and parking closures are a part of the Revocable Permit Application, Developer shall submit Downtown Lane Closure and Tow Away Permit Applications to DOT. These applications may be obtained at: <http://www.sanjoseca.gov/devresources>. Developer shall contact DOT at (408) 535-8350 for more information concerning the requirements of these applications.
- m. **SNI:** This project is located within the University SNI area. Public improvements shall conform to the approved EIR and neighborhood improvement plan.
- n. **Greater Downtown Area Master Plans:** This project is located within the Greater Downtown area. Public improvements shall conform to the Council approved San Jose Downtown Streetscape and Street and Pedestrian Lighting Master Plans.
- o. **Electrical:** Existing electroliers along the project frontage will be evaluated at the public improvement stage and any street lighting requirements will be included on the public improvement plans.
- p. **Street Trees:**
  - i. The locations of the street trees will be determined at the street improvement stage. Contact the City Arborist at (408) 794-1901 for the designated street tree. Install street trees within public right-of-way along entire project street frontage per City standards; refer to the current "Guidelines for Planning, Design, and Construction of City Streetscape Projects". Street trees shall be installed in cut-outs at the back of curb. Obtain a DOT street tree planting permit for any proposed street tree plantings. Street trees shown on this permit are conceptual



only.

- ii. Show all existing trees by species and diameter that are to be retained or removed. Obtain a street tree removal permit for any street trees that are over 6 feet in height that are proposed to be removed.

**39. Revocation, Suspension, Modification.** This Site Development Permit may be revoked, suspended or modified by the City Council at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 2, Chapter 20.100, Title 20 of the San José Municipal Code it finds:

- a. A violation of any conditions of the Site Development Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
- b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
- c. The use as presently conducted creates a nuisance.

In accordance with the findings set forth above, a permit to use the subject property for said purpose specified above is hereby approved.

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

AYES:

NOES:

ABSENT:

DISQUALIFIED:

---

MATT MAHAN  
Mayor

ATTEST:

---

TONI J. TABER, CMC  
City Clerk

*NOTICE TO PARTIES*

*The time within which judicial review must be sought to review this decision is governed by the provisions of the California Code of Civil Procedure Section 1094.6.*

**LEGAL DESCRIPTION**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF San Jose, COUNTY OF SANTA CLARA, STATE OF California AND IS DESCRIBED AS FOLLOWS:

**PARCEL NO. ONE:**

Beginning at a point on the Southwesterly line of Fourth Street, where said line is intersected by the line dividing Lots 1 and 4 in Block 4, Range 4 South of the Base Line of the City of San Jose; and running thence Southeasterly along the Southwesterly line of Fourth Street 57.89 feet; thence at right angles Southwesterly 120 feet; thence at right angles Northwesterly 57.89 feet; thence at right angles Northeasterly 120 feet to the Point of Beginning and being a part of Lot 4 in Block 4 Ranch 4 South of the base line of the City of San Jose.

**PARCEL NO. TWO:**

Portion of Lot 4 in Block 4 Range 4 South, as shown upon that certain Map entitled, "City of San Jose, copied from the original Map drawn by Sherman Day, Civil Engineer", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, in Book "A" of Maps, Pages 72 and 73 and more particularly described as follows, to wit:

Beginning at a point on the Westerly line of Fourth Street, distant thereon 57.89 feet Southerly from where said line of Fourth Street is intersected by the line dividing Lots 1 and 4 in Block 4 Range 4 South of the base line of the City of San Jose; thence Southerly and along said line of Fourth Street 40 feet; thence at right angles Westerly 120 feet; thence at right angles Northerly 40 feet; thence at right angles Easterly 120 feet to the Point of Beginning.

**PARCEL NO. THREE:**

Portion of Lot 4 in Block 4 Range 4 South, as shown upon that certain Map entitled "City of San Jose, copied from the original Map drawn by Sherman Day, Civil Engineer", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, in Book "A" of Maps, at Pages 72 and 73, and more particularly described as follows:

Beginning at a point on the Westerly line of Fourth Street, where the line is intersected by the line dividing Lots 4 and 5 in Block 4, Range 4 South of the base line of the City of San Jose; and running thence Northerly along the Westerly line of Fourth Street 40 feet; thence at right angles Westerly 120 feet; thence at right angles Southerly 40 feet; thence at right angles Easterly 120 feet to the Point of Beginning.

APN: 467-47-096

## FW: public comment re 439-451 South 4th Street for 12Mar2024 Council meeting

Taber, Toni <toni.taber@sanjoseca.gov>

Thu 3/7/2024 12:43 PM

To:Agendadesk <Agendadesk@sanjoseca.gov>

 1 attachments (195 KB)

San Jose - 439-451 S 4th St - HAA Letter.pdf;

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**From:** James Lloyd <[REDACTED]>

**Sent:** Thursday, March 7, 2024 12:39 PM

**To:** The Office of Mayor Matt Mahan <mayor@sanjoseca.gov>; District1 <district1@sanjoseca.gov>; District2 <District2@sanjoseca.gov>; District3 <district3@sanjoseca.gov>; District4 <District4@sanjoseca.gov>; District5 <District5@sanjoseca.gov>; District 6 <district6@sanjoseca.gov>; District7 <District7@sanjoseca.gov>; District8 <district8@sanjoseca.gov>; District9 <district9@sanjoseca.gov>; District 10 <District10@sanjoseca.gov>

**Cc:** City Clerk <city.clerk@sanjoseca.gov>; Manford, Robert <Robert.Manford@sanjoseca.gov>; Burton, Chris <Christopher.Burton@sanjoseca.gov>; CAO Main <cao.main@sanjoseca.gov>; Taber, Toni <toni.taber@sanjoseca.gov>; Hughey, Rosalynn <Rosalynn.Hughey@sanjoseca.gov>

**Subject:** public comment re 439-451 South 4th Street for 12Mar2024 Council meeting

[External Email]

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Dear San José City Council,

Please see attached CalHDF's public comment regarding 439-451 South 4th Street, item 10.1(a) for the 12 March 2024 Council meeting.

James M. Lloyd  
Director of Planning and Investigations  
California Housing Defense Fund  
[REDACTED]

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**Mar 6, 2024**

**San José City Council**  
**200 E. Santa Clara Street**  
**San Jose, CA 95113**

**By Email:** [mayoremail@sanjoseca.gov](mailto:mayoremail@sanjoseca.gov); [District1@sanjoseca.gov](mailto:District1@sanjoseca.gov); [District2@sanjoseca.gov](mailto:District2@sanjoseca.gov);  
[District3@sanjoseca.gov](mailto:District3@sanjoseca.gov); [District4@sanjoseca.gov](mailto:District4@sanjoseca.gov); [District5@sanjoseca.gov](mailto:District5@sanjoseca.gov);  
[district6@sanjoseca.gov](mailto:district6@sanjoseca.gov); [District7@sanjoseca.gov](mailto:District7@sanjoseca.gov); [district8@sanjoseca.gov](mailto:district8@sanjoseca.gov);  
[District9@sanjoseca.gov](mailto:District9@sanjoseca.gov); [District10@sanjoseca.gov](mailto:District10@sanjoseca.gov)

**CC:** [city.clerk@Sanjoseca.gov](mailto:city.clerk@Sanjoseca.gov); [robert.manford@sanjoseca.gov](mailto:robert.manford@sanjoseca.gov);  
[Christopher.Burton@sanjoseca.gov](mailto:Christopher.Burton@sanjoseca.gov); [cao.main@sanjoseca.gov](mailto:cao.main@sanjoseca.gov); [toni.taber@sanjoseca.gov](mailto:toni.taber@sanjoseca.gov);  
[rosalynn.hughey@sanjoseca.gov](mailto:rosalynn.hughey@sanjoseca.gov)

**Re:** Proposed 210-unit building at 439-451 South 4th Street

Dear San José City Council,

The California Housing Defense Fund (“CalHDF”) submits this letter to remind the Council of its duty to abide by the Housing Accountability Act (“HAA”) when evaluating the proposed 210-unit residential building at 439-451 South 4th Street.

The Housing Accountability Act (the “HAA”) (Gov. Code, § 65589.5) requires approval of zoning and general plan compliant housing development projects unless findings can be made regarding specific, objective, written health and safety hazards. These findings must be “supported by a preponderance of the evidence on the record.” (*Id.* at subd. (j)(1).)

As the staff report notes, the project complies with the Downtown General Plan designation and with the requirements of the DC zoning district. As a project with at least two-thirds of its area devoted to residential uses, the project falls within the HAA’s ambit. Thus, the Council must approve the project unless it makes written health and safety findings, as described above – which it cannot do, since the preponderance of the evidence in the record does not support such a finding.

As you are well aware, California remains in the throes of a statewide crisis-level housing shortage. New housing such as this is a public benefit: it will house hundreds of households, reducing pressure on existing housing stock and lowering rents; it will enhance the City's tax base; and it will bring new customers to local businesses. It is especially important to meeting our state's climate goals, as it will provide valuable housing near employment and educational centers. While no single housing development can solve all these problems, this project is a big step in the right direction. CalHDF urges the Council to approve the project, consistent with both its legal obligations and the community's economic and environmental interests.

CalHDF is a 501(c)3 non-profit corporation whose mission includes advocating for increased access to housing for Californians at all income levels, including low-income households. You may learn more about CalHDF at [www.calhdf.org](http://www.calhdf.org).

Sincerely,

A large black rectangular redaction box covering the signature of Dylan Casey.

Dylan Casey  
CalHDF Executive Director

A large black rectangular redaction box covering the signature of James M. Lloyd.

James M. Lloyd  
CalHDF Director of Planning and Investigations