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**Subject:** PC Resolution  
**Date:** Tuesday, April 20, 2021 9:54:37 AM  
**Attachments:** [Downtown West EIR Resolution\\_041921.docx](#)

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Amanda,

Find attached draft version of the Resolution for the EIR for your records.

James Han

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San José City Hall is closed in response to COVID-19.

I am working remotely in accord with governor's and City's direction.

I will monitor email during this time.

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

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

**WHEREAS**, the proposed Downtown West Mixed-Use Plan includes: a General Plan Amendment, Diridon Station Area Plan ("DSAP") Amendment, Planned Development Rezoning, Planned Development Permit, amendments to the historic landmark boundaries of the Southern Pacific Depot and San José Water Company, Historic Preservation Permit Amendment for the San José Water Company, a Vesting Tentative Map, a Development Agreement, and other approvals to facilitate the development of up to 5,900 residential units; up to 7,300,000 gross square feet (gsf) of office space; up to 500,000 gsf of active uses such as retail, cultural, arts, etc.; up to 300 hotel rooms; up to 800 rooms of limited-term corporate accommodations; up to two event and conference centers totaling up to 100,000 gsf; up to two central utility plants totaling approximately 130,000 gsf; logistics/warehouse(s) totaling approximately 100,000 gsf; approximately 15 acres of open space; and infrastructure, transportation, and public realm improvements, all on approximately 80 acres (the "project"); and

**WHEREAS**, approval of the Downtown West Mixed-Use Plan would constitute a project under the provisions of the California Environmental Quality Act of 1970, together with related state and local implementation guidelines and policies promulgated thereunder, all as amended to date (collectively, "CEQA"); and

WHEREAS, this Resolution certifying the Downtown West Final Environmental Impact Report and adoption of CEQA Findings, a Mitigation Monitoring and Reporting Program, and Statement of Overriding Considerations is a companion to the following approvals relating to Downtown West: a General Plan Amendment (Resolution No. \_\_\_\_); amendments to the Diridon Station Area Plan (Resolution No. \_\_\_\_); an override of the Santa Clara County Airport Land Use Commission's inconsistency determination (Resolution No. \_\_\_\_); the Development Agreement for the Downtown West Mixed-Use Plan (Ordinance No. \_\_\_\_); Planned Development Rezoning, including a General Development Plan (Ordinance No. \_\_\_\_); a Planned Development Permit (Resolution No. \_\_\_\_); amendments to Title 20 of the San José Municipal Code (Ordinance No. \_\_\_\_); approval of a Vesting Tentative Map (Resolution No. \_\_\_\_); amendments to the landmark boundaries of the San José Water Company Historic Landmark and the Southern Pacific Depot Historic District (Resolutions No. \_\_\_\_ and \_\_\_\_); an amendment to Historic Preservation Permit (HP16-002) (Resolution No. \_\_\_\_); approval of Major Encroachment Permit(s) approval of the Construction Impact Mitigation Plan (CIMP) (Resolution No. \_\_\_\_); and

**WHEREAS**, the City of San José ("City") issued a Notice of Preparation (NOP) of an Environmental Impact Report that was filed with the Office of Planning and Research State Clearinghouse and circulated to responsible agencies, trustee agencies, involved federal agencies, and other interested agencies and members of the public on October 23, 2019, in accordance with CEQA Guidelines Sections 15082(a) and 15375;

**WHEREAS**, the City held a public scoping meeting on November 7, 2019, to discuss the proposed project and receive input on the scope and contents of the Draft Environmental Impact Report for the project (the "Draft EIR");

**WHEREAS**, the 30-day public comment period on the NOP concluded on November 22, 2019, after which the Department of Building, Planning, and Code Enforcement took

comments received at the scoping meeting and during the public comment period under consideration during preparation of the Draft EIR; and

**WHEREAS**, the City concurrently filed and distributed a Notice of Completion and a Notice of Availability for the Draft EIR (State Clearinghouse No. 2019080493) on October 7, 2020; and the DEIR was circulated for public review and to the appropriate agencies and interested parties for a sixty two (62) day comment period from October 7, 2020 to December 8, 2020, in addition to providing printed copies of the Draft EIR upon request, as City Hall and San José Public Library Branches were closed due to the COVID-19 pandemic; and

**WHEREAS**, the First Amendment to the Draft EIR, which is comprised of comments received by the City on the Draft EIR during the public review period, responses to those comments, and revisions to the Draft EIR, was published on April 16, 2021; and

**WHEREAS**, the City is the lead agency for the project, and has prepared a Final Environmental Impact Report for the project pursuant to and in accordance with CEQA, which is comprised of the Draft EIR together with the First Amendment to the Draft EIR, including revisions to the Draft EIR made in the First Amendment (collectively, all of said documents are referred to herein as the “FEIR”); and

**WHEREAS**, the project applicant, in coordination with the City, made certain modifications to the project subsequent to publication of the Draft EIR and in response to comments on the Draft EIR, which are detailed in the First Amendment to the Draft EIR and which, as analyzed in Sections 1.2.2 and 1.2.3 of the First Amendment to the Draft EIR, do not constitute “significant new information” as defined in State CEQA Guidelines Section 15088.5 but rather clarify, amplify, or make insignificant modifications to the Draft EIR and, for this reason, recirculation of the Draft EIR is not required; and

**WHEREAS**, pursuant to CEQA Guidelines Section 15088(b), the City provided notice to public agencies that commented on the Draft EIR of the availability of the Final EIR on the City's website, including the written responses to the respective agency's comments, at least ten (10) days prior to the City's action certifying the FEIR; and

**WHEREAS**, the FEIR concluded that implementation of the project would potentially result in significant adverse effects on the environment; and

**WHEREAS**, the FEIR outlines mitigation measures and alternatives that would substantially lessen or avoid some, but not all, significant effects of the project; 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 monitoring or reporting program and make a statement of overriding considerations for any impact that may not be reduced to a less-than-significant level; and

**WHEREAS**, on April 28, 2021, the Planning Commission of the City of San José reviewed the FEIR prepared for the Downtown West Mixed-Use Plan at a duly-noticed public hearing, considered the FEIR and testimony and information received at the public hearing, and recommended that the City Council find that environmental review for the proposed project was completed in accordance with the requirements of CEQA and further recommended that the City Council adopt this Resolution; and

**WHEREAS**, on May 25, 2021, the City Council conducted a duly noticed public hearing at a regularly scheduled meeting to consider the FEIR and approval of the project. The City Council has heard and considered the public testimony provided to it at the hearing and has further considered written materials and oral testimony presented on behalf of

the City, the project applicant, and other interested parties. The City Council has reviewed the entire record of this proceeding regarding the alternatives, mitigation measures, environmental impacts analyzed in the FEIR, overriding considerations for approving the project, and the proposed Mitigation Monitoring and Reporting Program (MMRP) attached as Exhibit A and incorporated fully by this reference. The entire record was made available to the public.

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

1. That the above recitals are true and correct and made part of this Resolution; and
2. That the City Council finds that the public has been afforded ample notice and opportunity to comment on the EIR; and
3. That the City Council does hereby find and certify that the FEIR has been prepared and completed in compliance with CEQA; and
4. That the City Council certifies it was presented with, and has independently reviewed and analyzed, the FEIR and other information in the record located in File No. \_\_\_\_\_ at the City's Department of Planning, Building and Code Enforcement, San José City Hall, 200 East Santa Clara Street, 3rd Floor Tower, San José, California, 95113 and located on the internet at <https://downtownwestadminrecord.com/>, and has considered the information contained therein, including the written and oral comments received at the public hearings on the FEIR and the project, prior to acting upon or approving the project; and
5. That the City Council does hereby find and certify that the FEIR represents the independent judgment of the City of San José ("City") as lead agency for the project; and
6. That the City Council does hereby find and recognize that the FEIR contains additions, clarifications, modifications, and other information in its responses to comments on the Draft EIR, or obtained by the City after the Draft EIR was issued and circulated for public review, and does hereby find that such changes and additional information are not significant new information, as defined in CEQA Guidelines Section 15088.5, because such changes and additional information have not changed the EIR in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the

project or a feasible way to mitigate or avoid such an effect that the project proponents have declined to implement; and

7. That the City Council does hereby find and determine that recirculation of the FEIR for further public review and comment is not warranted or required under the provisions of CEQA; and
  - I. That the City Council does hereby make, pursuant to Section 15091, the following findings, as set forth below, with respect to the significant effects on the environment of the project, as identified in the FEIR, with the understanding that all of the information in this Resolution is intended as a summary of the full administrative record supporting the FEIR, which should be consulted for the full details supporting these findings. That the City Council has balanced the economic, legal, social, technological, and other benefits of the project against the unavoidable environmental risks that may result, and finds that the specific economic, legal, social, technological, and other benefits outweigh the unavoidable adverse environmental effects, as set forth in more detail below. The City Council, therefore, finds the adverse environmental effects of the project are “acceptable”, and hereby adopts the statement of overriding considerations as set forth below.
  - II. That changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen significant environmental effects, as identified in the Final EIR.
  - III. Mitigation measures have been identified to reduce significant impacts to less than significant.
  - IV. That the City Council, pursuant to Section 21081.6, hereby adopts the MMRP attached hereto as Exhibit A, adopts each mitigation measure set forth therein, and imposes each mitigation measure as a condition of the proposed project’s approval.

## **DOWNTOWN WEST MIXED-USE PLAN CEQA FINDINGS**

These findings are organized as follows:

**Section 1** provides a description of the project proposed for adoption and project objectives.

**Section 2** provides findings regarding mitigation measures. Subsection 2A provides findings related to significant impacts that cannot be avoided or reduced to less-than-significant levels, and subsection 2B provides findings regarding mitigation measures related to potentially significant impacts that can be avoided or reduced to less than significant levels through mitigation measures proposed for adoption as part of the project.



**Section 3** evaluates the different project alternatives and the economic, legal, social, technological, and other considerations that support approval of the project and the rejection of alternatives analyzed.

**Section 4** presents a statement of overriding considerations setting forth specific reasons in support of the actions for the project and the rejection as infeasible of the alternatives not incorporated into the project.

The MMRP is attached to this Resolution as Exhibit A.

## **SECTION 1: PROJECT DESCRIPTION AND PROJECT OBJECTIVES**

### **PROJECT DESCRIPTION**

As generally summarized in Draft EIR, Chapter S, Summary, as amended in the First Amendment, the project description is as follows:

Google LLC, the project applicant, is proposing the Project as part of the company's expansion of its workforce and business operations in the Bay Area. To accommodate workforce growth and create more efficient transportation linkages between Google workplaces and employees' homes, the proposed project envisions a new high-density job center anchored by public transportation. The proposed project would include a mix of uses generally consistent with the City's Diridon Station Area Plan (DSAP), providing for a mixed-use Downtown neighborhood.

The project site is located in the western portion of Downtown San José, mostly in the DSAP area, although the site also includes the former San José Water Company site at 374 W. Santa Clara Street, which is not part of the existing DSAP. The proposed project includes an amendment to the DSAP to bring the 374 W. Santa Clara Street site within the DSAP boundary. The project site is generally bounded by Lenzen Avenue and the Union Pacific Railroad tracks to the north; North Montgomery Street, Los Gatos Creek, the Guadalupe River, Barack Obama Boulevard (formerly South Autumn Street), and Royal Avenue to the east; Auzerais Avenue to the south; and Diridon Station and the Caltrain rail tracks to the west. Cahill Street fronts Diridon Station and runs generally parallel to the rail tracks in the project's central area.

The proposed project consists of the demolition of most existing buildings on the project site and phased development of new buildings on approximately 80 acres on the west side of Downtown San José. The proposed project would require amendments to the General Plan and DSAP, Planned Development Rezoning, a Planned Development Permit, including adoption of the Downtown West Design Standards and Guidelines;



Vesting Tentative Map(s)/Tentative Map(s)/Final Map(s); and related entitlements from the City including, but not limited to, a Development Agreement and permits related to tree removal, demolition, grading, building, encroachment, solid waste, and historic preservation. The proposed project would include the following uses:

- A maximum of 7.3 million gross square feet (gsf) of commercial office space
- A maximum of 5,900 residential units
- A maximum of 500,000 gsf of active uses (commercial retail/restaurant, arts, cultural, live entertainment, community center, institutional, childcare and education, maker spaces, non-profit, and small-format office space, as well as one or more live entertainment venues)
- A maximum of 300 hotel rooms
- A maximum of 800 rooms of limited-term corporate accommodations (lodging of company workforce for not more than 60 consecutive days and not open to the public; considered a non-residential use)
- A maximum of 100,000 gsf of event and conference space
- On- and off-street public/commercial and residential parking
- A district-systems approach to on-site utilities delivery (i.e., an on-site utility network), including designated infrastructure zones with centralized utility plants totaling approximately 130,000 gsf.
- One or more on-site logistics centers to serve the commercial on-site uses that would occupy a total of about 100,000 gsf
- A total of approximately 15 acres of parks, plazas, and open space, including areas for outdoor seating and commercial activity (such as retail, cafes, and restaurants), green spaces, mid-block passages, semi-public spaces, riparian setbacks, riparian setbacks, and trails
- Various improvements to the public realm to improve transit access and pedestrian and bicycle circulation and facilitate connectivity, both within the site and to and from surrounding neighborhoods

The project would also include the adoption of the Downtown West Design Standards and Guidelines, an enforceable series of design-focused standards, along with advisory guidelines, that would govern development on the project site and that would be approved as part of the Planned Development Permit.

### **PROJECT OBJECTIVES**

The project has been proposed and planned to address objectives of the project applicant, the City, and the City and Google Memorandum of Understanding, as discussed in Section 2.14 of the Draft EIR, as amended, and listed below.

## **Project Applicant Objectives**

### ***Overarching Objectives***

- The project applicant's key objective is to provide sufficient high-quality office space to accommodate the long-term expansion of its workforce and business operations in a Bay Area location that is anchored by public transportation.
- Deliver community benefits consistent with the terms of the Memorandum of Understanding between Google and the City of San José, dated December 4, 2018 (MOU).
- Provide this new office space in a vibrant mixed-use neighborhood centered around Diridon Station that includes not only new workplaces, but also housing and active commercial and open spaces with the amenities and services necessary to support a diverse, thriving community of residents and workers.

### ***Establish Diridon Station as a New Regional Job Center***

- Deliver a critical mass of new office space consistent with the goals and objectives of the Diridon Station Area Plan.
- Encourage a significant shift to public transportation by leveraging existing and planned local, regional, and statewide transportation facilities at the site by developing a high-density mix of office and residential uses.
- Create a dense commercial center that is designed to anticipate and adapt to changing business needs and growth over several decades, with floorplates large enough to provide horizontally connected workplaces.
- Group office uses contiguously while creating a mixed-use environment in order to take advantage of operational efficiencies, such as the ability to share amenity spaces.

### ***Develop Housing, Including Affordable Housing, Alongside Jobs***

- Deliver thousands of units of new, high-quality housing.
- Construct housing with sufficient density to maintain day and evening, weekday and weekend activities in Downtown West.
- Offer a mix of unit types, sizes, and levels of affordability to accommodate a range of potential residents.
- Deliver affordable housing consistent with the goals set forth in the MOU.

### ***Create Opportunity Pathways***

- Develop commercial retail spaces on the project site that would attract diverse tenants, adapt to future needs, integrate local small businesses, stimulate local economic activity, serve the neighborhood, and complement adjacent public spaces.

- Promote learning and career opportunities from retail, to food service, to professional and tech jobs.

### ***Build a Place that is of San José***

- Incorporate high-quality urban design, architecture, and open spaces with varied form, scale, and design character to enliven San José's downtown.
- Preserve and adapt landmark historic resources and assets where feasible to foster a place authentic to San José, and foster contemporary relations to San José's history.
- Develop key public spaces at the core of the project site as an extension to Downtown.
- Build upon the project's location at the convergence of a significant regional and statewide transportation hub and the city's Downtown to create a world-class, architecturally iconic civic/cultural center for the City of San José, particularly through the combination and juxtaposition of historic and contemporary design elements.
- Optimize environmental performance and comfort within buildings and adjacent public spaces through orientation, massing, and building technology.
- Create a place that fosters arts and cultural uses, especially through the provision of dedicated spaces for the arts, and as part of a larger suite of community benefits.

### ***Connect People to Nature and Transit***

- Connect people with nature along Los Gatos Creek and the Guadalupe River.
- Create myriad opportunities for passive recreation in new public open spaces, while improving access to active recreation by significantly augmenting a multi-use trail.
- Improve pedestrian, bicycle, and transit connectivity within the project area, as well as between the project area and existing adjacent neighborhoods, in order to create a highly active and lively pedestrian and bicycle friendly environment.
- Consistent with the MOU, develop a project with minimal parking and robust Transportation Demand Management measures in order to encourage active transportation and public transit use, and to support implementation of the City's Climate Smart plan.
- Provide a model of 21st century sustainable urban development by implementing shared infrastructure and logistics systems across the project, significantly reducing energy and water demand, vehicle miles traveled, and greenhouse gas emissions.

### ***Vibrant Public Realm***

- Create a network of connected plazas, green spaces, streetscapes, and trails to link office and residential uses with retail, cultural, hotel, and other active uses and provide a range of publicly accessible amenities that create attractive, vibrant and safe experiences.

### **City Objectives**

The City of San José seeks to achieve the following objectives by approving the proposed project:

- Ensure development of the project site consistent with policies in the General Plan, Downtown Strategy 2040, and DSAP, that encourages ambitious job creation, promotes development of Downtown as a regional job center and a world-class urban destination, and supports transit ridership.
- Align the Diridon Station Area Plan with the Downtown Strategy 2040, specifically with regard to the increase in office development capacity.
- Ensure that development advances the City's progress toward the following goals and policies, as reflected in and implemented through the Downtown Strategy 2040 and Diridon Station Area Plan:
  - Manage land uses to enhance employment lands to improve the balance between jobs and workers residing in San José. To attain fiscal sustainability for the City, strive to achieve a minimum ratio of 1.1 jobs per employed resident by 2040. In the near term, strive to achieve a minimum ratio of 1 job per employed resident by 2025. (General Plan Policy IE-1.4)
  - Promote the intensification of employment activities on sites in close proximity to transit facilities and other existing infrastructure, in particular within the Downtown, North San José, the Berryessa International Business Park, and Edenvale. (General Plan Policy IE1.5)
  - Advance the Diridon Station Area as a world-class transit hub and key transportation center for Northern California. (General Plan Policy IE-1.7)
  - Foster development patterns that will achieve a complete community in San José, particularly with respect to increasing jobs and economic development and increasing the City's jobs-to-employed resident ratio while recognizing the importance of housing a resident workforce. (General Plan Policy LU-1.1)
  - Provide maximum flexibility in mixing uses throughout the Downtown area. Support intensive employment, entertainment, cultural, public/quasi-public, and residential uses in compact, denser 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*. (General Plan Policy LU-3.1)

### **Objectives of the City and Google Memorandum of Understanding**

- Implement the vision statement in the MOU dated December 4, 2018, by (1) creating a vibrant, welcoming, and accessible urban destination on the project site consisting of land uses that are well-integrated with the intermodal transit station, adjacent neighborhoods, and Downtown; (2) demonstrating a commitment to place making, social equity, economic development, environmental sustainability, and financially viable private development; and (3) collaborating with the project applicant to innovate in the development of an urban destination that will bring opportunity to the local community and create new models for urban and workplace design and development.
- Deliver community benefits including, but not limited to, achieving the following goals in the MOU:
  - Grow and preserve housing, including affordable housing.
  - Create broad job opportunities for San José residents of all skill and educational levels.
  - Enhance and connect the public realm.
  - Pay construction workers a prevailing hourly wage and benefit rate for Office and Research and Development building construction.
  - Increase access to quality education, enrichment opportunities, internships, and pathways to careers in science, technology, engineering, and mathematics (STEM) fields.
  - Support the timely delivery of substantial jobs and housing in the area surrounding Diridon Station to maximize integration with planned transit projects and successful implementation of the Diridon Station Area Plan.
- Support San José's economic growth by adding economic vitality to downtown and enhancing the property tax base.

### **SECTION 2: FINDINGS REGARDING MITIGATION MEASURES**

Consistent with the requirement in State CEQA Guidelines Section 15091, changes or additions in the form of mitigation measures have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effects identified in the FEIR. To the extent that effects will not be eliminated or lessened to a less-than-significant level, specific economic, legal, social, technological, and other considerations identified in the FEIR make infeasible other mitigation measures and project alternatives.

## **SUBSECTION 2A: SIGNIFICANT AND UNAVOIDABLE IMPACTS**

### **Air Quality**

**Impact:**     **Impact AQ2:** The proposed project would result in a cumulatively considerable net increase of a criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard.

**Mitigation:**   **Mitigation Measure AQ-2a: Construction Emissions Minimization Plan**

To ensure that the project features assumed in the analysis of air pollutant emissions are implemented, and to further reduce criteria pollutant emissions from construction activities, the project applicant shall implement the following measures prior to the issuance of any demolition, grading, or building permits for each phase of the project:

1. *Engine Requirements.*

- a. As part of the project design, all off-road construction equipment with engines greater than 25 horsepower must adhere to Tier 4 Final off-road emissions standards, if commercially available (refer to Item #2, *Engine Requirement Waivers*, below, for the definition of “commercially available”). This adherence shall be verified through submittal of an equipment inventory and Certification Statement to the Director of Planning, Building and Code Enforcement or the Director’s designee. The Certification Statement must state that each contractor agrees to compliance and acknowledges that a significant violation of this requirement shall constitute a material breach of the contractor’s agreement and/or the general contract with the project applicant.
- b. The project applicant shall use alternative fuels as commercially available, such as renewable diesel, biodiesel, natural gas, propane, and electric equipment. The applicant must demonstrate to the satisfaction of the Director of Planning, Building and Code Enforcement, or the Director’s designee, that any alternative fuels used in any construction equipment, such as biodiesel, renewable diesel, natural gas, or other biofuels, reduce ROG, NO<sub>x</sub>, and PM emissions compared to traditional diesel fuel.
- c. The project applicant shall use electricity to power off-road equipment, specifically for all concrete/industrial saws, sweepers/scrubbers, aerial lifts, welders, air compressors, fixed cranes, forklifts, and cement and mortar mixers, along with 90 percent of pressure washers and 70 percent of pumps, in all but isolated cases where diesel powered equipment is used as an



interim measure prior to the availability of grid power at more remote areas of the site. Portable equipment shall be powered by grid electricity or alternative fuels (i.e., not diesel) instead of by diesel generators.

## 2. *Engine Requirement Waivers.*

If engines that comply with Tier 4 Final off-road emission standards are not commercially available for specific off-road equipment necessary during construction, the project applicant shall provide the next cleanest piece of off-road equipment, as provided by the step-down schedule identified in Table MAQ2a. The project applicant shall provide to the Director of Planning, Building and Code Enforcement, or the Director's designee, for review and approval documentation showing that engines that comply with Tier 4 Final off-road emission standards are not commercially available for the specific off-road equipment necessary during construction.

**TABLE M-AQ-2A**  
**OFF-ROAD EQUIPMENT COMPLIANCE STEP-DOWN SCHEDULE**

Compliance Alternative	Engine Emissions Standard	Emissions Control
1	Tier 4 Interim	N/A
2	Tier 3	CARB Level 3 VDECS
3	Tier 2	CARB Level 3 VDCES

NOTES: CARB = California Air Resources Board; N/A = not applicable; VDECS = Verified Diesel Emissions Control Strategies

*How to use the table:* If engines that comply with Tier 4 Final off-road emission standards are not commercially available, the project applicant shall meet Compliance Alternative 1. If off-road equipment meeting Compliance Alternative 1 is not commercially available, the project applicant shall meet Compliance Alternative 2. If off-road equipment meeting Compliance Alternative 2 is not commercially available, the project applicant shall meet Compliance Alternative 3.

For purposes of this mitigation measure, "commercially available" shall take into consideration the following factors: (i) potential significant delays to critical-path timing of construction and (ii) the geographic proximity to the project site of Tier 4 Final equipment.

The project applicant shall maintain records of its efforts to comply with this requirement.



### 3. *Additional Exhaust Emissions Control Measures.*

The Emissions Plan (described in greater detail under Item #5, *Construction Emissions Minimization Plan*, below) shall include the applicable measures for controlling criteria air pollutants and toxic air contaminants during construction of the proposed project. Control measures shall include but are not limited to the following:

- a. Idling times on all diesel-fueled commercial vehicles weighing more than 10,000 pounds shall be minimized either by shutting equipment off when not in use or by reducing the maximum idling time to two minutes, exceeding the five-minute limit required by the California airborne toxics control measure (California Code of Regulations Title 13, Section 2485s). Clear signage to this effect shall be provided for construction workers at all access points.
- b. Idling times on all diesel-fueled off-road vehicles exceeding 25 horsepower shall be minimized either by shutting equipment off when not in use or by reducing the maximum idling time to two minutes. Fleet operators must develop a written policy as required by California Code of Regulations Title 23, Section 2449 ("California Air Resources Board Off-Road Diesel Regulations").
- c. Portable equipment shall be powered by grid electricity if available, instead of diesel generators. If grid electricity is not available, batteries or fuel cell systems or other non-diesel fuels shall be used for backup power.
- d. The project applicant shall use super-compliant volatile organic compound (VOC) architectural coatings during construction for all interior and exterior spaces and shall include this requirement on plans submitted for review by the City's building official. "Super-compliant" coatings are those that meet a limit of 10 grams VOC per liter (<http://www.aqmd.gov/home/regulations/compliance/architectural-coatings/super-compliant-coatings>).
- e. All equipment to be used on the construction site shall comply with the requirements of California Code of Regulations Title 13, Section 2449 ("California Air Resources Board Off-Road Diesel Regulations"). This regulation imposes idling limits; requires that all off-road equipment be reported to California Air Resources Board and labeled; restricts adding older vehicles to fleets starting January 1, 2014; and requires fleets to reduce their emissions by retiring, replacing, or repowering older engines, or installing Verified Diesel Emissions Control Strategies. Upon request by the City (and Bay Area Air Quality Management District if specifically requested),

the project applicant and/or its contractor shall provide written documentation that fleet requirements have been met.

- f. Truck routes shall be established to avoid both on-site and off-site sensitive receptors. A truck route program, along with truck calming, parking, and delivery restrictions, shall be implemented. This program must demonstrate how the project applicant will locate the truck routes as far from on-site receptors as possible and how truck activity (travel, idling, and deliveries) will be minimized. The Construction Emissions Minimization Plan must include the location of construction truck routes and must demonstrate that routes have been established as far as possible from the locations of all on-site and off-site sensitive receptors.
- g. The project applicant shall encourage walking, bicycling, and transit use by construction employees by offering incentives such as on-site bike parking, transit subsidies, and additional shuttles. The project shall target a project-lifetime performance standard of diverting at least 50 percent of construction employee trips from single-occupant vehicles. This may include the use of carpools and vanpools for construction workers.

4. *Dust Control Measures.*

The project applicant shall implement the following dust control requirements during construction of the project, consistent with the San José Downtown Strategy:

- a. All exposed surfaces shall be watered at a frequency adequate to maintain minimum soil moisture of 12 percent (verified by lab samples or moisture probe).
- b. All excavation, grading, and/or demolition activities shall be suspended when average wind speeds exceed 20 miles per hour (mph).
- c. All trucks and equipment, including tires, shall be washed off before they leave the project site.
- d. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
- e. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- f. All vehicle speeds on unpaved roads shall be limited to 15 mph.

- g. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
- h. A publicly visible sign shall be posted, listing the telephone number and person to contact at the lead agency (the City) regarding dust complaints. This person shall respond and take corrective action within 48 hours. The sign shall also include the telephone number of the on-site construction manager. BAAQMD's phone number shall also be visible to ensure compliance with applicable regulations.
- i. Wind breaks (e.g., trees, fences) shall be installed on the windward side(s) of actively disturbed areas of construction. Wind breaks should have at maximum 50 percent air porosity.
- j. Vegetative ground cover (e.g., fast-germinating native grass seed) shall be planted in disturbed areas as soon as possible and watered appropriately until vegetation is established.
- k. Site accesses to a distance of 100 feet from the paved road shall be treated with a 6- to 12-inch compacted layer of wood chips, mulch, or gravel.
- l. Sandbags or other erosion control measures shall be installed to prevent silt runoff to public roadways from sites with a slope greater than 1 percent.

5. *Construction Emissions Minimization Plan.*

Before starting each phase of on-site ground disturbance, demolition, or construction activities, the project applicant shall submit a Construction Emissions Minimization Plan (Emissions Plan) to the Director of the City of San José Department of Planning, Building and Code Enforcement, or the Director's designee, for review and approval. The Emissions Plan shall state, in reasonable detail, how the project applicant and/or its contractor shall meet the requirements of Section 1, Engine Requirements; Section 3, Additional Exhaust Emissions Control Measures; and Section 4, Dust Control Measures.

- a. The Emissions Plan shall include estimates of the construction timeline, with a description of each piece of off-road equipment required. The description shall include but not be limited to equipment type, equipment manufacturer, engine model year, engine certification (tier rating), horsepower, and expected fuel usage and hours of operation.
- b. For off-road equipment using alternative fuels, the description shall also specify the type of alternative fuel being used.

- c. The project applicant shall ensure that all applicable requirements of the Emissions Plan have been incorporated into the contract specifications. The plan shall include a certification statement that each contractor agrees to comply fully with the plan.
- d. The Emissions Plan shall be verified through an equipment inventory and Certification Statement submitted to the Director of Planning, Building and Code Enforcement or the Director's designee. The Certification Statement must state that the project applicant agrees to compliance and acknowledges that a significant violation of this requirement shall constitute a material breach of the contractor's agreement with the project applicant and/or the general contractor.
- e. The project applicant and/or its contractor shall make the Emissions Plan available to the public for review on-site during working hours. The project applicant and/or its contractor shall post at the construction site a legible and visible sign summarizing the Emissions Plan. The sign shall also state that the public may ask to inspect the project's Emissions Plan at any time during working hours and shall explain how to request to inspect the Emissions Plan. The project applicant and/or its contractor shall post at least one copy of the sign in a visible location on each side of the construction site facing a public right-of-way. The sign shall include contact information for an on-site construction coordinator if any member of the public has complaints or concerns.

6. *Monitoring.*

After the start of construction activities, the project applicant and/or its contractor shall submit annual reports to the Director of the City of San José Department of Planning, Building and Code Enforcement, or the Director's designee, documenting compliance with the Emissions Plan. The reports shall indicate the actual location of construction during each year and must demonstrate how construction of each project component is consistent with the Emissions Plan.

**Mitigation Measure AQ-2b: Construction Equipment Maintenance and Tuning**

Prior to the issuance of any demolition, grading, or building permits for each phase, the project applicant shall implement the following measures:

1. Instruct all construction workers and equipment operators on the maintenance and tuning of construction equipment and require such workers and operators to properly maintain and tune equipment in accordance with the manufacturers' specifications. All equipment shall be checked by a certified mechanic and determined to be running in

proper condition before operation. Equipment check documentation shall be kept at the construction site and be available for review by the City and Bay Area Air Quality Management District as needed.

2. Implement the construction minimization requirements of Mitigation Measure AQ2a Item #5, *Construction Emissions Minimization Plan*.
3. Implement the monitoring requirements of Mitigation Measure AQ2a Item #6, *Monitoring*.

#### **Mitigation Measure AQ2c: Heavy-Duty Truck Model Year Requirement**

Prior to the issuance of any demolition, grading, or building permits for each phase, the project applicant shall ensure that all on-road heavy-duty trucks with a gross vehicle weight rating of 33,000 pounds or greater used at the project site during construction (such as haul trucks, water trucks, dump trucks, and vendor trucks) have engines that are model year 2014 or newer. This assurance shall be included in the construction contracts for all contractors and vendors using heavy-duty trucks for any construction-related activity.

#### **Mitigation Measure AQ-2d: Super-Compliant VOC Architectural Coatings during Operations**

Prior to the issuance of any building permits, the project applicant shall set an enforceable protocol for inclusion in all lease terms and/or building operation plans for all non-residential and residential developed blocks requiring all future interior and exterior spaces to be repainted only with “super-compliant” VOC (i.e., ROG) architectural coatings beyond BAAQMD requirements (i.e., Regulation 8, Rule 3: Architectural Coatings). “Super-compliant” coatings meet the standard of less than 10 grams VOC per liter (<http://www.aqmd.gov/home/regulations/compliance/architectural-coatings/super-compliant-coatings>). The Director of the City of San José Department of Planning, Building and Code Enforcement, or the Director’s designee, shall review the mandatory protocol to ensure that this requirement is included, and shall mandate that this requirement be added if not included.

#### **Mitigation Measure AQ-2e: Best Available Emissions Controls for Stationary Emergency Generators**

To reduce emissions of criteria pollutants and TACs associated with operation of the proposed project, the project applicant shall implement the following measures. These features shall be submitted to the Director of the Department of Planning, Building and Code Enforcement, or the Director’s designee, for review and approval, and shall be included on the project drawings submitted for the construction-related permit(s) or on other

documentation submitted to the City prior to the issuance of any building permits:

1. Permanent stationary emergency generators installed on-site shall have engines that meet or exceed CARB Tier 4 Off-Road Compression Ignition Engine Standards (California Code of Regulations Title 13, Section 2423), which have the lowest NO<sub>x</sub> and PM emissions of commercially available generators. If the California Air Resources Board adopts future emissions standards that exceed the Tier 4 requirement, the emissions standards resulting in the lowest NO<sub>x</sub> emissions shall apply.
2. As non-diesel-fueled emergency generator technology becomes readily available and cost effective in the future, and subject to the review and approval of the City fire department for safety purposes, non-diesel-fueled generators shall be installed in new buildings, provided that alternative fuels used in generators, such as biodiesel, renewable diesel, natural gas, or other biofuels or other non-diesel emergency power systems, are demonstrated to reduce ROG, NO<sub>x</sub>, and PM emissions compared to diesel fuel.
3. Permanent stationary emergency diesel backup generators shall have an annual maintenance testing limit of 50 hours, subject to any further restrictions as may be imposed by Bay Area Air Quality Management District (BAAQMD) in its permitting process.
4. For each new diesel backup generator permit submitted to BAAQMD for the proposed project, the project applicant shall submit the anticipated location and engine specifications to the Director of the City of San José Department of Planning, Building and Code Enforcement, or the Director's designee, for review and approval prior to issuance of a permit for the generator. Once operational, all diesel backup generators shall be maintained in good working order for the life of the equipment, and any future replacement of the diesel backup generators must be consistent with these emissions specifications. The operator of the facility at which the generator is located shall maintain records of the testing schedule for each diesel backup generator for the life of that diesel backup generator and shall provide this information for review to the Director of the City of San José Department of Planning, Building and Code Enforcement, or the Director's designee, within three months of requesting such information.

#### **Mitigation Measure AQ-2f: Operational Diesel Truck Emissions Reduction**

The project applicant shall incorporate the following measures into the project design and construction contracts (as applicable) to reduce



emissions associated with operational diesel trucks, along with the potential health risk caused by exposure to toxic air contaminants. These features shall be submitted to the Director of Planning, Building and Code Enforcement, or the Director's designee, for review and approval prior to the issuance of any building permits, and shall be included on the project drawings submitted for the construction-related permit or on other documentation submitted to the City. Emissions from project-related diesel trucks shall be reduced by implementing the following measures:

1. Equip all truck delivery bays with electrical hook-ups for diesel trucks at loading docks to accommodate plug-in electric truck transportation refrigeration units (TRUs) during project operations. Ensure that intra-campus delivery vehicles traveling within the project site to serve the project applicant are all electric or natural gas.
2. Encourage the use of trucks equipped with TRUs that meet U.S. Environmental Protection Agency Tier 4 emission standards.
3. Prohibit TRUs from operating at loading docks for more than thirty minutes by posting signs at each loading dock presenting this TRU limit.
4. Prohibit trucks from idling for more than two minutes by posting "no idling" signs at the site entry point, at all loading locations, and throughout the project site.

#### **Mitigation Measure AQ2g: Electric Vehicle Charging**

Prior to the issuance of the final building's certificate of occupancy for each phase of construction, the project applicant shall demonstrate that at least 15 percent of all parking spaces are equipped with electric vehicle (EV) charging equipment, which exceeds the San José Reach Code's requirement of 10 percent EV supply equipment spaces. The installation of all EV charging equipment shall be documented in a report submitted to the Director of the City of San José Department of Planning, Building and Code Enforcement, or the Director's designee, for review and approval, and shall be included on the project drawings submitted for the construction-related permit(s) or on other documentation submitted to the City.

#### **Mitigation Measure AQ-2h: Enhanced Transportation Demand Management Program**

The project applicant shall develop and submit a Transportation Demand Management (TDM) Program for review and approval by the Directors of Public Works and Planning, Building, and Code Enforcement or the Directors' designees prior to or concurrent with adoption of the Planned Development Permit. The TDM program shall be designed such that all project-related daily vehicle trips are reduced with a primary focus on the office and residential components of the proposed project. (Office and



residential trips would comprise approximately 85 percent of project vehicle trips and are assumed to serve as a proxy for all project trips.)

The TDM program shall:

- (A) Be designed to meet performance standards that include exceeding the 15 percent transportation efficiency requirement of AB 900 *and* achieving additional vehicle trip reductions to mitigate transportation-related environmental impacts and reduce criteria pollutant emissions from mobile sources, as described below;
- (B) Describe project features and TDM measures that shall and may be used to achieve the performance standard commitments;
- (C) Describe a monitoring and reporting program, including a penalty structure for non-compliance; and
- (D) Recognizing that commute patterns, behavior and technology continue to evolve, describe a process for amending and updating the TDM program as needed over time while continuing to achieve the performance standards described below.

These elements of the TDM Program are described further below.

- A. **Performance Standards:** The project's TDM program shall be designed to achieve the performance standards described below:
- Assuming currently available (pre-COVID-19) public transit service levels, achieve a combined non-single occupancy vehicle (SOV) rate of 50 percent, which is estimated to be equivalent to a 24 percent reduction in daily vehicle trips from the City of San José Travel Demand Forecasting Model's travel demand outputs.
  - Following completion of service enhancements related to Caltrain Electrification, achieve a combined non-SOV rate of 60 percent, which is estimated to be equivalent to a 26 percent reduction in daily vehicle trips from the City Travel Demand Forecasting Model's travel demand outputs.
  - Following completion of service enhancements related to the start of BART service to Diridon Station, achieve a combined non-SOV rate of 65 percent, which is estimated to be equivalent to a 27 percent reduction in daily vehicle trips from the City Travel Demand Forecasting Model's travel demand outputs.

**B. TDM Program:** Project features and required SOV trip reduction strategies shall include the following elements:

1. Improvements to pedestrian and bicycle facilities on-site and connecting the site to surrounding areas, including construction/contribution to Los Gatos Creek Trail improvements and on-street connectors between West San Carlos Street and West Santa Clara Street;
2. Limited parking supplies on-site, including no more than 4,800 parking spaces for commercial uses and no more than 2,360 spaces for residential development (a portion of the residential spaces could be available as shared-use spaces for office employees) and enforcement of the project's parking maximums for new uses as a disincentive for employees and visitors to the site, encouraging them to carpool, take transit, bike, and walk instead of drive;
3. Market-rate parking pricing for non-residential uses and unbundled parking for market-rate residential uses;
4. Pre-tax commuter benefits for employees allowing employees to exclude their transit or vanpooling expenses from taxable income or an alternate commuter benefit option consistent with the MTC/BAAQMD Commuter Benefits Program required for employers with 50 or more full-time employees;
5. Marketing (encouragement and incentives) to encourage transit use, carpooling, vanpooling, and all non-SOV travel by employees and residents, including welcome packets for new employees and residents, and dissemination of information about Spare the Air Days in the San Francisco Bay Area Air Basin, as recommended by the 2017 Clean Air Plan; and
6. Rideshare coordination, such as implementation of the 511 Regional Rideshare Program or equivalent, as recommended by the 2017 Clean Air Plan.

Other supplemental SOV trip reduction strategies to meet performance standards shall include some combination of the following:

<b>Transit Fare Subsidy</b>	Provide transit passes or subsidies to employees and residents to make transit an attractive, affordable mode of travel.
<b>Parking Pricing Structure</b>	Ensure that the parking pricing structure encourages "park once" behavior for all uses.

<b>Preferential Carpool and Vanpool Parking</b>	Provide dedicated parking for carpool and vanpool vehicles near building and garage entrances.
<b>On-Site Bicycle Parking and Storage</b>	Provide additional security and convenience for bicycle parking, such as lockers or secured bicycle rooms.
<b>Designated Ride-Hailing Waiting Areas</b>	Dedicate curbside areas for passenger pickup by ride-hailing services, to minimize traffic intrusion and double-parking by rideshare vehicles.
<b>Traffic Calming</b>	Implement on-site traffic calming improvements to support the increased use of walking, biking, and transit.
<b>Express Bus or Commuter Shuttle Services</b>	Provide express bus or other commuter shuttle services to complement existing, high-quality, high-frequency public transit; service may also be provided through public/private partnerships with transit providers.
<b>Alternative Work Schedules and Telecommuting</b>	Allow and encourage employees to adopt alternative work schedules and telecommute when possible, reducing the need to travel to the office component of the project.
<b>First-/Last-Mile Subsidy</b>	Provide subsidies for first-/last-mile travel modes to employees to reduce barriers to the use of transit as a primary commute mode by making short connecting trips to and from longer transit trips less costly and more convenient. First-/last-mile subsidies could be used to access bicycle share, scooter share, ride hailing, and local bus and shuttle services, and could subsidize bicycling and walking.
<b>On-Site Transportation Coordinators</b>	Provide TDM program outreach and marketing via on-site transportation coordinators who can also give individualized directions, establish ridesharing connections, and provide other alternative travel information to project employees and residents.

<b>Technology-Based Services</b>	Use technology-based information, encouragement, and trip coordination services to encourage carpooling, transit, walking, and biking by project employees and visitors. These can include third-party apps to distribute incentives to people who choose to use these modes.
<b>Employer-Sponsored Vanpools</b>	Coordinate and provide subsidized vanpools for employees who cannot easily commute via transit.
<b>Biking Incentives and On-Site Bike Repair Facilities</b>	Provide additional incentives that encourage bicycle usage and ability to repair bikes on site.
<b>Carshare Program</b>	Provide car share subsidies to residents to encourage the use of carshare programs (such as ZipCar and Gig) and limit parking demand.
<b>Building-Specific TDM Plans</b>	Develop customized TDM plans for specific buildings and tenants to better address the needs of their users.
<b>Transportation Management Agency Membership</b>	Join a non-profit transportation management association if formed for Downtown San José, and leverage the larger pool of commuters and residents to improve TDM program marketing and coordinate TDM programs.

- C. **Monitoring and Enforcement:** Starting in the calendar year after the City issues the first certificate of occupancy for the first office building in the first development phase, the project applicant shall retain the services of an independent City-approved transportation planning/engineering firm to conduct an annual mode-share survey of the project's office and residential components each fall (mid-September through mid-November). The survey shall be conducted to determine whether the project is achieving the combined average non-SOV mode share for office and residential uses sufficient to indicate the specified trip reductions. The project applicant shall submit an annual report to the staff of the San José Department of Transportation each January 31 of the following year.

The annual report shall describe: (a) implementation of the TDM program; and (b) results of the annual mode split survey, including a

summary of the methodology for collecting the mode split data, statistics on response rates, a summary conclusion, and an outline of additional TDM measures (i.e., a corrective action plan) to be implemented in subsequent years if the non-SOV mode split goal is not reached.

If timely reports are not submitted and/or reports indicate that the project office and residential uses combined have failed to achieve the combined non-SOV mode share specified above in two consecutive years after issuance of the certificates of occupancy for 50 percent of the office development, the project will be considered in violation of this mitigation measure. The City will issue a notice of non-compliance after the first year the project fails to meet monitoring requirements (submittal of timely reports and/or achieving specified non-SOV mode share), after which the project applicant has one year to comply with the monitoring requirements through the project's discretionary implementation of additional TDM measures.

After two years of not meeting the project-wide monitoring requirements, the City may initiate enforcement action against the project applicant and successors. In an enforcement action, the non-SOV mode share for the office and residential uses will be identified separately to determine whether the office and/or residential components are in non-compliance. Enforcement actions for owners and/or operators of the office development may include imposition of financial penalties that will support the funding and management of transportation improvements that would improve the project's ability to achieve the target non-SOV mode share. Financial penalties shall generally be consistent with City Council Policy 5-1 and include a mutually agreed-upon monetary cap for penalties applied to the office uses. Enforcement actions for the owner and/or operators of the residential development would include required implementation of additional feasible TDM measures as reasonably required by the City. If such additional TDM measures are not implemented as required, regardless of measured effectiveness, financial penalties may be imposed.

If timely reports are submitted and demonstrate that the project applicant has implemented required features and strategies and has achieved the non-SOV mode share specified above for five consecutive years after issuance of certificates of occupancy for 50 percent of the office development, monitoring shall no longer be required annually, and shall instead be required every five years, or if reasonably determined by the City of San José Planning, Building, and Code Enforcement Department or Department of Public Works to ensure ongoing compliance, monitoring and reporting may be required up to once per year.

**D. Flexibility and Amendments:** The project applicant may propose amendments to the approved TDM program as part of its annual report each year, provided that the project applicant shall not be permitted to decrease the performance standards specified in Section (A), above, subject to review and approval by the Director of Public Works and Director of Planning, Building, and Code Enforcement or the Directors' designees. The City and the project applicant expect that the TDM program will evolve as travel behavior changes and as new technologies become available. Any proposed changes will be considered approved unless the Director of Public Works or Director of Planning, Building, and Code Enforcement objects to the proposed change within 30 days of receipt.

**Finding:** Implementing Mitigation Measures AQ 2a, Construction Emissions Minimization Plan; AQ 2b, Construction Equipment Maintenance and Tuning; AQ 2c, Heavy-Duty Truck Model Year Requirement; AQ 2d, Super-Compliant VOC Architectural Coatings during Operations; AQ 2e, Best Available Emissions Controls for Stationary Emergency Generators; AQ-2f, Operational Diesel Truck Emission Reduction; AQ 2g, Electric Vehicle Charging; and AQ-2h, Enhanced Transportation Demand Management Program, would reduce the severity of the impact, but not to a less-than-significant level. The City Council finds that there are no additional feasible mitigation measures or alternatives that the City Council could adopt at this time that would reduce this impact to a less-than-significant level. For these reasons, the impact remains significant and unavoidable. To the extent that this adverse impact will not be eliminated or lessened to an acceptable (less-than-significant) level, the City Council finds that specific economic, legal, social, technological, and other considerations identified in the FEIR make infeasible other mitigation measures.

**Facts in Support of Finding:** As discussed in Section 3.1 (page 3.1-120) of the Draft EIR, as amended, implementation of Mitigation Measures AQ2a through AQ2h would reduce project construction and operational emissions of criteria air pollutants (reactive organic gases [ROG], oxides of nitrogen (NO<sub>x</sub>), and particulate matter 10 microns or less in diameter and 2.5 microns or less in diameter [PM<sub>10</sub> and PM<sub>2.5</sub>, respectively]. However, as further explained on page 3.1-120 of the Draft EIR, the net increase in criteria air pollutant emissions would exceed the Bay Area Air Quality Management District significance thresholds for ROG, NO<sub>x</sub>, PM<sub>10</sub>, and PM<sub>2.5</sub>, even after mitigation. For this reason, the residual impact of project emissions during construction and overlapping operations would be significant and unavoidable.



**Impact:** **Impact AQ3:** The proposed project would expose sensitive receptors to substantial pollutant concentrations.

**Mitigation:** **Mitigation Measure AQ-2a: Construction Emissions Minimization Plan** (refer to Impact AQ-2)

**Mitigation Measure AQ-2b: Construction Equipment Maintenance and Tuning** (refer to Impact AQ-2)

**Mitigation Measure AQ-2c: Heavy-Duty Truck Model Year Requirement** (refer to Impact AQ-2)

**Mitigation Measure AQ-2e: Best Available Emissions Controls for Stationary Emergency Generators** (refer to Impact AQ-2)

**Mitigation Measure AQ-2f: Operational Diesel Truck Emissions Reduction** (refer to Impact AQ-2)

**Mitigation Measure AQ-2g: Electric Vehicle Charging** (refer to Impact AQ-2)

**Mitigation Measure AQ-2h: Enhanced Transportation Demand Management Program** (refer to Impact AQ-2)

**Mitigation Measure AQ-3: Exposure to Air Pollution—Toxic Air Contaminants**

The project applicant shall incorporate the following health risk reduction measures into the project design to reduce the potential health risk caused by exposure to toxic air contaminants (TACs) (i.e., on-road vehicles, stationary emergency generators), as feasible for the project's sources of TACs. These features shall be submitted to the Director of Planning, Building and Code Enforcement, or the Director's designee, for review and approval and shall be included on the project drawings submitted for the construction-related permit(s) or on other documentation submitted to the City:

1. Plant trees and/or vegetation between new on-site and existing off-site sensitive receptors and the project's operational source(s) of TACs (i.e., on-road vehicles, stationary emergency generators), if feasible. In addition, plant trees and/or vegetation between new on-site sensitive receptors and existing background sources of toxic air contaminants, if feasible. Locally native trees that provide suitable trapping of particulate matter are preferred.
2. Construction trucks shall adhere to the modeled haul route as presented in Figure 3.1-2. If an alternative truck haul route is used, the project applicant shall quantitatively demonstrate to the satisfaction of the Director of Planning, Building and Code Enforcement, or the Director's



designee, that these haul routes would not result in health risks that exceed the project-level thresholds of significance for either existing off-site or new on-site sensitive receptors.

**Finding:** Implementing Mitigation Measures AQ 2a, Construction Emissions Minimization Plan; AQ 2b, Construction Equipment Maintenance and Tuning; AQ 2c, Heavy-Duty Truck Model Year Requirement; AQ 2e, Best Available Emissions Controls for Stationary Emergency Generators; AQ-2f, Operational Diesel Truck Emission Reduction; AQ 2g, Electric Vehicle Charging; AQ-2h, Enhanced Transportation Demand Management Program; and AQ-3, Exposure to Air Pollution—Toxic Air Contaminants, would reduce the severity of the impact, but not to a less-than-significant level. The City Council finds that there are no additional feasible mitigation measures or alternatives that the City Council could adopt at this time that would reduce this impact to a less-than-significant level. For these reasons, the impact remains significant and unavoidable. To the extent that this adverse impact will not be eliminated or lessened to an acceptable (less-than-significant) level, the City Council finds that specific economic, legal, social, technological, and other considerations identified in the FEIR make infeasible other mitigation measures and project alternatives.

**Facts in Support of Finding:** As discussed in Section 3.1 (page 3.1-129) of the Draft EIR, as amended, implementation of Mitigation Measures AQ-2a, AQ-2b, AQ-2c, AQ-2e, AQ-2f, AQ-2g, AQ-2h, and AQ-3 would reduce the project's potential to expose sensitive receptors to substantial pollutant concentrations. With mitigation, both cancer and non-cancer health risks would be less than significant for on-site residents. However, lifetime cancer risk from a combination of construction and operational emissions would remain in excess of Bay Area Air Quality Management District (BAAQMD) thresholds for the maximally exposed off-site child resident receptor. For operational emissions from full buildout of the project, both lifetime cancer risk and health risks from exposure to annual average concentrations of PM<sub>2.5</sub> would remain in excess of BAAQMD thresholds for the maximally exposed off-site child resident receptor, while health risks from exposure to PM<sub>2.5</sub> concentrations would remain in excess of BAAQMD thresholds for the maximally exposed off-site adult resident receptor. For these reasons, the residual impact of project health risks to sensitive receptors would be significant and unavoidable.

**Impact:** **Impact CAQ-1:** The proposed project, in combination with past, present, and reasonably foreseeable future development in the project area, would result in a cumulatively considerable contribution to significant cumulative regional air quality impacts.

**Mitigation:** **Mitigation Measure AQ-2a: Construction Emissions Minimization Plan** (refer to Impact AQ-2)

**Mitigation Measure AQ-2b: Construction Equipment Maintenance and Tuning** (refer to Impact AQ-2)

**Mitigation Measure AQ-2c: Heavy-Duty Truck Model Year Requirement** (refer to Impact AQ-2)

**Mitigation Measure AQ-2d: Super-Compliant VOC Architectural Coatings during Operations** (refer to Impact AQ-2)

**Mitigation Measure AQ-2e: Best Available Emissions Controls for Stationary Emergency Generators** (refer to Impact AQ-2)

**Mitigation Measure AQ-2f: Diesel Truck Emissions Reduction** (refer to Impact AQ-2)

**Mitigation Measure AQ-2g: Electric Vehicle Charging** (refer to Impact AQ-2)

**Mitigation Measure AQ-2h: Enhanced Transportation Demand Management Program** (refer to Impact AQ-2)

**Mitigation Measure AQ-5: Hydrogen Sulfide and Odor Management Program for the Potential Water Reuse Facility(s)** (refer to Impact AQ-5)

**Finding:** Implementing Mitigation Measures AQ-2a, Construction Emissions Minimization Plan; AQ-2b, Construction Equipment Maintenance and Tuning; AQ-2c, Heavy-Duty Truck Model Year Requirement; AQ-2d, Super-Compliant VOC Architectural Coatings during Operations; AQ-2e, Best Available Emissions Controls for Stationary Emergency Generators; AQ-2f, Operational Diesel Truck Emission Reduction; AQ-2g, Electric Vehicle Charging; and AQ-2h, Enhanced Transportation Demand Management Program would reduce the severity of the impact, but not to a less-than-significant level. The City Council finds that there are no additional feasible mitigation measures or alternatives that the City Council could adopt at this time that would reduce this impact to a less-than-significant level. For these reasons, the impact remains significant and unavoidable. To the extent that this adverse impact will not be eliminated or lessened to an acceptable (less-than-significant) level, the City Council finds that specific economic, legal, social, technological, and other considerations identified in the FEIR make infeasible other mitigation measures and project alternatives.

Mitigation Measure AQ-5 would, however, reduce the project's cumulative effects with respect to odor to a less-than-significant level.

**Facts in Support of Finding:** As discussed in Section 3.1 (page 3.1-145) of the Draft EIR, as amended, implementation of Mitigation Measures AQ-2a through AQ-2h and AQ-5 would reduce the severity of the project's cumulatively considerable contribution to a significant cumulative impact with respect to criteria pollutant emissions, as described above under Impact AQ-2. However, the project's contribution to the cumulative impact would remain cumulatively considerable. For these reasons, the project's cumulative air quality effects would remain significant and unavoidable. Cumulative odor impacts would, however, be less than significant, as also stated on page 3.1-145.

**Impact:** **Impact CAQ-2:** The proposed project, in combination with past, present, and reasonably foreseeable future development in the project area, would result in a cumulatively considerable contribution to significant cumulative health risk impacts on sensitive receptors.

**Mitigation:** **Mitigation Measure AQ-2a: Construction Emissions Minimization Plan** (refer to Impact AQ-2)

**Mitigation Measure AQ-2b: Construction Equipment Maintenance and Tuning** (refer to Impact AQ-2)

**Mitigation Measure AQ-2c: Heavy-Duty Truck Model Year Requirement** (refer to Impact AQ-2)

**Mitigation Measure AQ-2e: Best Available Emissions Controls for Stationary Emergency Generators** (refer to Impact AQ-2)

**Mitigation Measure AQ-2f: Operational Diesel Truck Emissions Reduction** (refer to Impact AQ-2)

**Mitigation Measure AQ-2g: Electric Vehicle Charging** (refer to Impact AQ-2)

**Mitigation Measure AQ-2h: Enhanced Transportation Demand Management Program** (refer to Impact AQ-2)

**Mitigation Measure AQ-3: Exposure to Air Pollution—Toxic Air Contaminants** (refer to Impact AQ-3)

**Finding:** Implementing Mitigation Measures AQ-2a, Construction Emissions Minimization Plan; AQ-2b, Construction Equipment Maintenance and Tuning; AQ-2c, Heavy-Duty Truck Model Year Requirement; AQ-2e, Best Available Emissions Controls for Stationary Emergency Generators; AQ-2f, Operational Diesel Truck Emission Reduction; AQ-2g, Electric Vehicle

Charging; AQ-2h, Enhanced Transportation Demand Management Program; and AQ-3, Exposure to Air Pollution—Toxic Air Contaminants, would reduce the severity of the impact, but not to a less-than-significant level. The City Council finds that there are no additional feasible mitigation measures or alternatives that the City Council could adopt at this time that would reduce this impact to a less-than-significant level. For these reasons, the impact remains significant and unavoidable. To the extent that this adverse impact will not be eliminated or lessened to an acceptable (less-than-significant) level, the City Council finds that specific economic, legal, social, technological, and other considerations identified in the FEIR make infeasible other mitigation measures and project alternatives.

**Facts in Support of Finding:** As discussed in Section 3.1 (page 3.1-150) of the Draft EIR, as amended, implementation of Mitigation Measures AQ-2a, AQ-2b, AQ-2c, AQ-2e, AQ-2f, AQ-2g, AQ-2h, and AQ-3 would reduce the project's contribution to cumulative health risk effects, as described above under Impact AQ-3, but the contribution would remain considerable. For this reason, the project's contribution to cumulative air quality effects relative to health risks to sensitive receptors would remain considerable and the impact would be significant and unavoidable.

### **Cultural Resources**

**Impact:** **Impact CU1:** The proposed project would demolish or relocate historic architectural resources, resulting in a substantial adverse change in the significance of a historical resource as defined in CEQA Guidelines Section 15064.5.

**Mitigation:** **Mitigation Measure CU-1a: Documentation**

Before the issuance of a demolition and/or relocation permit and under the direction of the Director of Planning, Building and Code Enforcement or the Director's designee, the project applicant shall prepare documentation of all historic architectural resources under CEQA subject to demolition and/or relocation. This includes **150 South Montgomery Street; 343 North Montgomery Street; 345 North Montgomery Street; 559, 563, and 567 West Julian Street; 145 South Montgomery Street; and 580 Lorraine Avenue**. Each resource shall be photo-documented to an archival level utilizing 35 mm photography and consisting of selected black-and-white views of the building to the following standards:

- *Cover sheet*—A cover sheet identifying the photographer, providing the address of the building, common or historic name of the building, date of construction, date of photographs, and photograph descriptions.
- *Camera*—A 35mm camera.

- *Lenses*—No soft-focus lenses. Lenses may include normal focal length, wide angle, and telephoto.
- *Filters*—Photographer's choice. Use of a pola screen is encouraged.
- *Film*—Black-and-white film only; tri-X, Plus-X, or T-Max film is recommended.
- *View*—Perspective view—front and other elevations. All photographs shall be composed to give primary consideration to the architectural and/or engineering features of the structure, with aesthetic considerations necessary but secondary.
- *Lighting*—Sunlight usually preferred for exteriors, especially of the front façade. Light overcast days, however, may provide more satisfactory lighting for some structures. A flash may be needed to cast light into porch areas or overhangs.
- *Technical*—Sharp focus required for all areas of the photograph.

The project applicant shall coordinate the submission of the photo-documentation, including the original prints and negatives, to History San José. Digital photos may be provided as a supplement to the above photo-documentation, but not in place of it. Digital photography shall be recorded on a CD and shall be submitted with the above documentation. The above shall be accompanied by a transmittal stating that the documentation is submitted as a Standard Measure to address the loss of the historic resource, which shall be named and the address stated, with a copy provided to the Director of Planning, Building and Code Enforcement or the Director's designee.

#### **Mitigation Measure CU-1b: Relocation**

In accordance with General Plan Policy LU-13.2, and consistent with the DSAP Final EIR's *Measures Included in the Project to Reduce and Avoid Impacts to Historic Resources*, relocation of a historic architectural resource shall be considered as an alternative to demolition. After implementation of Mitigation Measure CU-1a, Documentation, and prior to issuance of any permit that would allow demolition of a historic architectural resource, the project applicant shall take the following actions to facilitate historic architectural resource relocation within the City limits. This applies to **343**

**North Montgomery Street (partial); 345 North Montgomery Street; and 145 South Montgomery Street (partial):<sup>1</sup>**

- (1) **Relocation Outreach.** The project applicant shall advertise the availability for relocation of historic architectural resources subject to Mitigation Measure CU-1b, Relocation. A dollar amount equal to the estimated cost of demolition, as certified by a licensed contractor, and any associated Planning Permit fees for relocation shall be offered to the recipient of the building who is willing to undertake relocation and rehabilitation after relocation. Advertisement and outreach to identify an interested third party shall continue for no less than 60 days. The advertisements shall include notification in at least one newspaper of general circulation and on online platforms as appropriate, including at a minimum *The Mercury News* (print and online), and the City of San José Department of Planning, Building and Code Enforcement's Environmental Review website. Noticing shall be compliant with City Council Policy 6-30: Public Outreach Policy and shall include posting of a notice, on each building proposed for demolition, that is no smaller than 48 x 72 inches and is visible from the public right-of-way.<sup>2</sup> Satisfaction of the notification provisions shall be subject to review by the Director of Planning, Building and Code Enforcement or the Director's designee following completion of the minimum 60-day public outreach period, before the issuance of demolition permits.
- (2) **Relocation Implementation Plan(s).** If, before the end of the outreach period, an interested third party (or parties) expresses interest in relocating and rehabilitating one or more of the resources to a suitable site under their ownership or control, they shall be allowed a period of up to 60 days to prepare and submit a Relocation Implementation Plan, and an additional 120 days to complete removal of the resources from the project site. The Relocation Implementation Plan(s) shall be prepared in consultation with historic preservation professionals who meet or exceed the *Secretary of the Interior's Professional Qualification Standards*. The plan(s) shall be based on the findings of the *Downtown West Mixed-Use Plan—Historic Resource Move Feasibility* memo and *Site Selection Criteria for Relocation of Identified Historic Resources* memo (EIR Appendix E3) or subsequent relocation feasibility

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<sup>1</sup> Garden City Construction, "Downtown West Mixed Use Plan – Historic Resource Move Feasibility," memo, prepared for Google/Lendlease, June 29, 2020.

<sup>2</sup> Current noticing protocols for *On-Site Noticing/Posting Requirements for Large Development Proposals* can be found at <https://www.sanjoseca.gov/home/showdocument?id=15573>.



documentation, to support relocation of the historic resource to a site outside of the project site and acceptable to the City.<sup>3</sup>

The Relocation Implementation Plan for each resource shall include:

- A description of the intended relocation receiver site within the City limits and an analysis of its compatibility with the unique character, historical context, and prior physical environment of the resource;
- A description and set of working drawings detailing methods and means of securing and bracing the building through all stages of relocation;
- A site plan for the receiver site within the City limits demonstrating compliance with all setback and zoning requirements;
- A travel route survey that records the width of streets, street lamp and signal arm heights, heights of overhead utilities that may require lifting or temporary removal, and other details necessary for coordinating the relocation;
- A scope of work for building rehabilitation following completion of relocation, and anticipated timing to initiate and complete such rehabilitation; and
- Roles and responsibilities between the interested party, project applicant, City staff, and outside individuals, groups, firms, and/or consultants as necessary.

Once the Relocation Implementation Plan(s) have been reviewed and approved by the Director of Planning, Building and Code Enforcement or the Director's designee, implementation of the approved relocation shall occur within 120 days.

- (3) **Rehabilitation after Relocation.** After relocation of the resource(s) and pursuant to General Plan Policy LU-13.6 and CEQA Section 15064.5(3), parties responsible for relocation shall also be responsible for rehabilitation of the building(s) on their new site(s) as specified in the Relocation Implementation Plan. Resource(s) shall be secured on a foundation and repaired to ensure that each resource remains in good condition and is usable for its intended purpose, and that all modifications are sensitive to those elements that convey the resource's historical significance. All repairs and modifications shall be consistent with the *Secretary of the Interior's Standards and Guidelines for*

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<sup>3</sup> Garden City Construction, "Downtown West Mixed Use Plan – Historic Resource Move Feasibility," memo, prepared for Google/Lendlease, June 29, 2020; Architectural Resources Group, *Site Selection Criteria for Relocation of Identified Historic Resources*, memo, prepared for Google/Lendlease, August 7, 2020.



*Rehabilitation* and related permits shall be subject to review by the Director of Planning, Building and Code Enforcement or the Director's designee.

#### **Mitigation Measure CU-1c: Interpretation/Commemoration**

As part of the Downtown West Design Standards and Guidelines conformance review for each new building on the site of one or more demolished resources (including 150 South Montgomery Street), the project applicant, in consultation with a qualified architectural historian and design professional, and under the direction of the Director of Planning, Building and Code Enforcement or the Director's designee, shall develop an interpretive program that may include one or more interpretive displays, artworks, incorporation/reuse of historic materials, electronic media, smartphone apps, and other means of presenting information regarding the site's history and development. The program shall concentrate on those contextual elements that are specific to the resources that have been demolished. Display panels, if included in the interpretive program, shall be placed at, or as near as possible to, the location where the resource was historically located. The interpretive program shall be approved prior to the issuance of demolition permit(s) for the historical resource(s) to be demolished and shall be fully implemented and/or installed before the issuance of a certificate of occupancy for the applicable new building(s).

#### **Mitigation Measure CU-1d: Salvage**

Before the demolition of any historic resource on the site that is not relocated, the subject building shall be made available for salvage to companies or individuals facilitating reuse of historic building materials, including local preservation organizations. Noticing for salvage opportunities shall include notification in at least one newspaper of general circulation and online platforms as appropriate, including at a minimum the *The Mercury News* (print and online) and the City of San José Department of Planning, Building and Code Enforcement's Environmental Review website. Noticing shall be compliant with City Council Policy 6-30: Public Outreach Policy and shall include a notice, on each building proposed for demolition, that is no smaller than 48 x 72 inches and is visible from the public right-of-way.<sup>4</sup> The time frame for materials salvage shall be 30 days after the initial 60 days noticing for relocation.

**Finding:** Implementing Mitigation Measures CU-1a, Documentation; CU-1b, Relocation; CU-1c, Interpretation/Commemoration; and CU-1d, Salvage, would reduce the severity of the impact, but not to a less-than-significant

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<sup>4</sup> Current noticing protocols for *On-Site Noticing/Posting Requirements for Large Development Proposals* can be found at <https://www.sanjoseca.gov/home/showdocument?id=15573>.

level. The City Council finds that there are no additional feasible mitigation measures or alternatives that the City Council could adopt at this time that would reduce this impact to a less-than-significant level. For these reasons, the impact remains significant and unavoidable. To the extent that this adverse impact will not be eliminated or lessened to an acceptable (less-than-significant) level, the City Council finds that specific economic, legal, social, technological, and other considerations identified in the FEIR make infeasible other mitigation measures and project alternatives.

**Facts in Support of Finding:** As discussed in Section 3.3 (page 3.3-70) of the Draft EIR, as amended, implementation of Mitigation Measures CU 1a and CU 1b—documentation and relocation, including rehabilitation according to the Secretary of the Interior’s Standards—would substantially reduce impacts on historical resources. However, impacts cannot be reduced to a less-than-significant level. First, the building at 580 Lorraine Avenue and portions of two other buildings are not reasonable candidates for relocation. Additionally, relocation on-site would not allow for the project to proceed as proposed. Finally, the feasibility of off-site relocation is speculative because neither responsible parties nor receiver sites have been identified. Moreover, off-site relocation would remove resources from their historical setting and context. If relocation is not feasible, Mitigation Measures CU 1a, CU 1c, and CU 1d (documentation, interpretation, and salvage) would lessen the severity of, but would not avoid, the impacts associated with demolition. For these reasons, the impact on historic architectural resources as a result of demolition would remain significant and unavoidable even with mitigation.

**Impact:** **Impact CU3:** The proposed project would construct one or more additions to and adaptively reuse 150 South Montgomery Street (Hellwig Ironworks). The proposed additions and modifications would result in a substantial adverse change in the significance of a historical resource as defined in CEQA Guidelines Section 15064.5.

**Mitigation:** **Mitigation Measure CU-1a: Documentation** (refer to Impact CU-1)  
**Mitigation Measure CU-1c: Interpretation/Commemoration** (refer to Impact CU-1)

**Finding:** Implementing Mitigation Measure CU-1a, Documentation, and Mitigation Measure CU-1c, Interpretation/Commemoration, would reduce the severity of the impact, but not to a less-than-significant level. The City Council finds that there are no additional feasible mitigation measures or alternatives that the City Council could adopt at this time that would reduce this impact to a less-than-significant level. For these reasons, the impact remains significant and unavoidable. To the extent that this adverse impact will not be

eliminated or lessened to an acceptable (less-than-significant) level, the City Council finds that specific economic, legal, social, technological, and other considerations identified in the FEIR make infeasible other mitigation measures and project alternatives.

**Facts in Support of Finding:** As discussed in Section 3.3 (page 3.3-75) of the Draft EIR, as amended, the purpose of the proposed project's alterations to the Hellwig Iron Works building at 150 South Montgomery Street is to create an architecturally iconic center by juxtaposing historical and contemporary design elements and this alteration would not likely conform to the Secretary of the Interior's Standards. While Mitigation Measures CU-1a and CU-1c (documentation and commemoration) would reduce the severity of the impact, they would not prevent alterations or additions that are inconsistent with the Secretary of the Interior's Standards from affecting the building's integrity and resulting in a substantial adverse change in its historical significance. For this reason, the impact on the Hellwig Iron Works building would remain significant and unavoidable.

**Impact:** **Impact CCU1:** The proposed project would make a cumulatively considerable contribution to previously identified significant citywide cumulative adverse impact on historical resources as defined in CEQA Guidelines Section 15064.5.

**Mitigation:** **Mitigation Measure CU-1a, Documentation** (refer to Impact CU-1)

**Mitigation Measure CU-1b: Relocation** (refer to Impact CU-1)

**Mitigation Measure CU-1c: Interpretation/Commemoration** (refer to Impacts CU-1 and CU-3)

**Mitigation Measure CU-1d: Salvage** (refer to Impacts CU-1 and CU-3)

**Finding:** Implementing Mitigation Measures CU-1a, Documentation; CU-1b, Relocation; CU-1c, Interpretation/Commemoration; and CU-1d, Salvage, would reduce the severity of the project's contribution, but not to a less-than-significant level. The City Council finds that there are no additional feasible mitigation measures or alternatives that the City Council could adopt at this time that would reduce this impact to a less-than-significant level. For these reasons, the impact remains significant and unavoidable. To the extent that this adverse impact will not be eliminated or lessened to an acceptable (less-than-significant) level, the City Council finds that specific economic, legal, social, technological, and other considerations identified in the FEIR make infeasible other mitigation measures and project alternatives.

**Facts in Support of Finding:** As discussed in Section 3.3 (page 3.3-101) of the Draft EIR, as amended, demolition of four historic architectural resources cannot be mitigated to a less-than-significant level, and anticipated changes to 150 South Montgomery Street may significantly affect the ability of the resource to convey its historical significance, as described above under Impacts CU-1 and CU-3. These significant and unavoidable project impacts would reduce the variety and quantity of 19th- and early-20th- century historic resources in the city of San José. A significant and unavoidable cumulative impact was previously identified in the environmental impact report for Envision San José 2040 General Plan, and the project would make a cumulatively considerable contribution to this significant impact, even with implementation of Mitigation Measures CU-1a through CU-1d. For the above reasons, the project's contribution to cumulative impacts on historic architectural resources would remain significant and unavoidable.

### Land Use

**Impact:** **Impact LU-2:** The proposed project would cause a significant environmental impact due to a conflict with a land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect.

**Mitigation:** **Mitigation Measure NO-3: Exposure to Airport Noise** (refer to Section 3.10, Noise and Vibration)

**Finding:** Implementing Mitigation Measure NO-3, Exposure to Airport Noise, would reduce the severity of the impact, but not to a less-than-significant level. The City Council finds that there are no additional feasible mitigation measures or alternatives that the City Council could adopt at this time that would reduce this impact to a less-than-significant level. For these reasons, the impact remains significant and unavoidable. To the extent that this adverse impact will not be eliminated or lessened to an acceptable (less-than-significant) level, the City Council finds that specific economic, legal, social, technological, and other considerations identified in the FEIR make infeasible other mitigation measures and project alternatives.

**Facts in Support of Finding:** As discussed in Section 3.9 (page 3.9-46) of the Draft EIR, as amended, implementation of Mitigation Measure NO-3 would reduce interior noise levels for residential uses within the 65 dBA CNEL noise contour to 45 dB CNEL or less. However, because the project could include outdoor residential areas within the airport's 65 dBA CNEL noise contour, it could result in a land use that is not compatible with the Norman Y. Mineta San José International Airport Comprehensive Land Use Plan (CLUP). This impact, therefore, would be significant and unavoidable even with mitigation.

**Impact:** **Impact C-LU-2:** The proposed project, in combination with past, present, and reasonably foreseeable future projects in the vicinity of the project site, would result in a significant cumulative impact due to a conflict with a land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect.

**Mitigation:** **Mitigation Measure NO-3: Exposure to Airport Noise** (refer to Section 3.10, Noise and Vibration)

**Finding:** Implementing Mitigation Measure NO-3, Exposure to Airport Noise, would reduce the severity of the impact, but not to a less-than-significant level. The City Council finds that there are no additional feasible mitigation measures or alternatives that the City Council could adopt at this time that would reduce this impact to a less-than-significant level. For these reasons, the impact remains significant and unavoidable. To the extent that this adverse impact will not be eliminated or lessened to an acceptable (less-than-significant) level, the City Council finds that specific economic, legal, social, technological, and other considerations identified in the FEIR make infeasible other mitigation measures and project alternatives.

**Facts in Support of Finding:** As discussed in Section 3.9 (page 3.9-57) of the Draft EIR, as amended, implementation of Mitigation Measure NO-3 would reduce interior noise levels for residential uses within the 65 dBA CNEL noise contour to 45 dB CNEL or less, as described above under Impact LU-2. However, because the proposed project alone would result in a conflict with CLUP Policy N-4, and future residential development within the 65 dB CNEL noise contour could likewise conflict with that policy, the proposed project, in combination with cumulative projects, would conflict with the CLUP such that future residential receptors in outdoor areas would be subject to elevated noise levels by being located in the 2027 65 dB CNEL contour. For this reason, the impact would be significant and unavoidable, even with mitigation.

### **Noise and Vibration**

**Impact:** **Impact NO1b:** Project-generated traffic noise would result in permanent increases in ambient noise levels in the vicinity of the project in excess of standards established in the local General Plan or noise ordinance, or applicable standards of other agencies.

**Mitigation:** **Mitigation Measure NO-1b: Traffic Noise Impact Reduction**



Prior to the issuance of any building permits, the project applicant shall implement the following measures to reduce roadside noise impacts at the following roadway segments:

- *West San Fernando Street from South Montgomery Street to Delmas Avenue.* Prior to the issuance of any building permits for construction on this block, the project applicant for the construction work proposed shall prepare and submit to the Director of Planning, Building and Code Enforcement, or the Director's designee, a site-specific acoustical study for review and approval. Upon approval of the site-specific acoustical study, the project applicant shall directly contact property owners of single-family residences to implement, with the owners' consent, reasonable sound insulation treatments, such as replacing the existing windows and doors with sound-rated windows and doors and providing a suitable form of forced-air mechanical ventilation, that could reduce indoor noise levels up to 45 dBA DNL, as warranted by the study.
- *Bird Avenue from West San Carlos Street to Auzerais Avenue.* Prior to the issuance of any building permits for construction on this block, the project applicant for the construction work proposed shall prepare and submit to the Director of Planning, Building and Code Enforcement, or the Director's designee, a site-specific acoustical study for review and approval. Upon approval of the site-specific acoustical study, the project applicant shall directly contact the property owners of single-family homes on Auzerais Avenue, within 200 feet of Bird Avenue, to implement, with the owners' consent, reasonable sound insulation treatments, such as replacing the existing windows and doors with sound-rated windows and doors and providing a suitable form of forced-air mechanical ventilation, that could reduce indoor noise levels up to 45 dBA DNL, as warranted by the study.

**Finding:** Implementing Mitigation Measure NO-1b, Traffic Noise Impact Reduction, would reduce roadside noise impacts at existing noise-sensitive receptors, but not to a less-than-significant level. The City Council finds that there are no additional feasible mitigation measures or alternatives that the City Council could adopt at this time that would reduce this impact to a less-than-significant level. For these reasons, the impact remains significant and unavoidable. To the extent that this adverse impact will not be eliminated or lessened to an acceptable (less-than-significant) level, the City Council finds that specific economic, legal, social, technological, and other considerations identified in the FEIR make infeasible other mitigation measures.

**Facts in Support of Finding:** As discussed in Section 3.10 (page 3.10-40) of the Draft EIR, as amended, implementation of Mitigation Measure NO-1b could



reduce traffic noise along two segments where sensitive residential receptors would be adversely affected by noise generated by project traffic, along West San Fernando Street and Bird Avenue. However, effective mitigation is not available or reasonable in the short term to reduce traffic noise levels along the third affected segment, along North Autumn Street, and it may not be feasible to reduce impacts to a less-than-significant level along the affected segments of West San Fernando Street and Bird Avenue. This is because it is unsure whether existing residences can be adequately sound-proofed and it is not certain whether the owners of those buildings would accede to such measures. For the above reason, the traffic noise impact at existing noise-sensitive receptors along all three segments would be significant and unavoidable with mitigation.

**Impact:** **Impact NO-1c:** Construction of the proposed project could result in temporary increases in ambient noise levels in the vicinity of the project in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies.

**Mitigation:** **Mitigation Measure NO-1c: Master Construction Noise Reduction Plan**

Prior to the issuance of the first demolition, grading, or building permit for new construction within the project site or for any of the project's new public and private infrastructure, the project applicant shall prepare a Master Construction Noise Reduction Plan, to be implemented as development occurs throughout the project site to address demolition and construction within 500 feet of residential uses, within 200 feet of commercial or office uses, or areas inside, or within 50 feet of, the Los Gatos Creek riparian corridor. The plan shall be submitted to the Director of Planning, Building and Code Enforcement, or the Director's designee, for review and approval, and implementation of the identified measures shall be required as a condition of each permit. This Master Construction Noise Reduction Plan shall include, at a minimum, the following noise reduction measures:

1. **Noise Monitoring:** The Master Construction Noise Reduction Plan shall include a requirement for noise monitoring of construction activity throughout the duration of project construction, at times and locations determined appropriate by the qualified consultant and approved by the Director of Planning, Building and Code Enforcement, or the Director's designee.
2. **Schedule:** Loud activities such as rock breaking and pile driving shall occur only between 8 a.m. and 4 p.m., every day (with pile driving and rock breaking to start no earlier than 9 a.m. on weekends). Similarly, other activities with the potential to create extreme noise levels exceeding 90 dBA shall be avoided where possible. (Extreme noise-generating activities consist of those activities that independently

generate noise in excess of 90 dBA. These activities include impact pile driving, vibratory pile driving, deep dynamic compaction, rapid impact compaction, and the breaking of concrete using a hoe ram.) Where such activities cannot be avoided, they shall also occur only between 8 a.m. and 4 p.m. Any proposed nighttime (defined as 10 p.m. to 7 a.m.) construction activities, such as nighttime concrete pours or other nighttime work necessary to achieve satisfactory results or to avoid traffic impacts, shall undergo review, permitting, and approval by the Director of Planning, Building and Code Enforcement, or the Director's designee.

3. **Site Perimeter Barrier:** To reduce noise levels for work occurring adjacent to residences, schools, or other noise-sensitive land uses, and areas inside, or within 50 feet of, the Los Gatos Creek riparian corridor, a noise barrier(s) shall be constructed on the edge of the work site facing the receptor(s). Barriers shall be constructed either with two layers of 0.5-inch-thick plywood (joints staggered) and K-rail or other support, or with a limp mass barrier material weighing 2 pounds per square foot. If commercial barriers are employed, such barriers shall be constructed of materials with a Sound Transmission Class rating of 25 or greater.
4. **Stationary-Source Equipment Placement:** Stationary noise sources, such as generators and air compressors, shall be located as far from adjacent properties as possible, and no closer than 50 feet from the Los Gatos Creek riparian corridor. These noise sources shall be muffled and enclosed within temporary sheds, shall incorporate insulation barriers, or shall use other measures as determined by the Director of Planning, Building, and Code Enforcement, or the Director's designee, to provide equivalent noise reduction.
5. **Stationary-Source Equipment Local Barriers:** For stationary equipment, such as generators and air compressors, that will operate for more than one week within 500 feet of a noise-sensitive land use, and areas inside, or within 50 feet of, the Los Gatos Creek riparian corridor, the project contractor shall provide additional localized barriers around such stationary equipment that break the line of sight<sup>5</sup> to neighboring properties.
6. **Temporary Power:** The project applicant shall use temporary power poles instead of generators, where feasible.
7. **Construction Equipment:** Exhaust mufflers shall be provided on pneumatic tools when in operation for more than one week within

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<sup>5</sup> If a barrier does not block the line of sight between the source and the observer, the barrier will provide little or no attenuation (U.S. Department of Housing and Urban Development, *The Noise Guidebook*, prepared by The Environmental Planning Division, Office of Environment and Energy, March 2009, p. 24).

500 feet of a noise-sensitive land use, and areas inside, or within 50 feet of, the Los Gatos Creek riparian corridor. All equipment shall be properly maintained.

8. **Truck Traffic:** The project applicant shall restrict individual truck idling to no more than two consecutive minutes per trip end. Trucks shall load and unload materials in the construction areas, rather than idling on local streets. If truck staging is required, the staging area shall be located along major roadways with higher traffic noise levels or away from the noise-sensitive receivers, where such locations are available.
9. **Methods:** The construction contractor(s) shall consider means to reduce the use of heavy impact tools, such as pile driving, and shall locate these activities away from the property line, as practicable. Alternative methods of pile installation, including drilling, could be employed if noise levels are found to be excessive. Piles could be pre-drilled, as practicable, and a wood block placed between the hammer and pile to reduce metal-to-metal contact noise and “ringing” of the pile.
10. **Noise Complaint Liaison:** A noise complaint liaison shall be identified to field complaints regarding construction noise and interface with the project construction team. Contact information including a telephone number (including for text messages, if feasible) and e-mail address shall be distributed to nearby noise-sensitive receivers. Signs that include contact information shall be posted at the construction site.
11. **Notification and Confirmation:** Businesses and residents within 500 feet shall be notified by certified mail at least one month before the start of extreme noise-generating activities (to be defined in the Construction Noise Reduction Plan). The notification shall include, at a minimum, the estimated duration of the activity, construction hours, and contact information.
12. **Nighttime Construction:** If monitoring confirms that nighttime construction activities substantially exceed the ambient noise level (to be defined for receptors near each nighttime construction area in the site-wide Master Construction Noise Reduction Plan) and complaints occur regularly (generally considered to be two or more per week), additional methods shall be implemented, such as installing additional storm windows in specific residences and/or constructing additional local barriers. The specific approach shall be refined as the construction activities and noise levels are refined.
13. **Complaint Protocol:** Protocols shall be implemented for receiving, responding to, and tracking received complaints. A noise complaint liaison shall be designated by the project applicant and shall be responsible for responding to any local complaints about construction

noise. The community liaison shall determine the cause of the noise complaint and require that measures to correct the problem be implemented. Signage that includes the community liaison's telephone number shall be posted at the construction site and the liaison's contact information shall be included in the notice sent to neighbors regarding the construction schedule.

**Finding:** Implementing Mitigation Measure NO-1c, Master Construction Noise Reduction Plan, would implement a construction noise logistics plan to reduce the noise impact with respect to exposure of persons to, or generation of, noise levels in excess of standards established in the local general plan, specific plan, or other land use plan, but not to a less-than-significant level. The City Council finds that there are no additional feasible mitigation measures or alternatives that the City Council could adopt at this time that would reduce this impact to a less-than-significant level. For these reasons, the impact remains significant and unavoidable. To the extent that this adverse impact will not be eliminated or lessened to an acceptable (less-than-significant) level, the City Council finds that specific economic, legal, social, technological, and other considerations identified in the FEIR make infeasible other mitigation measures.

**Facts in Support of Finding:** As discussed in Section 3.10 (page 3.10-45) of the Draft EIR, as amended, implementation of Mitigation Measure NO-1c, along with Standard Condition of Approval NO-1 (Construction-Related Noise), would minimize construction noise to the extent feasible. However, the City considers construction noise impacts to be significant if a project located within 500 feet of residential uses or 200 feet of commercial or office uses 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 project would entail construction activities that may include substantial noise-generating activities occurring in three separate phases over a period of approximately 11 years, although construction activity within 500 feet of any particular residential uses or 200 feet of commercial or office uses would generally be limited to a particular phase or sub-phase of construction. However, because it is not feasible to ensure that no construction would exceed 12 months within the applicable distances from sensitive receptors the project's impact due to construction noise would remain significant and unavoidable with mitigation.

**Impact:** **Impact NO-3:** For a project located within the vicinity of a private airstrip or an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, the proposed project could expose people residing or working in the project area to excessive noise levels.

**Mitigation:** **Mitigation Measure NO-3: Exposure to Airport Noise**

Prior to approval of construction-related permits for residential and hotel structures on the easternmost blocks of the project site, which are located within the year 2027 65 dBA CNEL noise contour—including Blocks E3 and C3—each project applicant for a residential or hotel structure shall submit a noise reduction plan prepared by a qualified acoustical engineer for review and approval by the Director of Planning, Building and Code Enforcement or the Director's designee. The noise reduction plan shall contain noise reduction measures (e.g., sound-rated window, wall, and door assemblies) to achieve an acceptable interior noise level in accordance with the land use compatibility guidelines of the General Plan's Noise Element for any and all proposed residential land uses within the 65 dBA CNEL noise contour for operations at Norman Y. Mineta San José International Airport. Exterior-to-interior noise reductions of 36 dBA have been demonstrated in modern urban residential uses,<sup>6</sup> while attenuation of up to 45 dBA CNEL has been achieved at Airport hotels. Noise-reduction specifications shall be included on all building plans, and the construction contractor shall implement the approved plans during construction such that interior noise levels shall not exceed 45 dBA CNEL at these residential land uses.

**Finding:** Implementing Mitigation Measure NO-3, Exposure to Airport Noise, would reduce interior noise levels; however, because the project could include outdoor residential areas located within the airport's 65 dB CNEL contour, it could result in a land use that is not compatible with the Norman Y. Mineta San José International Airport Comprehensive Land Use Plan (CLUP) and the impact would remain significant and unavoidable. The City Council finds that there are no additional feasible mitigation measures or alternatives that the City Council could adopt at this time that would reduce this impact to a less-than-significant level. For these reasons, the impact remains significant and unavoidable. To the extent that this adverse impact will not be eliminated or lessened to an acceptable (less-than-significant) level, the City Council finds that specific economic, legal, social, technological, and other considerations identified in the FEIR make infeasible other mitigation measures.

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<sup>6</sup> Environmental Science Associates, 301 Mission Street, Millennium Tower Perimeter Pile Upgrade Project, Preliminary Mitigated Negative Declaration and Initial Study, November 2019, p. 102.



**Facts in Support of Finding:** As discussed in Section 3.10 (page 3.10-54) of the Draft EIR, as amended, implementation of Mitigation Measure NO-3 would reduce interior noise levels for residential uses within the 65 dBA CNEL noise contour to 45 dB CNEL or less. However, because the project could include outdoor residential areas located within the airport's 65 dB CNEL contour, it could expose people residing or working in the project area to excessive noise levels. For the above reason, the impact of exposure of project residents to airport noise would remain significant and unavoidable.

**Impact:** **Impact C-NO1:** Construction activities of the proposed project combined with cumulative construction noise in the project area would result in substantial temporary or periodic increase in ambient noise levels in excess of standards established in the Envision San José 2040 General Plan (General Plan) or Noise Ordinance.

**Mitigation:** **Mitigation Measure NO-1c: Master Construction Noise Reduction Plan** (refer to Impact NO-1c)

**Finding:** Implementing Mitigation Measure NO-1c, Master Construction Noise Reduction Plan, would reduce the project's contribution to this cumulative impact, which would remain significant and unavoidable. The City Council finds that there are no additional feasible mitigation measures or alternatives that the City Council could adopt at this time that would reduce this impact to a less-than-significant level. For these reasons, the impact remains significant and unavoidable. To the extent that this adverse impact will not be eliminated or lessened to an acceptable (less-than-significant) level, the City Council finds that specific economic, legal, social, technological, and other considerations identified in the FEIR make infeasible other mitigation measures.

**Facts in Support of Finding:** As discussed in Section 3.10 (page 3.10-59) of the Draft EIR, as amended, implementation of Mitigation Measure NO-1c, along with Standard Condition of Approval NO-1 (Construction-Related Noise), would minimize project construction noise to the extent feasible, as described above under Impact NO-1c. However, the project could contribute considerably to significant cumulative construction noise impacts in excess of standards established in the local general plan or noise ordinance—or in this case, the applicable standards of another agency (Federal Transit Administration). For the above reason, the project's cumulative impact relative to construction noise would remain significant and unavoidable.



**Impact:** **Impact C-NO-2:** Operation of the proposed project when considered with other cumulative development would cause a substantial permanent increase in ambient noise levels in excess of standards established in the General Plan or Noise Ordinance.

**Mitigation:** **Mitigation Measure NO-2: Cumulative Traffic Noise Impact Reduction**

Prior to the issuance of any building permits, the project applicant shall implement the following measures to reduce roadside noise impacts at the following roadway segment:

- *North Montgomery Street from West Julian Street to St. John Street.* Prior to the issuance of any building permits for construction on this block, the project applicant shall prepare and submit to the Director of Planning, Building and Code Enforcement, or the Director's designee, a site-specific acoustical study for review and approval. Upon approval of the site-specific acoustical study, the project applicant shall directly contact property owners of single-family homes on this stretch of North Montgomery Street to implement, with the owners' consent, reasonable sound insulation treatments. Treatments may include replacing the existing windows and doors with sound-rated windows and doors and providing a suitable form of forced-air mechanical ventilation, which could reduce indoor noise levels up to 45 dBA DNL, as warranted by the study.

**Finding:** Implementing Mitigation Measure C-NO-2, Cumulative Traffic Noise Impact Reduction, would reduce the project's contribution to this cumulative impact, but not to a less-than-significant level. The City Council finds that there are no additional feasible mitigation measures or alternatives that the City Council could adopt at this time that would reduce this impact to a less-than-significant level. For these reasons, the impact remains significant and unavoidable. To the extent that this adverse impact will not be eliminated or lessened to an acceptable (less-than-significant) level, the City Council finds that specific economic, legal, social, technological, and other considerations identified in the FEIR make infeasible other mitigation measures.

**Facts in Support of Finding:** As discussed in Section 3.10 (page 3.10-61) of the Draft EIR, as amended, implementation of Mitigation Measure C-NO-2 would reduce interior noise levels for the affected residences along North Montgomery Street to the extent feasible. However, existing multifamily residences along Stockton Avenue and San Carlos Street have usable balconies where mitigating noise increases is not possible. Therefore, the project would result in a considerable contribution to traffic noise impacts.

For the above reason, the project's cumulative impact with respect traffic noise would be significant and unavoidable with mitigation.

**Impact:** **Impact C-NO-3:** The proposed project would make a considerable contribution to exposure of people to excessive airport noise levels.

**Mitigation:** **Mitigation Measure NO-3: Exposure to Airport Noise** (refer to Impact NO-3)

**Finding:** Implementing Mitigation Measure NO-3, Exposure to Airport Noise, would reduce interior noise levels, reducing the project's contribution to this cumulative impact, which would remain significant and unavoidable due to outdoor residential areas within the airport's 65 dB CNEL contour. The City Council finds that there are no additional feasible mitigation measures or alternatives that the City Council could adopt at this time that would reduce this impact to a less-than-significant level. For these reasons, the impact remains significant and unavoidable. To the extent that this adverse impact will not be eliminated or lessened to an acceptable (less-than-significant) level, the City Council finds that specific economic, legal, social, technological, and other considerations identified in the FEIR make infeasible other mitigation measures.

**Facts in Support of Finding:** As discussed in Section 3.10 (page 3.10-61) of the Draft EIR, as amended, implementation of Mitigation Measure NO-3 would reduce interior noise levels for residential uses within the 65 dBA CNEL noise contour to 45 dB CNEL or less, as described above under Impact NO-3. However, because the proposed project alone would result in a conflict with CLUP Policy N-4, and future residential development within the 65 dB CNEL noise contour could likewise conflict with that policy, the proposed project, in combination with cumulative projects, would conflict with the CLUP such that future residential receptors in outdoor areas would be subject to elevated noise levels by being located in the 2027 65 dB CNEL contour. For this reason, the impact would be significant and unavoidable, even with mitigation.

### **Population and Housing**

**Impact:** **Impact C-PH1:** The proposed project would result in a cumulatively considerable contribution to the citywide significant and unavoidable cumulative impact related to the jobs/housing imbalance identified in the 2040 General Plan EIR.

**Mitigation:** None available.

**Finding:** As described in the EIRs for the Envision San José 2040 General Plan and Downtown Strategy 2040, there is no feasible mitigation for this impact, which would therefore be significant and unavoidable. The City Council finds that there are no additional feasible mitigation measures or alternatives that the City Council could adopt at this time that would reduce this impact to a less-than-significant level. For these reasons, the impact remains significant and unavoidable. To the extent that this adverse impact will not be eliminated or lessened to an acceptable (less-than-significant) level, the City Council finds that specific economic, legal, social, technological, and other considerations identified in the FEIR make infeasible other mitigation measures.

**Facts in Support of Finding:** As discussed in Section 3.11 (page 3.11-28) of the Draft EIR, as amended, despite the absence of project-specific impacts related to vehicle miles traveled and greenhouse gas emissions, the proposed project would result in a cumulatively considerable contribution to the citywide significant and unavoidable impact that was previously identified in the EIRs for the Envision San José 2040 General Plan and Downtown Strategy 2040. As explained in those EIRs and reiterated on Draft EIR page 3.11-28, no feasible mitigation is available for this impact, because the adopted General Plan policy to move to a jobs-to-employed-residents ratio of 1.1, if achieved, could have the secondary effect of inducing population growth outside of San José by creating demand for new housing to serve the new workers in San José. In addition, the shift in jobs/housing would result in a substantial new quantity of employment-intensive land uses that may generate more jobs than can be met by the San José workforce, causing out-of-area workers to commute to Downtown San José. For this reason, this EIR reiterates the conclusion of the prior EIRs that this is considered a significant and unavoidable cumulative impact.

**SUBSECTION 2B: SIGNIFICANT IMPACTS THAT CAN BE MITIGATED TO A  
LESS-THAN-SIGNIFICANT LEVEL**

**Air Quality**

**Impact:** **Impact AQ-1:** The proposed project would not conflict with or obstruct implementation of the applicable air quality plan.

**Mitigation:** **Mitigation Measure AQ-2a: Construction Emissions Minimization Plan** (refer to Impact AQ-2)

**Mitigation Measure AQ-2b: Construction Equipment Maintenance and Tuning** (refer to Impact AQ-2)

**Mitigation Measure AQ-2c: Heavy-Duty Truck Model Year Requirement** (refer to Impact AQ-2)

**Mitigation Measure AQ-2d: Super-Compliant VOC Architectural Coatings during Operations** (refer to Impact AQ-2)

**Mitigation Measure AQ-2e: Best Available Emissions Controls for Stationary Emergency Generators** (refer to Impact AQ-2)

**Mitigation Measure AQ-2f: Operational Diesel Truck Emissions Reduction** (refer to Impact AQ-2)

**Mitigation Measure AQ-2g: Electric Vehicle Charging** (refer to Impact AQ-2)

**Mitigation Measure AQ-2h: Enhanced Transportation Demand Management Program** (refer to Impact AQ-2)

**Mitigation Measure AQ-3: Exposure to Air Pollution—Toxic Air Contaminants** (refer to Impact AQ-3)

**Mitigation Measure AQ-5: Hydrogen Sulfide and Odor Management Program for the Potential Water Reuse Facility(s)** (refer to Impact AQ-5)

**Finding:** Implementing Mitigation Measures AQ-2a, Construction Emissions Minimization Plan; AQ-2b, Construction Equipment Maintenance and Tuning; AQ-2c, Heavy-Duty Truck Model Year Requirement; AQ-2d, Super-Compliant VOC Architectural Coatings during Operations; AQ-2e, Best Available Emissions Controls for Stationary Emergency Generators; AQ-2f, Operational Diesel Truck Emission Reduction; AQ-2g, Electric Vehicle Charging; AQ-2h, Enhanced Transportation Demand Management Program; AQ-3, Exposure to Air Pollution—Toxic Air Contaminants; and AQ-5, Hydrogen Sulfide and Odor Management Program for the Potential Water Reuse Facility(s), would reduce air emissions and bring the project into conformance with the Clean Air Plan. Accordingly, with adoption of

these mitigation measures, changes or alterations have been required in, or incorporated into the project which avoid or substantially lessen the significant environmental effect as identified in the FEIR, and this impact would be reduced to a less-than-significant level.

**Facts in Support of Finding:** As discussed in Section 3.1 (page 3.1-88) of the Draft EIR, as amended, with implementation of Mitigation Measures AQ-2a through AQ-2h, AQ-3, and AQ-5 and compliance with applicable regulations as described in Table 3.1-6 of Section 3.1, the project would include applicable control measures from the Clean Air Plan and the project would, therefore, support the primary goals of the Clean Air Plan and would not interfere with, disrupt, or hinder implementation of the Clean Air Plan. Furthermore, the project would be consistent with the applicable policies set forth in the General Plan. Accordingly, with implementation, the project impact related to consistency with the Clean Air Plan would be reduced to a less-than-significant level with mitigation.

**Impact:** **Impact AQ-5:** The proposed project would not result in other emissions (such as those leading to odors) adversely affecting a substantial number of people.

**Mitigation:** **Mitigation Measure AQ-5: Hydrogen Sulfide and Odor Management Program for the Potential Water Reuse Facility(s)**

Prior to construction of each WRF, the project applicant shall develop a Hydrogen Sulfide and Odor Management program (HSOM Program) at each water reuse facility (WRF) for review and approval by the Director of Planning, Building and Code Enforcement and the Director of Environmental Services, or the Directors' designees. The HSOM Program shall address hydrogen sulfide and odor management using a performance-based approach designed to meet the regulatory ambient air concentrations established in BAAQMD Regulation 9, Rule 2, (i.e., 0.06 ppm averaged over three consecutive minutes or 0.03 ppm averaged over any 60 consecutive minutes) and to limit public complaints. The HSOM Program shall include best management practices and emissions controls as follows:

1. For grit and screenings, refuse containers shall be odor proof and contained within an area draining to the sanitary sewer.
2. Primary screenings shall be housed in a ventilated enclosure at the WRF(s).
3. Carbon absorption, biofiltration, or ammonia scrubbers shall be installed at the WRF(s).
4. Ferrous chloride injection for hydrogen sulfide removal may also be installed and implemented if necessary.

The project applicant shall implement the HSOM Program on an ongoing basis and provide the Directors or the Directors' designees with an annual report to describe implementation of the program and any adjustments needed to improve performance.

The HSOM Program shall address odor complaints that occur over time and shall designate WRF staff to receive and respond to complaints. The name and contact information of the responsible WRF staff shall be posted in a noticeable location on each WRF facility. The performance standard for odors shall be based on a three-tier threshold based on 30-day, 90-day, and three year averaging times for complaints. The performance standards that must be met shall be as follows:

1. Three or more violation notices for public nuisance related to odors issued by the BAAQMD within a 30-day period;
2. Odor complaints from ten or more complainants within a 90-day period; or
3. Five or more confirmed odor complaints per year averaged over three years as an indication of a significant odor impact from a facility.

If one or more of these standards are not met, the project applicant shall revise the program and make any necessary improvement to the WRF odor controls to achieve all performance standards in subsequent reporting years.

Additionally, odor-control facilities shall be designed to meet the requirements of Section 302 of BAAQMD Regulation 7 and shall not allow the WRF to discharge any odorous substance that causes the ambient air at or beyond the property line to be odorous and to remain odorous after dilution with four parts of odor-free air.

**Finding:** Implementing Mitigation Measure AQ-5, Hydrogen Sulfide and Odor Management Program for the Potential Water Reuse Facility(s), would reduce this impact to a less-than-significant level. Accordingly, with adoption of these mitigation measures, changes or alterations have been required in, or incorporated into the project which avoid or substantially lessen the significant environmental effect as identified in the FEIR, and this impact would be reduced to a less-than-significant level.

**Facts in Support of Finding:** As discussed in Section 3.1 (page 3.1-143) of the Draft EIR, as amended, with implementation of Mitigation Measure AQ-5 and compliance with applicable odor controls set forth in Bay Area Air Quality Management District Rules 1-301, 6-2, 7, 8-8, and 9-2, odors would not adversely affect a substantial number of people and the impact would be reduced to a less-than-significant level with mitigation.



## **Biological Resources**

**Impact:** **Impact BI-1:** The proposed project could have a substantial adverse effect, either directly, indirectly, or through habitat modifications, on a species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by CDFW or USFWS (western pond turtle, central California coast steelhead distinct population segment, nesting birds, special-status bats).

**Mitigation:** **Mitigation Measure BI-1a: General Avoidance and Protection Measures**

The project applicant or the project applicant's contractor shall be responsible for this measure, which shall be required for demolition, site preparation (including clearing of vegetation), and construction work in the Los Gatos Creek channel and riparian corridor and the 50-foot building construction setback from the riparian corridor. It shall also be required for proposed construction activities within 50 feet of the Guadalupe River (Block E, including 374 West Santa Clara Street), and work within 20 feet of the creeping wild rye plant community described under Impact BI-2. Relevant avoidance and protection measures shall be included on demolition, grading, and building permit plans.

- Before the issuance of any demolition, grading, or building permit, a qualified biologist shall prepare a worker environmental awareness training brochure and submit the brochure to the Director of Planning, Building and Code Enforcement, or the Director's designee, for review and approval. The training shall be distributed to the construction contractor for the specific work in question to ensure that a copy is available to all construction workers on-site. The training shall be implemented as described below.
- A California Department of Fish and Wildlife (CDFW)– and National Marine Fisheries Service (NMFS)–approved biologist shall be present to monitor all of the following activities:
  - All construction-related work within the Los Gatos Creek channel or riparian corridor or the 50-foot building construction setback from the riparian corridor;
  - Construction activities within 50 feet of the Guadalupe River (Block E, including the former San José Water Company building [374 West Santa Clara Street]); and
  - Work within 20 feet of the creeping wild rye plant community.

The biologist shall prepare and submit daily reports demonstrating compliance with all general avoidance and protection measures to the

Director of Planning, Building and Code Enforcement or the Director's designee.

- A qualified biologist shall provide the worker environmental awareness training to field management and construction personnel. Communication efforts and training shall take place during pre-construction meetings so that construction personnel are aware of their responsibilities and the importance of compliance. The training shall identify the types of sensitive biological resources in the project area (nesting birds, roosting bats, salmonids and other special-status fish, western pond turtle, riparian habitat, and creeping wild rye plant community) and the measures required to avoid impacting these resources. The materials covered in the training program shall include environmental rules and regulations for the specific project and shall require workers to limit activities to the construction work area and avoid demarcated sensitive resource areas.
- If the project adds new construction personnel, the contractor for the work in question shall ensure that the new personnel receive worker environmental awareness training before starting work within the Los Gatos Creek riparian corridor or channel; within the 50-foot building construction setback from the Los Gatos Creek riparian corridor and the Guadalupe River; or within 20 feet of the creeping wild rye plant community. The contractor shall maintain a sign-in sheet identifying the individuals who have received the training. A representative from the contractor company for the work in question shall be appointed during the training to be the contact person for any employee or contractor who might inadvertently kill or injure a listed species, or who finds a dead, injured, or entrapped individual. The representative's name and telephone number shall be provided to NMFS and CDFW before the start of ground disturbance.
- The minimum qualifications for a qualified biologist shall be a four-year college degree in biology or related field and at least two years' demonstrated experience with the species of concern.
- If a listed wildlife species is discovered, construction activities shall not begin in the immediate vicinity of the individual until the CDFW Region 3 office in Fairfield is contacted, and the discovered species has been allowed to leave and is no longer present in the construction area.
- Any special-status species observed by the qualified biologist shall be reported to CDFW by the qualified biologist, or by a biologist designated by the qualified biologist, so that the observations can be added to the California Natural Diversity Database.

- The discharge of water from new construction sites into Los Gatos Creek or the Guadalupe River shall be prohibited if the temperature of the discharged water exceeds 72 degrees Fahrenheit (°F), unless modeling studies and subsequent monitoring demonstrate that the volume of the discharge would not increase maximum daily stream temperatures above 75.2°F. Prior to project construction, water and ambient air temperature loggers shall be installed at three locations within and adjacent to the project site. One logger shall be installed in upstream Los Gatos Creek, one within the affected reach adjacent to building construction, and one downstream of the project site. Loggers at these three locations shall record hourly water temperature values before, during, and after project construction. This prohibition shall cover both direct discharges and indirect discharges into local storm drains that discharge to Los Gatos Creek or the Guadalupe River. Construction discharges shall be prohibited until the discharged water cools below the average daily stream temperature at the discharge point or maximum daily stream temperatures drop below 75°F.

#### **Mitigation Measure BI-1b: In-Water Construction Schedule**

The project applicant shall ensure that the contractor includes the schedule for in-water construction work in the Los Gatos Creek channel to occur outside of the normal rainy season, between June 1 and October 15 inclusive (or as otherwise specified by permits from the San Francisco Bay Regional Water Quality Control Board, California Department of Fish and Wildlife, National Marine Fisheries Service, and/or U.S. Army Corps of Engineers), when flows in Los Gatos Creek and the Guadalupe River are normally at their lowest and special-status anadromous fish species are least likely to occur in the project area.

#### **Mitigation Measure BI-1c: Native Fish Capture and Relocation**

The project applicant shall ensure that any contractor for any construction work in the Los Gatos Creek channel prepares and submits a fish relocation plan (consistent with federal and state permit requirements) for in-water work in Los Gatos Creek. Relocation shall be required only for in-water work in the Los Gatos Creek channel. The fish relocation plan shall be prepared by a qualified biologist. The plan shall be prepared in coordination with the California Department of Fish and Wildlife (CDFW), and a copy of the final plan shall be provided to the Director of Planning, Building and Code Enforcement or the Director's designee, along with demonstration of

coordination with CDFW. Implementation of the fish relocation plan shall be consistent with the following conditions:

- Before rescues of listed species are attempted, any necessary authorization shall be obtained from the resource agencies (CDFW and/or National Marine Fisheries Service [NMFS]).
- Before dewatering may occur, a qualified biologist shall determine whether the extent of dewatering will result in immediate or foreseeable impacts on fish and wildlife. This shall include conducting a reconnaissance survey of the dewatering zone.
- Before dewatering can begin, the following elements of fish relocation shall be determined:
  - *Staging Area*: Staging areas in the dewatering zone shall be identified. Sites should be selected based on their proximity and access to the dewatering zone and ability to support safe operation of the equipment.
  - *Relocation Sites*: Relocation site(s) shall be identified. Priority shall be given to a site's close proximity to the dewatering zone in the same stream. If a qualified on-site biologist determines that no suitable site in the stream is available, then "second choice" locations within the watershed shall be selected. In all cases, the closest site that is likely to result in a successful rescue shall be used.
  - *Transportation Routes*: Transport routes for rescued fish species shall be determined in advance of dewatering.
  - *Disease Consideration*: To guard against disease transmission, fish shall not be moved upstream over substantial barriers or long distances (i.e., greater than 10 miles).
- If salmonids are encountered during relocation, they shall be moved upstream to a location of perennial running water or the best available habitat determined by a qualified biologist. Collection and transport methods shall be determined based on site conditions. Methods shall also be selected to maximize the efficiency of the collection effort while minimizing handling and transport time and stress. Creek water from the site shall be used in all containers. The local transport of fish may be completed using various methods, including:
  - *Net Transfer*: Appropriate for short distances (less than 50 feet) where rapid transfer is possible.
  - *Live Car*: Appropriate for temporary holding in the stream and for short distances where a rapid transfer is required.

- *Bucket*: Appropriate for temporary holding and transport over short to medium distances. Holding time should be minimized if possible and aeration should be supplied.
- *Aerated Cooler*: Appropriate for temporary holding and transport for long distances. Temperature shall be maintained to be similar to the temperature of the source creek water, and if necessary, fish shall be sorted by size to reduce risks of predation.
- Species and collection/relocation sites shall be prioritized as follows: (1) Threatened species; and (2) other native fishes.
- A contact person at each of the appropriate resource agencies (CDFW, NMFS, and/or U.S. Fish and Wildlife Service) shall be identified in the relocation plan. At least 24 hours before fish relocation begins, the appropriate resource agencies shall be notified to communicate the details of the fish relocation and to confirm disposition instructions.
- Fish shall be relocated under the following conditions:
  - *Setup*: Upon arrival at the site, a qualified biologist shall review the operational sequence and logistics of the rescue and field assignments shall be designated. The fish relocation team shall review safety and operational methods.
  - *Live Well Operation*:
    - If necessary, live wells shall be set up early in the operation to stabilize tank conditions.
    - Local “native” water shall be used to fill live wells, if available and clean.
    - To lessen stress on fish, the temperature in live wells shall be reduced or managed to be compatible with the water temperatures in which the fish were encountered.
    - To ensure that sufficient oxygen is present during the adjustment period, the aeration system shall be started before fish are placed into the live well. When salmonids are placed in the live well, the live well shall be managed to the extent possible so that the dissolved oxygen concentration is greater than 6 milligrams per liter, but less than saturation.
  - *Electrofishing Operation*:
    - The electrofishing unit settings shall be adjusted to the conductivity and temperature of the water. Settings shall be adjusted for either varying width (wide to narrow) or varying

frequency (high to low) to minimize possible fish injury when these settings elicit proper taxis (i.e., response of fish toward or away from stimulus) for fish capture.

- The settings used and any incidental electrofishing mortalities shall be recorded in the field notebook. If electrofishing mortalities for salmonids and other species listed as threatened or endangered exceed 5 percent of the total capture, or as otherwise specified in any biological resource permits, a qualified biologist shall re-evaluate and possibly terminate electrofishing activities.
- Fish other than salmonids experiencing mortality from electrofishing activities shall be noted and used as an indicator of the possible injury or mortality rates of salmonids and other fish.
- *General Collection Guidelines:*
  - Fish shall be collected in a manner to minimize handling time and stress, yet maintain the safety of personnel.
  - Multiple buckets and/or live cars shall be used to reduce crowding during collection and transfer.
  - Fish shall be pre-sorted as needed for transport.
  - Buckets that hold salmonids shall be equipped with portable aerators until the fish are transferred to a live well.
- *Transport:*
  - Fish shall be transported to minimize holding time and alternately sequenced in tandem with ongoing collection activities.
  - Normal live well operations shall continue during transport.
- *Records and Data:*
  - Fish shall be inventoried and pertinent data shall be recorded, including species, numbers of each species, disposition, and fork length. If conditions preclude a complete inventory, at a minimum, the species present and their disposition shall be documented and their abundance shall be estimated.
  - Information on ambient site conditions (available habitat/water quality) shall be recorded as appropriate, including photo documentation at collection and release sites and other information on collection, handling, and transport.
  - At completion, a qualified biologist shall conduct an assessment of the fish relocation to identify lessons learned, estimate the number of individual fish and fish species moved, and determine



the mortality rate. The assessment report shall be forwarded to the appropriate resource agencies and to the Director of Planning, Building, and Code Enforcement or the Director's designee within a month of the completion of in-water work.

#### **Mitigation Measure BI-1d: Western Pond Turtle Protection Measures**

Prior to the start of any construction activities within 50 feet of the Los Gatos Creek riparian corridor (measured from the outer dripline of riparian vegetation or the top of bank, whichever is greater), the project applicant for the specific construction activity to be undertaken shall retain a qualified biologist to conduct pre-construction surveys for western pond turtles in all suitable habitats (i.e., aquatic and upland in the Los Gatos Creek riparian corridor) near the work site. Surveys shall take place no more than 72 hours before the onset of site preparation and construction activities that have the potential to disturb turtles or their habitat and copies shall be provided to the Director of Planning, Building, and Code Enforcement or the Director's designee.

If pre-construction surveys identify active western pond turtle nests on the project site, the biologist shall establish no-disturbance buffer zones around each nest using temporary orange construction fencing. The demarcation shall be permeable to allow young turtles to move away from the nest after hatching. The radius of the buffer zone and the duration of exclusion shall be determined in consultation with the California Department of Fish and Wildlife (CDFW). The buffer zones and fencing shall remain in place until the young have left the nest, as determined by the qualified biologist.

A qualified biologist shall monitor construction activities near suitable habitat within which western pond turtle is found (either during the survey or observed during construction), and shall remove and relocate western pond turtles in proposed construction areas to suitable habitat outside the project limits, consistent with CDFW protocols and handling permits. Relocation sites shall be subject to CDFW approval.

If any turtles are found on the project site, construction activities shall halt within 50 feet of the turtle(s) and the qualified biologist shall be notified. If the biologist determines that the turtle is a western pond turtle, the turtle shall be relocated into nearby suitable habitat consistent with CDFW protocols and with approval from CDFW. The biologist shall submit a final report to the Director of Planning, Building, and Code Enforcement or the Director's designee following completion of construction and relocation.

### **Mitigation Measure BI-1e: Avoidance of Impacts on Nesting Birds**

Prior to the issuance of any demolition, grading, or building permits, the project shall implement the following measures to avoid impacts on nesting migratory birds:

- **Avoidance:** The project applicant for the specific construction activity to be undertaken shall schedule demolition and construction activities to avoid commencement during the nesting season, if feasible. The nesting season for most birds, including most raptors in the San Francisco Bay Area, extends from February 1 through August 15 (inclusive), as amended.
- **Nesting Bird Surveys:** If demolition and construction cannot be scheduled to occur between August 16 and January 31 (inclusive), a qualified ornithologist shall complete pre-construction surveys for nesting birds to ensure that no nests are disturbed during project implementation. This survey shall be completed no more than 14 days before the start of construction activities during the early part of the breeding season (February 1 through April 30 inclusive), and no more than 30 days before the start of construction activities during the late part of the breeding season (May 1 through August 15 inclusive). During this survey, the ornithologist shall inspect all trees and other possible nesting habitats immediately adjacent to the construction areas for nests.
- **Buffer Zones:** If an active nest is found within 250 feet of work areas to be disturbed by construction, the ornithologist, in coordination with the California Department of Fish and Wildlife (CDFW), shall determine the extent of a construction-free buffer zone to be established around the nest, typically 250 feet for raptors and 100 feet for songbirds, or an area determined to be adequate by the qualified ornithologist in coordination with CDFW, to ensure that raptor or migratory bird nests are not be disturbed during project construction. The no disturbance buffer shall remain in place until the ornithologist determines that the nest is no longer active or the nesting season ends. If construction ceases for 7 days or more, then resumes during the nesting season, an additional survey shall be necessary to avoid impacts on active bird nests that may be present.
- **Reporting:** The project applicant for the specific construction activity to be undertaken shall submit the ornithologist's report indicating the results of the surveys and any designated buffer zones to the Director of Planning, Building and Code Enforcement, or the Director's designee, for review and approval prior to issuance of any grading or building permits or tree removal (whichever occurs first).

- The results of the surveys and any identified designated buffer zones shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee.

#### **Mitigation Measure BI-1f: Roosting Bat Surveys**

In advance of tree and structure removal or adaptive reuse, a qualified biologist shall conduct a pre-construction survey for special-status bats to characterize potential bat habitat and identify active roost sites within 100 feet of the project site. The results of the surveys and the locations of any designated buffer zones 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 any demolition or building permits. Should potential roosting habitat or active bat roosts be found in trees and/or structures to be removed or renovated under the project or within a 100-foot buffer zone from these areas, the following measures shall be implemented:

- Removal of trees and structures with active roosts shall occur when bats are active, approximately between March 1 and April 15 inclusive and between September 1 and October 15 inclusive. To the extent feasible, removal shall occur outside of bat maternity roosting season (approximately April 15 to August 31 inclusive) and outside of the months of winter torpor (approximately October 16 to February 28 inclusive).
- If removing trees and structures during the periods when bats are active is not feasible and active bat roosts being used for maternity or hibernation purposes are found on or in the immediate vicinity of the project area where tree and structure removal is planned, a no-disturbance buffer shall be established around these roost sites, typically 100 feet, or an area determined to be adequate by the qualified biologist based on site conditions, construction activity, species, number of roosting individuals, and/or noise attenuation and frequency, along with coordination with CDFW, if necessary, until the qualified biologist has determined that they are no longer active.
- The qualified biologist shall be present during removal of trees and structures when active bat roosts not being used for maternity or hibernation purposes are present. Trees and structures with active roosts shall be removed only when no rain is occurring and rain is not forecast to occur for 3 days following removal of the roost, and when daytime temperatures are at least 50 degrees Fahrenheit.

- Removal of trees with active or potentially active roost sites shall follow a twostep removal process:
  - (1) On the first day of tree removal and under the supervision of the qualified biologist, branches and limbs that do not contain cavities or fissures in which bats could roost shall be cut only using chainsaws. Removal of the canopy makes the tree unappealing for bats to return that evening to roost.
  - (2) On the following day and under the supervision of the qualified biologist, after confirmation that bats have not returned, the remainder of the tree may be removed, using either chain saws or other equipment (e.g., excavator or backhoe).

Structures that contain or are suspected to contain active bat roosts, but that are not being used for maternity or hibernation purposes, shall be dismantled under the supervision of the qualified biologist in the evening, after bats have emerged from the roost to forage. The structures shall be partially dismantled to substantially change roost conditions, causing the bats to abandon and not return to the roost.

**Finding:** Implementing Mitigation Measures BI-1a, General Avoidance and Protection Measures; BI-1b, In-Water Construction Schedule; BI-1c, Native Fish Capture and Relocation; BI-1d, Western Pond Turtle Protection Measures; BI-1e, Avoidance of Impacts on Nesting Birds; and BI-1f, Roosting Bat Surveys, would reduce this impact to a less-than-significant level. Accordingly, with adoption of these mitigation measures, changes or alterations have been required in, or incorporated into the project which avoid or substantially lessen the significant environmental effect as identified in the FEIR, and this impact would be reduced to a less-than-significant level.

**Facts in Support of Finding:** As discussed in Section 3.2 (pages 3.2-35, 3.2-42, and 3.2-43) of the Draft EIR, as amended, implementation of Mitigation Measures BI-1a through BI-1f would ensure that appropriate preventative and protective measures, surveys, avoidance, protection, and relocation (if necessary) would be undertaken in connection with project construction activities, thereby reducing potential adverse effects on special-status fish, western pond turtle, nesting birds, and special-status bats. For the above reason, the impact on candidate, sensitive, and special-status species would be reduced to a less-than-significant level with mitigation.

**Impact:** **Impact BI-2:** The proposed project could have a substantial adverse effect on riparian habitat or other sensitive natural communities identified in local or regional plans, policies, regulations, or by CDFW or USFWS.

**Mitigation:** **Mitigation Measure BI-1a: General Avoidance and Protection Measures** (refer to Impact BI-1)

**Mitigation Measure BI-1b: In-Water Construction Schedule** (refer to Impact BI-1)

**Mitigation Measure BI-1c: Native Fish Capture and Relocation** (refer to Impact BI-1)

**Mitigation Measure BI-2a: Avoidance of Impacts on Riparian Habitat**

The project applicant for the specific construction activity to be undertaken and its contractors shall implement the following measures.

For portions of the project site located within 50 feet of the riparian corridor—such as the new footbridge; multi-use trail and associated infrastructure; pedestrian boardwalks, viewing platforms, and signage; removal and replacement of fencing; replacement of the West San Fernando Street vehicle bridge; reconstruction of the existing storm drain; and building demolition, construction, and renovation—a qualified biologist shall clearly delineate the construction footprint in or within 50 feet of the riparian area with flagging before the start of construction to avoid the accidental removal or trampling of vegetation outside of the project limits. No noise-generating construction activity shall be permitted within 50 feet of the riparian corridor after 7 p.m. or after sunset, whichever is earlier.

The limits of construction within 50 feet of the riparian corridor shall be confined to the smallest possible area to complete the required work. The edge of construction in and near riparian areas shall be separated and protected from the work area through silt fencing, amphibian-friendly fiber rolls (i.e., no microfilament), or other appropriate erosion control material. Staging of materials and all other project-related activity shall be located at least 25 feet upslope from riparian areas.

Where disturbance to riparian habitat cannot be avoided, any temporarily affected riparian habitat shall be restored to pre-construction conditions or better at the end of construction, in accordance with the requirements of USACE, the San Francisco Bay Regional Water Quality Control Board, and CDFW permits. Live trees larger than 6 inches diameter at breast height (dbh) removed by the project shall be replaced at a minimum ratio of 3:1 (trees replaced: trees removed) for native species and 2:1 for non-native species. Removal of live trees with a dbh of less than 6 inches shall be mitigated at a minimum of 1:1 on an acreage basis for native trees and not

mitigated for non-native trees. Removal of dead native trees shall be mitigated at a ratio of 1:1. Replacement trees shall consist of a combination of plantings of shade-tolerant riparian vegetation and other locally appropriate native species. No mitigation is proposed for the removal of invasive tree species regardless of dbh.

Compensation for permanent impacts on riparian habitat shall be provided at a 1:1 or greater ratio, or as specified by USACE, the San Francisco Bay Regional Water Quality Control Board, and CDFW. Compensation for loss of riparian habitat may be in the form of permanent on-site or off-site creation, restoration, enhancement, or preservation of habitat with the goal of returning temporarily affected areas to pre-project conditions or better. Mitigation for project impacts shall be undertaken within the City of San José and, to the extent practical, shall be adjacent to or in proximity to the project area (i.e., along the Guadalupe River, Los Gatos Creek, or other local waterway and in a location where, in the opinion of a qualified biologist, comparable riparian habitat exists or can successfully be created). To that end, the restoration or compensation sites shall, at a minimum, meet the following performance standards by the fifth year after restoration or as otherwise required by resource agency permits:

- (1) Native vegetation cover shall be at least 70 percent of the baseline native vegetation cover in the impact area.
- (2) No more cover by invasive species shall be present than in the baseline/impact area.

Restoration or compensation shall be detailed in a Riparian Habitat Mitigation and Monitoring Plan, which shall be developed before the start of construction and in coordination with permit applications and/or conditions from applicable regulatory agencies. At a minimum, the plan shall include:

- (1) Name and contact information for the property owner of the land on which the mitigation will take place;
- (2) Identification of the water source for supplemental irrigation, if needed;
- (3) Identification of depth to groundwater;
- (4) Topsoil salvage and storage methods for areas that support special-status plants;
- (5) Site preparation guidelines to prepare for planting, including coarse and fine grading;
- (6) Plant material procurement, including assessment of the risk of introduction of plant pathogens through the use of nursery-grown



container stock vs. collection and propagation of site-specific plant materials, or use of seeds;

- (7) A planting plan outlining species selection, planting locations, and spacing for each vegetation type to be restored. To the extent practical, the planting plan will follow the *Guidelines and Standards for Land Use Near Streams: A Manual of Tools, Standards, and Procedures to Protect Streams and Streamside Resources in Santa Clara County*;
- (8) Planting methods, including containers, hydroseed or hydromulch, weed barriers, and cages, as needed;
- (9) Soil amendment recommendations, if needed;
- (10) An irrigation plan, with proposed rates (in gallons per minute), schedule (i.e., recurrence interval), and seasonal guidelines for watering;
- (11) A site protection plan to prevent unauthorized access, accidental damage, and vandalism;
- (12) Weeding and other vegetation maintenance tasks and schedule, with specific thresholds for acceptance of invasive species;
- (13) Performance standards, as referenced above, by which successful completion of mitigation can be assessed relative to a relevant baseline or reference site, and by which remedial actions will be triggered;
- (14) Success criteria that shall include the minimum performance standards described in Mitigation Measure BI-2a, Avoidance of Impacts on Riparian Habitat, and Mitigation Measure BI-2d, Avoidance and Protection of Creeping Wild Rye Habitat;
- (15) Monitoring methods and schedule;
- (16) Reporting requirements and schedule;
- (17) Adaptive management and corrective actions to achieve the established success criteria; and
- (18) An educational outreach program to inform operations and maintenance departments of local land management and utility agencies of the mitigation purpose of restored areas to prevent accidental damages.

The Riparian Habitat Mitigation and Monitoring Plan shall be developed before the start of construction and in coordination with permit applications and/or conditions from applicable regulatory oversight agencies. The plan shall be submitted to the Director of Planning, Building and Code Enforcement, or the Director's designee, prior to the issuance of any demolition, grading, or building permit that would include construction activities that would have direct impacts on riparian habitat.

### **Mitigation Measure BI-2b: Frac-Out Contingency Plan**

If jack-and-bore construction is implemented, the project applicant shall require the contractor to retain a licensed geotechnical engineer to develop a Frac-out Contingency Plan. The project applicant shall submit the contingency plan to the appropriate resource agencies (e.g., the California Department of Fish and Wildlife [CDFW], Regional Water Quality Control Board, U.S. Army Corps of Engineers [USACE], U.S. Fish and Wildlife Service [USFWS], and National Marine Fisheries Service [NMFS]) for review and approval prior to the start of construction of any pipeline that requires jack-and-bore construction to avoid surface waters. The regulatory agency–approved Frac-Out Contingency Plan shall also be submitted to the Director of Planning, Building and Code Enforcement or the Director’s designee. The Frac-out Contingency Plan shall be implemented where jack-and-bore construction under a waterway will occur to avoid, minimize, or mitigate potential project impacts during jack-and-bore construction, as specified in the contingency plan. The Frac-out Contingency Plan shall include, at a minimum:

- (1) Measures describing training of construction personnel about monitoring procedures, equipment, materials, and procedures in place for the prevention, containment, cleanup (creating a containment area and using a pump, using a vacuum truck, etc.), and disposal of released bentonite slurry, and agency notification protocols;
- (2) Methods for preventing frac-out, including maintaining pressure in the borehole to avoid exceeding the strength of the overlying soil;
- (3) Methods for detecting an accidental release of bentonite slurry that include:
  - (a) Monitoring by a minimum of one qualified biological monitor throughout drilling operations to ensure swift response if a frac-out occurs;
  - (b) Continuous monitoring of drilling pressures to ensure they do not exceed those needed to penetrate the formation;
  - (c) Continuous monitoring of slurry returns at the exit and entry pits to determine if slurry circulation has been lost; and
  - (d) Continuous monitoring by spotters to follow the progress of the drill bit during the pilot hole operation, and reaming and pull back operations;
- (4) Protocols that the contractor would follow if there is a loss of circulation or other indicator of a release of slurry; and

- (5) Cleanup and disposal procedures and equipment the contractor would use if a frac-out occurs.

If a frac-out occurs, the contractor shall immediately halt work and implement the measures outlined in the Frac-out Contingency Plan to contain, clean up, and dispose of the bentonite slurry. The project applicant and/or contractor shall also notify and coordinate with appropriate regulatory agencies, as required by the Frac-Out Contingency Plan (e.g., CDFW, the Regional Water Quality Control Board, USACE, USFWS, and NMFS) before jack-and-bore activities can begin again.

#### **Mitigation Measure BI-2c: Monitor Effects of Shading and Heat Island on Riparian Vegetation and Stream Temperature**

To evaluate the effects of building shading on riparian vegetation and water temperature in Los Gatos Creek, the project applicant shall implement an annual monitoring program that includes a baseline assessment and continues annually for 15 years following construction between Auzerais Avenue and West Santa Clara Street. The baseline assessment shall begin prior to the issuance of permits for ground-disturbing activity in the designated area. Post-construction monitoring shall begin following completion of each submitted phase that includes development between Auzerais Avenue and West Santa Clara Street and is adjacent to Los Gatos Creek and continue for 15 consecutive years thereafter for each submitted phase within these bounds. Two or more unshaded reference sites shall be included for comparison to shaded areas to account for vegetation effects that are unrelated to the project, such as from drought. The following performance standards shall be used to evaluate vegetation and water temperature changes over time and determine whether project-related shading is negatively affecting the riparian corridor, or whether the increased urban footprint is negatively affecting water temperatures in Los Gatos Creek.

**Aquatic monitoring.** The project applicant shall use the following methodology to study water temperature in Los Gatos Creek during the 15-year monitoring period. Prior to project construction, water and ambient air temperature loggers shall be installed at three locations within and adjacent to the project site. One logger shall be installed in upstream Los Gatos Creek, one within the affected reach adjacent to building construction, and one downstream of the project site. Care shall be taken to ensure that each of these temperature loggers is installed in similar habitat types (e.g., pool, riffle, run) within similar habitat conditions (e.g., amount of cover, depth, flow rate). Loggers at these three locations shall record hourly water temperature values before, during, and after project construction. If the difference in water temperature between the upstream and downstream monitoring locations

increases substantially over time, particularly above the threshold of concern (71.6 degrees Fahrenheit), then additional adaptive actions shall be implemented (e.g., riparian planting, increase in urban tree canopy, treatment of runoff) to compensate for any increase in stream temperature. All actions shall be consistent with the approved Habitat Enhancement Plan, described below.

**Riparian monitoring.** At a minimum, riparian vegetation shaded by project buildings shall meet the following performance standards by the 15th year of post-project monitoring:

- (1) The loss of absolute cover of riparian canopy and understory cover relative to baseline conditions is less than or equal to 15 percent. (If the loss of cover exceeds this criterion, then the change shall be compared with changes measured in the reference site[s] to determine whether on-site shading is the causal factor as opposed to other external regional factors such as climate change, drought, and alterations to reservoir releases.)
- (2) There is no more than a 5 percent reduction in native species relative to non-native species for tree and woody shrub species, measured both as species richness and relative cover.

The following approach shall be used to monitor vegetation conditions during the 15-year period:

- (1) Prior to the start of building construction within 100 feet of the riparian corridor, the project applicant shall prepare a 15-Year Riparian Vegetation Monitoring Plan to assess the change in riparian vegetation canopy and understory cover in the Los Gatos Creek riparian corridor within 100 feet of the project. The Riparian Vegetation Monitoring Plan shall describe quantitative methods for measuring the canopy and understory vegetation cover of baseline on-site and reference site riparian habitat and changes in the extent and species composition of riparian vegetation canopy following the completion of building construction within 100 feet of the riparian corridor. This plan shall assess the impacts of shading by project buildings on the riparian vegetation. The plan shall have measures to track changes in the percentage of native tree species (thus revealing any changes towards more shade tolerant species) and the results of the monitoring shall be assessed to determine if any tree species shifts could potentially adversely affect the riparian ecosystem. The monitoring data shall be reviewed by a qualified wildlife biologist. If adverse effects on ecosystems are identified, corrective actions would be implemented as part of the Habitat Enhancement Plan described below, and could involve planting of either shade tolerant species (such as bigleaf maple or alder, or sun-loving species in mitigation areas

where they would thrive). Reference sites shall be chosen that have comparable canopy coverage, species composition, hydrology, topography, and scale from locations on Los Gatos Creek or the Guadalupe River as close to the project site as possible. The Riparian Vegetation Monitoring Plan shall be submitted to the appropriate regulatory agencies (e.g., the California Department of Fish and Wildlife [CDFW]) for review and subsequently to the Director of Planning, Building and Code Enforcement or the Director's designee. The Riparian Vegetation Monitoring Plan shall include, at a minimum, the following elements:

- (a) Methods for monitoring and measuring composition (i.e., species), cover, and extent of existing riparian vegetation, which may include:
  - (1) Tree canopy and wood understory cover plots or transects; and
  - (2) Percent cover of non-native invasive species. Non-native species shall be based on the California Invasive Plant Council (Cal-IPC) and Valley Water's Invasive Plant Management Program list.

In addition, monitoring shall include qualitative indicators of riparian vegetation health such as photomonitoring and signs of early decline (e.g., yellowing of leaves, small leaves, poor growth) to allow for early indications that riparian canopy cover and understory vegetation is in decline. Monitoring will also include natural recruitment/succession of native riparian vegetation, by recording observations of seedling and sapling tree species, and tracking their persistence and growth each year.

- (b) Pre-project conditions shall be assessed during the late summer before the start of each construction phase that includes construction within 100 feet of the riparian corridor. Post-project monitoring shall be conducted in years 1–15 following the conclusion of each construction phase that includes construction within 100 feet of the riparian corridor. Surveys shall be conducted during the late summer to capture riparian species during their maximum growth.
- (c) The project applicant shall prepare and submit to the Director of Planning, Building and Code Enforcement, or the Director's designee, an annual report documenting the monitoring of riparian habitat and any associated habitat enhancement activities. The first-year report shall consist of baseline on-site and reference site monitoring and a plan for habitat enhancement. Reports shall be submitted by December 30 of each monitoring year.

- (2) A failure to meet the performance standards defined above in year 5, 10, or 15 shall trigger implementation of the following habitat enhancement measures as mitigation for loss of existing riparian habitat:
- (a) Repeat the monitoring the following year (e.g., if performance criteria are not met in year 5, repeat monitoring in year 6). If in the following year (e.g., year 6), performance criteria are not met (i.e., for 2 years in a row), implement step (b), below.
  - (b) The project applicant shall develop a Habitat Enhancement Plan to be reviewed and approved by appropriate regulatory agencies (e.g., National Marine Fisheries Service), and submitted to the Director of Planning, Building and Code Enforcement, or the Director's designee. The plan shall consist of a planting palette composed primarily of shade-tolerant riparian vegetation such as white alder (*Alnus rhombifolia*), bigleaf maple (*Acer macrophyllum*), box elder (*Acer negundo*), Oregon ash (*Fraxinus latifolia*), California buckeye (*Aesculus californica*), and other locally appropriate native species, as well as an invasive vegetation control plan (if appropriate based on monitoring findings). Shade-tolerant riparian vegetation selected for the planting palette shall be based on nearby reference sites.
  - (c) The area of plantings needed to offset losses of existing riparian vegetation shall be defined in the Habitat Enhancement Plan based on the documented difference in percent absolute cover of riparian vegetation between the baseline conditions and the percent absolute cover averaged over each year of annual monitoring to date.
  - (d) Mitigation gains in woody riparian vegetation shall be deemed successful when there is an 80 percent survival rate of plantings after 5 years of additional monitoring, and no increase in percent cover of invasive plant species in restored areas.
  - (e) If these criteria are not met, adaptive management and corrective actions shall be implemented to achieve the established success criteria, in coordination with the applicable regulatory agencies. These may include additional plantings, weeding, or provision of supplemental water. Monitoring within the corrective action area shall continue for up to 10 additional years, until the criteria are met, or as otherwise required by the applicable regulatory agencies.
  - (f) The project applicant shall prepare and submit an annual report to the Director of Planning, Building and Code Enforcement, or the Director's designee, documenting the annual monitoring of habitat enhancement activities to document that this performance standard has been satisfied.



### **Mitigation Measure BI-2d: Avoidance and Protection of Creeping Wild Rye Habitat**

Prior to the start of construction within 20 feet of retained areas of creeping wild rye, the project applicant shall ensure that all areas that contain or potentially contain creeping wild rye are clearly delineated, separated, and protected from the work area by environmentally sensitive area fencing, which shall be maintained throughout the construction period. A qualified biologist shall oversee the delineation and installation of fencing. Excavation, vehicular traffic, staging of materials, and all other project-related activity shall be located outside of the environmentally sensitive area.

If creeping wild rye cannot be avoided, any temporarily affected areas shall be restored to preconstruction conditions or better at the end of construction that occurs within 20 feet of the retained area of creeping wild rye in accordance with CDFW permits, as well as the requirements of USACE and the San Francisco Bay Regional Water Quality Control Board. Compensation for permanent impacts on creeping wild rye habitat shall be provided at a 1:1 or greater ratio, or as specified by USACE, the San Francisco Bay Regional Water Quality Control Board, and CDFW. Compensation for permanent impacts on riparian habitat shall be provided at a 1:1 or greater ratio, or as specified by USACE, the San Francisco Bay Regional Water Quality Control Board, and CDFW. If impacts to prior mitigation sites occur, resource agencies may require a greater ratio (e.g., 2:1 or higher). Compensation for loss of riparian habitat may be in the form of permanent on-site or off-site creation, restoration, enhancement, or preservation of habitat. To that end, the restoration sites shall, at a minimum, meet the following performance standards by the fifth year after restoration:

- (1) Native vegetation cover shall be at least 70 percent of the baseline native vegetation cover in the impact area.
- (2) No more cover by invasive species shall be present than in the baseline/impact area.

Restoration shall be detailed in a habitat mitigation and monitoring plan, which shall be developed before the start of construction and in coordination with permit applications and/or conditions. At a minimum, the plan shall include:

- (1) Name and contact information for the property owner of the land on which the mitigation will take place;
- (2) Identification of the water source for supplemental irrigation, if needed;

- (3) Identification of depth to groundwater;
- (4) Topsoil salvage and storage methods for areas that support special-status plants;
- (5) Site preparation guidelines to prepare for planting, including coarse and fine grading;
- (6) Plant material procurement, including assessment of the risk of introduction of plant pathogens through the use of nursery-grown container stock vs. collection and propagation of site-specific plant materials, or use of seeds;
- (7) A planting plan outlining species selection, planting locations, and spacing for each vegetation type to be restored;
- (8) Planting methods, including containers, hydroseed or hydromulch, weed barriers, and cages, as needed;
- (9) Soil amendment recommendations, if needed;
- (10) An irrigation plan, with proposed rates (in gallons per minute), schedule (i.e., recurrence interval), and seasonal guidelines for watering;
- (11) A site protection plan to prevent unauthorized access, accidental damage, and vandalism;
- (12) Weeding and other vegetation maintenance tasks and schedule, with specific thresholds for acceptance of invasive species;
- (13) Performance standards by which successful completion of mitigation can be assessed relative to a relevant baseline or reference site, and by which remedial actions will be triggered;
- (14) Success criteria that shall include the minimum performance standards described in Mitigation Measure BI-2a, Avoidance of Impacts on Riparian Habitat, and Mitigation Measure BI-2d, Avoidance and Protection of Creeping Wild Rye Habitat;
- (15) Monitoring methods and schedule;
- (16) Reporting requirements and schedule;
- (17) Adaptive management and corrective actions to achieve the established success criteria; and
- (18) An educational outreach program to inform operations and maintenance departments of local land management and utility agencies of the mitigation purpose of restored areas to prevent accidental damages.

The Habitat Mitigation and Monitoring Plan and all field documentation, prepared in coordination with the appropriate regulatory agencies, shall be submitted to the Director of the City 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 permit for construction that would occur within 20 feet of creeping wild rye habitat.

**Finding:** Implementing Mitigation Measures BI-1a, General Avoidance and Protection Measures; BI-1b, In-Water Construction Schedule; BI-1c, Native Fish Capture and Relocation; BI-1e, Avoidance of Impacts on Nesting Birds; BI-1f, Roosting Bat Surveys; BI-2a, Avoidance of Impacts on Riparian Habitat; BI-2b, Frac-Out Contingency Plan; BI-2c, Monitor Effects of Shading and Heat Island Effect on Riparian Vegetation and Stream Temperature; BI-2d, Avoidance and Protection of Creeping Wild Rye Habitat; HY-3b, Plan for Ongoing Creek Maintenance; and NO-1a, Operational Noise Performance Standard, would reduce this impact to a less-than-significant level. Accordingly, with adoption of these mitigation measures, changes or alterations have been required in, or incorporated into the project which avoid or substantially lessen the significant environmental effect as identified in the FEIR, and this impact would be reduced to a less-than-significant level.

**Facts in Support of Finding:** As discussed in Section 3.2 (pages 3.2-46, 3.2-50, 3.2-54, 3.2-56, 3.2-58, 3.2-61, 3.2-67, 3.2-71, and 3.2-73) of the Draft EIR, as amended, implementation of Mitigation Measures BI-1a through BI-1f, BI-2a through BI-2d, HY-3b, and NO-1a would ensure that appropriate preventative and protective measures, surveys, avoidance, relocation (if necessary), monitoring, maintenance, and noise control would be undertaken in connection with project construction activities and ongoing project operations, thereby reducing potential adverse effects on essential fish habitat, riparian habitat, and creeping wild rye sensitive natural community. For the above reason, the impact on riparian habitat or other sensitive natural communities would be reduced to a less-than-significant level with mitigation.

**Impact:** **Impact BI3:** The proposed project could have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means.

**Mitigation:** **Mitigation Measure BI-1a: General Avoidance and Protection Measures** (refer to Impact BI-1)

**Mitigation Measure BI-2a: Avoidance of Impacts on Riparian Habitat** (refer to Impact BI-2)

**Mitigation Measure BI-2d: Avoidance and Protection of Creeping Wild Rye Habitat** (refer to Impact BI-2)

**Mitigation Measure BI-3: Avoidance of Impacts on Wetlands and Waters**

The project applicant for the specific construction activity to be undertaken and its contractors shall minimize impacts on waters of the United States and waters of the state, including wetlands, by implementing the following measures:

- A preliminary jurisdictional delineation of wetlands shall be prepared to determine the extent of waters of the United States and/or waters of the state within the project component footprints and anticipated construction disturbance areas. The results shall be summarized in a wetland delineation report to be submitted to the Director of the City of San José Department of Planning, Building and Code Enforcement, or the Director's designee, for review and approval before the issuance of any demolition, grading, or building permit for construction activity within the riparian corridor. Wetlands identified in the report shall be avoided through project design, if feasible. All identified avoidance and protection measures shall be included on the plans for proposed demolition, grading, and/or building permits for construction activities within the riparian corridor.
- The proposed project shall be designed to avoid, to the extent practical, work within wetlands and/or waters under the jurisdiction of U.S. Army Corps of Engineers (USACE), the San Francisco Bay Regional Water Quality Control Board, and/or the California Department of Fish and Wildlife (CDFW). If applicable, permits or approvals shall be sought from the above agencies, as required. Where wetlands or other water features must be disturbed, the minimum area of disturbance necessary for construction shall be identified and the area outside avoided.
- Before the start of construction within 50 feet of any wetlands and drainages, appropriate measures shall be taken to ensure protection of the wetland from construction runoff or direct impact from equipment or materials, such as the installation of a silt fence, and signs indicating the required avoidance shall be installed. No equipment mobilization, grading, clearing, or storage of equipment or machinery, or similar activity, shall occur until a qualified biologist has inspected and approved the fencing installed around these features. The construction contractor for the specific construction activity to be undertaken shall ensure that the temporary fencing is maintained until construction activities are complete. No construction activities, including equipment movement, storage of

materials, or temporary spoils stockpiling, shall be allowed within the fenced areas protecting wetlands.

- Where disturbance to jurisdictional wetlands or waters cannot be avoided, any temporarily affected jurisdictional wetlands or waters shall be restored to pre-construction conditions or better at the end of construction, in accordance with the requirements of USACE, San Francisco Bay Regional Water Quality Control Board, and/or CDFW permits. Compensation for permanent impacts on wetlands or waters shall be provided at a 1:1 ratio, or as agreed upon by CDFW, USACE, and the San Francisco Bay Regional Water Quality Control Board, as applicable. Compensation for loss of wetlands may be in the form of permanent on-site or off-site creation, restoration, enhancement, or preservation of habitat. At a minimum, the restoration or compensation sites shall meet the following performance standards by the fifth year after restoration:
  - (1) Temporarily affected areas shall be returned to pre-project conditions or better, as determined by the Director of PBCE or USACE, RWQCB, or CDFW.
  - (2) Wetlands restored or constructed as federal wetlands meet the applicable federal criteria for jurisdictional wetlands, and wetlands restored or constructed as state wetlands meet the state criteria for jurisdictional wetlands.
  - (3) No more cover by invasive species shall be present than in the baseline/impact area pre-project.

Restoration and compensatory mitigation activities shall be described in the habitat mitigation and monitoring plan prescribed by Mitigation Measure BI-2a, Avoidance of Impacts on Riparian Habitat.

**Finding:** Implementing Mitigation Measures BI-1a, General Avoidance and Protection Measures; BI-2a, Avoidance of Impacts on Riparian Habitat; BI-2d, Avoidance and Protection of Creeping Wild Rye Habitat; and BI-3, Avoidance of Impacts on Wetlands and Waters, would reduce this impact to a less-than-significant level. Accordingly, with adoption of these mitigation measures, changes or alterations have been required in, or incorporated into the project which avoid or substantially lessen the significant environmental effect as identified in the FEIR, and this impact would be reduced to a less-than-significant level.

**Facts in Support of Finding:** As discussed in Section 3.2 (page 3.2-77) of the Draft EIR, as amended, implementation of Mitigation Measures BI-1a, BI-2a, BI-2d, and BI-3 would ensure that appropriate preventative and protective measures, avoidance, and worker training would be undertaken in

connection with project construction activities, thereby reducing potential adverse effects on wetlands. For the above reason, the impact on state or federally protected wetlands would be reduced to a less-than-significant level with mitigation.

**Impact:** **Impact BI-4:** The proposed project could interfere substantially with the movement of a native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites.

**Mitigation:** **Mitigation Measure BI-4: Avian Collision Avoidance Measures**

In addition to conforming to the bird safety standards and guidelines in the City's Downtown Design Guidelines, and the General Plan, the following mitigation measures shall be implemented:

*Educating Tenants, Residents, and Occupants.* Prior to issuance of any building permits, the project applicant shall develop educational materials for building tenants, occupants, and residents, encouraging them to minimize light transmission from windows, especially during peak spring and fall migratory periods, by turning off unnecessary lights and/or closing window coverings at night. The Director of Planning, Building and Code Enforcement or the Director's designee shall review and approve the educational materials before buildings are occupied. The project applicant shall also supply documentation (e.g., written statement) describing when and how the materials will be distributed (e.g., poster in building lobby, attachment to lease, new-tenant welcome packet). Documentation shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee.

*Antennae, Monopole Structures, and Rooftop Elements.* Prior to issuance of any building permits, the project applicant shall provide documentation (e.g., construction drawings) that buildings minimize the number of and co-locate rooftop antennas and other rooftop equipment, and that monopole structures or antennas on buildings do not include guy wires. The documentation shall be reviewed and approved by a wildlife biologist before issuance of the site development permit for the project component (e.g., building) that poses a collision risk for birds. Documentation shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee.

**Finding:** Implementing Mitigation Measure BI-4, Avian Collision Avoidance Measures, would reduce this impact to a less-than-significant level. Accordingly, with adoption of these mitigation measures, changes or alterations have been required in, or incorporated into the project which avoid or substantially lessen the significant environmental effect as



identified in the FEIR, and this impact would be reduced to a less-than-significant level.

**Facts in Support of Finding:** As discussed in Section 3.2 (page 3.2-81) of the Draft EIR, as amended, implementation of Mitigation Measure BI-4, along with compliance with bird-safe policies, would ensure that building occupants would be educated concerning reduction of night lighting impacts on birds, and minimizing the impacts of antennas, monopole structures, and rooftop elements that could pose bird collision hazards. For the above reason, the impact on native and resident special movement would be reduced to a less-than-significant level with mitigation.

**Impact:** **Impact BI-6:** The proposed project would not conflict with the provisions of an adopted habitat conservation plan, natural community conservation plan, or other approved local, regional, or state habitat conservation plan.

**Mitigation:** **Mitigation Measure BI-1a: General Avoidance and Protection Measures** (refer to Impact BI-1)

**Mitigation Measure BI-1b: In-Water Construction Schedule** (refer to Impact BI-1)

**Mitigation Measure BI-1c: Native Fish Capture and Relocation** (refer to Impact BI-1)

**Mitigation Measure BI-2a: Avoidance of Impacts on Riparian Habitat** (refer to Impact BI-2)

**Finding:** Implementing Mitigation Measures BI-1a, General Avoidance and Protection Measures; BI-1b, In-Water Construction Schedule; BI-1c, Native Fish Capture and Relocation; and BI-2a, Avoidance of Impacts on Riparian Habitat, would reduce this impact to a less-than-significant level. Accordingly, with adoption of these mitigation measures, changes or alterations have been required in, or incorporated into the project which avoid or substantially lessen the significant environmental effect as identified in the FEIR, and this impact would be reduced to a less-than-significant level.

**Facts in Support of Finding:** As discussed in Section 3.2 (page 3.2-81) of the Draft EIR, as amended, implementation of Mitigation Measure BI-1a through 1c and BI-2a would ensure that appropriate preventative and protective measures, avoidance, and relocation (if necessary) would be undertaken in connection with project construction activities and ongoing project operations, thereby reducing potential adverse effects on the Los Gatos Creek riparian corridor. For the above reason, the impact relative to conflict with the Santa Clara

Valley Habitat Plan would be reduced to a less-than-significant level with mitigation.

**Impact:** **Impact C-BI-1:** The proposed project, in conjunction with other past, current, or foreseeable development in the project vicinity, could result in cumulative impacts on biological resources.

**Mitigation:** **Mitigation Measure BI-1a: General Avoidance and Protection Measures** (refer to Impact BI-1)

**Mitigation Measure BI-1b: In-Water Construction Schedule** (refer to Impact BI-1)

**Mitigation Measure BI-1c: Native Fish Capture and Relocation** (refer to Impact BI-1)

**Mitigation Measure BI-1d: Western Pond Turtle Protection Measures** (refer to Impact BI-1)

**Mitigation Measure BI-1e: Avoidance of Impacts on Nesting Birds** (refer to Impact BI-1)

**Mitigation Measure BI-1f: Roosting Bat Surveys** (refer to Impact BI-1)

**Mitigation Measure BI-2a: Avoidance of Impacts on Riparian Habitat** (refer to Impact BI-2)

**Mitigation Measure BI-2b: Frac-Out Contingency Plan** (refer to Impact BI-2)

**Mitigation Measure BI-2c: Monitor Effects of Shading and Heat Island Effect on Riparian Vegetation and Stream Temperature** (refer to Impact BI-2)

**Mitigation Measure BI-2d: Avoidance and Protection of Creeping Wild Rye Habitat** (refer to Impact BI-2)

**Mitigation Measure BI-3: Avoidance of Impacts on Wetlands and Waters** (refer to Impact BI-3)

**Mitigation Measure BI-4: Avian Collision Avoidance Measures** (refer to Impact BI-4)

**Mitigation Measure HY-3b: Plan for Ongoing Creek Maintenance** (refer to Section 3.8, *Hydrology and Water Quality*)

**Mitigation Measure NO-1a: Operational Noise Performance Standard** (refer to Section 3.10, *Noise and Vibration*)

**Finding:** Implementing Mitigation Measures BI-1a, General Avoidance and Protection Measures; BI-1b, In-Water Construction Schedule; BI-1c, Native

Fish Capture and Relocation; BI-1d, Western Pond Turtle Protection Measures; BI-1e, Avoidance of Impacts on Nesting Birds; BI-1f, Roosting Bat Surveys; BI-2a, Avoidance of Impacts on Riparian Habitat; BI-2b, Frac-out Contingency Plan; BI-2c, Monitor Effects of Shading and Heat Island Effect on Riparian Vegetation and Stream Temperature; BI-2d, Avoidance and Protection of Creeping Wild Rye Habitat; BI-3, Avoidance of Impacts on Wetlands and Waters; BI-4, Avian Conflict Avoidance Measures; HY-3b, Plan for Ongoing Creek Maintenance; and NO-1a, Operational Noise Performance Standard, would reduce the project's contribution to cumulative impacts, resulting in a less-than-significant impact. Accordingly, with adoption of these mitigation measures, changes or alterations have been required in, or incorporated into the project which avoid or substantially lessen the significant environmental effect as identified in the FEIR, and this impact would be reduced to a less-than-significant level.

**Facts in Support of Finding:** As discussed in Section 3.2 (page 3.2-92) of the Draft EIR, as amended, implementation of Mitigation Measures BI-1a through BI-1f, BI-2a through BI-2d, BI-3, BI-4, HY-3b, and NO-1a would ensure that appropriate preventative and protective measures, surveys, avoidance, relocation (if necessary), monitoring, education, maintenance, and noise control would be undertaken in connection with project construction activities and ongoing project operations, thereby ensuring that the project would not make a considerable contribution to cumulative impacts on essential fish habitat, riparian habitat, creeping wild rye sensitive natural community, wetland, or native and resident species movement, or conflict with the provisions of an adopted habitat conservation plan, natural community conservation plan, or other approved local, regional, or state habitat conservation plan, as described above under Impacts BI-1, BI-2, BI-3, BI-4, BI-5, and BI-6. For the above reason, the project's cumulative impact on biological resources would be reduced to a less-than-significant level with mitigation.

### **Cultural Resources and Tribal Cultural Resources**

**Impact:** **Impact CU-2:** The proposed project would relocate, construct an addition to, and adaptively reuse the historic portions of 40 South Montgomery Street (Kearney Pattern Works and Foundry). This could result in a substantial adverse change in the significance of a historical resource as defined in CEQA Guidelines Section 15064.5

**Mitigation:** **Mitigation Measure CU-2a: Relocation On-site**

Before the issuance of any building, grading, or demolition permit that would allow disturbance of the historic resource at 40 South Montgomery Street, the project applicant shall prepare a Relocation Implementation Plan that

includes a detailed description of the proposed relocation methodology. At a minimum, this plan shall include detailed descriptions and drawings that indicate:

- The means and methods of securing and bracing the building through all stages of relocation;
- The proposed locations of cuts to facilitate relocation, with sections that are as large as feasible to limit damage to the historic fabric;
- Proposed siting and foundation details; and
- The approximate timetable for the completion of work, including major milestones.

All work shall be undertaken in consultation with an architect or professional who meets the *Secretary of the Interior's Historic Preservation Professional Qualifications Standards*. The Relocation Implementation Plan shall be subject to review and approval by the Director of Planning, Building and Code Enforcement or the Director's designee.

**Mitigation Measure CU-2b: Compliance with the Secretary of the Interior's Standards**

Before the issuance of any building, grading, or demolition permit to move or modify or expand the building at 40 South Montgomery Street, the project applicant shall submit detailed designs prepared by a qualified historic preservation architect demonstrating that all proposed relocation methodologies, including satisfaction of the provisions of Mitigation Measure CU-2a, Relocation On-site, repairs, modifications, and additions, are consistent with the Secretary of the Interior's Standards for Rehabilitation.

The submitted designs shall be subject to review and approval by the Director of Planning, Building and Code Enforcement or the Director's designee.

**Finding:** Implementing Mitigation Measure CU-2a, Relocation On-site; and Mitigation Measure CU-2b, Compliance with the Secretary of the Interior's Standards, would reduce this impact to a less-than-significant level. Accordingly, with adoption of these mitigation measures, changes or alterations have been required in, or incorporated into the project which avoid or substantially lessen the significant environmental effect as identified in the FEIR, and this impact would be reduced to a less-than-significant level.

**Facts in Support of Finding:** As discussed in Section 3.3 (page 3.3-73) of the Draft EIR, as amended, Mitigation Measures CU-2a and CU-2b (relocation on-site and

compliance with the Secretary of the Interior's Standards) would ensure that appropriate steps are taken to protect the historic Kearney Pattern Works and Foundry (40 South Montgomery Street) during relocation, preserve its character-defining features, and rehabilitate and reuse it in conformance with the Secretary of the Interior's Standards. For the above reasons, the impact on the Kearney Pattern Works and Foundry would be reduced to a less-than-significant level with mitigation.

**Impact:** **Impact CU-4:** The proposed project could result in significant impacts on historic resources resulting from construction-related vibrations.

**Mitigation:** **Mitigation Measure CU-4: Construction Vibration Operation Plan for Historic Structures**

As presented in General Plan Policy EC-3.2, building damage for sensitive historic structures is generally experienced when vibration levels exceed 0.08 in/sec PPV. Section 3.10, Table 3.10-13, *Vibration Levels for Construction Activity*, lists a number of construction activities with their estimated PPVs at various distances. At distances up to 170 feet, vibration levels can approach the 0.08 PPV recommended threshold. Therefore, before the issuance of any demolition, grading, or building permit (whichever comes first) for work within 170 feet of a historic resource, the project applicant shall submit a Construction Vibration Operation Plan prepared by an acoustical and/or structural engineer or other appropriate qualified professional to the Director of Planning, Building and Code Enforcement, or the Director's designee, for review and approval.

The Construction Vibration Operation Plan shall establish pre-construction baseline conditions and threshold levels of vibration that could damage the historic structures located within 170 feet of construction, regardless of whether the historic structures are located on the project site or adjacent to it. The plan shall also include measures to limit operation of vibration-generating construction equipment near sensitive structures to the greatest extent feasible.

In addition, the Construction Vibration Operation Plan shall address the feasibility and potential implementation of the following measures during construction:

- Prohibit impact, sonic, or vibratory pile driving methods where feasible. Drilled piles cause lower vibration levels where geological conditions permit their use.
- Limit other vibration-inducing equipment to the extent feasible.
- Submit a list of all heavy construction equipment to be used for this project known to produce high vibration levels (e.g., tracked vehicles,

vibratory compaction, jackhammers, hoe rams) to the Director of the City of San José Department of Planning, Building and Code Enforcement or the Director's designee. This list 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.

- Where vibration-inducing equipment is deemed necessary for construction work within 170 feet of a historic resource, include details outlining implementation of continued vibration monitoring.

All construction contracts and approved plans shall include notes with reviewer-identified limitations and diagrams to avoid impacts on historic resources.

**Mitigation Measure NO-2a: Master Construction Vibration Avoidance and Reduction Plan** (refer to Section 3.10, *Noise and Vibration*)

**Finding:** Implementing Mitigation Measure CU-4, Construction Vibration Operation Plan for Historic Structures; and Mitigation Measure NO-2a, Master Construction Vibration Avoidance and Reduction Plan, would reduce this impact to a less-than-significant level. Accordingly, with adoption of these mitigation measures, changes or alterations have been required in, or incorporated into the project which avoid or substantially lessen the significant environmental effect as identified in the FEIR, and this impact would be reduced to a less-than-significant level.

**Facts in Support of Finding:** As discussed in Section 3.3 (page 3.3-76) of the Draft EIR, as amended, implementation of Mitigation Measures NO-2a and CU-4, along with Standard Condition of Approval CR-3 (Vibration Impacts to Adjacent and Nearby Historic Buildings) would ensure that vibration would be reduced or avoided near historic architectural resources and that required construction vibration monitoring is undertaken. For the above reason, the impact of construction vibration on historic architectural resources would be reduced to a less-than-significant level with mitigation.

**Impact:** **Impact CU-7:** The proposed project could result in significant impacts at 105 South Montgomery Street (Stephen's Meat Products sign), a historic resource, as a result of its removal, storage, and relocation within the project site.

**Mitigation: Mitigation Measure CU-7: Sign Relocation**

Before the issuance of the first permit for site preparation or construction on the site within 100 feet of the Stephen's Meat Product sign, the project applicant, in consultation with a qualified historic preservation professional, shall remove the sign from the site. If the sign is not immediately relocated



to a receiver site, it shall be placed in secure storage. Storage shall be indoors, or otherwise protected from weather, impacts, and vandalism. The location of the storage facility shall be communicated to the Director of Planning, Building and Code Enforcement or the Director's designee.

During design development, a receiver site shall be identified on the project site with the following characteristics:

- The site shall be similar to the existing location along a public right-of-way.
- The sign shall be placed upon a single support pole of similar dimension.
- Views of the sign shall be permitted from a minimum of 150 feet along both directions of the public right-of-way.
- The sign shall be repaired, as needed, to return it to its current functional state.
- Interpretive signage indicating the sign's age, association, and original location shall be located at the base of the structural support.

The selected site shall be subject to approval by the Director of Planning, Building and Code Enforcement, or the Director's designee. Relocation of the sign shall be completed within no more than five years from the date of its removal, with the potential for an extension not to exceed an additional five years upon approval by the Director of Planning, Building and Code Enforcement or the Director's designee.

**Finding:** Implementing Mitigation Measure CU-7, Sign Relocation, would reduce this impact to a less-than-significant level. Accordingly, with adoption of these mitigation measures, changes or alterations have been required in, or incorporated into the project which avoid or substantially lessen the significant environmental effect as identified in the FEIR, and this impact would be reduced to a less-than-significant level.

**Facts in Support of Finding:** As discussed in Section 3.3 (page 3.3-93) of the Draft EIR, as amended, implementation of Mitigation Measure CU-7 would ensure that the Stephen's Meat Products sign would maintain its historical and artistic integrity, and ensure its relocation to an appropriate nearby location visible to the public. For the above reason, the impact on the Stephen's Meat Products sign would be reduced to a less-than-significant level with mitigation.

**Impact:** **Impact CU-8:** The proposed project could cause a substantial adverse change in the significance of an archaeological resource as defined in CEQA Guidelines Section 15064.5.

**Mitigation:** **Mitigation Measure CU-8a: Cultural Resources Awareness Training**

Before any ground-disturbing and/or construction activities, a Secretary of the Interior–qualified archaeologist shall conduct a training program for all construction and field personnel involved in site disturbance. On-site personnel shall attend a mandatory pre-project training that will outline the general archaeological sensitivity of the area and the procedures to follow in the event an archaeological resource and/or human remains are inadvertently discovered. A training program shall be established for new project personnel before project work.

**Mitigation Measure CU-8b: Archaeological Testing Plan**

Before the issuance of any demolition or grading permits (whichever comes first) for each of the three construction phases, the project applicant shall be required to complete subsurface testing to determine the extent of possible cultural resources on-site. Subsurface testing shall be completed by a qualified archaeologist based on an approved Archaeological Testing Plan prepared and submitted to the Director of the City of San José Department of Planning, Building and Code Enforcement, or the Director's designee, for review and approval. The Testing Plan shall include, at a minimum:

- Identification of the property types of the expected archaeological resource(s) that could be affected by construction;
- The testing method to be used (hand excavation, coring, and/or mechanical trenching);
- The locations recommended for testing; and
- A written report of the findings.

The purpose of the archaeological testing program shall be to determine the presence or absence of archaeological resources to the extent possible and to evaluate whether any archaeological resource encountered on the site constitutes an historical resource under CEQA.

**Mitigation Measure CU-8c: Archaeological Evaluation**

Prior to the issuance of any demolition or grading permits, the project applicant shall ensure that all prehistoric and historic-era materials and features identified during testing are evaluated by a qualified archaeologist based on California Register of Historical Resources criteria and consistent with the approved Archaeological Testing Plan. Based on the findings of the

subsurface testing, a qualified archaeologist shall prepare an Archaeological Resources Treatment Plan addressing archaeological resources, in accordance with Mitigation Measure CU8d, Archaeological Resources Treatment Plan.

#### **Mitigation Measure CU-8d: Archaeological Resources Treatment Plan**

The project applicant shall submit the Archaeological Resources Treatment Plan to the Director of the City of San José Department of Planning, Building and Code Enforcement, or the Director's designee, for review and approval before the issuance of any demolition and grading permits. The treatment plan shall contain the following elements, at a minimum:

- Identification of the scope of work and range of subsurface effects (with a location map and development plan), including requirements for preliminary field investigations;
- Development of research questions and goals to be addressed by the investigation (what is significant vs. what is redundant information);
- Detailed field strategy used to record, recover, or avoid the finds and address research goals;
- Analytical methods;
- Report structure and outline of document contents;
- Disposition of the artifacts; and
- Appendices: Site records, correspondence, and consultation with Native Americans and other interested parties.

The project applicant shall implement the approved Archaeological Treatment Plan before the issuance of any demolition or grading permits. After completion of the fieldwork, all artifacts shall be cataloged in accordance with 36 CFR Part 79, and the State of California's *Guidelines for the Curation of Archeological Collections*. The qualified archaeologist shall complete and submit the appropriate forms documenting the findings with the Northwest Information Center of the California Historical Resources Information System at Sonoma State University.

**Finding:** Implementing Mitigation Measures CU-8a, Cultural Resources Awareness Training; CU-8b, Archaeological Testing Plan; CU-8c, Archaeological Evaluation; and CU-8d, Archaeological Resources Treatment Plan, would reduce this impact to a less-than-significant level. Accordingly, with adoption of these mitigation measures, changes or alterations have been required in, or incorporated into the project which avoid or substantially

lessen the significant environmental effect as identified in the FEIR, and this impact would be reduced to a less-than-significant level.

**Facts in Support of Finding:** As discussed in Section 3.3 (page 3.3-94) of the Draft EIR, as amended, implementation of Mitigation Measures CU-8a through CU-8d would ensure that project ground-disturbing and construction activities would avoid impacts on unrecorded subsurface prehistoric and historic-era archaeological resources. For the above reason, the impact on archaeological resources would be reduced to a less-than-significant level with mitigation.

**Impact:** **Impact CU-9:** The proposed project would disturb human remains, including those interred outside of formal cemeteries.

**Mitigation:** **Mitigation Measure CU-8a: Cultural Resources Awareness Training** (refer to Impact CU 8)

**Finding:** Implementing Mitigation Measure CU-8a, Cultural Resources Awareness Training, would reduce this impact to a less-than-significant level. Accordingly, with adoption of these mitigation measures, changes or alterations have been required in, or incorporated into the project which avoid or substantially lessen the significant environmental effect as identified in the FEIR, and this impact would be reduced to a less-than-significant level.

**Facts in Support of Finding:** As discussed in Section 3.3 (page 3.3-96) of the Draft EIR, as amended, implementation of Mitigation Measure CU-8a would ensure that construction personnel would receive cultural resources awareness training and that, in the event of an inadvertent discovery of human remains, the legal procedures are followed, including contacting the county coroner. For the above reasons, the impact relative to disturbance of human remains would be reduced to a less-than-significant level with mitigation.

**Impact:** **Impact CU-10:** The proposed project could cause a substantial adverse change in the significance of a tribal cultural resource as defined in Public Resources Code Section 21074.

**Mitigation:** **Mitigation Measure CU-8a: Cultural Resources Awareness Training** (refer to Impact CU-8)

**Mitigation Measure CU-8b: Archaeological Testing Plan** (refer to Impact CU-8)

**Mitigation Measure CU-8c: Archaeological Evaluation** (refer to Impact CU-8)

**Mitigation Measure CU-8d: Archaeological Treatment Plan** (refer to Impact CU-8)

**Finding:** Implementing Mitigation Measures CU-8a, Cultural Resources Awareness Training; CU-8b, Archaeological Testing Plan; CU-8c, Archaeological Evaluation; and CU-8d, Archaeological Resources Treatment Plan, would reduce this impact to a less-than-significant level. Accordingly, with adoption of these mitigation measures, changes or alterations have been required in, or incorporated into the project which avoid or substantially lessen the significant environmental effect as identified in the FEIR, and this impact would be reduced to a less-than-significant level.

**Facts in Support of Finding:** As discussed in Section 3.3 (page 3.3-97) of the Draft EIR, as amended, implementation of Mitigation Measures CU-8a through CU-8d would ensure that project ground-disturbing and construction activities would avoid impacts on tribal cultural resources. For the above reason, the impact on tribal cultural resources would be reduced to a less-than-significant level with mitigation.

**Impact:** **Impact C-CU4:** The proposed project would combine with other projects to result in significant cumulative effects on archaeological resources as defined in CEQA Guidelines Section 15064.5; human remains, including those interred outside of formal cemeteries; and tribal cultural resources as defined in Public Resources Code Section 21074.

**Mitigation:** **Mitigation Measure CU-8a: Cultural Resources Awareness Training** (refer to Impact CU-8)

**Mitigation Measure CU-8b: Archaeological Testing Plan** (refer to Impact CU-8)

**Mitigation Measure CU-8c: Archaeological Evaluation** (refer to Impact CU-8)

**Mitigation Measure CU-8d: Archaeological Resources Treatment Plan** (refer to Impact CU-8)

**Finding:** Implementing Mitigation Measures CU-8a, Cultural Resources Awareness Training; CU-8b, Archaeological Testing Plan; CU-8c, Archaeological Evaluation; and CU-8d, Archaeological Resources Treatment Plan, would reduce this impact to a less-than-significant level. Accordingly, with adoption of these mitigation measures, changes or alterations have been required in, or incorporated into the project which avoid or substantially lessen the significant environmental effect as identified in the FEIR, and this impact would be reduced to a less-than-significant level.

**Facts in Support of Finding:** As discussed in Section 3.3 (page 3.3-104) of the Draft EIR, as amended, implementation of Mitigation Measures CU-8a through CU-8d would ensure that project ground-disturbing and construction activities would not make a considerable contribution to cumulative impacts on archaeological resources, undiscovered human remains, or tribal cultural resources by avoiding or minimizing any project-specific adverse impacts, as described above under Impacts CU-8, CU-9, and CU-10. For the above reason, cumulative impacts on archaeological resources, undiscovered human remains, and tribal cultural resources would be reduced to a less-than-significant level with mitigation.

### **Geology/Soils/Paleontological Resources**

**Impact:** **Impact GE-1:** The proposed project could directly or indirectly cause potential substantial adverse effects, including the risk of loss, injury, or death involving strong seismic ground shaking; or seismic-related ground failure, including liquefaction.

**Mitigation:** **Mitigation Measure GE-1: Seismic Damage and Seismic-Related Ground Failure, including Liquefaction**

Prior to the issuance of any grading or building permit for new building construction, the project applicant shall implement the following measures:

- To avoid or minimize potential damage from seismic shaking, use standard engineering and seismic safety design techniques for project construction. Complete building design and construction at the site in conformance with the recommendations of an approved geotechnical investigation. The geotechnical investigation report shall be reviewed and approved by the Director of the City of San José Department of Public Works as part of the building permit review and entitlement process. The buildings shall meet the requirements of applicable Building and Fire Codes as adopted or updated by the City. The project shall be designed to withstand soil hazards identified on the site, and designed to reduce the risk to life or property on-site and off-site to the extent feasible and in compliance with the Building Code.
- Construct the project in accordance with standard engineering practices in the California Building Code, as adopted by the City of San José. Obtain a grading permit from the Department of Public Works prior to the issuance of a Public Works Clearance. These standard practices will ensure that future buildings on the site are designed to properly account for soils-related hazards.

**Finding:** Implementing Mitigation Measure GE-1, Seismic Damage and Seismic-Related Ground Failure, including Liquefaction, would reduce this impact to



a less-than-significant level. Accordingly, with adoption of these mitigation measures, changes or alterations have been required in, or incorporated into the project which avoid or substantially lessen the significant environmental effect as identified in the FEIR, and this impact would be reduced to a less-than-significant level.

**Facts in Support of Finding:** As discussed in Section 3.5 (page 3.5-22) of the Draft EIR, as amended, implementation of Mitigation Measure GE-1 would reduce impacts from seismic ground shaking and seismic-related ground failure by implementing standard engineering and seismic safety design techniques and requiring the completion of building design and construction in accordance with the recommendations of an approved geotechnical investigation. The buildings would also need to meet the requirements of applicable Building and Fire Code sections as adopted or updated by the City. For the above reason, the impact of the proposed project related to strong seismic ground shaking would be reduced to a less-than-significant level with mitigation.

**Impact:** **Impact GE3:** The proposed project would not be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction, or collapse.

**Mitigation:** **Mitigation Measure GE-3: Geotechnical Report**

Prior to or coincident with the submittal of grading and drainage plans for each proposed building or other improvements, the project applicant for the improvements in question shall submit to the Director of Public Works or Director's designee for review and approval, in accordance with the California Building Code, a geotechnical report for the site under consideration. The project applicant for the improvements in question shall comply with the recommendations of the geotechnical report, as approved by the Director of Public Works or Director's designee.

**Finding:** Implementing Mitigation Measure GE-3, Geotechnical Report, would reduce this impact to a less-than-significant level. Accordingly, with adoption of these mitigation measures, changes or alterations have been required in, or incorporated into the project which avoid or substantially lessen the significant environmental effect as identified in the FEIR, and this impact would be reduced to a less-than-significant level.

**Facts in Support of Finding:** As discussed in Section 3.5 (page 3.5-24) of the Draft EIR, as amended, implementation of Mitigation Measure GE-3 would require preparation of a site-specific geotechnical report that would include recommendations and design requirements to address any unstable soils

identified on the project site in accordance with the California Building Code. For the above reason, the impact of the proposed project related to unstable soils and their associated hazards would be reduced to a less-than-significant level with mitigation.

**Impact:** **Impact GE5:** The proposed project could directly or indirectly destroy a unique paleontological resource or site or unique geologic feature.

**Mitigation:** **Mitigation Measure GE-5a: Project Paleontologist**

The project applicant for specific construction work proposed shall retain a qualified professional paleontologist (qualified paleontologist) meeting the Society of Vertebrate Paleontology standards as set forth in the “Definitions” section of Standard Procedures for the Assessment and Mitigation of Adverse Impacts to Paleontological Resources (2010) prior to the approval of demolition or grading permits. The qualified paleontologist shall attend the project kickoff meeting and project progress meetings on a regular basis, shall report to the site in the event potential paleontological resources are encountered, and shall implement the duties outlined in Mitigation Measures GE-5b through GE-5d. Documentation of a paleontologist attending the project kickoff meeting and project progress meetings shall be submitted to the Director of the City of San José Department of Planning, Building, and Code Enforcement, or the Director’s designee.

**Mitigation Measure GE-5b: Worker Training**

Prior to the start of any ground-disturbing activity (including vegetation removal, grading, etc.), the qualified paleontologist shall prepare paleontological resources sensitivity training materials for use during the project-wide Worker Environmental Awareness Training (or equivalent). The paleontological resources sensitivity training shall be conducted by a qualified environmental trainer (often the Lead Environmental Inspector or equivalent position, like the qualified paleontologist). In the event construction crews are phased, additional trainings shall be conducted for new construction personnel. The training session shall focus on the recognition of the types of paleontological resources that could be encountered within the project site and the procedures to be followed if they are found, as outlined in the approved Paleontological Resources Monitoring and Mitigation Plan in Mitigation Measure GE-5c. The project applicant for specific construction work proposed and/or its contractor shall retain documentation demonstrating that all construction personnel attended the training prior to the start of work on the site, and shall provide the documentation to the Director of the City of San José Department of Planning, Building, and Code Enforcement, or the Director’s designee.

### **Mitigation Measure GE-5c: Paleontological Monitoring**

The qualified paleontologist shall prepare, and the project applicant for specific construction work proposed and/or its contractors shall implement, a Paleontological Resources Monitoring and Mitigation Plan (PRMMP). The project applicant shall submit the plan to the Director of the City of San José Department of Planning, Building and Code Enforcement, or the Director's designee, for review and approval at least 30 days prior to the start of construction. This plan shall address the specifics of monitoring and mitigation and comply with the recommendations of the Society of Vertebrate Paleontology (SVP) (2010), as follows.

1. The qualified paleontologist shall identify, and the project applicant or its contractor(s) shall retain, qualified paleontological resource monitors (qualified monitors) meeting the SVP standards (2010).
2. The qualified paleontologist and/or the qualified monitors under the direction of the qualified paleontologist shall conduct full-time paleontological resources monitoring for all ground-disturbing activities in previously undisturbed sediments in the project site that have high paleontological sensitivity. This includes any excavation that exceeds 2 feet in depth in previously undisturbed areas. The PRMMP shall clearly map these portions of the proposed project based on final design provided by the project applicant and/or its contractor(s).
3. If pieces of heavy equipment (gross vehicle weight of 10,000 pounds or more) are in use simultaneously but at locations greater than 500 feet distant from one another, each location shall be individually monitored.
4. Monitors shall have the authority to temporarily halt or divert work away from exposed fossils in order to evaluate and recover the fossil specimens, establishing a 50-foot buffer.
5. If construction or other project personnel discover any potential fossils during construction, regardless of the depth of work or location and regardless of whether the site is being monitored, work at the discovery location shall cease in a 50-foot radius of the discovery until the qualified paleontologist has assessed the discovery and made recommendations as to the appropriate treatment.
6. The qualified paleontologist shall determine the significance of any fossils discovered, and shall determine the appropriate treatment for significant fossils in accordance with the SVP standards. The qualified paleontologist shall inform the project applicant of these determinations as soon as practicable. See Mitigation Measure GE-5d regarding significant fossil treatment.
7. Monitors shall prepare daily logs detailing the types of activities and soils observed, and any discoveries. The qualified paleontologist shall

prepare a final monitoring and mitigation report to document the results of the monitoring effort and any curation of fossils. The project applicant shall provide the daily logs to the Director of the City of San José Department of Planning, Building, and Code Enforcement, or the Director's designee, upon request, and shall provide the final report to the Director of the City of San José Department of Planning, Building, and Code Enforcement, or the Director's designee, upon completion.

#### **Mitigation Measure GE-5d: Significant Fossil Treatment**

If any find is deemed significant, as defined in the Society of Vertebrate Paleontology (SVP) (2010) standards and following the process outlined in Mitigation Measure GE-5c, the qualified paleontologist shall salvage and prepare the fossil for permanent curation with a certified repository with retrievable storage following the SVP standards, and plans for permanent curation shall be submitted to the Director of the City of San José Department of Planning, Building, and Code Enforcement, or the Director's designee.

**Finding:** Implementing Mitigation Measures GE-5a, Project Paleontologist; GE-5b, Worker Training; GE-5c, Paleontological Monitoring; and GE-5d, Significant Fossil Treatment, would reduce this impact to a less-than-significant level. Accordingly, with adoption of these mitigation measures, changes or alterations have been required in, or incorporated into the project which avoid or substantially lessen the significant environmental effect as identified in the FEIR, and this impact would be reduced to a less-than-significant level.

**Facts in Support of Finding:** As discussed in Section 3.5 (page 3.5-26) of the Draft EIR, as amended, implementation of Mitigation Measures GE-5a through 5d, along with Standard Condition of Approval GE-1 (Paleontological Resources) would reduce the potential for significant impacts on paleontological resources by providing paleontological resources sensitivity training for construction workers; implementing a monitoring and mitigation plan to ensure preservation of any paleontological resources encountered during construction; and salvaging and preparing significant fossil finds for curation. For the above reasons, the project's impact on paleontological resources would be reduced to a less-than-significant level with mitigation.

**Impact:** **Impact C-GE-1:** The proposed project, in combination with past, present, and reasonably foreseeable future projects, could result in significant cumulative impacts related to geology, soils, or paleontology.

**Mitigation:** **Mitigation Measure GE-5a: Project Paleontologist** (refer to Impact GE-5)

**Mitigation Measure GE-5b: Worker Training** (refer to Impact GE-5)

**Mitigation Measure GE-5c: Paleontological Monitoring** (refer to Impact GE-5)

**Mitigation Measure GE-5d: Significant Fossil Treatment** (refer to Impact GE-5)

**Finding:** Implementing Mitigation Measures GE-5a, Project Paleontologist; GE-5b, Worker Training; GE-5c, Paleontological Monitoring; and GE-5d, Significant Fossil Treatment, would reduce the project's contribution to cumulative impacts, resulting in a less-than-significant impact. Accordingly, with adoption of these mitigation measures, changes or alterations have been required in, or incorporated into the project which avoid or substantially lessen the significant environmental effect as identified in the FEIR, and this impact would be reduced to a less-than-significant level.

**Facts in Support of Finding:** As discussed in Section 3.5 (page 3.5-29) of the Draft EIR, as amended, implementation of Mitigation Measures GE-5a through 5d, along with Standard Condition of Approval GE-1 (Paleontological Resources) would ensure that project ground-disturbing and construction activities would not make a considerable contribution to cumulative impacts on paleontological resources by avoiding any project-specific adverse impacts, as described above under Impact GE-5. For the above reason, cumulative impacts on paleontological resources would be reduced to a less-than-significant level with mitigation.

### **Greenhouse Gas Emissions**

**Impact:** **Impact GR-2:** The proposed project would not conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing the emissions of greenhouse gases.

**Mitigation:** **Mitigation Measure AQ-2a: Construction Emissions Minimization Plan** (refer to Impact AQ-2)

**Mitigation Measure AQ-2b: Construction Equipment Maintenance and Tuning** (refer to Impact AQ-2)

**Mitigation Measure AQ-2c: Heavy-Duty Truck Model Year Requirement** (refer to Impact AQ-2)

**Mitigation Measure AQ-2e: Best Available Emissions Controls for Stationary Emergency Generators** (refer to Impact AQ-2)

**Mitigation Measure AQ-2f: Diesel Truck Emissions Reduction** (refer to Impact AQ-2)

**Mitigation Measure AQ-2g: Electric Vehicle Charging** (refer to Impact AQ-2)

**Mitigation Measure AQ-2h: Enhanced Transportation Demand Management Program** (refer to Impact AQ-2)

**Mitigation Measure GR-2: Compliance with AB 900**

Prior to the City's first design Conformance Review for the first new construction building or buildings, the project applicant shall submit a plan documenting the project's proposed GHG emissions reductions and schedule for compliance with AB 900 to the Director of Planning, Building and Code Enforcement or the Director's designee. The plan shall:

- Quantify project construction for all phases and operational GHG emissions for the life of the project (defined as 30 years of operation);
- Specify the project features and project-specific emission reduction strategies that shall be implemented during construction and operation of the project; and
- Contain the schedule of GHG offset purchases required as part of the AB 900 certification process to comply with the "no net additional" requirement of Public Resources Code Section 21183(c).

With funding from the project applicant, the City shall retain the services of a third-party expert who meets or exceeds the following level of experience and qualifications to assist with the City's annual review of the GHG plan: an expert GHG emissions verifier accredited by the ANSI National Accreditation Board (ANAB) Accreditation Program for Greenhouse Gas Validation/Verification Bodies or a Greenhouse Gas Emissions Lead Verifier accredited by CARB.

**Emission Reductions:** At a minimum, project features and project-specific emission reduction strategies shall include the following measures. These measures reflect commitments by the project applicant and specific mitigation measures incorporated to reduce air pollutant emissions as described in Section 3.1, *Air Quality*:

1. Achieve LEED ND Gold Certification and LEED Gold for all office buildings.
2. Implement a transportation demand management program to achieve a minimum non-single occupancy vehicle rate of 50 percent for office uses, assuming current transit service levels. The non-single occupancy vehicle rate shall increase to 60 percent for office uses following implementation of the Caltrain Business Plan and to 65 percent for office uses following the start of BART service.



3. Install EV charging equipment on 15 percent or more of all parking spaces at the project site.
4. Design and operate buildings with all-electric utilities (no on-site fossil fuels consumed to provide cooling, heating, cooking, water heating, etc.), with the exception of a total of 20,000 square feet of restaurant kitchens that may be equipped with natural gas for food preparation purposes.
5. Install and operate on-site a solar photovoltaic system generating at least 7.8 MW.
6. Use recycled water for all non-potable water demand.
7. Use electric off-road equipment for construction, including for all concrete/industrial saws, sweepers/scrubbers, aerial lifts, welders, air compressors, fixed cranes, forklifts, pumps, pressure washers, and 50 percent of all cement and mortar mixers. Power portable equipment by grid electricity instead of diesel generators.
8. Meet or exceed all applicable building code requirements and standards, including the CALGreen and San José Reach Codes, and meet or exceed ASHRAE 2019 energy efficiency standards.

**GHG Offset Credits:** The project applicant's plan shall describe the schedule for the purchase of GHG offset credits sufficient to offset the balance of the project's GHG emissions for the life of the project consistent with the CARB Determination dated December 19, 2019. As detailed in the CARB Determination, the project applicant's purchases of GHG offsets shall coincide with the phases defined in the AB 900 analysis:

AB 900 Phasing	Total GHG Emissions (MTCO <sub>2</sub> e)		
	Construction	Net Operational	Net Combined
Phase 1	54,663	494,359	549,022
Phase 2	55,431	523,451	578,882
Phase 3	47,153	438,704	485,857
<b>Total</b>	<b>157,247</b>	<b>1,456,514</b>	<b>1,613,761</b>

SOURCE: CARB Executive Order G-19-154, *Downtown Mixed Use Plan AB 900 Application and Supporting Documentation*, Attachment 2, p. 10, Table 2 (construction), and Attachment 1, pp. 11–12, Table 4.

As documented in the CARB Determination, the project applicant shall purchase GHG offset credits necessary to offset construction-generated emissions on a prorated basis before obtaining the first building permit in

each phase of construction, for a total of three offset payments over three construction phases. The project applicant shall purchase GHG offset credits necessary to offset the cumulative net increase in operational emissions over the life of the project on a pro-rated basis before the City issues the final Certificate of Occupancy for the first building in each phase of construction, for a total of three offset payments over three construction phases.

To enable the City to monitor and enforce this requirement, the project applicant's plan shall identify the amount of construction and square footage of development associated with the GHG emissions anticipated for each phase. Any building that would cause emissions to exceed the projected 30-year net additional construction or operational emissions associated with a particular phase shall be considered to be in the next phase. At this point, the project applicant would have to purchase the next installment of AB 900 credits for the associated phase before the final Certificate of Occupancy is issued for this building (see below for more detail).

To account for potential future changes in phasing and project buildout, the project applicant shall purchase carbon credits for each of the three construction phases and three operational phases as follows.

- **Construction—Phase 1:** Before obtaining the first building permit for construction, the project applicant shall purchase the first installment of GHG offset credits for construction as presented in the table above and in the CARB Determination.
- **Construction—Phase 2:** Before obtaining the first building permit in Phase 2 of construction (i.e., the building permit for the first building that would cause construction emissions to exceed 54,663 MTCO<sub>2e</sub>), the project applicant shall purchase GHG offset credits for construction as presented in the table above and in the CARB Determination.
- **Construction—Phase 3:** Before obtaining the first building permit in Phase 3 of construction (i.e., the building permit for the first building that would cause total construction emissions to exceed 110,094 MTCO<sub>2e</sub>, which is the total of Phase 1 and Phase 2, as defined by the CARB Determination), the project applicant shall purchase the third installment of GHG offset credits for construction as presented in the table above.
- **Operations—Phase 1:** Before the City issues the final Certificate of Occupancy for the first building in Phase 1, the project applicant shall purchase the first installment of GHG offset credits for operations as presented in the table above and in the CARB Determination.
- **Operations—Phase 2:** Before the City issues the final Certificate of Occupancy for the first building in Phase 2 (i.e., the building permit for

the first building that would cause projected 30-year net additional operational emissions to exceed 494,359 MTCO<sub>2</sub>e), the project applicant shall purchase the second installment of GHG offset credits for operations as presented in the table above and in the CARB Determination.

- **Operations—Phase 3:** Before the City issues the final Certificate of Occupancy for the first building in Phase 3 (i.e., the building permit for the first building that would cause total projected 30-year net additional operational emissions to exceed 1,017,810 MTCO<sub>2</sub>e, the total of Phase 1 and Phase 2 as defined by the CARB Determination), the project applicant shall purchase the third installment of GHG offset credits for operations as presented in the table above. The project applicant shall increase the GHG offset purchase if needed to offset additional GHG emissions from project-lifetime construction and operations beyond the total GHG offsets required at the time of CARB's Determination, as calculated in the plan.

As described in the CARB Determination, all GHG offset credits shall be purchased from the following CARB-accredited carbon registries: the American Climate Registry, Climate Action Reserve, and Verra (formerly Verified Carbon Standard). The GHG offset credits shall be verifiable by the City and enforceable in accordance with the registry's applicable standards, practices, or protocols. The GHG offsets must substantively satisfy all six of the statutory "environmental integrity" requirements applicable to the CARB Cap-and-Trade Program, generally as set forth in both subdivisions (d)(1) and (d)(2) of California Health and Safety Code §38562: real, additional, quantifiable, permanent, verifiable, and enforceable. To be eligible to be used to meet this Mitigation Measure, offset credits must be generated and verified in accordance with published protocols and other applicable standards which can demonstrate to the satisfaction of the City's verifier that all six of these environmental integrity requirements are substantively satisfied. All offset credits shall be verified by an independent verifier who meets stringent levels of professional qualification (i.e., ANAB Accreditation Program for Greenhouse Gas Validation/Verification Bodies or a Greenhouse Gas Emissions Lead Verifier accredited by CARB), or an expert with equivalent qualifications to the extent necessary to assist with the verification). Without limiting the generality of the foregoing, in the event that an approved registry becomes no longer accredited by CARB and the offset credits cannot be transferred to another accredited registry, the project applicant shall comply with the rules and procedures for retiring and/or replacing offset credits in the manner specified by the applicable protocol or other applicable standards including (to the extent required) by purchasing an equivalent number of credits to recoup the loss.

The project applicant shall utilize the purchase and retirement of GHG offset credits generated from projects within the United States of America. In the unlikely event that an approved registry becomes no longer approved by CARB and the offset credits cannot be transferred to another CARB-approved registry, the project applicant shall comply with the rules and procedures for retiring and/or replacing offset credits in the manner specified by the applicable Protocol, Standard or Methodology, including (to the extent required) by purchasing an equivalent number of credits to recoup the loss.

**Reporting and Enforcement:** On an annual basis, by March 1 of each year, the project applicant shall submit a letter to the Director of Planning, Building and Code Enforcement or the Director's designee confirming implementation of the emission reduction strategies listed in the AB 900 compliance plan. The letter shall also identify any changes or additions to the plan, including any recalculation of project emissions based on new information, incorporation of additional strategies, or changes in technology. If changes or additions to the plan are proposed, these shall be subject to review and approval by the Director of Planning, Building and Code Enforcement or the Director's designee, and the City's third-party expert as noted above, within 30 days.

In addition, before the City issues the final Certificate of Occupancy for the first building constructed in each phase, as the phases were defined at the time of CARB's certification and as laid out in the project applicant's plan, the project applicant shall provide copies of GHG offset contracts demonstrating required purchases to the Director of the City of San José Department of Planning, Building and Code Enforcement, or the Director's designee, and to CARB and the Governor's Office of Planning and Research. This will serve as documentation to fully enforce the provision that the project result in no net additional GHG emissions for the life of the obligation.

**Finding:** Implementing Mitigation Measures GR-2, Compliance with AB 900; AQ-2a, Construction Emissions Minimization Plan; AQ-2b, Construction Equipment Maintenance and Tuning; AQ-2c, Heavy-Duty Truck Model Year Requirement; AQ-2e, Best Available Emissions Controls for Stationary Emergency Generators; AQ-2f, Diesel Truck Emissions Reduction; AQ-2g, Electric Vehicle Charging; and AQ-2h, Enhanced Transportation Demand Management Program, would reduce this impact to a less-than-significant level. Accordingly, with adoption of these mitigation measures, changes or alterations have been required in, or incorporated into the project which avoid or substantially lessen the significant environmental effect as identified in the FEIR, and this impact would be reduced to a less-than-significant level.

**Facts in Support of Finding:** As discussed in Section 3.6 (page 3.6-69) of the Draft EIR, as amended, implementation of mitigation measures GR-2 and AQ-2a, AQ-2b, AQ-2c, AQ-2e, AQ-2f, AQ-2g, and AQ-2h would ensure that the project would achieve the “no net additional” emissions standard established in Assembly Bill 900, effectively resulting in zero net additional emissions. This standard is defined as the project’s construction emissions plus operational net new GHG emissions over 30 years. This is a clear, quantitative performance standard. Mitigation Measure GR-2 requires the project applicant to meet this standard through project features and project-specific emission reduction strategies, along with GHG offset credits purchased through a CARB-accredited carbon registry. For the above reason, the project’s emissions of greenhouse gases would not conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing the emissions of greenhouse gases, and the impact would be reduced to a less-than-significant level with mitigation.

### **Hazards and Hazardous Materials**

**Impact:** **Impact HA-2:** The proposed project would not emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school.

**Mitigation:** **Mitigation Measure HA-3b: Health and Safety Plan** (refer to Impact HA-3)

**Mitigation Measure HA-3c: Site Management Plan** (refer to Impact HA-3)

**Finding:** Implementing Mitigation Measure HA-3b, Health and Safety Plan, and Mitigation Measure HA-3c, Site Management Plan, would reduce this impact to a less-than-significant level. Accordingly, with adoption of these mitigation measures, changes or alterations have been required in, or incorporated into the project which avoid or substantially lessen the significant environmental effect as identified in the FEIR, and this impact would be reduced to a less-than-significant level.

**Facts in Support of Finding:** As discussed in Section 3.7 (page 3.7-81) of the Draft EIR, as amended, implementation of Mitigation Measures HA-3a and 3b, along with compliance existing regulations concerning hazardous materials, would ensure that any hazardous material or waste encountered during project construction activities is containerized, handled, and transported safely and in accordance with all applicable federal, state, and local regulations. Moreover, haul routes from the project site would not pass by area schools. For the above reasons, project impacts with respect to



handling of hazardous materials and waste in proximity to a school would be reduced to a less-than-significant level with mitigation.

**Impact:** **Impact HA-3:** The proposed project is located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would create a significant hazard to the public or the environment.

**Mitigation:** **Mitigation Measure HA-3a: Land Use Limitations**

Before construction activities on parcels with land use covenants, other regulatory land use restrictions, open remediation cases, or contamination identified as part of a Phase II investigation above regulatory environmental screening levels, the project applicant for the specific work proposed shall obtain regulatory oversight from the appropriate agency. The project applicant shall perform further environmental investigation or remediation as needed to ensure full protection of construction workers, the environment, and the public.

For properties with land use limitations, the limitations and restrictions may be reduced or removed entirely if the underlying contamination is removed or treated to below the regulatory screening levels for the proposed land use (residential, commercial, or industrial). The project applicant shall be required to prepare a remedial action plan describing the proposed cleanup actions, the target cleanup levels, and the proposed land use after cleanup. The remedial action plan shall be submitted to the regulatory agency enforcing the land use limitations for its review and approval. Upon regulatory agency approval, the project applicant shall implement the remedial action to clean up the site, followed by confirmation sampling and testing of soil, soil gas, and/or groundwater to verify that the cleanup achieved the target cleanup levels. The project applicant shall prepare a report documenting the cleanup activities, comparing the sample results to the target cleanup levels, and request that the land use limitations be modified or removed. The regulatory agency shall review the report and, if satisfied that the cleanup is sufficient, modify or remove the land use limitations. The report shall also be submitted to the Environmental Services Department's Municipal Environmental Compliance Officer.

For properties with land use covenants (LUCs) that have incomplete Phase II investigations or that need further investigation to inform changes or removals of LUCs, Phase II investigations shall be performed before the start of any construction activities. If the Phase II investigations show soil, soil gas, and/or groundwater concentrations that exceed regulatory screening levels, the project applicant shall obtain regulatory oversight from the appropriate regulatory agency. The project applicant shall perform further environmental



investigation and remediation if needed to ensure full protection of construction workers, the environment, and the public. Mitigation Measures HA-3b and HA-3c, described below, would be required and would describe the remediation measures to be implemented. Mitigation Measure HA-3d, described below, may also be implemented if appropriate to the particular site.

### **Mitigation Measure HA-3b: Health and Safety Plan**

Before the start of ground-disturbing activities, including grading, trenching, or excavation, or structure demolition on parcels within the project site, the project applicant for the specific work proposed shall require that the construction contractor(s) retain a qualified professional to prepare a site-specific health and safety plan (HSP) in accordance with federal Occupational Safety and Health Administration regulations (29 CFR 1910.120) and California Occupational Safety and Health Administration regulations (8 CCR Section 5192).

The HSP shall be implemented by the construction contractor to protect construction workers, the public, and the environment during all ground-disturbing and structure demolition activities. HSPs shall be submitted to the Director of Planning, Building, and Code Enforcement, or the Director's designee, the Environmental Services Department Municipal Environmental Compliance Officer, and any applicable oversight regulatory agency (if regulatory oversight is required) for review before the start of demolition and construction activities and as a condition of the grading, construction, and/or demolition permit(s). The HSP shall include, but not be limited to, the following elements:

- Designation of a trained, experienced site safety and health supervisor who has the responsibility and authority to develop and implement the site HSP.
- A summary of all potential risks to demolition and construction workers and maximum exposure limits for all known and reasonably foreseeable site chemicals.
- Specified personal protective equipment and decontamination procedures, if needed.
- The requirement to prepare documentation showing that HSP measures have been implemented during construction (e.g., tailgate safety meeting notes with sign-up sheet for attendees).
- A requirement specifying that any site worker who identifies hazardous materials has the authority to stop work and notify the site safety and health supervisor.

- Emergency procedures, including the route to the nearest hospital.
- Procedures to follow if evidence of potential soil or groundwater contamination is encountered (such as soil staining, noxious odors, debris or buried storage containers). These procedures shall be followed in accordance with hazardous waste operations regulations and specifically include, but not be limited to, immediately stopping work in the vicinity of the unknown hazardous materials release; notifying the PBCE and the regulatory agency overseeing site cleanup, if any; and retaining a qualified environmental firm to perform sampling and remediation.

### **Mitigation Measure HA3c: Site Management Plan**

In support of the health and safety plans described in Mitigation Measure HA-3b, the project applicant for the specific work proposed shall develop and require that its contractor(s) develop and implement site management plans (SMPs) for the management of soil, soil gas, and groundwater before any ground-disturbing activity for all parcels with land use limitations and all parcels with known or suspected contamination. SMPs may be prepared for the entire project site, for groups of parcels, or for individual parcels. In any case, all such parcels shall be covered by an SMP. Each SMP shall include the following, at a minimum:

- Site description, including the hazardous materials that may be encountered.
- Roles and responsibilities of on-site workers, supervisors, and the regulatory agency.
- Training for site workers focused on the recognition of and response to encountering hazardous materials.
- Protocols for the materials (soil and/or dewatering effluent) testing, handling, removing, transporting, and disposing of all excavated materials and dewatering effluent in a safe, appropriate, and lawful manner.
- Reporting requirement to the overseeing regulatory agency and the Planning, Building, and Code Enforcement (PBCE), documenting that site activities were conducted in accordance with the SMP.

SMPs for parcels with soil, soil gas, and/or groundwater above environmental screening levels for the proposed land use shall be submitted to the regulatory agency with jurisdiction (i.e., Department of Toxic Substances Control, the Regional Water Quality Control Board, or the SCCDEH), for review, and to the Director of Planning, Building, and Coded Enforcement or the Director's designee, and the Environmental Services Municipal Environmental Compliance Officer to inform their permit approval process

before the start of demolition and construction activities and as a condition of the grading, construction, and/or demolition permit(s). The overseeing regulatory agency, if it accepts oversight, will require enrolment in its cleanup program and payment for oversight. The Contract specifications shall mandate full compliance with all applicable federal, state, and local regulations related to the identification, transportation, and disposal of hazardous materials.

For work at parcels that would encounter groundwater, as part of the SMPs, contractors shall include a groundwater dewatering control and disposal plan specifying how groundwater (dewatering effluent), if encountered, will be handled and disposed of in a safe, appropriate, and lawful manner. The groundwater portion of the SMPs shall include the following, at a minimum:

- The locations at which groundwater dewatering is likely to be required.
- Test methods to analyze groundwater for hazardous materials.
- Appropriate treatment and/or disposal methods.
- Discussion of discharge to a publicly owned treatment works or the stormwater system, in accordance with any regulatory requirements the treatment works may have, if this effluent disposal option is to be used.
- The groundwater dewatering control and disposal plan shall provide a detailed analysis of construction dewatering, including estimating dewatering volumes/durations and evaluating related impacts if volumes are expected to be significant. The dewatering system shall be designed such that the volume and duration of dewatering are minimized to the greatest extent possible.
- The geotechnical investigation for those parcels that may require dewatering shall identify the foundation design and waterproofing to minimize the need for permanent dewatering after construction is complete.

### **Mitigation Measure HA-3d: Vapor Mitigation**

To mitigate exceedances of indoor air standards, the project applicant shall incorporate at least one or more of the vapor mitigation methods listed below on each parcel known to have soil gas concentrations above soil gas screening levels or identified to have concentrations above screening levels as a result of Phase II investigations included in Mitigation Measure HA-3c. The proposed work-specific vapor mitigation, if not in compliance with then-current guidance, must be pre-approved by the applicable regulatory oversight agency (e.g., DTSC, the Regional Water Quality Control Board,

or the Santa Clara County Department of Environmental Health [SCCDEH]):

- Excavate and remove contaminated materials (soil and, if needed, groundwater), to levels where subsequent testing verifies that soil gas levels are below screening levels. This approach would remove the source of soil gas and would not require a physical barrier such as a high-density polyethylene vapor barrier to prevent vapor intrusion.
- Install a physical vapor barrier (e.g., liner) beneath the structure foundation that prevents soil gas from seeping into breathing spaces inside the structure.
- Install a passive or powered vapor mitigation system layer that draws soil gas out of the under-foundation base rock and directs that soil gas to a treatment system to prevent people from being exposed outdoors.

Upon completion, the project applicant shall prepare a report documenting the testing results and installed vapor mitigation method and submit the report to the regulatory agency with jurisdiction (i.e., DTSC, SCCDEH, or the Regional Water Quality Control Board). A copy of the report shall be provided to Director of Planning, Building and Code Enforcement, or the Director's designee, and the Environmental Services Department Municipal Environmental Compliance Officer to inform them of compliance with this requirement. The implemented mitigation measure shall result in indoor air concentrations that do not exceed the screening levels provided in the above-referenced DTSC HHRA Note 3.

**Finding:** Implementing Mitigation Measures HA-3a, Land Use Limitations; HA-3b, Health and Safety Plan; HA-3c, Site Management Plan; and HA-3d, Vapor Mitigation, would reduce this impact to a less-than-significant level. Accordingly, with adoption of these mitigation measures, changes or alterations have been required in, or incorporated into the project which avoid or substantially lessen the significant environmental effect as identified in the FEIR, and this impact would be reduced to a less-than-significant level.

**Facts in Support of Finding:** As discussed in Section 3.7 (page 3.7-83) of the Draft EIR, as amended, implementation of Mitigation Measures HA-3a through 3d, along with compliance existing regulations concerning hazardous materials, would ensure that any hazardous material or waste encountered during project construction activities is containerized, handled, and transported safely and in accordance with all applicable federal, state, and local regulations. Moreover, haul routes from the project site would not pass by area schools. For the above reasons, the project impact with respect to the known presence of hazardous materials, based on Government Code

Section 65962.5, would be reduced to a less-than-significant level with mitigation.

**Impact:** **Impact HA4:** The proposed project is located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, but would not result in a safety hazard or excessive noise for people residing or working in the project area.

**Mitigation:** **Mitigation Measure NO-3: Exposure to Airport Noise** (refer to Section 3.10, *Noise and Vibration*)

**Finding:** Implementing Mitigation Measure NO-3, Exposure to Airport Noise, would reduce this impact to a less-than-significant level. Accordingly, with adoption of these mitigation measures, changes or alterations have been required in, or incorporated into the project which avoid or substantially lessen the significant environmental effect as identified in the FEIR, and this impact would be reduced to a less-than-significant level.

**Facts in Support of Finding:** As discussed in Section 3.7 (page 3.7-89) of the Draft EIR, as amended, implementation of Mitigation Measure NO-3 would reduce interior noise levels for residential uses within the 65 dBA CNEL noise contour to 45 dB CNEL or less. While the project could include outdoor residential areas located within the airport's 65 dB CNEL contour, as explained on Draft EIR page 3.7-87, with Mitigation Measure NO-3, exposure to aircraft noise on the project site would not result in adverse health or safety impacts, despite the policy conflict with the Norman Y. Mineta San José International Airport Comprehensive Land Use Plan. For the above reason, the impact of exposure of project residents to airport noise would be reduced to a less-than-significant level with mitigation.

**Impact:** **Impact C-HA1:** The proposed project would not combine with other projects to result in significant cumulative impacts related to hazardous materials.

**Mitigation:** **Mitigation Measure HA-3b: Health and Safety Plan** (refer to Impact HA-3)

**Mitigation Measure HA-3c: Site Management Plan** (refer to Impact HA-3)

**Mitigation Measure HA-3d: Vapor Mitigation**, as appropriate (refer to Impact HA-3)

**Finding:** Implementing Mitigation Measures HA-3b, Health and Safety Plan; HA-3c, Site Management Plan; and HA-3d, Vapor Mitigation, would reduce the project's contribution to cumulative impacts, resulting in a less-than-

significant impact. Accordingly, with adoption of these mitigation measures, changes or alterations have been required in, or incorporated into the project which avoid or substantially lessen the significant environmental effect as identified in the FEIR, and this impact would be reduced to a less-than-significant level.

**Facts in Support of Finding:** As discussed in Section 3.7 (page 3.7-94) of the Draft EIR, as amended, implementation of Mitigation Measures HA-3b through 3d, along with compliance existing regulations concerning hazardous materials, would avoid or minimize project-specific impacts with respect to hazardous materials, as described above in Impacts HA-2 and HA-3. This would reduce the project's contribution to any potential cumulative impacts to less than cumulatively considerable. For the above reason, cumulative impacts related to hazardous materials would be reduced to a less-than-significant level with mitigation.

**Impact:** **Impact C-HA-2:** The proposed project would not combine with other projects to result in significant cumulative impacts related to proximity to airports.

**Mitigation:** **Mitigation Measure NO-3: Exposure to Airport Noise** (refer to Section 3.10, *Noise and Vibration*)

**Finding:** Implementing Mitigation Measure NO-3, Exposure to Airport Noise, would reduce this impact to a less-than-significant level. Accordingly, with adoption of these mitigation measures, changes or alterations have been required in, or incorporated into the project which avoid or substantially lessen the significant environmental effect as identified in the FEIR, and this impact would be reduced to a less-than-significant level.

**Facts in Support of Finding:** As discussed in Section 3.7 (page 3.7-94) of the Draft EIR, as amended, implementation of Mitigation Measure NO-3, would avoid project-specific adverse health or safety impacts with respect to exposure to airport noise, as described above in Impact HA-4. Other projects would similarly be required to avoid such health or safety impacts. Accordingly, the project's contribution to any potential cumulative airport noise impacts would be less than cumulatively considerable. For the above reason, cumulative impacts related to health and safety impacts of airport noise would be reduced to a less-than-significant level with mitigation.



## **Hydrology and Water Quality**

**Impact:** **Impact HY-1:** The proposed project could violate a water quality standard or waste discharge requirement or otherwise substantially degrade surface or groundwater quality.

**Mitigation:** **Mitigation Measure HY-1: Water Quality Best Management Practices during Construction Activities in and near Waterways**

To avoid and/or minimize potential impacts on water quality (and jurisdictional waters) for project activities that would be conducted in, over, or within 100 feet of waterways, the project applicant shall implement the following standard construction best management practices (BMPs), applicable to project construction activities in, near, or over waterways, to prevent releases of construction materials or hazardous materials and to avoid other potential environmental impacts:

- If the project includes activities such as debris removal or pier/pile demolition, the project applicant for the specific work proposed shall be required to submit a notice of intent to comply with waste discharge requirements and conditions identified by the San Francisco Bay Regional Water Quality Control Board. No debris, rubbish, soil, silt, sand, cement, concrete, or washings thereof, or other construction-related materials or wastes, oil, or petroleum products shall be allowed to enter jurisdictional waters, or shall be placed where it would be subject to erosion by rain, wind, or waves and enter into jurisdictional waters, except as permitted by the San Francisco Bay Regional Water Quality Control Board under an approved waste discharge requirement permit condition. Staged construction materials with the potential to be eroded/entrained during a rainfall event shall be covered every night and during any rainfall event (as applicable).
- In-stream construction shall be scheduled during the summer low-flow season to the extent feasible to minimize impacts on aquatic resources.
- To the maximum extent practicable, construction materials, wastes, debris, sediment, rubbish, trash, fencing, etc., shall be removed from the project site's riparian areas daily during construction, and thoroughly at the completion of the project. Debris shall be transported to a pre-designated upland disposal area.
- Protective measures shall be used to prevent accidental discharges of oils, gasoline, or other hazardous materials to jurisdictional waters during fueling, cleaning, and maintenance of equipment, as outlined in the project's soil and groundwater management plan. Well-maintained equipment shall be used to perform construction work, and except in the case of failure or breakdown, equipment maintenance shall be

performed off-site, to the extent feasible. Crews shall check heavy equipment daily for leaks; if a leak is discovered, it shall be immediately contained and use of the equipment shall be suspended until repaired. The source of the leak shall be identified, material shall be cleaned up, and the cleaning materials shall be collected and properly disposed.

- Vehicles and equipment used during construction shall be serviced off-site, as feasible, or in a designated location a minimum of 100 feet from waterways. Fueling locations shall be inspected after fueling to document that no spills have occurred. Any spills shall be cleaned up immediately.
- The project applicant shall submit a copy of the BMPs to the Director of Planning, Building, and Code Enforcement or Director's designee for review and approval prior to the issuance of any demolition or grading permits.

**Mitigation Measure BI-1a: General Avoidance and Protection Measures** (refer to Section 3.2, *Biological Resources*)

**Mitigation Measure BI-2a: Avoidance of Impacts on Riparian Habitat** (refer to Section 3.2, *Biological Resources*)

**Mitigation Measure HA-3b: Health and Safety Plan** (refer to Section 3.7, *Hazards and Hazardous Materials*)

**Mitigation Measure HA-3c: Site Management Plan** (refer to Section 3.7, *Hazards and Hazardous Materials*)

**Finding:** Implementing Mitigation Measures HY-1, Water Quality Best Management Practices during Construction Activities in and near Waterways; BI-1a, General Avoidance and Protection Measures; BI-2a, Avoidance of Impacts on Riparian Habitat; HA-3b, Health and Safety Plan; and HA-3c, Site Management Plan, would reduce the project's impact to a less-than-significant level. Accordingly, with adoption of these mitigation measures, changes or alterations have been required in, or incorporated into the project which avoid or substantially lessen the significant environmental effect as identified in the FEIR, and this impact would be reduced to a less-than-significant level.

**Facts in Support of Finding:** As discussed in Section 3.9 (pages 3.8-27–3.8-28) of the Draft EIR, as amended, implementation of Mitigation Measures HY-1, BI-1a, HA-3b, and HA-3c, along with compliance with applicable water quality regulations, would require specific water quality protection mitigation measure intended to limit the potential impacts of construction in or near waterways; minimize disturbance and protect the riparian corridor; and

ensure that contaminants would not be released into groundwater during construction excavation. As stated on Draft EIR page 3.8-31, implementation of Mitigation Measures BI-2a and HA-3c would provide for re-vegetation and ongoing monitoring of the riparian corridor after construction to repair construction-related disturbance of the corridor and reduce site runoff, erosion, and potential contamination of surface waters, and would ensure that contaminants would not be released into groundwater during construction excavation. For the above reasons, project impacts with respect to potential violation of a water quality standard or waste discharge requirement or other substantial degradation of surface or groundwater quality would be reduced to a less-than-significant level with mitigation.

**Impact:** **Impact HY3:** The proposed project could substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river or through the addition of impervious surfaces, in a manner which would result in substantial erosion or siltation on- or off-site; or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site.

**Mitigation:** **Mitigation Measure BI-1a: General Avoidance and Protection Measures** (refer to Section 3.2, *Biological Resources*)

**Mitigation Measure HY-1: Water Quality Best Management Practices during Construction Activities in and near Waterways** (refer to Impact HY-1)

**Mitigation Measure HY-3a: Flood Risk Analysis and Modeling**

Once the final design is complete and before the issuance of any building permit for any portion of the project potentially subject to flooding according to the best available data from the City or Valley Water, the project applicant for the specific work proposed shall conduct a hydrologic analysis of the final project design to address flood risks.

The project applicant shall prepare a thorough hydrologic technical evaluation and demonstrate that the project poses minimal flood risk to occupants, residents, visitors, and surrounding properties. The project design shall be modified to minimize the impacts of the proposed development and shall be submitted to the City for review and approval. The design shall ensure that proposed new structures are elevated or flood-proofed above the 1 percent (100-year) base flood elevation, consistent

with the City's adopted performance standards<sup>7</sup> that limit development within a special flood hazard area (Zone A) unless demonstrated that the cumulative effect of the proposed development would not increase the water surface elevation of the base flood more than 1 foot at any point within the City of San José.

The hydrologic technical evaluation shall demonstrate that after construction of the new structure(s), floodplain encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge for existing adjacent structures or, for those structures located in the 100-year floodplain under existing conditions, the project shall not result in increases in the base flood elevation of more than one foot, consistent with the City's adopted performance standard.

Final design measures shall be developed in consultation with Valley Water, subject to review and approval by the City Department of Public Works and Department of Planning, Building and Code Enforcement. Measures could include any of the following:

- Use in-stream and associated floodplain restoration strategies in the riparian corridor to expand a greenway along Los Gatos Creek and conduct associated floodplain restoration.
- Remove existing obstructions to flood conveyance, such as channel debris or existing structures within the floodway.
- Upgrade the City's storm drain network.
- Install protective infrastructure for subsurface structures to reduce the risk of inundation.
- Raise the level of the project's structures to minimize risks to occupants and the surrounding community.
- Flood-proof project structures with, including but not limited to, permanent or removable standing barriers, garage flood gates, or automated flip-up barriers.

#### **Mitigation Measure HY-3b: Plan for Ongoing Creek Maintenance**

In the event that the project includes channel rehabilitation, prior to commencement of the initial restoration program within Los Gatos Creek, the project applicant shall submit a plan for ongoing maintenance of the

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<sup>7</sup> City of San José, *City of San José Code of Ordinances*, Title 17, Buildings and Construction; Chapter 17.08, Special Flood Hazard Areas; Part 5, Requirements; Section 17.08.640, New Developments. Available at [https://library.municode.com/ca/san\\_jose/codes/code\\_of\\_ordinances?nodeId=TIT17BUCO\\_CH17.08SPF\\_LHAARRE\\_PT5RESPFLHAAR\\_17.08.640NEDE](https://library.municode.com/ca/san_jose/codes/code_of_ordinances?nodeId=TIT17BUCO_CH17.08SPF_LHAARRE_PT5RESPFLHAAR_17.08.640NEDE). Accessed January 15, 2020.

affected reach of Los Gatos Creek to Valley Water and to the Director of Planning, Building, and Code Enforcement, or the Director's designee, for review and approval. The plan shall be consistent with the conditions in the existing permits for Valley Water's ongoing stream maintenance program and/or shall be subject to its own project-specific permitting regime, subject to jurisdictional agency review and approval.

**Finding:** Implementing Mitigation Measures HY-1, Water Quality Best Management Practices during Construction Activities in and near Waterways; HY-3a, Flood Risk Analysis and Modeling; HY-3b, Plan for Ongoing Creek Maintenance; and BI-1a, General Avoidance and Protection Measures, would reduce this impact to a less-than-significant level. Accordingly, with adoption of these mitigation measures, changes or alterations have been required in, or incorporated into the project which avoid or substantially lessen the significant environmental effect as identified in the FEIR, and this impact would be reduced to a less-than-significant level.

**Facts in Support of Finding:** As discussed in Section 3.9 (page 3.8-32) of the Draft EIR, as amended, implementation of Mitigation Measures HY-1 and BI-1a, along with compliance with applicable flood regulations, would require implementation of best management practices and applicable development design standards and to protect waterways and would limit or minimize erosion, runoff, and/or siltation on-site or off-site. As stated on Draft EIR page 3.8-36, implementation of Mitigation Measures HY-3a and HY-3b would address the potential for an increase in volume of surface runoff resulting in increased flood risk associated with altered drainage patterns, and would ensure that stream maintenance activities would not conflict with the ongoing Valley Water stream maintenance program and are coordinated with the City, in consultation with the appropriate jurisdictional agencies. For the above reasons, project impacts with respect to alteration of drainage patterns and increased runoff would be reduced to a less-than-significant level with mitigation.

**Impact:** **Impact HY-4:** The proposed project could create or contribute runoff water that could exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff, or impede or redirect flood flows.

**Mitigation:** **Mitigation Measure HY-1: Water Quality Best Management Practices during Construction Activities in and near Waterways** (refer to Impact HY-1)

**Mitigation Measure HY-3a: Flood Risk Analysis and Modeling** (refer to Impact HY-3)

**Mitigation Measure HY-3b: Plan for Ongoing Creek Maintenance**  
(refer to Impact HY-3)

**Finding:** Implementing Mitigation Measures HY-1, Water Quality Best Management Practices during Construction Activities in and near Waterways; HY-3a, Flood Risk Analysis and Modeling; and HY-3b, Plan for Ongoing Creek Maintenance, would reduce this impact to a less-than-significant level. Accordingly, with adoption of these mitigation measures, changes or alterations have been required in, or incorporated into the project which avoid or substantially lessen the significant environmental effect as identified in the FEIR, and this impact would be reduced to a less-than-significant level.

**Facts in Support of Finding:** As discussed in Section 3.9 (page 3.8-38) of the Draft EIR, as amended, implementation of Mitigation Measures HY-1, HY-3a, and HY-3b, along with compliance with existing regulations, would require specific water quality protection mitigation measure to limit impacts of construction in or near waterways, address the potential increased flood risk associated with altered drainage patterns, and ensure that stream maintenance activities would not conflict with Valley Water's stream maintenance program and would be coordinated with other agencies, thus ensuring that the project would create or contribute runoff water that could exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff, or impede or redirect flood flows. For the above reasons, project impacts with respect to stormwater runoff would be reduced to a less-than-significant level with mitigation.

**Impact:** **Impact HY5:** The proposed project could risk release of pollutants in a flood hazard, tsunami, or seiche zone due to project inundation.

**Mitigation:** **Mitigation Measure HY-3a: Flood Risk Analysis and Modeling** (refer to Impact HY-3)

**Mitigation Measure HY-3b: Plan for Ongoing Creek Maintenance**  
(refer to Impact HY-3)

**Finding:** Implementing Mitigation Measure HY-3a, Flood Risk Analysis and Modeling, and Mitigation Measure HY-3b, Plan for Ongoing Creek Maintenance, would reduce this impact to a less-than-significant level. Accordingly, with adoption of these mitigation measures, changes or alterations have been required in, or incorporated into the project which avoid or substantially lessen the significant environmental effect as identified in the FEIR, and this impact would be reduced to a less-than-significant level.



**Facts in Support of Finding:** As discussed in Section 3.9 (page 3.8-42) of the Draft EIR, as amended, implementation of Mitigation Measures HY-3a and HY-3b would address the potential for an increase in volume of surface runoff resulting in increased flood risk associated with altered drainage patterns, and would ensure that stream maintenance activities would not conflict with the ongoing Valley Water stream maintenance program and are coordinated with the City, in consultation with the appropriate jurisdictional agencies. For the above reasons, project impacts with respect to increasing flood hazards would be reduced to a less-than-significant level with mitigation.

**Impact:** **Impact HY6:** The proposed project could conflict with or obstruct implementation of a water quality control plan or sustainable groundwater management plan.

**Mitigation:** **Mitigation Measure HA-3b: Health and Safety Plan** (refer to Section 3.7, *Hazards and Hazardous Materials*)

**Mitigation Measure HA-3c: Site Management Plan** (refer to Section 3.7, *Hazards and Hazardous Materials*)

**Finding:** Implementing Mitigation Measure HA-3b, Health and Safety Plan, and Mitigation Measure HA-3c, Site Management Plan, would reduce this impact to a less-than-significant level. Accordingly, with adoption of these mitigation measures, changes or alterations have been required in, or incorporated into the project which avoid or substantially lessen the significant environmental effect as identified in the FEIR, and this impact would be reduced to a less-than-significant level.

**Facts in Support of Finding:** As discussed in Section 3.9 (page 3.8-43–3.8-44) of the Draft EIR, as amended, implementation of Mitigation Measures HA-3b and HA-3c and compliance with applicable water quality regulations would prevent groundwater contamination during project construction and operation. For the above reasons, the project would not conflict with or obstruct implementation of the *Water Quality Control Plan for the San Francisco Bay Basin*, the applicable water quality control plan; additionally, the project would not conflict with the *2016 Groundwater Management Plan: Santa Clara and Llagas Subbasin*. For the above reasons, and this impact would be reduced to a less-than-significant level with mitigation.

**Impact:** **Impact C-HY-1:** The project, in combination with past, present, and reasonably foreseeable future projects in the site vicinity, could result in a considerable contribution to cumulative impacts on hydrology and water quality.

**Mitigation:** **Mitigation Measure HY-1: Water Quality Best Management Practices during Construction Activities in and near Water** (refer to Impact HY-1)

**Mitigation Measure BI-1a: General Avoidance and Protection Measures** (refer to Section 3.2, *Biological Resources*)

**Mitigation Measure BI-2a: Avoidance of Impacts on Riparian Habitat** (refer to Section 3.2, *Biological Resources*)

**Mitigation Measure HA-3b: Health and Safety Plan** (refer to Section 3.7, *Hazards and Hazardous Materials*)

**Mitigation Measure HA-3c: Site Management Plan** (refer to Section 3.7, *Hazards and Hazardous Materials*)

**Finding:** Implementing Mitigation Measures HY-1, Water Quality Best Management Practices during Construction Activities in and near Water; BI-1a, General Avoidance and Protection Measures; BI-2a, Avoidance of Impacts on Riparian Habitat; HA-3b, Health and Safety Plan; and HA-3c, Site Management Plan, would reduce the project's contribution to cumulative impacts, resulting in a less-than-significant impact. Accordingly, with adoption of these mitigation measures, changes or alterations have been required in, or incorporated into the project which avoid or substantially lessen the significant environmental effect as identified in the FEIR, and this impact would be reduced to a less-than-significant level.

**Facts in Support of Finding:** As discussed in Section 3.9 (page 3.8-46) of the Draft EIR, as amended, implementation of Mitigation Measures HY-1, BI-1a, BI-2a, HA-3b, and HA-3c would require specific water quality protection mitigation measure intended to limit the potential impacts of construction in or near waterways; minimize disturbance and protect the riparian corridor; ensure that contaminants would not be released into groundwater during construction excavation; provide for re-vegetation and ongoing monitoring of the riparian corridor after construction to repair construction-related disturbance of the corridor and reduce site runoff, erosion, and potential contamination of surface waters; and ensure that contaminants would not be released into groundwater during construction excavation. These measures would avoid or minimize project-specific impacts on hydrology and water quality, as described above in Impacts HY-1 and HY-5. This would reduce the project's contribution to any potential cumulative impacts to less than cumulatively considerable. For the above reasons, cumulative

impacts with respect to hydrology and water quality would be reduced to a less-than-significant level with mitigation.

**Impact:** **Impact CHY3:** The proposed project, in combination with past, present, and reasonably foreseeable future projects in the site vicinity, could result in a considerable contribution to cumulative impacts related to flood hazards.

**Mitigation:** **Mitigation Measure HY-3a: Flood Risk Analysis and Modeling** (refer to Impact HY-3)

**Mitigation Measure HY-3b: Plan for Ongoing Creek Maintenance**  
(refer to Impact HY-3)

**Finding:** Implementing Mitigation Measure HY-3a, Flood Risk Analysis and Modeling, and Mitigation Measure HY-3b, Plan for Ongoing Creek Maintenance, would reduce the project's contribution to cumulative impacts, resulting in a less-than-significant impact. Accordingly, with adoption of these mitigation measures, changes or alterations have been required in, or incorporated into the project which avoid or substantially lessen the significant environmental effect as identified in the FEIR, and this impact would be reduced to a less-than-significant level.

**Facts in Support of Finding:** As discussed in Section 3.9 (page 3.8-47) of the Draft EIR, as amended, implementation of Mitigation Measures HY-3a and HY-3b would address the potential for an increase in volume of surface runoff resulting in increased flood risk associated with altered drainage patterns, and would ensure that stream maintenance activities would not conflict with the ongoing Valley Water stream maintenance program and are coordinated with the City, in consultation with the appropriate jurisdictional agencies, as described above in Impact HY-3. These measures would avoid or minimize project-specific impacts on flooding, thereby reducing the project's contribution to any potential cumulative impacts to less than cumulatively considerable. For the above reasons, cumulative impacts with respect to flood hazards would be reduced to a less-than-significant level with mitigation.

## **Noise and Vibration**

**Impact:** **Impact NO-1a:** Stationary sources associated with operation of the proposed project could result in generation of a permanent increase in ambient noise levels in the vicinity of the project in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies.

**Mitigation:** **Mitigation Measure NO-1a: Operational Noise Performance Standard**

Prior to the issuance of any building permit, the project applicant shall ensure that all mechanical equipment is selected and designed to reduce impacts on surrounding uses by meeting the performance standards of Chapters 20.20 through 20.50 of the San José Municipal Code, limiting noise from stationary sources such as mechanical equipment, loading docks, and central utility plants to 55 dBA, 60 dBA, and 70 dBA at the property lines of residential, commercial, and industrial receivers, respectively. If noise levels exceed these standards, the activity causing the noise shall be abated until appropriate noise reduction measures have been installed and compliance has been verified by the City. Methods of achieving these standards include using low-noise-emitting HVAC equipment, locating HVAC and other mechanical equipment within a rooftop mechanical penthouse, and using shields and parapets to reduce noise levels to adjacent land uses. For emergency generators, industrial-grade silencers can reduce exhaust noise by 12 to 18 dBA, and residential-grade silencers can reduce such noise by 18 to 25 dBA.<sup>8</sup> Acoustical screening can also be applied to exterior noise sources of the proposed central utility plants and can achieve up to 15 dBA of noise reduction.<sup>9</sup>

An acoustical study shall be prepared by a qualified acoustical engineer during final building design to evaluate the potential noise generated by building mechanical equipment and to identify the necessary design measures to be incorporated to meet the City's standards. The study shall be submitted to the Director of the City of San José Department of Planning, Building and Code Enforcement or the Director's designee for review and approval before the issuance of any building permit.

**Finding:** Implementing Mitigation Measure NO-1a, Operational Noise Performance Standard, would reduce this impact to a less-than-significant level. Accordingly, with adoption of these mitigation measures, changes or alterations have been required in, or incorporated into the project which

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<sup>8</sup> American Society of Heating, Refrigeration, and Air Conditioning Engineers, Technical Committee on Sound and Vibration, *Generator Noise Control—An Overview*, 2006.

<sup>9</sup> Environmental Noise Control, Product Specification Sheet, ENC STC-32 Sound Control Panel System, 2014.

avoid or substantially lessen the significant environmental effect as identified in the FEIR, and this impact would be reduced to a less-than-significant level.

**Facts in Support of Finding:** As discussed in Section 3.10 (page 3.10-33) of the Draft EIR, as amended, implementation of Mitigation Measure NO-1a would establish a performance standard for operational noise from mechanical equipment. This measure would ensure that the impact of noise from stationary sources associated with operation of the proposed project would be reduced to a less-than-significant level with mitigation.

**Impact:** **Impact NO-2:** The proposed project could result in the generation of excessive groundborne vibration or groundborne noise levels.

**Mitigation:** **Mitigation Measure NO-2a: Master Construction Vibration Avoidance and Reduction Plan**

Prior to the issuance of the first building permit for the project, the project applicant shall prepare a Master Construction Vibration Avoidance and Reduction Plan. The plan shall be implemented by the project applicant as development occurs throughout the project site to address demolition and construction activity that involves impact or vibratory pile driving, or use of a tunnel boring machine within 75 feet of conventionally constructed buildings. The plan shall be submitted to the Director of Planning, Building and Code Enforcement, or the Director's designee, for review and approval before the issuance of the initial grading or building permit. The plan shall include, at a minimum, the following vibration avoidance and reduction measures:

- Neighbors within 500 feet of the construction site shall be notified of the construction schedule and that noticeable vibration levels could result from pile driving.
- Foundation pile holes shall be pre-drilled to minimize the number of impacts required to seat the pile.
- Piles shall be jetted<sup>10</sup> or partially jetted into place to minimize the number of impacts required to seat the piles.
- A construction vibration monitoring plan shall be implemented to document conditions before, during, and after pile driving and use of the tunnel boring machine. All plan tasks shall be undertaken under the direction of a Professional Structural Engineer licensed in the State of

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<sup>10</sup> "Pile jetting" is a technique that is frequently used in conjunction with, or separate from, pile driving equipment for pile placement. Pile jetting uses a carefully directed and pressurized flow of water to assist in pile placement. This greatly decreases the bearing capacity of the soils below the pile tip, causing the pile to descend toward its final tip elevation with much less soil resistance, largely under its own weight.

California, in accordance with industry-accepted standard methods. The construction vibration monitoring plan shall include the following tasks:

- Identify the sensitivity of nearby structures to groundborne vibration. A vibration survey (generally described below) would need to be performed.
- Perform a pre-construction photo survey, elevation survey, and crack monitoring survey for each of these structures. Surveys shall be performed before any pile driving activity, at regular intervals during pile driving, and after completion. The surveys shall include monitoring for internal and external cracks in structures, settlement, and distress, and shall document the condition of foundations, walls, and other structural elements in the interior and exterior of the structures.
- Develop a vibration monitoring and construction contingency plan. The plan shall identify structures where monitoring is to be conducted, establish a vibration monitoring schedule, define structure-specific vibration limits, and address the need to conduct photo, elevation, and crack surveys to document conditions before and after pile driving.
- Identify alternative construction methods for when vibration levels approach the limits stated in the General Plan, such as in Policy EC-2.3.
- If vibration levels approach the limits, suspend construction and implement alternative construction methods to either lower vibration levels or secure the affected structures.
- Conduct a post-construction survey on structures where either monitoring has indicated high vibration levels or complaints have been received regarding damage. Where damage has resulted from construction activities, make appropriate repairs or provide compensation.
- Within one month after substantial completion of each phase identified in the project schedule, summarize the results of all vibration monitoring in a report and submit the report for review by the Director of Planning, Building and Code Enforcement or the Director's designee. The report shall describe measurement methods and equipment used, present calibration certificates, and include graphics as required to clearly identify the locations of vibration monitoring. An explanation of all events that exceeded vibration limits shall be included together with proper documentation supporting any such claims.



- 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.

#### **Mitigation Measure NO-2b: Master Construction Vibration Avoidance from Compaction**

The project applicant shall also prepare a Master Construction Vibration Avoidance and Reduction Plan for construction activities that will not involve impact or vibratory pile driving but will employ a vibratory roller as a method of compaction. The plan shall be implemented by the project applicant as development occurs throughout the project site to address construction activity occurring within 25 feet of conventionally constructed buildings. The plan shall be submitted to the Director of Planning, Building, and Code Enforcement or the Director's designee for review and approval before the issuance of the initial grading or building permit. The plan shall include, at a minimum, the following vibration avoidance and reduction measures:

- Contractors shall use nonvibratory, excavatormounted compaction wheels and small smooth drum rollers for final compaction of asphalt base and asphalt concrete, if within 50 feet of a historic structure or 25 feet of a conventionally constructed structure. If needed to meet compaction requirements, smaller vibratory rollers shall be used to minimize vibration levels during repaving activities where needed to meet vibration standards.
- The use of vibratory rollers and clam shovel drops near sensitive areas shall be avoided.
- Construction methods shall be modified, or alternative construction methods shall be identified, and designed to reduce vibration levels below the limits.

#### **Mitigation Measure CU-4: Construction Vibration Operation Plan for Historic Structures** (refer to Section 3.3, *Cultural Resources and Tribal Cultural Resources*)

**Finding:** Implementing Mitigation Measures NO-2a, Master Construction Vibration Avoidance and Reduction Plan; NO-2b, Master Construction Vibration Avoidance from Compaction; and CU-4, Construction Vibration Operation Plan for Historic Structures, would reduce this impact to a less-than-significant level. Accordingly, with adoption of these mitigation measures, changes or alterations have been required in, or incorporated into the project which avoid or substantially lessen the significant environmental effect as identified in the FEIR, and this impact would be reduced to a less-than-significant level.

**Facts in Support of Finding:** As discussed in Section 3.10 (page 3.10-47) of the Draft EIR, as amended, implementation of Mitigation Measures NO-2a and NO-2b, along with Mitigation Measure CU-4, would ensure that construction-related vibration would be monitored and controlled so as to avoid damage to historic architectural resources and other vibration-sensitive structures. For this reason, the project's impact with respect to the generation of groundborne vibration or groundborne noise levels would be reduced to a less-than-significant level with mitigation.

### **Public Services and Recreation**

**Impact:** **Impact PS7:** The proposed project would not include recreational facilities or require the construction or expansion of recreational facilities that might have an adverse physical effect on the environment.

**Mitigation:** Refer to Section 3.1, *Air Quality*, for the following mitigation measures:

**Mitigation Measure AQ-2a: Construction Emissions Minimization Plan**

**Mitigation Measure AQ-2b: Construction Equipment Maintenance and Tuning**

**Mitigation Measure AQ-2c: Heavy-Duty Truck Model Year Requirement**

Refer to Section 3.2, *Biological Resources*, for the following mitigation measures:

**Mitigation Measure BI-1a: General Avoidance and Protection Measures**

**Mitigation Measure BI-1b: In-Water Construction Schedule**

**Mitigation Measure BI-1c: Native Fish Capture and Relocation**

**Mitigation Measure BI-1d: Western Pond Turtle Protection Measures**

**Mitigation Measure BI-1e: Avoidance of Impacts on Nesting Birds**

**Mitigation Measure BI-1f: Roosting Bat Surveys**

**Mitigation Measure BI-2a: Avoidance of Impacts on Riparian Habitat**

**Mitigation Measure BI-2b: Frac-Out Contingency Plan**

**Mitigation Measure BI-2d: Avoidance and Protection of Creeping Wild Rye Habitat**

### **Mitigation Measure BI-3: Avoidance of Impacts on Wetlands and Waters**

Refer to Section 3.3, *Cultural Resources and Tribal Cultural Resources*, for the following mitigation measures:

#### **Mitigation Measure CU-8a: Cultural Resources Awareness Training**

#### **Mitigation Measure CU-8b: Archaeological Testing Plan**

#### **Mitigation Measure CU-8c: Archaeological Evaluation**

#### **Mitigation Measure CU-8d: Archaeological Resources Treatment Plan**

Refer to Section 3.5, *Geology, Soils, and Paleontological Resources*, for the following mitigation measures:

#### **Mitigation Measure GE-5a: Project Paleontologist**

#### **Mitigation Measure GE-5b: Worker Training**

#### **Mitigation Measure GE-5c: Paleontological Monitoring**

#### **Mitigation Measure GE-5d: Significant Fossil Treatment**

Refer to Section 3.6, *Greenhouse Gas Emissions*, for the following mitigation measure:

#### **Mitigation Measure GR-2: Compliance with AB 900**

Refer to Section 3.7, *Hazards and Hazardous Materials*, for the following mitigation measures:

#### **Mitigation Measure HA-3a: Land Use Limitations**

#### **Mitigation Measure HA-3b: Health and Safety Plan**

#### **Mitigation Measure HA-3c: Site Management Plan**

Refer to Section 3.8, *Hydrology and Water Quality*, for the following mitigation measures:

#### **Mitigation Measure HY-1: Water Quality Best Management Practices during Construction Activities in and near Waterways**

#### **Mitigation Measure HY-3a: Flood Risk Analysis and Modeling**

Refer to Section 3.10, *Noise and Vibration*, for the following mitigation measures:

**Mitigation Measure NO-1c: Master Construction Noise Reduction Plan**

**Mitigation Measure NO-2a: Master Construction Vibration Avoidance and Reduction Plan**

**Mitigation Measure NO-2b: Master Construction Vibration Avoidance from Compaction**

**Finding:** Implementing Mitigation Measures AQ-2a, AQ-2b, AQ-2c, BI-1a, BI-1b, BI-1c, BI-1d, BI-1e, BI-1f, BI-2a, BI-2b, BI-2d, BI-3, CU-8a, CU-8b, CU-8c, CU-8d, GE-5a, GE-5b, GE-5c, GE-5d, GR-2, HA-3a, HA-3b, HA-3c, HY-1, HY-3a, NO-1c, NO-2a, and NO-2b would reduce this impact to a less-than-significant level. Accordingly, with adoption of these mitigation measures, changes or alterations have been required in, or incorporated into the project which avoid or substantially lessen the significant environmental effect as identified in the FEIR, and this impact would be reduced to a less-than-significant level.

**Facts in Support of Finding:** As discussed in Section 3.12 (paGE-3.12-45) of the Draft EIR, as amended, implementation of Mitigation Measures AQ-2a, AQ-2b, AQ-2c, BI-1a, BI-1b, BI-1c, BI-1d, BI-1e, BI-1f, BI-2a, BI-2b, BI-2d, BI-3, CU-8a, CU-8b, CU-8c, CU-8d, GE-5a, GE-5b, GE-5c, GE-5d, GR-2, HA-3a, HA-3b, HA-3c, HY-1, HY-3a, NO-1c, NO-2a, and NO-2b, along with applicable standard conditions of approval, would avoid or substantially minimize impacts of park and recreational facility construction with respect to air quality, biological resources, cultural resources, geology and soils, greenhouse gases, hazardous materials, hydrology and water quality, and noise. As stated on page 3.12-47, although the proposed project as a whole would result in significant and unavoidable construction air quality and construction noise impacts, construction work involving parks and recreational space, which is included in the overall analysis, would be relatively minimal and would not, in itself, exceed any significance thresholds for air quality or noise. For the above reasons, project impacts with respect to construction or expansion of recreational facilities would be reduced to a less-than-significant level with mitigation.

### Transportation

**Impact:** **Impact TR-7:** The proposed project would cause a decrease in average travel speed on a transit corridor below Year 2040 Cumulative No Project conditions in the 1-hour a.m. peak period when the average speed drops below 15 mph or decreases by 25 percent or more; OR when the average speed drops by 1 mph or more for a transit corridor with average speed below 15 mph.

**Mitigation:** **Mitigation Measure AQ-2h, Enhanced Transportation Demand Management Program** (refer to Section 3.1, *Air Quality*)

**Finding:** Implementing Mitigation Measure AQ-2h, Enhanced Transportation Demand Management Program, would reduce this impact to a less-than-significant level. Accordingly, with adoption of these mitigation measures, changes or alterations have been required in, or incorporated into the project which avoid or substantially lessen the significant environmental effect as identified in the FEIR, and this impact would be reduced to a less-than-significant level.

**Facts in Support of Finding:** As discussed in Section 3.13 (page 3.13-53) of the Draft EIR, as amended, and as further documented in the First Amendment to the Draft EIR (Section 3.2.4, *Master Response 4: TDM Program*, page 329) and in Draft EIR Appendix C4, *Fehr & Peers TDM Effectiveness Memorandum*, as revised, implementation of Mitigation Measure AQ2h would ensure that the project achieves a non-single-occupancy vehicle mode share of 65 percent, which is estimated to be equivalent to a 27-percent reduction in daily vehicle trips following completion of service enhancement related to Caltrain electrification and BART service to Diridon Station by 2040. This would ensure adequate transit speeds along the Alum Rock Avenue corridor, thereby reducing the project impact on transit corridor travel speeds to a less-than-significant level with mitigation.

**Impact:** **Impact C-TR-1:** The proposed project would result in a cumulatively considerable contribution to a significant transportation impact.

**Mitigation:** **Mitigation Measure AQ-2h, Enhanced Transportation Demand Management Program** (refer to Section 3.1, *Air Quality*)

**Finding:** Implementing Mitigation Measure AQ-2h, Enhanced Transportation Demand Management Program, would reduce the project's contribution to cumulative impacts, resulting in a less-than-significant impact. Accordingly, with adoption of these mitigation measures, changes or alterations have been required in, or incorporated into the project which avoid or

substantially lessen the significant environmental effect as identified in the FEIR, and this impact would be reduced to a less-than-significant level.

**Facts in Support of Finding:** As discussed in Section 3.13 (page 3.13-54) of the Draft EIR, as amended, and as further documented in the First Amendment to the Draft EIR (Section 3.2.4, *Master Response 4: TDM Program*, page 3-29) and in Draft EIR Appendix C4, *Fehr & Peers TDM Effectiveness Memorandum*, as revised, implementation of Mitigation Measure AQ-2h would ensure adequate transit travel along the Alum Rock Avenue corridor, thereby avoiding project-specific impacts on transit speeds, as stated above in Impact TR-7. As explained on Draft EIR page 3.13-54, this would result in the project's contribution to cumulative impacts, as modeled in the City's Travel Forecasting Model, being less than cumulatively considerable. For the above reason, the cumulative impact on transit corridor travel speeds would be reduced to a less-than-significant level with mitigation.

### **Utilities and Service Systems**

**Impact:** **Impact UT-1:** The proposed project would not require or result in the relocation or construction of new or expanded water facilities, the construction or relocation of which could cause significant environmental effects.

**Mitigation:** Refer to Section 3.1, *Air Quality*, for the following mitigation measures:

**Mitigation Measure AQ-2a: Construction Emissions Minimization Plan**

**Mitigation Measure AQ-2b: Construction Equipment Maintenance and Tuning**

**Mitigation Measure AQ-2c: Heavy-Duty Truck Model Year Requirement**

Refer to Section 3.2, *Biological Resources*, for the following mitigation measures:

**Mitigation Measure BI-1a: General Avoidance and Protection Measures**

**Mitigation Measure BI-1b: In-Water Construction Schedule**

**Mitigation Measure BI-1c: Native Fish Capture and Relocation**

**Mitigation Measure BI-1d: Western Pond Turtle Protection Measures**

**Mitigation Measure BI-1e: Avoidance of Impacts on Nesting Birds**



**Mitigation Measure BI-1f: Roosting Bat Surveys**

**Mitigation Measure BI-2a: Avoidance of Impacts on Riparian Habitat**

**Mitigation Measure BI-2b: Frac-Out Contingency Plan**

**Mitigation Measure BI-2d: Avoidance and Protection of Creeping Wild Rye Habitat**

**Mitigation Measure BI-3: Avoidance of Impacts on Wetlands and Waters**

Refer to Section 3.3, *Cultural Resources and Tribal Cultural Resources*, for the following mitigation measures:

**Mitigation Measure CU-8a: Cultural Resources Awareness Training**

**Mitigation Measure CU-8b: Archaeological Testing Plan**

**Mitigation Measure CU-8c: Archaeological Evaluation**

**Mitigation Measure CU-8d: Archaeological Resources Treatment Plan**

Refer to Section 3.5, *Geology, Soils, and Paleontological Resources*, for the following mitigation measures:

**Mitigation Measure GE-5a: Project Paleontologist**

**Mitigation Measure GE-5b: Worker Training**

**Mitigation Measure GE-5c: Paleontological Monitoring**

**Mitigation Measure GE-5d: Significant Fossil Treatment**

Refer to Section 3.7, *Hazards and Hazardous Materials*, for the following mitigation measures:

**Mitigation Measure HA-3a: Land Use Limitations**

**Mitigation Measure HA-3b: Health and Safety Plan**

**Mitigation Measure HA-3c: Site Management Plan**

**Mitigation Measure HA-3d: Vapor Mitigation**

Refer to Section 3.8, *Hydrology and Water Quality*, for the following mitigation measure:

**Mitigation Measure HY-1: Water Quality Best Management Practices during Construction Activities in and near Waterways**

**Mitigation Measure HY-3a: Flood Risk Analysis and Modeling**

Refer to Section 3.10, *Noise and Vibration*, for the following mitigation measures:

**Mitigation Measure NO-1c: Master Construction Noise Reduction Plan**

**Mitigation Measure NO-2a: Master Construction Vibration Avoidance and Reduction Plan**

**Mitigation Measure NO-2b: Master Construction Vibration Avoidance from Compaction**

**Finding:** Implementing Mitigation Measures AQ-2a, AQ-2b, AQ-2c, BI-1a, BI-1b, BI-1c, BI-1d, BI-1e, BI-1f, BI-2a, BI-2b, BI-2d, BI-3, CU-8a, CU-8b, CU-8c, CU-8d, GE-5a, GE-5b, GE-5c, GE-5d, HA-3a, HA-3b, HA-3c, HA-3d, HY-1, HY-3a, NO-1c, NO-2a, and NO-2b would reduce this impact to a less-than-significant level. Accordingly, with adoption of these mitigation measures, changes or alterations have been required in, or incorporated into the project which avoid or substantially lessen the significant environmental effect as identified in the FEIR, and this impact would be reduced to a less-than-significant level.

**Facts in Support of Finding:** As discussed in Section 3.14 (pages 3.14-11–3.14-12) of the Draft EIR, as amended, implementation of Mitigation Measures AQ-2a, AQ-2b, AQ-2c, BI-1a, BI-1b, BI-1c, BI-1d, BI-1e, BI-1f, BI-2a, BI-2b, BI-2d, BI-3, CU-8a, CU-8b, CU-8c, CU-8d, GE-5a, GE-5b, GE-5c, GE-5d, HA-3a, HA-3b, HA-3c, HA-3d, HY-1, HY-3a, NO-1c, NO-2a, and NO-2b, along with applicable standard conditions of approval, would avoid or substantially minimize impacts of utility construction with respect to air quality, biological resources, cultural resources, geology and soils, greenhouse gases, hazardous materials, hydrology and water quality, and noise. As stated on page 3.12-47, although the proposed project as a whole would result in significant and unavoidable construction air quality and construction noise impacts, construction work involving parks and recreational space, which is included in the overall analysis, would be relatively minimal and would not, in itself, exceed any significance thresholds for air quality or noise. For the above reasons, project impacts with respect to construction of new or expanded water facilities would be reduced to a less-than-significant level with mitigation.

**Impact:** **Impact UT3:** The proposed project would not require or result in the relocation or construction of new or expanded wastewater treatment facilities, the construction or relocation of which could cause significant environmental effects.

**Mitigation:** Refer to the list of mitigation measures under Impact UT-1.

**Finding:** Implementing Mitigation Measures AQ-2a, AQ-2b, AQ-2c, BI-1a, BI-1b, BI-1c, BI-1d, BI-1e, BI-1f, BI-2a, BI-2b, BI-2d, BI-3, CU-8a, CU-8b, CU-8c, CU-8d, GE-5a, GE-5b, GE-5c, GE-5d, HA-3a, HA-3b, HA-3c, HA-3d, HY-1, HY-3a, NO-1c, NO-2a, and NO-2b would reduce this impact to a less-than-significant level. Accordingly, with adoption of these mitigation measures, changes or alterations have been required in, or incorporated into the project which avoid or substantially lessen the significant environmental effect as identified in the FEIR, and this impact would be reduced to a less-than-significant level.

**Facts in Support of Finding:** As discussed in Section 3.14 (pages 3.14-11–3.14-12) of the Draft EIR, as amended, implementation of Mitigation Measures AQ-2a, AQ-2b, AQ-2c, BI-1a, BI-1b, BI-1c, BI-1d, BI-1e, BI-1f, BI-2a, BI-2b, BI-2d, BI-3, CU-8a, CU-8b, CU-8c, CU-8d, GE-5a, GE-5b, GE-5c, GE-5d, HA-3a, HA-3b, HA-3c, HA-3d, HY-1, HY-3a, NO-1c, NO-2a, and NO-2b, along with applicable standard conditions of approval, would avoid or substantially minimize impacts of utility construction with respect to air quality, biological resources, cultural resources, geology and soils, greenhouse gases, hazardous materials, hydrology and water quality, and noise. As stated on page 3.12-47, although the proposed project as a whole would result in significant and unavoidable construction air quality and construction noise impacts, construction work involving parks and recreational space, which is included in the overall analysis, would be relatively minimal and would not, in itself, exceed any significance thresholds for air quality or noise. For the above reasons, project impacts with respect to construction of new or expanded wastewater treatment facilities would be reduced to a less-than-significant level with mitigation.

**Impact:** **Impact UT5:** The proposed project would not require or result in the relocation or construction of new or expanded stormwater drainage facilities, the construction or relocation of which could cause significant environmental effects.

**Mitigation:** Refer to the list of mitigation measures under Impact UT-1.

**Finding:** Implementing Mitigation Measures AQ-2a, AQ-2b, AQ-2c, BI-1a, BI-1b, BI-1c, BI-1d, BI-1e, BI-1f, BI-2a, BI-2b, BI-2d, BI-3, CU-8a, CU-8b, CU-8c, CU-8d, GE-5a, GE-5b, GE-5c, GE-5d, HA-3a, HA-3b, HA-3c, HA-3d, HY-1,

HY-3a, NO-1c, NO-2a, and NO-2b would reduce this impact to a less-than-significant level. Accordingly, with adoption of these mitigation measures, changes or alterations have been required in, or incorporated into the project which avoid or substantially lessen the significant environmental effect as identified in the FEIR, and this impact would be reduced to a less-than-significant level.

**Facts in Support of Finding:** As discussed in Section 3.14 (pages 3.14-11–3.14-12) of the Draft EIR, as amended, implementation of Mitigation Measures AQ-2a, AQ-2b, AQ-2c, BI-1a, BI-1b, BI-1c, BI-1d, BI-1e, BI-1f, BI-2a, BI-2b, BI-2d, BI-3, CU-8a, CU-8b, CU-8c, CU-8d, GE-5a, GE-5b, GE-5c, GE-5d, HA-3a, HA-3b, HA-3c, HA-3d, HY-1, HY-3a, NO-1c, NO-2a, and NO-2b, along with applicable standard conditions of approval, would avoid or substantially minimize impacts of utility construction with respect to air quality, biological resources, cultural resources, geology and soils, greenhouse gases, hazardous materials, hydrology and water quality, and noise. As stated on page 3.12-47, although the proposed project as a whole would result in significant and unavoidable construction air quality and construction noise impacts, construction work involving parks and recreational space, which is included in the overall analysis, would be relatively minimal and would not, in itself, exceed any significance thresholds for air quality or noise. For the above reasons, project impacts with respect to construction of new or expanded stormwater drainage facilities would be reduced to a less-than-significant level with mitigation.

**Impact:** **Impact UT6:** The proposed project would not require or result in the relocation or construction of new or expanded electric power, natural gas, or telecommunications facilities, the construction or relocation of which could cause significant environmental effects.

**Mitigation:** Refer to the list of mitigation measures under Impact UT-1.

**Finding:** Implementing Mitigation Measures AQ-2a, AQ-2b, AQ-2c, BI-1a, BI-1b, BI-1c, BI-1d, BI-1e, BI-1f, BI-2a, BI-2b, BI-2d, BI-3, CU-8a, CU-8b, CU-8c, CU-8d, GE-5a, GE-5b, GE-5c, GE-5d, HA-3a, HA-3b, HA-3c, HA-3d, HY-1, HY-3a, NO-1c, NO-2a, and NO-2b would reduce this impact to a less-than-significant level. Accordingly, with adoption of these mitigation measures, changes or alterations have been required in, or incorporated into the project which avoid or substantially lessen the significant environmental effect as identified in the FEIR, and this impact would be reduced to a less-than-significant level.

**Facts in Support of Finding:** As discussed in Section 3.14 (pages 3.14-11–3.14-12) of the Draft EIR, as amended, implementation of Mitigation Measures AQ-2a, AQ-2b, AQ-2c, BI-1a, BI-1b, BI-1c, BI-1d, BI-1e, BI-1f, BI-2a, BI-2b, BI-2d,

BI-3, CU-8a, CU-8b, CU-8c, CU-8d, GE-5a, GE-5b, GE-5c, GE-5d, HA-3a, HA-3b, HA-3c, HA-3d, HY-1, HY-3a, NO-1c, NO-2a, and NO-2b, along with applicable standard conditions of approval, would avoid or substantially minimize impacts of utility construction with respect to air quality, biological resources, cultural resources, geology and soils, greenhouse gases, hazardous materials, hydrology and water quality, and noise. As stated on page 3.12-47, although the proposed project as a whole would result in significant and unavoidable construction air quality and construction noise impacts, construction work involving parks and recreational space, which is included in the overall analysis, would be relatively minimal and would not, in itself, exceed any significance thresholds for air quality or noise. For the above reasons, project impacts with respect to construction of new or expanded electric power, natural gas, or telecommunications facilities would be reduced to a less-than-significant level with mitigation.

### SECTION 3: FINDINGS CONCERNING ALTERNATIVES

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

The alternatives analyzed in the FEIR were developed with the goal of being potentially feasible, given project objectives and site constraints, while avoiding or reducing the project's identified significant environmental effects. The following are evaluated as alternatives to the proposed Project:

Alternative 1: No Project/DSAP Development Alternative

Alternative 2A: Historic Preservation Alternative

Alternative 2B: Historic Preservation/San José International Airport Comprehensive Land Use Plan (CLUP) Noise Compliance Alternative

Alternative 3: 150 South Montgomery Street Preservation Alternative

Alternative 4: Reduced Office Alternative

Alternative 5: Reduced Intensity Alternative

Based upon consideration of substantial evidence in the record, including evidence of economic, legal, social, technological, and other considerations described in this section, in addition to those described in the Statement of Overriding Considerations below, which are hereby incorporated by reference, that make these alternatives infeasible, the City rejects the alternatives set forth in the FEIR and listed below. In making these determinations, the City is aware that CEQA defines "feasibility" to mean "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors." (CEQA Guidelines Sec. 15364.) Under CEQA case law, the concept of "feasibility" encompasses (i) whether a particular alternative promotes the underlying goals and objectives of a project; and (ii) whether an alternative is "desirable" from a policy standpoint to the extent that desirability is based on a reasonable balancing of the relevant economic, environmental, social, legal, and technological factors.

#### **Alternative 1: No Project/DSAP Development Alternative**

**A. Description of Alternative:** Under the No Project/DSAP Development Alternative, development on the site would continue to occur over time based on market demand and consistent with the existing DSAP. Lots A, B, and C would remain as surface parking for the foreseeable future, and Block E (the former San



Jos é Water Company site) would remain outside the DSAP boundary, where a previously approved development project would proceed unchanged, resulting in construction of approximately 1.04 million gsf of office and retail space and 325 residential units on Block E (included in the program for this alternative). Overall, under this alternative development on the project site would be less than under the proposed project, yielding up to an estimated 4.9 million gsf of office uses, 419 hotel rooms, 625 dwelling units, and 380,000 square feet of retail/restaurant uses in the 80-acre planning area. The overall intensity of development within the project site, measured by building floor area, would be reduced by approximately 56 percent compared to the proposed project. Given the reduced development program, this alternative would likely preserve one or more historical resources that would be adversely affected under the proposed project.

**B. Comparison of Environmental Impacts:** The No Project/DSAP Development Alternative would not result in as much new housing or office space as the proposed project and would generally have reduced impacts compared to the project because of the lesser intensity of uses proposed. However, this alternative would result in net new GHG emissions, unlike the project, and most of the project's significant and unavoidable impacts would still occur related to air quality, cultural resources, land use, noise and vibration, and population and housing, even with mitigation measures identified in the EIR.

**C. Basis for Finding:** The No Project/DSAP Development Alternative would partly address the City's goals with respect to buildout under the General Plan and the DSAP. (It is noted that the City is in the process of amending the DSAP.) However, this alternative would not address the stated objectives of either the project applicant or the City for the project site, as memorialized in the MOU dated December 4, 2018 and described here. This MOU called for creating a vibrant, welcoming, and accessible urban destination on the project site, and envisioned substantial new employment and housing, including affordable housing, with the City "collaborating with the project applicant to innovate in the development of an urban destination that will bring opportunity to the local community and create new models for urban and workplace design and development." Developing the project under the framework of the already adopted DSAP would to some extent prevent in-depth collaboration to create an innovative and cohesive plan. For example, the DSAP's road network would likely preclude the project's integration of development with a re-conceived road network, which creates more public open space while also meeting the project's objective of creating contiguous, horizontally connected office spaces.

In addition, with significantly reduced housing overall (625 units compared to the project's up to 5,900 units), affordable housing would also be expected to be reduced. The increase in employment would be similarly reduced, to just over 20,000 jobs across the project site, from the project's approximately 30,550 new

jobs. The MOU also calls for a range of community benefits, including affordable housing. With reduced development of office space, which generally supports the financial feasibility of community benefits, including affordable housing, the ability of the No Project/DSAP Development Alternative to meet the MOU objective of community benefits would also be reduced. This alternative also would not meet the project applicant's core objective to accommodate the long-term expansion of its workforce and business operations in a Bay Area location anchored by public transportation, or any of the project applicant's other objectives.

The No Project/DSAP Development Alternative would generally have lesser impacts than the project; however it would result in a net increase in GHG emissions unlike the project, and most of the project's significant and unavoidable impacts would still occur related to air quality, cultural resources, land use, noise and vibration, and population and housing, even with mitigation measures identified in the EIR. Moreover, while this alternative would partly address the City's goals with respect to buildout under the General Plan and the DSAP, it would not address the stated objectives of either the project applicant or the City for the project site, as memorialized in the MOU dated December 4, 2018. It is, therefore, not a feasible alternative.

- D. Finding:** Accordingly, these specific economic, legal, social, technological, or other considerations, make infeasible the No Project/DSAP Development Alternative. The City Council hereby finds that each of the reasons set forth above would be an independent ground for rejecting the No Project/DSAP Development Alternative, and by itself, independent of any other reason, would justify rejection of the No Project/DSAP Development Alternative.

#### **Alternative 2A: Historic Preservation Alternative**

- A. Description of Alternative:** The Historic Preservation Alternative would retain, adaptively reuse, and avoid adverse effects on all nine of the historical resources identified on the project site. This alternative would also reduce the sizes of buildings and increase setbacks proposed near retained historical resources on the project site. Overall, the Historic Preservation Alternative would include less development than the proposed project. Specifically, the number of residential dwelling units would be approximately up to 5,665 units (235 fewer than under the proposed project); the number of limited-term corporate accommodation units would be reduced by about 460, to a maximum of 340; and the maximum amount of office space would be reduced by about 1,610,000 gsf, to a maximum of 5,690,000 gsf. The floor area of active uses (e.g., commercial retail/restaurant, cultural, institutional, childcare, and education) and infrastructure-related buildings would also be reduced approximately in proportion to the decrease in office uses. The number of hotel rooms would

be unchanged from the proposed project, and event/conference space would be reduced by half, to 50,000 gsf. The overall intensity of development, measured by building floor area, would be reduced by approximately 17 percent as compared to the proposed project. This alternative would not include all of the project's proposed street network changes in the central portion of the site.

The Historic Preservation Alternative would respond to a number of policies in the General Plan, including Policy LU 13.2 (preservation of candidate or designated landmark buildings, structures and historic objects), and Policy LU 13.6 (modifications to candidate or designated landmarks to conform to the Secretary's Standards and/or appropriate State requirements). The alternative would also particularly address the project applicant's objective to "Preserve and adapt landmark historic resources and assets where feasible to foster a place authentic to San José and foster contemporary relations to San José's history."

**B. Comparison of Environmental Impacts:** The Historic Preservation Alternative would avoid all of the proposed project's significant unavoidable impacts on historic architectural resources. This alternative would not result in as much overall development as the proposed project and would have generally reduced impacts compared to the proposed project because of the lesser intensity of uses proposed. However, the relatively modest reduction in development program would not avoid any of the project's significant and unavoidable impacts in the areas of air quality, land use, noise and vibration, or population and housing, although the severity of impacts would be marginally reduced compared to those of the proposed project.

**C. Basis for Finding:** The Historic Preservation Alternative would resemble the project in most respects, and would therefore meet most of the project objectives, although to a lesser extent than the proposed project. However, this alternative would result in approximately 17 percent less overall development, including a 4 percent (235-unit) reduction in the number of housing units, which would also reduce the amount of affordable housing. In this way, it would not advance, to the same degree, the City's objectives to develop the site in a way that aligns with the General Plan, DSAP, and Downtown Strategy 2040 goals to encourage ambitious job creation in close proximity to transit, or to advance the Diridon Station Area as a world-class transit hub and key transportation center for Northern California.

The Historic Preservation Alternative would include a mixed-use program somewhat comparable to that of the proposed project, although the mix of uses would be different. However, the retention of a number of historic resources, and the resulting removal or significant reduction of certain new-construction buildings in the Historic Preservation Alternative, as compared to the project, would result in

less overall cohesion in the development plan. For example, the northern and southern ends of the project would likely be more isolated as a result of larger gaps in the development. Circulation improvements in the central area of the site would not be implemented, resulting in no southern extension of Cahill Street. Similarly, by retaining 145 South Montgomery Street, the proposed open space known as the Meander would not be built. With elimination of these features, the Alternative would fail to address the project applicant's objectives to improve connectivity and create a vibrant public realm to the same extent as the project. Economic growth and contribution to the City's tax base, an objective of the City and Google MOU, would be somewhat less compared to the proposed project, as the Historic Preservation Alternative would have a reduced office program compared to the proposed project, which is designed to realize the density gains encouraged by the City Council. Because office space generally supports the financial feasibility of community benefits, including affordable housing, the reduced office program would also limit or reduce the financial feasibility of delivering a range of community benefits, as sought by the MOU.

While office uses would also be generally grouped in order to achieve a balance of a vibrant mixed-use environment, the loss of certain office buildings under the Historic Preservation Alternative would reduce operational efficiencies, as well as the potential for future business operations to grow in place. The loss of office buildings at the northern and southern areas of the plan would reduce connectivity and the ability to share amenities. When compared to the proposed project, the alternative would eliminate some proposed large floorplate buildings, thereby reducing the project's ability to meet the objective of floorplates large enough to provide horizontally connected workplaces and groupings of offices to take advantage of operational efficiencies.

This alternative, therefore, would not fully achieve the project applicant's objective to develop a dense commercial center that is anchored by (and better leverages) public transit infrastructure. In addition, reduced development under the Historic Preservation Alternative could affect the layout and construction and reduce the efficiency of the project's proposed district infrastructure systems, potentially achieving less in the way of efficiency than the proposed project, and therefore addressing the project applicant's objective of a model of 21st century sustainable development to a lesser extent. Shared infrastructure systems developed at a scale appropriate to the proposed project and the Historic Preservation Alternative are expected to require generally fixed or similar costs. Therefore, reduced overall development in the Historic Preservation Alternative would result in both lower efficiency for district systems, while impacting economic efficacy.

Although the Historic Preservation Alternative would avoid all of the proposed project's significant unavoidable impacts on historic architectural resources, it would not avoid any of the project's significant and unavoidable impacts in the

areas of air quality, land use, noise and vibration, or population and housing, although the severity of impacts would be marginally reduced compared to those of the project. Moreover, while the Historic Preservation Alternative would respond to a number of historic preservation policies in the General Plan, it would be less responsive to many of the City's project objectives and key goals and policies in the General Plan, DSAP, and Downtown Strategy, MOU and other documents regarding economic development, transit, and housing. It also would not fully achieve the project applicant's and the City's objective to develop a dense commercial center that is anchored by (and better leverages) public transit infrastructure, and for all of these reasons would be infeasible.

- D. Finding:** Accordingly, these specific economic, legal, social, technological, or other considerations, make infeasible the Historic Preservation Alternative. The City Council hereby finds that each of the reasons set forth above would be an independent ground for rejecting the Historic Preservation Alternative, and by itself, independent of any other reason, would justify rejection of the Historic Preservation Alternative.

**Alternative 2B: Historic Preservation/San José International Airport Comprehensive Land Use Plan (CLUP) Noise Compliance Alternative**

- A. Description of Alternative:** The Historic Preservation/San José International Airport Comprehensive Land Use Plan (CLUP) Noise Compliance Alternative would combine aspects of the Preservation Alternative and the proposed project to avoid significant impacts to all but one of the historical resources on the project site and would also avoid significant noise and land use effects related to non-compliance with the CLUP airport noise exposure policy. The Historic Preservation/San José International Airport Comprehensive Land Use Plan (CLUP) Noise Compliance Alternative would respond to a number of policies in the General Plan, including Policy LU-13.2 (preservation of candidate or designated landmark buildings, structures and historic objects), and Policy LU-13.6 (modifications to candidate or designated landmarks to conform to the Secretary of the Interior's Standards for Treatment of Historic Properties and/or appropriate State requirements). The alternative would also particularly address the project applicant's objective to "Preserve and adapt landmark historic resources and assets where feasible to foster a place authentic to San José and foster contemporary relations to San José's history."

This alternative would develop a maximum of 3,600 dwelling units, 2,300 fewer than the project, and 436,000 gsf of active uses, about 13 percent less active uses than the project. No residential uses would be developed on several blocks proposed for residential development under the project.



The change in location of residential units would avoid most development of new residential units within the 65 dBA CNEL airport noise contour, while the relatively small number residential units within the noise contour would not include outdoor space, thereby avoiding significant impacts relating to CLUP airport noise exposure policies for residential uses. This alternative would retain the project's proposed 7.3 million gsf of office space, 300 hotel rooms, 800 units of limited-term corporate accommodation, 100,000 gsf of conference/event space, and 230,000 gsf devoted to infrastructure and utilities. Total development would be about 14 percent less than the project. Like the Historic Preservation Alternative, this alternative would not make all of the street network changes in the central portion of the site.

**B. Comparison of Environmental Impacts:** The Historic Preservation/CLUP Noise Compliance Alternative would result in a similar level of development to the Historic Preservation Alternative and would have reduced impacts compared to the proposed project. It would avoid adverse effects to eight of the nine historical resources on the project site but would include the project's proposed additions and alterations to the former Hellwig Iron Works Building at 150 South Montgomery to create an architectural icon. Because this transformation would appear to alter the building form and affect its historic integrity, it would result in a significant and unavoidable impact, similar to the proposed project. Additionally, the relatively modest reduction in development program would not avoid all of the project's significant and unavoidable impacts in the areas of air quality, noise and vibration (other than airport noise policy consistency), or population and housing, although the severity of impacts would be marginally reduced compared to those of the proposed project. This alternative would, however, avoid land use and noise impacts related to airport noise.

**C. Basis for Finding:** The Historic Preservation/CLUP Noise Compliance Alternative would resemble the project in most respects, and would therefore meet most of the project objectives, although to a lesser extent than the proposed project. However, this alternative would result in approximately 14 percent less overall development, including a nearly 40 percent (2,300-unit) reduction in the number of housing units, which would also reduce the amount of affordable housing, a community benefit outlined in the City and Google MOU. The alternative would achieve the project applicant's objective to provide sufficient high-quality office space to accommodate the long-term expansion of its workforce and business operations in a Bay Area location that is anchored by public transportation, by allowing for up to 7.3 million gsf of office development. Retaining the office development under this alternative would also advance the key objective of providing economic vitality and an economically feasible project. Further, the alternative would achieve the City's policy objectives to promote development of Downtown as a regional job center, to intensify employment activities on sites in close proximity to transit facilities, and increasing jobs and economic development



Downtown. However, this alternative would not meet the City's and the project applicant's MOU objectives to develop housing, including affordable housing, to the same degree as the proposed project. The reduction in residential development also would not advance to the same degree as the proposed project the applicant's objective to develop housing at a sufficient density to maintain activity levels in the project site outside of normal business hours. This alternative would also reduce by about 13 percent the square footage of active uses developed on the project site, and thus would not advance, to the same degree, the City's objectives to develop the site in a way that aligns with the General Plan, DSAP, and Downtown Strategy 2040 goals to encourage ambitious job creation in close proximity to transit, or to advance the Diridon Station Area as a world-class transit hub and key transportation center for Northern California.

Similar to Alternative 2A, the Historic Preservation/CLUP Noise Compliance Alternative would include a mixed-use program somewhat comparable to that of the proposed project, although the mix of uses would be different. However, the retention of a number of historic resources, and the resulting removal or significant reduction of certain new-construction buildings in this alternative, as compared to the project, would result in less overall cohesion in the development plan. For example, the northern and southern ends of the project would likely be more isolated as a result of larger gaps in the development. Circulation improvements in the central area of the site would not be implemented, resulting in no southern extension of Cahill Street. Similarly, by retaining 145 South Montgomery Street, the proposed open space known as the Meander would not be built. With elimination of these features, the Alternative would fail to address the project applicant's objectives to improve connectivity and create a vibrant public realm to the same extent as the project. As with Alternative 2A, economic growth and contribution to the City's tax base, an objective of the City and Google MOU, would be somewhat less compared to the proposed project, as the Historic Preservation/CLUP Noise Compliance Alternative would have a reduced office program compared to the proposed project, which is designed to realize the density gains encouraged by the City Council.

Like Alternative 2A, the Historic Preservation/CLUP Noise Compliance Alternative would eliminate some proposed large floorplate buildings that would be developed under the proposed project, thereby reducing the project's ability to meet the objective of floorplates large enough to provide horizontally connected workplaces and grouping offices to take advantage of operational efficiencies. This alternative, therefore, would not fully achieve the project applicant's and the City's objective to develop a dense commercial center that is anchored by (and better leverages) public transit infrastructure. In addition, reduced development under the Historic Preservation/CLUP Noise Compliance Alternative could affect the layout and construction and reduce the efficiency of the project's proposed district infrastructure systems, potentially achieving less in the way of efficiency than the

proposed project and therefore addressing the project applicant's objective of a model of 21st century sustainable development to a lesser extent. Shared infrastructure systems developed at a scale appropriate to the proposed project and the Historic Preservation/CLUP Noise Compliance Alternative are expected to require generally fixed or similar costs. Therefore, reduced overall development in the Historic Preservation/CLUP Noise Compliance Alternative would result in both lesser efficiency for district systems, while impacting economic efficacy.

While the Historic Preservation/CLUP Noise Compliance Alternative would avoid most of the proposed project's significant unavoidable impacts on historic architectural resources, would avoid land use and noise impacts related to airport noise, and would meet many project objectives, this alternative would develop nearly 40 percent (2,300 units) less housing than the project, which would also reduce the amount of affordable housing, an objective of the City and Google MOU. This alternative also would not implement certain circulation and open space improvements that are intended to further multimodal transportation and connections to Downtown. The Historic Preservation/CLUP Noise Compliance Alternative is, therefore, not a feasible alternative.

- D. Finding:** Accordingly, these specific economic, legal, social, technological, or other considerations, make infeasible the Historic Preservation/CLUP Noise Compliance Alternative. The City Council hereby finds that each of the reasons set forth above would be an independent ground for rejecting the Historic Preservation/CLUP Noise Compliance Alternative, and by itself, independent of any other reason, would justify rejection of the Historic Preservation/CLUP Noise Compliance Alternative.

### **Alternative 3: 150 South Montgomery Street Preservation Alternative**

- A. Description of Alternative:** The 150 South Montgomery Street Preservation Alternative would be identical to the proposed project except that it would not include the proposed project's alterations and additions to the building at 150 South Montgomery Street (historic Hellwig Ironworks) to accommodate new arts and cultural uses. Instead, the 150 South Montgomery Street building would be preserved and/or rehabilitated and adaptively reused in compliance with the Secretary of the Interior's Standards for the Treatment of Historic Properties. Land use designations and height limits would be the same as under the proposed project, as would the proposed development program, because the program space identified for addition(s) to the 150 South Montgomery Street building (approximately 8,500 square feet) would be developed elsewhere on the project site.

**B. Comparison of Environmental Impacts:** Impacts of the 150 South Montgomery Street Preservation Alternative would be virtually identical to those of the proposed project, with the exception of Impact CU-3 (additions and modifications to 150 South Montgomery Street). With the proposed project, this impact would be significant and unavoidable, but with this alternative, the impact would be less than significant with mitigation because the historic significance of the 150 South Montgomery Street building would not be adversely affected. No other impacts would be meaningfully different than those of the project. The level of construction activity would be virtually the same compared to that of the project, because the development associated with the proposed addition would be relocated elsewhere on the project site, and any minor decrease in construction activity, compared to that with the proposed project, would not measurably decrease air quality or noise impacts. Similarly, any minor redistribution of traffic would not measurably change transportation impacts.

**C. Basis for Finding:** The 150 South Montgomery Street Preservation Alternative would allow both the City and the project applicant to meet virtually all project objectives, except that the project would likely not include the “world-class, architecturally iconic civic/cultural center for the City of San José” due to the site’s proposed “combination and juxtaposition of historic and contemporary design elements,” as articulated in the project applicant’s objectives. Under this alternative, the project applicant’s objectives to build a place that is “of San José” through high-quality urban design, fostering contemporary connections to San José’s history, and creating places that foster arts and cultural uses, would be achieved, although not to the same degree as with the proposed project. While arts and cultural uses would be anticipated elsewhere on the site, they would not be anticipated in an iconic, contemporary interpretation of a historic building. They also would not be as located centrally on the project site in a spot adjacent to a major new open space such as the Meander, reducing the ability of such uses to create an iconic architectural moment.

Although the 150 South Montgomery Street Preservation Alternative would eliminate the project’s significant and unavoidable impact on the Hellwig Iron Works building (150 South Montgomery Street), other impacts of this alternative would be virtually identical to those of the proposed project, and the alternative would not avoid any of the project’s other significant and unavoidable impacts. While this alternative would meet nearly all the project objectives, it would not attain the project applicant’s goal of developing an architecturally iconic civic/cultural center as part of the project. The 150 South Montgomery Street Preservation Alternative is, therefore, not a feasible alternative.

**D. Finding:** Accordingly, these specific economic, legal, social, technological, or other considerations, make infeasible the 150 South Montgomery Street Preservation Alternative. The City Council hereby finds that each of the reasons

set forth above would be an independent ground for rejecting the 150 South Montgomery Street Alternative, and by itself, independent of any other reason, would justify rejection of the 150 South Montgomery Street Alternative.

#### **Alternative 4: Reduced Office Alternative**

- A. Description of Alternative:** The Reduced Office Alternative would include the same amount of housing as the proposed project and a reduced amount of commercial office space, and is intended to reduce the project's contribution to the cumulative jobs/housing impact identified in this EIR (Section 3.11, Population and Housing). The Reduced Office Alternative would include less overall development than the proposed project. Specifically, this alternative would include a maximum of only 3 million gsf of office space (almost 60 percent less than the project). In addition, the number of limited-term corporate accommodation rooms would also be reduced by 60 percent, to a maximum of 320 rooms, while infrastructure-related building space would be reduced by approximately 30,000 gsf (13 percent). Active uses (e.g., commercial retail/restaurant, cultural, institutional, childcare and education) also would be reduced by approximately 275,000 gsf (55 percent), to a maximum of 225,000 gsf. The Reduced Office Alternative would provide up to 5,900 dwelling units and 300 hotel rooms, the same quantities as under the proposed project. The overall intensity of development, measured by building floor area, would be reduced by approximately 36 percent compared to the proposed project. Given the reduced development program, this alternative would likely allow for preservation of one or more historical resources that would be adversely affected under the proposed project.
- B. Comparison of Environmental Impacts:** This alternative would avoid the proposed project's cumulatively considerable contribution to the cumulative significant and unavoidable jobs/housing ratio impact projected to occur by 2040 under the General Plan, DSAP and Downtown Strategy 2040. With its smaller development program, this alternative would also have reduced impacts compared to the project, because of the lesser intensity of uses proposed. Despite the large reduction in development program, however, the Reduced Office Alternative would not avoid any of the proposed project's significant unavoidable impacts in the areas of air quality, cultural resources, land use, or noise and vibration, although the severity of impacts would be greatly reduced as compared to those of the proposed project. This alternative would also not meet the project's "no net additional" standard for GHG emissions.
- C. Basis for Finding:** The Reduced Office Alternative would resemble the project in some respects, however it would substantially reduce the amount of office space proposed with the project, and would therefore only meet some of the project

objectives. It would not do as much to further the City's goals, as expressed in the General Plan, the DSAP and Downtown Strategy 2040, of substantially increasing the ratio of jobs to housing in the Downtown area. It would also not advance, to the same degree, the City's objectives to develop the site in a way that aligns with the General Plan, DSAP, and Downtown Strategy 2040 goals to encourage ambitious job creation in close proximity to transit, or to advance the Diridon Station Area as a world-class transit hub and key transportation center for Northern California. In addition, with less than half of the office program as that of the proposed project, the Reduced Office Alternative would have a proportionally reduced community benefits program, as described in the MOU—including affordable housing, which would similarly be anticipated to be less than half of the amount to be delivered in the proposed project, and would provide reduced economic benefits and property tax revenue to the City.

With nearly 60 percent less office space than the proposed project, the alternative would not meet the project applicant's core objective to accommodate the long-term expansion of its workforce and business operations in a Bay Area location anchored by public transportation. The Reduced Office Alternative, like the Historic Preservation Alternative, would not include certain large floorplate office buildings, given the substantial reduction in office space compared to the project, especially to the extent that this alternative would preserve one or more of the historic resources proposed for demolition with the proposed project. This could result in lesser workplace flexibility, contiguity, and operational efficiencies than would the proposed project. This alternative could also reduce the environmental performance and economic viability of district infrastructure systems, compared to the proposed project, reducing this alternative's ability to meet the project objective to achieve outstanding environmental performance.

Although the Reduced Office Alternative would avoid the proposed project's significant unavoidable cumulative impact with respect to jobs/housing balance, it would not avoid any of the proposed project's significant unavoidable impacts in the areas of air quality, cultural resources, land use, or noise and vibration, although the severity of impacts would be greatly reduced as compared to those of the project. The Reduced Office Alternative would not achieve the project's "no net additional" standard for GHG emissions, and would do less than the project to further the City's goals, as expressed in the General Plan, DSAP and Downtown Strategy 2040, of substantially increasing the ratio of jobs to housing in the Downtown area. Nor would it advance, to the same degree as the project, the City's objectives to develop the site in a way that aligns with the General Plan, DSAP, and Downtown Strategy 2040 goals to encourage ambitious job creation in close proximity to transit, or to advance the Diridon Station Area as a world-class transit hub and key transportation center for Northern California. It also would not meet the project applicant's core objective to accommodate the long-term expansion of its workforce and business operations in a Bay Area location



anchored by public transportation, and it would generate lesser public benefits than would the proposed project. The Reduced Office Alternative is, therefore, not a feasible alternative.

- D. Finding:** Accordingly, these specific economic, legal, social, technological, or other considerations, make infeasible the Reduced Office Alternative. The City Council hereby finds that each of the reasons set forth above would be an independent ground for rejecting the Reduced Office Alternative, and by itself, independent of any other reason, would justify rejection of the Reduced Office Alternative.

### **Alternative 5: Reduced Intensity Alternative**

- A. Description of Alternative:** Compared to the proposed project, the Reduced Intensity Alternative would include approximately 55 percent less overall development, measured by building floor area. Specifically, this alternative would include up to 3 million gsf of office space, up to 2,655 dwelling units, a maximum of 150,000 gsf of active uses (e.g., commercial retail/restaurant, cultural, institutional, child care, and education), up to 135 hotel rooms, up to 320 units of limited-term corporate accommodation, as much as 45,000 gsf of event/conference space, and a maximum 127,000 gsf of infrastructure-related building space. Overall development would be about 58 percent less than with the project. Given the reduced development program, this alternative would likely allow for preservation of one or more historical resources that would be adversely affected under the proposed project. The scale of the proposed project would need to be reduced by approximately 90 percent to avoid all of the project's significant and unavoidable impacts relating to operational emissions of criteria air pollutants; however, the Reduced Intensity Alternative was developed to meaningfully reduce criteria air pollutant emissions while maintaining a similar proportional mix of office, residential, and active uses as the proposed project.
- B. Comparison of Environmental Impacts:** With its substantially smaller development program, this alternative would have reduced impacts compared to the project because of the lesser intensity of uses proposed. In particular, the alternative would have less than significant impacts relating to operational emissions of PM<sub>2.5</sub>, unlike the proposed project. Despite the large reduction in development program, however, the Reduced Intensity Alternative would not avoid any of the project's other significant unavoidable impacts in the areas of air quality, cultural resources, land use, noise and vibration, or population and housing, although the severity of air quality and noise and vibration impacts would be greatly reduced, compared to those of the proposed project. This alternative would, however, not meet the project's "no net additional" standard for GHG emissions. It



is also likely that this alternative could be designed to avoid one or more historic resources, but in the absence of a detailed development plan and a historic preservation objective, it is assumed that these impacts would remain significant and unavoidable.

- C. Basis for Finding:** The Reduced Intensity Alternative would achieve many of the objectives for the project site, although to a lesser degree than the proposed project. It would not advance, to the same degree, the City's objectives to develop the site in a way that aligns with the General Plan, DSAP, and Downtown Strategy 2040 goals to encourage ambitious job creation in close proximity to transit, or to advance the Diridon Station Area as a world-class transit hub and key transportation center for Northern California. This alternative would not substantially address the stated objectives of either the project applicant or the City for the project site, as memorialized in the MOU dated December 4, 2018. This MOU called for creating a vibrant, welcoming, and accessible urban destination on the project site, and envisioned substantial new employment and housing, with the City "collaborating with the project applicant to innovate in the development of an urban destination that will bring opportunity to the local community and create new models for urban and workplace design and development." In addition, like the Historic Preservation Alternative and the Reduced Office Alternative, the Reduced Intensity Alternative would generate less in the way of community benefits, including affordable housing, and would provide reduced economic benefits and property tax revenue to the City than would the proposed project.

With nearly 60 percent less office space than the proposed project, the alternative would not meet the project applicant's core objective to accommodate the long-term expansion of its workforce and business operations in a Bay Area location anchored by public transportation. Similarly, it would reduce the project applicant's ability to create a dense commercial center and construct housing with sufficient density to maintain day and evening, weekday and weekend activity on the project site while offering a mix of unit types, sizes, and levels of affordability to accommodate a range of potential residents. The Reduced Intensity Alternative, like the Historic Preservation Alternative and Reduced Office Alternative, would remove certain large floorplate office buildings, thereby reducing the project's ability to meet the objective of floorplates large enough to provide horizontally connected workplaces and grouping offices to take advantage of operational efficiencies. This alternative could also reduce the environmental performance and economic viability of district infrastructure systems, compared to the proposed project, reducing this alternative's ability to meet the project applicant's objective to provide a model of 21<sup>st</sup> century sustainable urban development.

Although the Reduced Intensity Alternative would have reduced impacts compared to the project, it would not avoid all of the project's significant unavoidable impacts in the areas of air quality (except for operational emissions of PM<sub>2.5</sub>), cultural

resources, land use, noise and vibration, or population and housing, although the severity of impacts would be greatly reduced, compared to those of the project. Like the Reduced Office Alternative, the Reduced Intensity Alternative would not achieve the project's "no net additional" standard for GHG emissions, and would do less than the project to further the City's goals, as expressed in the General Plan, DSAP and Downtown Strategy 2040, of substantially increasing the ratio of jobs to housing in the Downtown area, nor would it advance, to the same degree as the project, the City's objectives to develop the site in a way that aligns with the General Plan, DSAP, and Downtown Strategy 2040 goals to encourage ambitious job creation in close proximity to transit, or to advance the Diridon Station Area as a world-class transit hub and key transportation center for Northern California. The Reduced Intensity Alternative would not substantially address the stated objectives of either the project applicant or the City for the project site, as memorialized in the MOU dated December 4, 2018. It also would not meet the project applicant's core objective to accommodate the long-term expansion of its workforce and business operations in a Bay Area location anchored by public transportation, and it would generate lesser public benefits than would the proposed project. The Reduced Intensity Alternative is, therefore, not a feasible alternative.

- D. Finding:** Accordingly, these specific economic, legal, social, technological, or other considerations, make infeasible the Reduced Intensity Alternative. The City Council hereby finds that each of the reasons set forth above would be an independent ground for rejecting the Reduced Intensity Alternative, and by itself, independent of any other reason, would justify rejection of the Reduced Intensity Alternative.

#### **Alternatives Considered for Inclusion in the Draft EIR and Rejected**

As discussed in Section 5.4 of the Draft EIR, the following alternatives were considered for inclusion in the Draft EIR but were not analyzed in detail because they would not fulfill most of the basic objectives of the project, would not avoid or substantially lessen significant environmental impacts, and/or would be infeasible.

- A.** The Off-Site Location Alternative would locate the project's development program to another transit-accessible site in the City or the region. There are no sites in San José of similar size that are vacant or could be readily assembled and any such sites in the are not owned or controlled by the project applicant, and are therefore infeasible. Also an alternative location would not address the City's objective to advance goals and strategies for Downtown and the DSAP.

**Finding:** Accordingly, these specific economic, legal, social, technological, or other considerations, make the Off-Site Location Alternative infeasible.

- B.** The Additional Residential Development Alternative was based on comments received in the scoping period and would modify the project to include up to 17,750 dwelling units rather than up to 5,900 units while retaining the same amount of office space as the project. This alternative would reduce or eliminate the project's contribution to a significant impact related to jobs-housing balance, but would increase rather than reduce other significant impacts of the project. This alternative would require raising height limits beyond those proposed with the project and allowed near the airport, likely exceed allowable densities in the General Plan's Downtown designation, and would not be consistent with the City's goals as expressed in the General Plan, the DSAP, and Downtown Strategy 2040.

**Finding:** Accordingly, these specific economic, legal, social, technological, or other considerations, make the Additional Residential Development Alternative infeasible.

- C.** The Creek Setback Alternative would include 100-foot setbacks along Los Gatos Creek, reducing significant and mitigable biological impacts of the project. It would require more material modifications to the project than in other reduced density alternatives included in the EIR, reduce the amount of retail, cultural, arts, education, or other active uses in the project, and reduce the ability to meet project objectives such as activating commercial spaces, while failing to avoiding or substantially lessening any of the significant and unavoidable impacts of the project. Also, the City's riparian corridor policy expressly allows deviation from the 100-foot setback where impacts to riparian resources are mitigated to less than significant, as with the project.

**Finding:** Accordingly, these specific economic, legal, social, technological, or other considerations, make the Creek Setback Alternative infeasible.

- D.** The Substantially Reduced Project (Avoidance of Significant Criteria Air Pollutant Impacts) Alternative would reduce the size of the project by nearly 90 percent in order to avoid or reduce the significant and unavoidable impact of the project related to emissions of criteria air pollutants to less than significant. Development that would not occur on the site would likely occur elsewhere, potentially at a site or sites with less transit accessibility, and overall criteria pollutants in the region would still be expected to rise. This alternative would also be fundamentally different than the project and would not meet the project applicant's and the City's objectives of developing new office space to support the long-term expansion of the project applicant's Bay Area operations and workforce, encouraging ambitious job creation and proposing development of Downtown as a regional job center, and delivering thousands of units of new, high quality housing.

**Finding:** Accordingly, these specific economic, legal, social, technological, or

other considerations, make the Substantially Reduced Project (Avoidance of Significant Criteria Air Pollutant Impacts) Alternative infeasible.

- E. The No Project (No Development Alternative) would assume no new development on the project site other than reuse of existing buildings and approved “pipeline” projects. The alternative would require the City to stop implementing its General Plan and would not accomplish any of the project applicants’ and the City’s objectives. It would also not be reasonable or consistent with CEQA Guidelines Section 15126.6(e), which requires a “no project” alternative that reflects the practical result of non-approval and not a set of artificial assumptions.

**Finding:** Accordingly, these specific economic, legal, social, technological, or other considerations, make the No Project (No Development) Alternative infeasible.

### **Alternatives Suggested in Comments on the Draft EIR**

Comments on the Draft EIR (L.9, Y.1, Y.7, Z.27, DD.16, II.1) directly or indirectly recommended that additional preservation alternatives be evaluated. Another comment (F.6) requested that additional housing units be included in the proposed project. These comments are fully responded to in the First Amendment to the Draft EIR. The City Council finds that the FEIR’s analysis of alternatives meets the requirement for analysis of a “range of reasonable alternatives” in CEQA Guidelines Section 15126.6.

### **Environmentally Superior Alternative**

The CEQA Guidelines (Section 15126.6) state that an EIR shall identify an environmentally superior alternative. Based on the above discussion, the environmentally superior alternative is the Reduced Intensity Alternative because it would substantially reduce the project’s significant air quality impacts (Impacts AQ-2, AQ-3, C-AQ-1, and C-AQ-2) and would substantially reduce noise impacts (Impacts NO-1b, NO-1c, C-NO-1, and C-NO-2). In addition, the Reduced Intensity Alternative would most likely reduce, and could potentially avoid, the project’s significant unavoidable impacts due to demolition and substantial alteration of cultural resources (Impacts CU-1, CU-3, and C-CU-1). On the whole, due to the overall reduced scale of development, this alternative was found to provide a greater decrease in significant environmental impacts, compared to those of the proposed project, than the other alternatives considered. It should be noted, however, that to the extent that the demand for additional developed space that would otherwise be built pursuant to the proposed project would be met elsewhere in the Bay Area, employees in and residents of such development could potentially generate greater impacts on transportation systems (including vehicle miles traveled), air quality, and greenhouse gases than would be the case for development on the more compact and better-served-by-transit project site. This would be particularly likely for development in more outlying parts of the region where fewer services and lesser transit access are provided. While it would be speculative to attempt to quantify or specify the location where such development would

occur and the subsequent impacts thereof, it is acknowledged that the Reduced Intensity Alternative would incrementally reduce local impacts in and around the project site and in Downtown San José, while potentially increasing regional emissions of criteria air pollutants and greenhouse gases, as well as regional traffic congestion. Per capita GHG emissions could also be higher under the Reduced Intensity Alternative because it would not be subject to the “no net additional” GHG emissions commitment of AB 900, as the proposed project is; however, overall GHG emissions relating to the project would be substantially lower and the impact would be less than significant due to the still relatively high density of this alternative and the availability of transit. This alternative could also incrementally increase impacts related to “greenfield” development on previously undeveloped locations in the Bay Area and, possibly, beyond.

### MITIGATION MONITORING AND REPORTING PROGRAM

Attached to this Resolution as Exhibit “A” and incorporated and adopted herein is the Mitigation Monitoring and Reporting Program (“MMRP”) for the project, as required under Section 21081.6 of the Public Resources Code (CEQA statute) and Sections 15091(d) and 15097(b) of the CEQA Guidelines. The MMRP identifies impacts of the project, corresponding mitigation, designation of responsibility for mitigation implementation and the agency responsible for the monitoring action.

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## SECTION 4: STATEMENT OF OVERRIDING CONSIDERATIONS

- A. **Significant Unavoidable Impacts.** With respect to the foregoing findings and in recognition of those facts that are included in the record, the City has determined that the project would result in significant unmitigated or unavoidable impacts, as set forth above, associated with project-specific and cumulative emissions of criteria air pollutants; project-specific and cumulative effects related to health risks from toxic air contaminants and fine particulate matter; project-specific and cumulative effects on cultural (historic architectural) resources associated with demolition of historic buildings; a project-specific impact due to incompatible alterations to the historic Hellwig Ironworks Building at 150 South Montgomery Street; project-specific and cumulative land use effects associated with a conflict with airport noise policies in the Comprehensive Land Use Plan for Mineta San José International Airport; project-specific and cumulative construction noise impacts; project-specific and cumulative impacts resulting from increases in operational traffic noise; project-specific and cumulative effects associated with exposure of persons to airport noise; and a cumulative impact associated with a contribution to the jobs/housing imbalance identified in the 2040 General Plan EIR.
- B. **Overriding Considerations.** The City Council specifically adopts and makes this Statement of Overriding Considerations that this project has avoided, eliminated, or substantially lessened all significant effects on the environment where feasible, and finds that the remaining significant, unavoidable impacts of the project are acceptable in light of the economic, legal, environmental, social, technological or other considerations noted below, because the benefits of the project outweigh its significant adverse environmental impact. The City Council finds that each of the overriding considerations set forth below constitutes a separate and independent basis for finding that the benefits of the project outweigh its significant adverse environmental impacts and each is an overriding consideration warranting approval of the project. These matters are supported by evidence in the record that includes, but is not limited to, the policy determinations of the City Council, as set forth in the Envision San José 2040 General Plan, the Diridon Station Area Plan, and Downtown Strategy 2040.
- C. **Benefits of the Project.** The City Council has considered the public record of proceedings on the proposed project as well as oral and written testimony at all public hearings related to the project, and does hereby determine that implementation of the project as specifically provided in the project documents would result in the following substantial public benefits:



- 1) **Provision of Housing in an Identified Growth Area.** Development of the project would result in a net increase of up to about 4,000 residential units, or up to about 5,900 residential units as analyzed in the FEIR, within the Diridon Station Area, advancing Major Strategy No. 3 (Focused Growth) in the Envision San José 2040 General Plan. Provision of increased density in an identified growth area would advance General Plan policies to encourage infill development.
- 2) **Support of 25 percent affordable housing in the Diridon Station Area.** The project will deliver, cause to be delivered, or dedicate land in service of the delivery of 1,000 units of affordable housing, or 25% affordable housing in the Diridon Station Area (measured against the anticipated 4,000 units to be delivered as part of the project), a high watermark for a private project in San José and a critical goal to meet in light of a regional housing, and affordable housing, shortage.
- 3) **Development along High-Frequency Transit Services.** The project supports goals of the Envision San José 2040 General Plan to focus jobs and high-density housing within proximity to existing high-frequency transit (Caltrain and VTA bus routes 22, 23, 64A, 64B, 68, 500, 522, and 523) and the approved BART-Silicon Valley Phase II extension, as well as proposed California High-Speed Rail. The development supports increased ridership and use of these bus lines by placing more destinations and potential users within a half-mile of existing transit stops, and through implementation of a project-specific Transportation Demand Management Plan.
- 4) **Jobs/Housing Balance and Fiscal Health.** The project would produce more jobs (net increase of approximately 30,550) than employed residents (net increase of approximately 8,850); therefore, it would assist the City in implementing its adopted General Plan major strategy of growing as a regional job center and help to achieve the jobs-to-employed-residents ratio of 1.1 citywide, from a current ratio of 0.81:1, based on the 2020 General Plan Annual Performance Review. As discussed in the General Plan, this is critical to improving the City's ongoing fiscal health through the expansion of tax revenue on a per capita basis, especially in comparison to other cities in Santa Clara Valley, to which San José has historically exported workers.
- 5) **Access to Jobs.** Construction of the project will include a 30 percent local hire goal for on-site building construction, and all on-site construction workers will be paid state prevailing wages. Ten percent

(or over \$300 million) of commercial office building design and construction contracts will be awarded to businesses that qualify as a Local Business Enterprise (LBE), Disadvantaged Business Enterprise (DBE), Minority Business Enterprise (MBE), Woman Business Enterprise (WBE), LGBT Business Enterprise (LGBTBE), Disability Owned Business Enterprise (DOBE), and/or Service-Disabled/Veteran Owned Business (SD/VOB). The project applicant will additionally promote and provide career exploration and skill development opportunities, such as onsite field trips, career days, and computer science workshops, to students from underserved communities and who have an interest in technology and technology-based careers.

**6) Community Stabilization and Opportunity Pathways.** The project's community benefits package includes a first-of-its-kind Community Stabilization and Opportunity Pathways Fund of over \$150 million, spanning the interdependence between housing, education and job access, with a focus on social equity and serving underserved and historically underrepresented students, families, and adults. The fund will support programs like affordable housing preservation, homeless prevention, and homeless services, as well as education, workforce development, small business resilience and entrepreneurship, and is structured to involve community participation in the grantmaking process. The fund will support the long-term stability and social and economic health of San José's most underserved communities and will be a pioneering and critical tool for more inclusive economic recovery.

**7) Provision of Open Space.** The project would provide 15 acres of new open space, both publicly and privately owned and all accessible to the public. Approximately 4.8 acres of the total space would be dedicated to the City for public parks and trails, and approximately 10.2 acres would be owned by the project applicant and managed by a third party. The 4.8 acres of City-dedicated parkland and trails would include about 0.55 acres of land for the Los Gatos Creek Multi-Use Trail within the project's Los Gatos Creek East and Los Gatos Creek Park, while the remaining 4.25 acres would be located in Northend Park (approximately 0.9 acres, or just under half of this open space); St. John Triangle (about 1.5 acres, or 80 percent of this open space); the Social Heart (about 0.6 acres, or 80 percent of this open space); Los Gatos Creek Park (about 0.4 acres, or 15 percent of this open space); and the Los Gatos Creek Connector (about 0.9 acres, or 65 percent of this open space). Of the 10.2 acres of project applicant-owned open space, approximately

4.2 acres would be designated as permanent parkland with a public access agreement (restrictive covenant) in perpetuity. Also permanently publicly accessible would be about 2.5 acres of riparian setback and about 0.4 acres of riparian corridor within the project site. The remainder of the open space would consist of semi-public open space (1.8 acres; semi-public open space would be publicly accessible but may have different hours and/or access conditions than the City-dedicated open space) and mid-block passages (1.4 acres).

- 8) Complete Communities.** The project will advance Envision San José 2040 General Plan policies to create complete communities. The project will complement existing and proposed development in the Diridon Station Area Plan area by locating new workers and residents on the site within a mixed-use community with high-quality urban design including office, retail, and entertainment uses and within walking distance to nearby transit, shops, restaurants, and existing neighborhoods. Placing complimentary land uses like residential and commercial/retail uses near each other will help reduce the number of single-occupancy automobile trips and vehicle-miles traveled compared with the equivalent amount of development in a more suburban location where uses are separated and require the use of an automobile, contributing to an increase in vehicle miles traveled and GHG emissions.
- 9) No Net GHG Emissions and Sustainability.** The project will comply with requirements of the Jobs and Economic Improvement through Leadership Act of 2011 (AB 900) and result in no net new GHG emissions, as well as complying with state requirements for commercial and organic waste recycling. The project will achieve Leadership in Energy and Environmental Design (LEED) ND Gold certification, including optimization of building energy performance and include on-site solar PV panels sufficient to generate at least 7.8 megawatts. The project will achieve LEED Gold Certification for all office building and will use electricity rather than natural gas for space heating and cooling.
- 10) Provision of Significant Infrastructure Improvements.** The project will expedite phasing and funding of district infrastructure with no public subsidy. Improvements will include enhanced right of way improvements, utility upgrades and relocation, undergrounded overhead power and communication lines, replacement of the West San Fernando Bridge Street (restoring an aging asset and reducing flood risk in Los Gatos Creek), district systems offering increased

environmental performance with the provision of sustainable thermal energy, electricity, waste water treatment and recycled water. Incorporation of district systems and provision of other associated infrastructure improvements will support: increased environmental resiliency and outcomes, lower burden on existing citywide systems, and better public health and social outcomes, consistent with goals articulated in Envision San José 2040 General Plan and Climate Smart San José.

**11) Attainment of City Goals in MOU.** The project will achieve or help achieve the shared goals set forth in the Memorandum of Understanding between the City and Google, dated December 4, 2018. Among these, in summary form, are the following:

- Balance and address objectives of the City, Google and the community in creating a vibrant urban destination advancing economic opportunity, social equity, and environmental sustainability with a financially-viable private development.
- Capitalize on transit availability in the Diridon Station Area with new urban development, expanded transit service, and a planned new intermodal station.
- Achieve sufficient density to create a complementary mix of uses in a vibrant, transit-oriented urban neighborhood.
- Contribute funding to develop and preserve housing in the City to help address rising housing costs and displacement.
- Create good job opportunities for San José residents of all skill and educational levels and backgrounds.
- Develop the Diridon Station Area with intent to minimize negative impacts on people and place and maximize job opportunities for local youth and adults.
- Design buildings and spaces at a human scale to support an active street life and accessibility for people of all abilities.
- Develop robust, publicly accessible amenities, including parks, open space, plazas, and trails, and create attractive, vibrant, and safe experiences for pedestrians and bicyclists, as well as public art and cultural and historical preservation, with multi-modal connections to the Guadalupe River, Los Gatos Creek, and other public spaces.

- Pursue excellence in design that is appropriately open to the public and well-integrated with the surrounding community.
- Maximize use of public transit of and minimize parking.
- Collaborate with transit agencies to enhance transit access and operations.
- Advance the City's sustainability goals as outlined in the City's "Climate Smart San José" Plan, including reducing greenhouse gas emissions.
- Ensure that all projects in the Diridon Station Area and adjacent areas contribute their fair share of investment to support amenities, infrastructure, improvements, and mitigations that benefit all properties.
- The Developer, Contractors, and Subcontractors should pay construction workers a prevailing hourly wage and benefit rate for office and research and development construction.
- Prioritize community engagement in the drafting of a Community Benefits Plan.

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

### **LOCATION AND CUSTODIAN OF RECORDS**

The documents and other materials that constitute the record of proceedings on which the City Council based the foregoing findings and approval of the project are located at the City's Department of Planning, Building and Code Enforcement, San José City Hall, 200 East Santa Clara Street, 3rd Floor Tower, San José, California, 95113, and are also located on the internet at <https://downtownwestadminrecord.com/>. The City Council hereby designates the City's Director of Planning, Building, and Code Enforcement at the Director's office at 200 East Santa Clara Street, 3rd Floor Tower, San José California, 95113, as the custodian of documents and records of proceedings on which this decision is based.

ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2021, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

\_\_\_\_\_  
SAM LICCARDO  
Mayor

ATTEST:

\_\_\_\_\_  
TONI J. TABER, CMC  
City Clerk