Draft Environmental Impact Report

Berryessa Road Mixed Use Development

(File Nos.: PDC18-036, PD21-009, PT21-030)

(SCH No.: 2021070467)

Prepared by

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CAPITAL OF SILICON VALLEY

In Consultation with

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EXECUTIVE SUMMARY

The City of San José, as the Lead Agency, has prepared this Draft Environmental Impact Report (EIR) for the Berryessa Mixed-Use Development Project (project, proposed project) in compliance with the California Environmental Quality Act (CEQA) and the CEQA Guidelines.

As the CEQA Lead Agency for this project, the City of San José is required to consider the information in this EIR along with any other available information in deciding whether to approve the project. The basic requirements for an EIR include discussions of the environmental setting, significant environmental impacts including growth-inducing impacts, cumulative impacts, mitigation measures, and alternatives. It is not the intent of an EIR to recommend either approval or denial of a project.

Summary of the Project

The approximately 13-acre project site is located at 1655 Berryessa Road in the City of San José. The site is within the boundaries of the 270-acre Berryessa BART Urban Village (BBUV) Plan area. The site is surrounded by the Bay Area Rapid Transit (BART)/Union Pacific Railroad (UPRR) tracks to the east, Berryessa Road, the San José Flea Market, and surface parking lot to the south, and residential uses to the west and north. Upper Penitencia Creek is located approximately 105 feet south of the site.

The project site is currently used for industrial purposes. The site contains two industrial buildings, a portable office structure, ancillary structures, an associated parking lot, a vegetated stormwater detention pond, and trees.

The project proposes a Planned Development (PD) Zoning for development of up to 850 residential units, 480,000 square feet of commercial space, and a 0.9-acre park at the project site. The proposed residences would be located in the northeastern and central areas and along the northern and western perimeter of the site. The proposed commercial space would be located in the southern area of the site, fronting Berryessa Road, and the open space park would be located on the northwestern corner of the site.

This EIR includes an analysis of the maximum, most intensive development under the proposed PD Zoning.

Summary of Significant Impacts and Mitigation Measures

Table ES-1 below contains a summary of the significant environmental impacts identified and discussed in the EIR, and the mitigation measures proposed to avoid or reduce those impacts. The project description and full discussion of the impacts and mitigation measures can be found in Section 2.0 Project Information and Description, and Section 3.0 Environmental Setting, Impacts, and Mitigation of this EIR, respectively.

Table ES-1: Summary of Significant Impacts and Mitigation Measures	
Impact	**Mitigation Measure**
Air Quality	
Impact AIR-1: Construction period emissions would exceed BAAQMD thresholds of 54 pounds per day for ROG exhaust by 21.25 pounds per day, during the final year of construction, which would result in a cumulatively considerable impact to regional ROG emissions. **(Less than Significant Impact with Mitigation Incorporated)**	**MM AIR-1.1:** Prior to the issuance of any demolition, grading and/or building permits (whichever occurs first), the project applicant shall prepare a construction equipment plan that includes specifications of the equipment to be used during construction. The plan shall be accompanied by a letter signed by a qualified air quality specialist, verifying that the equipment included in the plan meets the standards set forth below: • All construction equipment larger than 25 horsepower used at the site for more than two continuous days or 20 hours total shall meet U.S. EPA Tier 4 emission standards for ROG, NOx, and PM (PM_{10} and $PM_{2.5}$), if feasible, as confirmed by a qualified air quality consultant and submitted to the City, otherwise: • If use of Tier 4 equipment is not available, alternatively use equipment that meets U.S. EPA emission standards for Tier 2 or 3 engines and include particulate matter emissions control equivalent to CARB Level 3 verifiable diesel emission control devices that altogether achieve a 60 percent reduction in particulate matter exhaust in comparison to uncontrolled equipment; alternatively (or in combination); • Use alternatively fueled equipment with lower emissions that meet the reduction requirements above. Prior to issuance of any demolition, grading, and/or building permits, whichever occurs first, the project applicant shall submit a copy of the construction equipment plan to the Director of Planning, Building and Code Enforcement or Director's designee, for review and approval. **MM AIR-1.2:** Prior to the issuance of any demolition, grading and/or building permits (whichever occurs first), the project applicant shall prepare a construction equipment plan that includes a description of the location of construction site signs to be posted restricting idling of diesel-operated equipment to two minutes or less with clearly listed exceptions based on applicable state regulations. The project

applicant shall submit the construction equipment plan to the Director of Planning, Building and Code Enforcement or the Director's designee. Diesel engines, whether for off-road equipment or on-road vehicles, shall not be left idling for more than two minutes, except as provided in exceptions to the applicable state regulations (e.g., traffic conditions, safe operating conditions). The construction sites shall have posted legible and visible signs in designated queuing areas to clearly notify operators of idling limit.

Prior to issuance of any demolition, grading, and/or building permits, whichever occurs first, the project applicant shall submit a copy of the construction equipment plan to the Director of Planning, Building and Code Enforcement or Director's designee, for review and approval.

MM AIR-1.3: Prior to the issuance of any demolition, grading and/or building permits (whichever occurs first), the project applicant shall prepare a construction equipment plan that includes a description of the electrical source of power that the powerline will connect to and identifies the approximate route of the powerline through the construction site to the Director of Planning, Building and Code Enforcement or the Director's designee. The line power to the site shall be provided during the early phases of construction to minimize the use of diesel-powered stationary equipment.

Prior to issuance of any demolition, grading, and/or building permits, whichever occurs first, the project applicant shall submit a copy of the construction equipment plan to the Director of Planning, Building and Code Enforcement or Director's designee, for review and approval.

MM AIR-1.4: Prior to the issuance of any demolition, grading, and/or building permits (whichever occurs first), the project applicant shall include a stipulation in the Declaration of Covenants, Conditions, and Restrictions requiring the use of low volatile organic compound or VOC (i.e., ROG) coatings, that are below current BAAQMD requirements (i.e., Regulation 8, Rule 3: Architectural Coatings), for at least 60 percent of all residential and nonresidential interior paints and 60 percent of exterior paints. This includes all architectural coatings applied during both construction and reapplications throughout the project's operational lifetime. At least 60 percent of coatings applied must meet a "super-compliant" VOC standard of less than 10 grams of VOC per liter of paint. For reapplication of

	coatings during the project's operational lifetime, the Declaration of Covenants, Conditions, and Restrictions shall contain a stipulation for low VOC coatings to be used. Examples of "super-compliant" coatings are contained in the South Coast Air Quality Management District's website. Prior to the issuance of any demolition, grading, and/or building permits (whichever occurs first), the project applicant shall submit all construction documents and plans, including the Declaration of Covenants, Conditions, and Restrictions, shall be submitted to the Director of Planning, Building and Code Enforcement, or the Director's designee for review and approval.
Biological Resources	
Impact BIO-1: Development of the proposed project and proposed tree removals would result in impacts to nesting birds, if present on the site at the time of construction. **(Less than Significant Impact with Mitigation Incorporated)**	**MM BIO-1.1:** Prior to the issuance of any tree removal, demolition, or grading permits (whichever occurs first), the project applicant shall schedule demolition and construction activities to avoid the nesting season. The nesting season for most birds, including most raptors in the San Francisco Bay area, extends from February 1st through August 31st, inclusive. **MM BIO-1.2:** If demolition and construction cannot be scheduled between September 1st and January 31st, inclusive, pre-construction surveys for nesting birds shall be completed by a qualified ornithologist to ensure that no nests shall be disturbed during project implementation. This survey shall be completed no more than 14 days prior to the initiation of construction activities during the early part of the breeding season (February 1st through April 30th inclusive) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May 1st through August 31st inclusive). During this survey, the ornithologist shall inspect all trees and other possible nesting habitats immediately adjacent to the construction areas for nests. **MM BIO-1.3:** If an active nest is found sufficiently close to work areas to be disturbed by construction, the ornithologist, in consultation with the California Department of Fish and Wildlife, shall determine the extent of a construction free buffer zone to be established around the nest, typically 250 feet, to ensure that raptor or migratory bird nests shall not be disturbed during project construction.

	MM BIO-1.4: Prior to any tree removal, or approval of any grading or demolition permits (whichever occurs first), the ornithologist shall submit a report indicating the results of the survey and any designated buffer zones to the satisfaction of the City's Director of Planning, Building and Code Enforcement or Director's designee.
	Cultural Resources
Impact CUL-1: Subsurface archaeological resources could be encountered during project construction. **(Less than Significant Impact with Mitigation Incorporated)**	**MM CUL-1.1:** Prior to issuance of any grading permits and prior to construction-related ground disturbance, a qualified archaeologist in coordination with a Native American Tribal Representative shall complete mechanical presence/absence exploration to explore for buried historical and Native American resources. Subsurface exploration shall be completed by an archaeologist trained in current California methods for prehistoric and historic archaeological resources. Narrow, deep trenches shall be created to search for Native American use of this site, and shallower, wide trenches employed near the potentially sensitive historic areas. The results of the presence/absence exploration shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee and the City's Historic Preservation Officer for review and approval prior to issuance of any grading permit. Based on the findings of the presence/absence exploration, an archaeological resources treatment plan (as described in MM CUL-1.2) shall be prepared by a qualified archaeologist in consultation with the Native American Tribal representative, if necessary. **MM CUL-1.2:** If required by MM CUL-1.1, the project applicant, prior to issuance of any grading permits, shall retain a qualified archaeologist to prepare a treatment plan in consultation with a Tribal representative that reflects the permit-level detail pertaining to depths and locations of all ground disturbing activities. The treatment plan shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee and the City's Historic Preservation Officer prior to approval of any grading permit. The treatment plan shall contain, at a minimum: • Identification of the scope of work and range of subsurface effects (including location map and development plan), including requirements for preliminary field investigations. • Description of the environmental setting (past and present) and the historic/prehistoric background of the parcel (potential range of what might be found).

	• Development of research questions and goals to be addressed by the investigation (what is significant vs. what is redundant information). • Detailed field strategy to record, recover, or avoid the finds and address research goals. • Analytical methods. • Report structure and outline of document contents. • Disposition of the artifacts. • Appendices: all site records, correspondence, and consultation with Native Americans, etc. Implementation of the plan, by a qualified archaeologist, shall be required prior to the issuance of any grading permits. The treatment plan shall utilize data recovery methods to reduce impacts to subsurface resources. The project applicant shall submit copies of the treatment plan to the Director of Planning, Building and Code Enforcement or the Director's designee. **MM CUL-1.3:** Prior to issuance of any grading permits, the project applicant shall report any preliminary field investigation, grading, or other construction activities findings to the Director of Planning, Building and Code Enforcement or Director's designee. Any historic or prehistoric material identified in the project area during the preliminary field investigation and/or during excavation activities shall be evaluated for eligibility for listing in the California Register of Historic Resources as determined by the California Office of Historic Preservation. The techniques used for data recovery shall follow the protocols identified in the approved treatment plan. All documentation and recordation shall be submitted to the Northwest Information Center and Native American Heritage Commission/Sacred Land Files prior to the issuance of an occupancy permit. A copy of the evaluation shall be submitted to the Director of Planning, Building, and Code Enforcement or Director's designee, and the Tribe.
Hazards and Hazardous Materials	
Impact HAZ-1: Residual concentrations of chemicals including organochlorine pesticides and pesticide-related metals (in the southern portion of the site) from prior agricultural use, USTs, and truck parking and storage at the site could expose construction workers, neighboring uses, and the environment to hazardous materials.	**MM HAZ-1.1:** Prior to the issuance of any demolition or grading permits (whichever occurs first), the project applicant shall enter into an agreement with the Santa Clara County Department of Environmental Health's (SCCDEH's) Site Cleanup Program to provide regulatory oversight. The applicant shall meet with the SCCDEH and perform additional soil and groundwater sampling and testing to adequately define the known and suspected contamination. A Corrective Action/Risk Management Plan (e.g., Remedial Action Work Plan and/or Soil Management Plan) shall be prepared and submitted to the

(Less than Significant Impact with Mitigation Incorporated)	agency for their approval to demonstrate that cleanup standards shall be met for the development of the site. The Corrective Action/Risk Management plan shall describe measures necessary to protect the health and safety of construction workers and future site occupants and establish appropriate management practices for handling and monitoring impacted soil, soil vapor and groundwater that potentially may be encountered during construction activities. All measures identified in the plan(s) shall be implemented during all phases of construction, as applicable. The Corrective Action/Risk Management Plan shall also describe protocols for profiling of soil planned for off-site disposal. The plan shall be prepared by an environmental professional and submitted to the SCCDEH. **MM HAZ-1.2:** Prior to the issuance of any demolition or grading permits (whichever occurs first), a Health and Safety Plan (HASP) shall be prepared to establish health and safety protocols for construction workers at the site. All measures identified in the plan(s) shall be implemented during all phases of construction, as applicable. The HASP shall be prepared by an environmental professional and submitted to the SCCDEH. **MM HAZ-1.3:** Prior to the issuance of any demolition or grading permits (whichever occurs first), additional shallow soil sampling shall be completed at the southern portion of the site including areas near the existing industrial buildings and former residence and outbuildings. The site shall be sampled for organochlorine pesticides and associated metals (including lead and arsenic). If elevated concentrations of these contaminants are discovered, the project applicant shall notify the Director of Planning, Building, and Code Enforcement and the SCCDEH and prepare a remedial action plan in accordance with SCCDEH requirements. The sampling, preparation of the remedial action plan, and remediation shall be completed by an environmental professional, under the oversight of SCCDEH.
Impact HAZ-2: Project construction could expose construction workers to potential total petroleum hydrocarbons (TPHs) in the soil beneath the oil-water separator. **(Less than Significant Impact with Mitigation Incorporated)**	**MM HAZ-2.1:** Prior to the issuance of grading permits, upon removal of the site's oil-water separator soil separator, soil underlying the separator shall be evaluated for the presence of TPH, volatile organic compounds (VOCs), and metals. The confirmation sampling shall be completed by an environmental professional following commonly accepted sampling protocols which shall be coordinated with SCCDEH and the City of San José Environmental Services Department. The sampling data shall be provided to SCCDEH, and approval shall be received prior to issuance of any grading permits. If elevated concentrations of these contaminants are discovered, the project

	applicant shall notify the Director of Planning, Building, and Code Enforcement and the SCCDEH and prepare a remedial action plan in accordance with SCCDEH requirements. The sampling, preparation of the remedial action plan, and remediation shall be completed by an environmental professional, under the oversight of SCCDEH.
	Noise and Vibration
Impact NOI-1: Project construction would result in elevated noise levels of five dBA or more at nearby residences for a period exceeding 12 months. **(Less than Significant Impact with Mitigation Incorporated)**	**MM NOI-1.1:** Prior to the issuance of any demolition or grading permits (whichever occurs first), an acoustic engineer shall prepare and implement a construction noise logistics plan, in accordance with General Plan Policy EC-1.7, prior to issuance of any demolition or grading permits. A typical construction noise logistics plan includes, but is not limited to, the following measures to reduce construction noise levels: • Construction shall be limited to the hours of 7:00 AM to 7:00 PM Monday through Friday for any on-site or off-site work within 500 feet of any residential unit. Construction outside of these hours may be approved through a development permit based on a site-specific "construction noise mitigation plan" and a finding by the Director of Planning, Building, and Code Enforcement that the construction noise mitigation plan is adequate to prevent noise disturbance of affected residential uses. • The contractor shall use "new technology" power construction equipment with state-of-the-art noise shielding and muffling devices. All internal combustion engines used on the project site shall be equipped with adequate mufflers and shall be in good mechanical condition to minimize noise created by faulty or poorly maintained engines or other components. • The unnecessary idling of internal combustion engines shall be prohibited. • Staging areas and stationary noise-generating equipment shall be located as far as possible from noise-sensitive receptors such as residential uses (a minimum of 200 feet). • The surrounding neighborhood shall be notified early and frequently of the construction activities. • A "noise disturbance coordinator" shall be designated to respond to any local complaints about construction noise. The disturbance coordinator would determine the cause of the noise complaints (e.g., beginning work too early, bad muffler, etc.) and institute reasonable measures warranted to correct the problem. A telephone number for the disturbance

coordinator would be conspicuously posted at the construction site.

- Implementation of a constriction noise logistics plan, which would include the following measures:
    - Utilize “quiet” models of air compressors and other stationary noise sources where technology exists.
    - Equip all internal combustion engine-driven equipment with mufflers, which are in good condition and appropriate for the equipment.
    - Construct temporary noise barriers, where feasible, to screen stationary noise-generating equipment when located within 200 feet of adjoining sensitive land uses. Temporary noise barrier fences would provide a 5 dBA noise reduction if the noise barrier interrupts the line-of-sight between the noise source and receptor and if the barrier is constructed in a manner that eliminates any cracks or gaps.
    - If stationary noise-generating equipment must be located near receptors, adequate muffling of equipment (with enclosures where feasible and appropriate) shall be used. Any enclosure openings or venting shall face away from sensitive receptors.
    - Ensure that generators, compressors, and pumps are housed in acoustical enclosures.
    - Locate cranes as far from adjoining noise-sensitive receptors as possible.
    - During final grading, substitute graders for bulldozers, where feasible. Wheeled heavy equipment are quieter than track equipment and should be used where feasible.
    - Substitute nail guns for manual hammering, where feasible.
    - Substitute electrically powered tools for noisier pneumatic tools, where feasible.
    - The contractor shall prepare a detailed construction plan identifying the schedule for major noise-generating construction activities. The construction plan shall identify a procedure for coordination with adjacent residential land uses so that construction activities can be scheduled to minimize noise disturbance.

Impact NOI-2: Noise from the project's mechanical equipment could exceed 55 dBA DNL at sensitive residential noise-receptors near the project site. **(Less than Significant Impact with Mitigation Incorporated)**	**MM NOI-2.1:** Prior to issuance of any demolition or grading permits (whichever occurs first), the project applicant shall select and design mechanical equipment and generators to reduce excessive noise levels at the nearby noise-sensitive land uses to meet the City's 55 dBA DNL noise level requirement. A qualified acoustical consultant shall be retained to review mechanical noise as these systems are selected to determine specific noise reduction measures necessary to reduce noise to comply with the City's Municipal Code noise level requirements. Noise reduction measures could include, but are not limited to, selection of equipment that emits low noise levels and installation of noise barriers, such as enclosures and parapet walls, to block the line-of-sight between the noise source and the nearest receptors. Other alternate measures may be optimal, such as locating equipment in less noise-sensitive areas, such as along the building façades farthest from adjacent neighbors, where feasible. The proposed mechanical equipment shall be approved by the City's Director of Planning, Building, and Code Enforcement.
Impact NOI-3: Vibration levels would have the potential to exceed San José's guidelines at residential uses in the site vicinity (0.2 in/sec PPV) and could result in damage to nearby structures.	**MM NOI-3.1:** Prior to the issuance of any demolition or grading permits (whichever occurs first), a qualified Professional Structural Engineer, licensed in the State of California, shall prepare a construction vibration monitoring plan to reduce construction-related vibration impacts below 0.2 in/sec PPV. The plan shall include, but is not limited to, the following measures: • Prohibit impact pile driving as a method of construction within 125 feet of any surrounding vibration-sensitive building. Prohibit vibratory pile driving as a method of construction within 85 feet of any surrounding vibration-sensitive building. As an alternative, drilled piles, which generate substantially lower levels of vibration, may be used. • Limit the use of vibratory rollers, hoe rams, large bulldozers, and caisson drilling, and avoid clam shovel drops within 20 feet of the property lines shared with residences and commercial structures adjacent to the site. • Place operating equipment on the construction site as far as possible from vibration-sensitive receptors. • Use smaller equipment to minimize vibration levels below the limits. • Select demolition methods not involving impact tools. • Avoid dropping heavy objects or materials near vibration sensitive locations.

- A list of all heavy construction equipment to be used for this project known to produce high vibration levels (tracked vehicles, vibratory compaction, jackhammers, hoe rams, etc.) shall be submitted to the City by the contractor. 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.
- A construction vibration-monitoring plan shall be implemented to document conditions at the residences and commercial structures adjacent to the site prior to, during, and after vibration generating construction activities. All plan tasks shall be undertaken under the direction of a licensed Professional Structural Engineer in the State of California and be in accordance with industry accepted standard methods. The construction vibration monitoring plan should be implemented to include the following tasks:
    - Identification of sensitivity to ground-borne vibration of the residences and commercial structures adjacent to the site. A vibration survey would need to be performed.
    - Performance of a photo survey, elevation survey, and crack monitoring survey for the residences and commercial structures nearest to the site. Surveys shall be performed prior to and after completion of vibration generating construction activities located within 20 feet of the structure. This distance shall be extended to 80 feet for vibratory pile driving and 120 feet for impact pile driving. The surveys shall include internal and external crack monitoring in the structure, settlement, and distress, and shall document the condition of the foundation, walls, and other structural elements in the interior and exterior of the structure.
    - Conduct a post-survey on the structure where either monitoring has indicated high levels or complaints of damage. Make appropriate repairs where damage has occurred as a result of construction activities.
    - The results of any vibration monitoring shall be summarized and submitted in a report shortly after substantial completion of each phase identified I the project schedule. The report shall include a description of measurement

		methods, equipment used, calibration certificates, and graphics as required to clearly identify vibration-monitoring locations. An explanation of all events that exceeded vibration limits shall be included together with proper documentation supporting any such claims. o 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. Implementation of the construction vibration monitoring plan shall occur during construction activities to reduce vibration levels below 0.2 in/sec PPV. Prior to the issuance of any demolition or grading permits, the project applicant shall submit the construction vibration monitoring plan to the Director of Planning, Building and Code Enforcement or Director's designee for review and approval.

Summary of Alternatives to the Proposed Project

CEQA requires that an EIR identify alternatives to a project as it is proposed. CEQA Guidelines Section 15126.6 specifies that an EIR should identify alternatives which "would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project." Below is a summary of the project alternatives analyzed in this EIR. A full analysis of the project alternatives is provided in Section 7.0 Alternatives.

Alternatives Considered but Rejected

The following alternatives were considered but rejected and escribed in detail in Section 7.4.1.

- Location Alternative – development of the project on an alternative site in the Diridon Station area.
- On-site Man-Made Pond Retention Design Alternative – retention of the on-site man-made pond by changing internal setbacks from on-site buildings to the pond or reducing the number of residential units.

Analyzed Alternatives

The following alternatives were evaluated as alternatives to the project and described in detail in Section 7.4.2.

- No Project Alternative as required by CEQA – no new development, with continued operation of the site as industrial use.
- Existing Plans and Policies Alternative – redevelopment of the site consistent with the existing capacity and density permitted for the site.
- Reduced Parking Alternative – development of the project as proposed, with one less underground parking level.

SECTION 1.0 INTRODUCTION

This Environmental Impact Report (EIR) examines the potentially significant effects on the environment resulting from the proposed Berryessa Road Mixed Use Development Project (proposed project, project), as described in detail in Section 2.0, Project Information and Description.

1.1 PURPOSE OF THE ENVIRONMENTAL IMPACT REPORT

The City of San José, as the Lead Agency, has prepared this Draft EIR for the Berryessa Road Mixed Use Development Project in compliance with the California Environmental Quality Act (CEQA) and the CEQA Guidelines.

As described in CEQA Guidelines Section 15121(a), an EIR is an informational document that assesses potential environmental impacts of a proposed project, as well as identifies mitigation measures and alternatives to the proposed project that could reduce or avoid adverse environmental impacts (CEQA Guidelines 15121(a)). As the CEQA Lead Agency for this project, the City of San José is required to consider the information in the EIR along with any other available information in deciding whether to approve the project. The basic requirements for an EIR include discussions of the environmental setting, significant environmental impacts including growth-inducing impacts, cumulative impacts, mitigation measures, and alternatives. It is not the intent of an EIR to recommend either approval or denial of a project.

1.2 EIR PROCESS

1.2.1 Notice of Preparation and Scoping

In accordance with Section 15082 of the CEQA Guidelines, the City of San José prepared a Notice of Preparation (NOP) for this EIR. The NOP was initially circulated to local, state, and federal agencies on April 15, 2019. The standard 30-day comment period concluded on May 14, 2019. Since publication of the NOP in 2019, the City adopted the Berryessa BART Urban Village (BBUV) Plan and more details about the proposed project became available. Therefore, the revised NOP was recirculated with an updated project description on July 23, 2021. The standard 30-day comment period concluded on August 23, 2021.

The NOP provided a general description of the proposed project and identified possible environmental impacts that could result from implementation of the project. The City of San José also held public scoping meetings on April 29, 2019, and August 12, 2021, to discuss the project and solicit public input as to the scope and contents of this EIR. The April 29, 2019, meeting was held at Education Park Branch Library in San José and the August 12, 2021, meeting was held virtually via Zoom. Appendix A of this EIR includes the NOP and full comments received on the NOP. See Table 1.2-1 for summaries of NOP comments.

Table 1.2-1: Summaries of Comments Received on NOP	
Commenter	**Summary of Comment**
California Department of Transportation August 19, 2021	Transportation • If the project does not meet VMT screening criteria, a detailed VMT analysis should be completed. • Recommends traffic analysis include applicable freeway ramps and segments of I-880, I-680, and US-101. • Identify project-generated travel demand and estimate costs of transit and active transportation improvements necessitated by the project.
Native American Heritage Commission (NAHC) July 26, 2021	Tribal Cultural Resources • NAHC recommends consultation with California Native American tribes that are traditionally and culturally affiliated with the geographic area of the project.
Pacific Gas and Electric Company (PG&E) July 27, 2021	Utilities • Construction activities could potentially take place near gas transmission pipelines. If PG&E approves work near gas transmission pipelines, the project must adhere to stipulations (listed in comment). • If PG&E permits uses within its electric transmission fee strip(s) and/or easement(s), restrictions must be followed (listed in comment).
PG&E August 11, 2021	Utilities • Proposed project does not appear to interfere with existing PG&E facilities or easement rights. • Before digging or excavation occurs, contact Underground Service Alert to ensure existing underground utilities are identified and marked.
Roy Molseed, Santa Clara Valley Transportation Authority May 14, 2019	Land Use • Support maximum development scenario centered around regional transit. Transportation • Analysis should document and analyze pedestrian and bike pathways on roadways, intersections, for both internal and external circulation. • Analysis should discuss concise and direct routes to the station. Study opportunities to connect site to trails access points for Coyote Creek Trail and Upper Penitencia Creek Trail. • TIA should address project's potential congestion impacts to transit travel times on Mabury Road, King Road, Berryessa Road, McKee Road, and surrounding vicinity, and evaluate transit access and facilities.

Table 1.2-1: Summaries of Comments Received on NOP	
Commenter	**Summary of Comment**

	• DEIR should analyze roadway modifications and signal operational changes surrounding the project site that may affect transit speed, reliability, and safety.
	• If increased transit delay is found, DEIR should include transit priority measures to offset impacts.
	• DEIR/TIA should analyze anticipated transit demand and capacity in project vicinity.
	• VTA recommends a comprehensive access analysis for the Berryessa BART station and surrounding developments.
	• VTA requests the following scenarios be included in the DEIR/TIA work scope:
	  o Scenario with a second vehicle access point to Berryessa Road in addition to the Sierra Road Extension/Berryessa Road connection and Sierra Road Extension Mabury Road Connection.
	  o Scenario with one access point and a second scenario with two access points (including automobiles, bicycles, and pedestrians) between Berryessa Station Way and the Sierra Road Extension, underneath the BART aerial guideway.
	• DEIR/TIA should include analysis of all freeway segments that may be impacted.
	• DEIR/TIA should clearly explain all auto trip reductions.
	• DEIR/TIA should consider impacts of temporary road closures and detour routes on all modes of transportation and enhance their access.
	• VTA recommends a TDM plan that establishes a trip reduction target, and third-party monitoring and enforcement.

Brent Pearse, Santa Clara Valley Transportation Authority (VTA) May 22, 2019	Transportation • VTA is not prepared to support additional vehicular access points underneath the Bay Area Rapid Transit (BART) guideway – new access points are not recommended and would be subject to regulatory requirements of Federal Transit Administration, Department of Homeland Security, and California Public Utilities Commission.
Brent Pearse, Santa Clara Valley Transportation Authority (VTA) August 23, 2021	Transportation • City should perform operations analysis of key intersections near the project site and CMP intersections that may be affected by the project. • Project transportation analysis should analyze the impacts to ramp metering operations at US-101/Old Oakland, future US-101 interchange at Mabury Road or Berryessa Road, and Berryessa Road/I-680 interchange.

Table 1.2-1: Summaries of Comments Received on NOP	
Commenter	**Summary of Comment**
	• EIR should analyze potential for project to reduce its VMT through a TDM program. • VTA is currently leading a feasibility study on a bicycle superhighway – will include proposed designs for bike facilities along Mabury Road. VTA recommends any long-range transportation analysis considers the potential of a high-quality low stress bikeway facility on Mabury Road. Noise and Vibration • Should be analyzed in the DEIR Cultural Resources • Upper Penitencia Creek is a highly sensitive area for buried prehistoric resources
Katherine Perez, Yokut/Ohlone/Bay Miwuke Tribe April 17, 2019	Cultural Resources • Raised concerns regarding previous burials near the Flea Market.
Srini Venkat April 30, 2019	Land Use/Population and Housing • Should involve housing, retail, and employment opportunities Transportation • Raised concerns regarding traffic and congestion • Lack of parking

Ben Aghegnehu, County of Santa Clara Roads and Airports Department
 	
May 14, 2019
	Transportation
	• Local Transportation Analysis should include Montague intersections at
	  o Main/Oakland Road
	  o Trade Zone
	  o Capitol Avenue
	  o Capitol Expressway/Capitol Avenue

1.2.2 Draft EIR Public Review and Comment Period

Publication of this Draft EIR will mark the beginning of a 45-day public review period. During this period, the Draft EIR will be available to the public, and local, state, and federal agencies for review and comment. Notice of the availability and completion of this Draft EIR will be sent directly to every agency, person, and organization that commented on the NOP, as well as the Office of Planning and Research. Written comments concerning the environmental review contained in this Draft EIR during the 45-day public review period should be sent to:

City of San José
Department of Planning, Building and Code Enforcement
200 East Santa Clara Street, 3rd Floor Tower
San José CA 95113-1905
Attn: Tina Garg, Planner III
(408) 535-7895, tina.garg@sanjoseca.gov

1.3 FINAL EIR/RESPONSES TO COMMENTS

Following the conclusion of the 45-day public review period, the City of San José will prepare a Final EIR in conformance with CEQA Guidelines Section 15132. The Final EIR will consist of:

- Revisions to the Draft EIR text, as necessary;
- List of individuals and agencies commenting on the Draft EIR;
- Responses to comments received on the Draft EIR, in accordance with CEQA Guidelines (Section 15088);
- Copies of letters received on the Draft EIR.

Section 15091(a) of the CEQA Guidelines stipulates that no public agency shall approve or carry out a project for which an EIR has been certified which identifies one or more significant environmental effects of the project unless the public agency makes one or more written findings. If the lead agency approves a project despite it resulting in significant adverse environmental impacts that cannot be mitigated to a less than significant level, the agency must state the reasons for its action in writing. This Statement of Overriding Considerations must be included in the record of project approval.

1.3.1 Notice of Determination

If the project is approved, the City of San José will file a Notice of Determination (NOD), which will be available for public inspection and posted within 24 hours of receipt at the County Clerk's Office and available for public inspection for 30 days. The filing of the NOD starts a 30-day statute of limitations on court challenges to the approval under CEQA (CEQA Guidelines Section 15094(g)).

SECTION 2.0 PROJECT INFORMATION AND DESCRIPTION

2.1 PROJECT LOCATION

The 13-acre project site is located at 1655 Berryessa Road and is within the boundaries of the 270-acre Berryessa BART Urban Village (BBUV) Plan area. The site is surrounded by the BART/Union Pacific Railroad (UPRR) tracks to the east, Berryessa Road, the San José Flea Market, and surface parking lot to the south, and residential uses to the west and north. The Berryessa BART/Transit Center is approximately 1,000 feet south of the site. Upper Penitencia Creek is located approximately 105 feet south of the site. The site's Assessor's Parcel Numbers (APNs) are 241-03-023, 241-03-024, and 241-03-025.

The project site currently contains two industrial buildings, a portable office structure, ancillary structures, an associated parking lot, a vegetated man-made pond, and trees. The northern portion of the site has been cleared and graded. Regional, vicinity, and aerial maps of the project site are shown on Figure 2.2-1, Figure 2.2-2, and Figure 2.2-3, respectively.

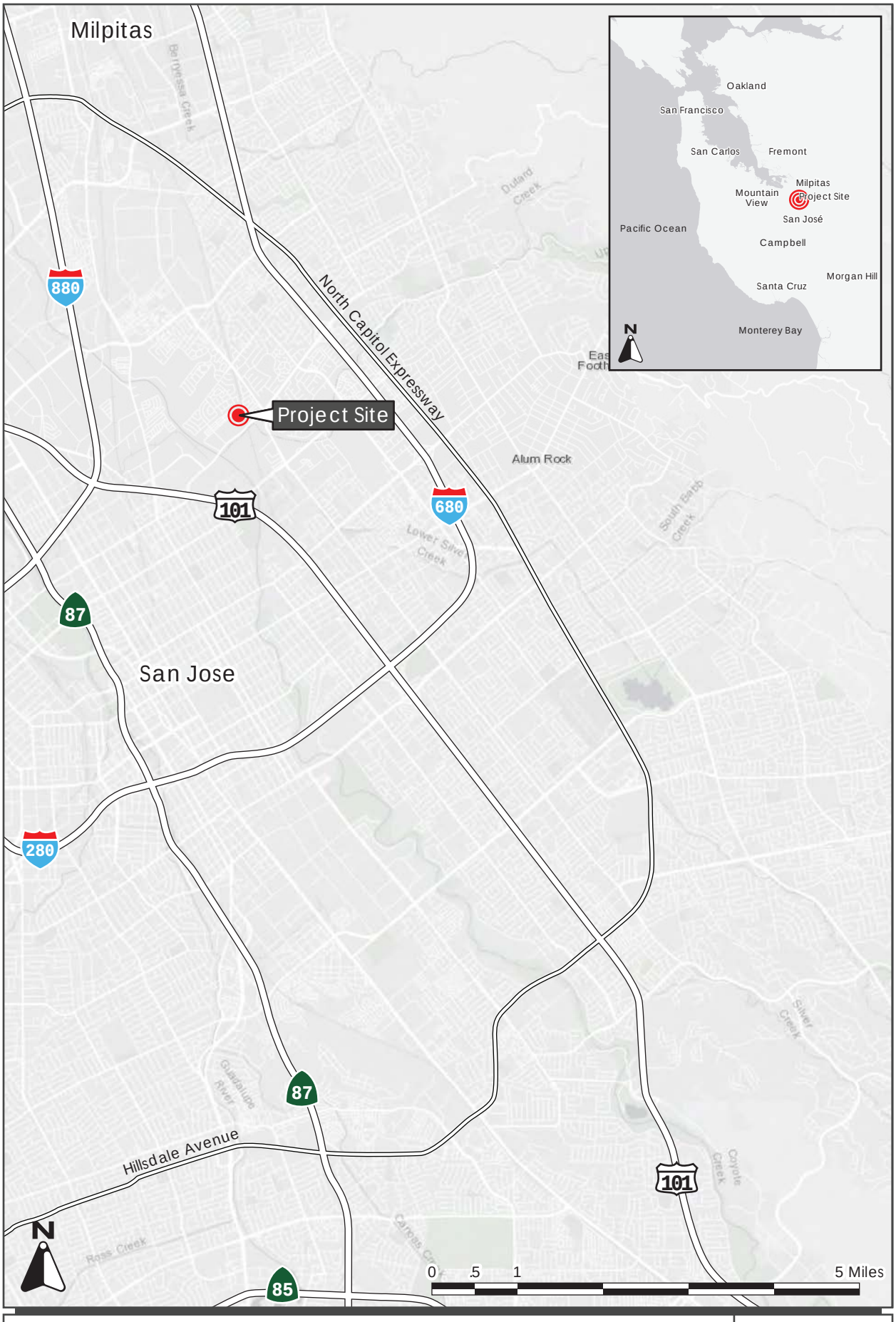
The project site is located within the boundaries of the Facchino District in the Berryessa/BART Urban Village Area, as shown on Figure 2.2-4.

2.2 PROJECT DESCRIPTION

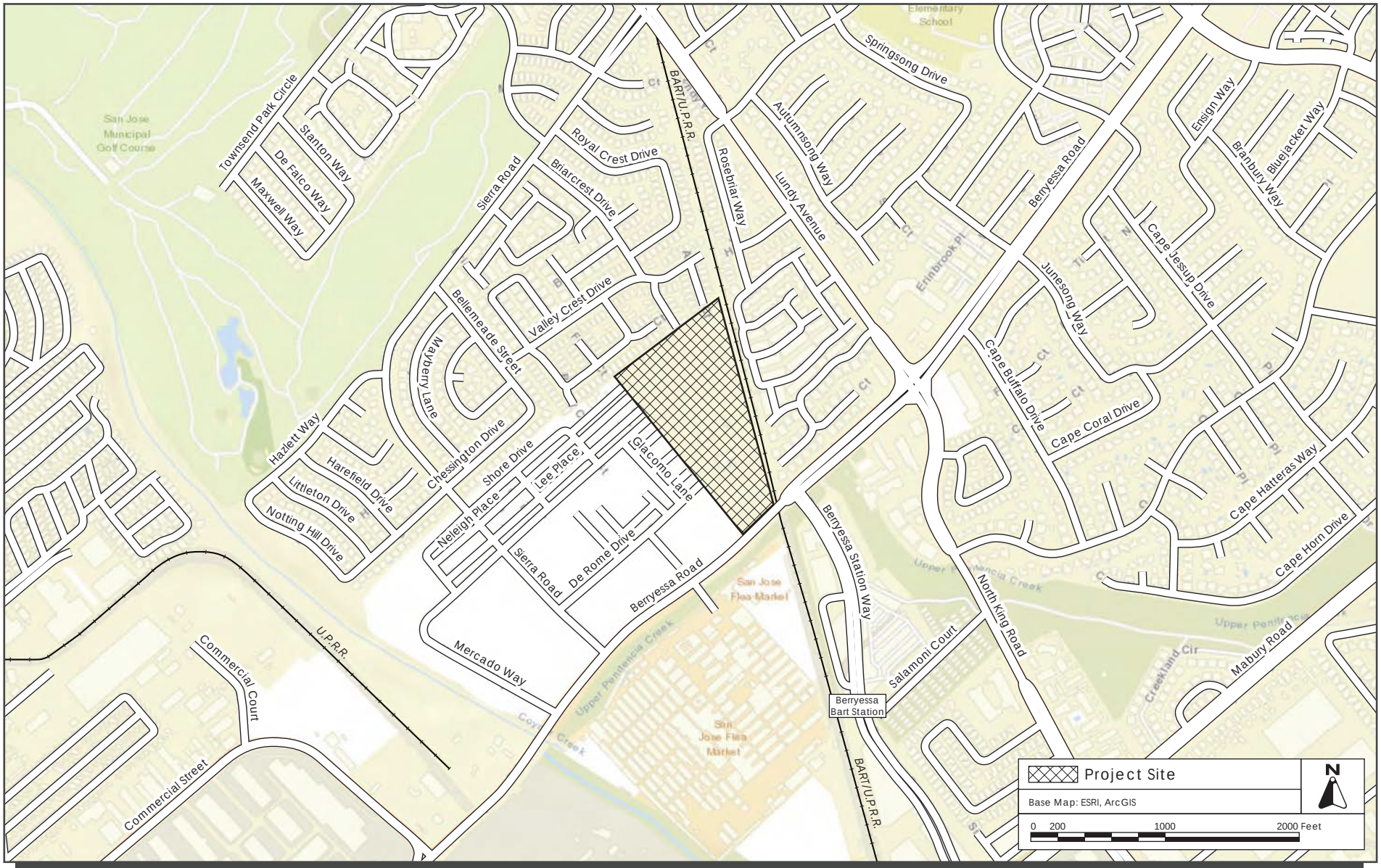
The project proposes a Planned Development (PD) Zoning for development of up to 850 residential units, 480,000 square feet of commercial space, and a 0.9-acre park at the project site. The residences would be located in the northeastern and central areas, and along the northern and western perimeter of the site. The proposed commercial space would be located in the southern area of the site, fronting Berryessa Road, and the open space park would be located on the northwestern corner of the site. A conceptual site plan is shown on Figure 2.2-5.

2.2.1 Residential Development

The project proposes the development of a maximum of 850 residential units including 614 market rate multi-family, 189 affordable multi-family, 23 townhouse, and 24 single-family units. The proposed residences would be located on Parcels A, B, C, D, F, G and H (refer to the site plan on Figure 2.2-5). The single-family houses would be located on Parcels A and B, townhouses would on Parcel C, market rate multi-family units would be on Parcels D, F, and G, and affordable multi-family units would be on Parcel H. The single-family and townhouse units would be a maximum of three-stories with a height of up to 40 feet above the ground surface. The market rate multi-family buildings on Parcels D, F, and G would be a maximum of 8 stories with a height of 90 feet above the ground surface and the affordable multi-family development on Parcel H would be a maximum of 15 stories with a height of 160 feet above the ground surface. The multi-family buildings would provide up to two levels of underground parking and up to two levels of above grade parking, which would include a maximum of 905 parking stalls.



REGIONAL MAP | FIGURE 2.2-1



VICINITY MAP

FIGURE 2.2-2

AERIAL PHOTOGRAPH AND SURROUNDING LAND USES | FIGURE 2.2-3

Source: City of San José, 2021.

BERRYESSA BART URBAN VILLAGE PLAN AREA | FIGURE 2.2-4

Source: KTGY Architecture + Planning, January 21, 2020.

CONCEPTUAL SITE PLAN

FIGURE 2.2-5

2.2.2 Commercial Development

The proposed 480,000 square feet of commercial space would be located on Parcel I (refer to the site plan on Figure 2.2-5). The commercial space could consist of one of the following three scenarios:

- 465,000 square feet of medical office space and 15,000 square feet of retail/restaurant space;
- 465,000 square feet of commercial office space and 15,000 square feet of retail/restaurant space; or
- 165,000 square feet (or 165 units) assisted living facility space and 315,000 square feet of medical office space.

The proposed commercial building would be a maximum of 10 stories at a height of 160 feet above the ground surface. The commercial building would include up to three levels of underground parking and two levels of above grade parking, with a maximum of a 1,200 parking stalls.

For the purposes of this EIR, the 465,000 square feet of medical office space and 15,000 square feet of retail/restaurant space will be evaluated for the commercial use, given it would be the most intensive use of the three scenarios, as it would generate the most traffic trips and emissions when compared to the two other commercial scenarios. Evaluation of the 465,000 square feet of medical office space and 15,000 square feet of retail/restaurant space scenario will provide a conservative assessment of impacts related to the proposed commercial space.

2.2.3 Open Space Park, Landscaping, and Outdoor Areas

The project would include a 0.9-acre neighborhood park, which would be located on Parcel E (refer to the site plan on Figure 2.2-5). The design of the park would be determined in the future through a public engagement process. However, it may include amenities such as a playground, picnic/shade area, small turf play area, and/or dog park. The project would also include pedestrian paths, and landscaping including trees and lawn areas. The multi-family developments would include outdoor courtyard amenity areas available to residents. Amenities would include a pool, outdoor seating, and barbecues. The proposed project would remove all existing trees on-site to facilitate the new construction and would plant new trees throughout the site.

2.2.4 Vehicle Access and Berryessa Road Public Improvements

Vehicle access to the project site would be provided via driveways on Berryessa Road, Shore Drive, Mercado Way, and De Rome Drive, which are public streets that would extend on to the project site. The project would include a mix of public and private internal streets. Stop control would be implemented at Lane A and Shore Drive, Lane A and Mercado Drive, and Lane A and De Rome Drive intersections (Figure 2.2-5 identifies these internal streets). The internal streets would provide access to the proposed residential and commercial developments.

The project would complete improvements along Berryessa Road to include the replacement of the existing 8-foot sidewalk with a new 12-foot sidewalk, public streetlights, and street trees along the project frontage.

2.2.5 Construction and Demolition

The project would export up to 165,000 cubic yards of soil from the project site and would import up to 10,000 cubic yards of soil to the site during construction. Assuming 12 cubic yards per truck load, the project requires about 14,585 truckloads of soil export and import combined. Development of the project site would require grading for utilities, drainage, roads, and buildings foundations. The project would be constructed in five phases. Demolition and grading of the entire site would occur in the first phase; single-family and townhouse units, and the neighborhood park, would be constructed on Parcels A, B, C, and E in the second phase; multi-family units would be constructed on Parcels D and H in the third phase; multi-family units would be constructed on Parcels F and G in the fourth phase; and the commercial building (to be located on Parcel I) and off-site improvements on Berryessa Road (described in Section 2.2.4) would be constructed in the fifth phase. Demolition and construction of the proposed mixed-use project would take up to approximately 44 months.

2.2.6 Utilities

New domestic water lines and fire service water lines would connect to existing six- to eight-inch water mains on Shore Drive and Mercado Way.

The project site drains to Coyote Creek and Upper Penitencia Creek through existing City storm drain systems. Stormwater runoff would flow to the proposed biotreatment areas and would be collected via on-site catch basins. Stormwater would be treated and then directed to the City's stormwater system. The project would connect to a 24-inch storm drain on Mercado Way, and a 15-inch storm drain on De Rome Drive.

The project's new sanitary sewer lines would connect to existing eight-inch sanitary sewer lines on Shore Drive, Mercado Way, and De Rome Drive.

Electricity at the project site would be provided by San José Clean Energy (SJCE) and natural gas would be provided by Pacific Gas and Electric (PG&E) for commercial uses.

2.2.7 General Plan, Berryessa BART Urban Village Plan, and Zoning

2.2.7.1 *General Plan and Berryessa BART Urban Village Plan*

The 13-acre project site is located within the BBUV, which surrounds the Berryessa/North San José BART Station. This is the first BART station in the City of San José which is expected to host 25,000 riders daily by 2030. The boundaries of the urban village are generally Shore Drive to the north, Lundy Avenue to the east, Coyote Creek to the west, and Mabury Road and Dobbin Drive to the south (refer to Figure 2.2-4).

The BBUV Plan encompasses 270 acres. The Plan adjusts the area's planned growth set in the Envision San José 2040 General Plan and includes an employment capacity of 4.2 million square feet of commercial uses (14,000 jobs) and a residential capacity of 5,100 dwelling units. Under the current BBUV Plan, the commercial capacity is reduced from 6.6 million square feet of commercial uses (21,100 jobs) to 4.2 million square feet of commercial uses; the 2.4 million square feet of planned job capacity has been reallocated to other General Plan growth areas in the City.

The General Plan and BBUV Plan designates the project site as the Facchino District which has land use designations of:

- Urban Residential (75 units to 250 dwelling units/acre and a floor area ratio (FAR) ranging from 2.0 to 4.0 for stand-alone commercial projects),
- Mixed-Use Neighborhood (up to 30 units/acre and a commercial FAR ranging from 0.25 to 2.0),
- Transit Employment Center (the FAR range is 3.0 to 5.0, supporting between 288,000 square feet and 480,000 square feet of commercial space), and
- Open Space, Parkland, and Habitat.

The proposed project is consistent with the Berryessa BART Urban Village Plan and General Plan land use designations and associated maximum heights (see Figure 2.2-6 and Figure 2.2-7 below).

2.2.7.2 *Zoning*

The project site currently has a Light Industrial Zoning District. The project is a Planned Development Rezoning to the PD Zoning District to align the site's Zoning District with the land uses shown in the BBUV Land Use Designations and facilitate the future development of a mixed-use commercial and residential development.

2.2.8 Green Building and Water Conservation Measures

The project would achieve LEED Silver Certification (for the commercial component) and GreenPoint rating score of at least 50 points (for the residential component). The proposed project would be fully electric, include solar hot water heating systems, use water-efficient landscaping, plant water-efficient and drought-tolerant trees.

2.2.9 BBUV Parking and Transportation Demand Management Plan

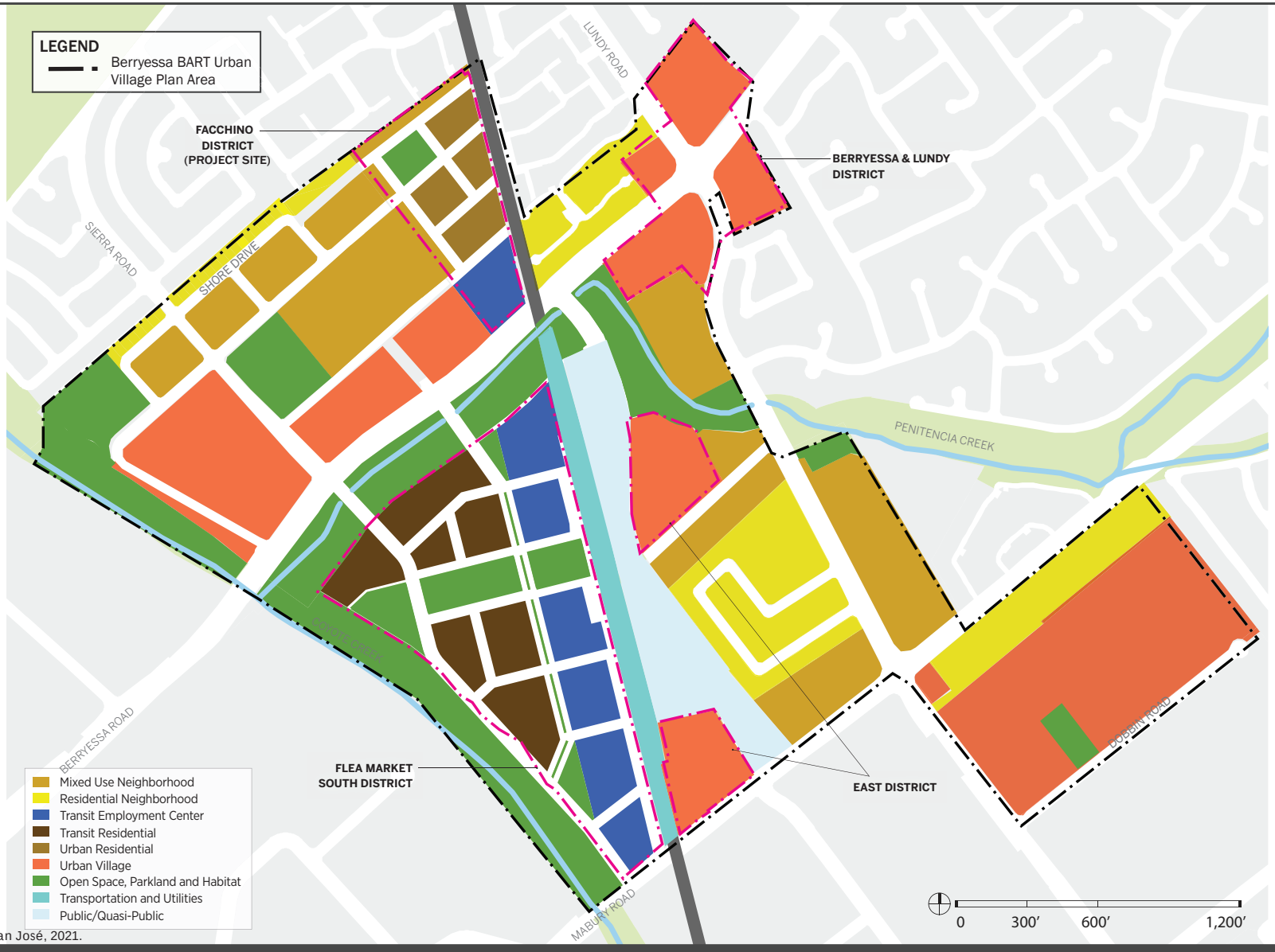
The BBUV established the Parking and TDM Plan to help the BBUV meet its mode split goals and reduce vehicle miles traveled (VMT) for the plan area. In accordance with the Parking and TDM Plan, the project would achieve 30 points by implementing measures from TDM strategies identified in the BBUV Parking and TDM Plan. Point values are based on an estimated percentage reduction of VMT per strategy, with one point roughly equivalent to a one percent estimated reduction in VMT.

To achieve the BBUV Parking and TDM Plan 30 points requirement, the project would implement TDM measures. These measures include but are not limited to the following:

- **Program 1:** Transportation Management Association (TMA) – Participate in a TDM program provided by an established TMA in a local area such as a transit-rich urban village.

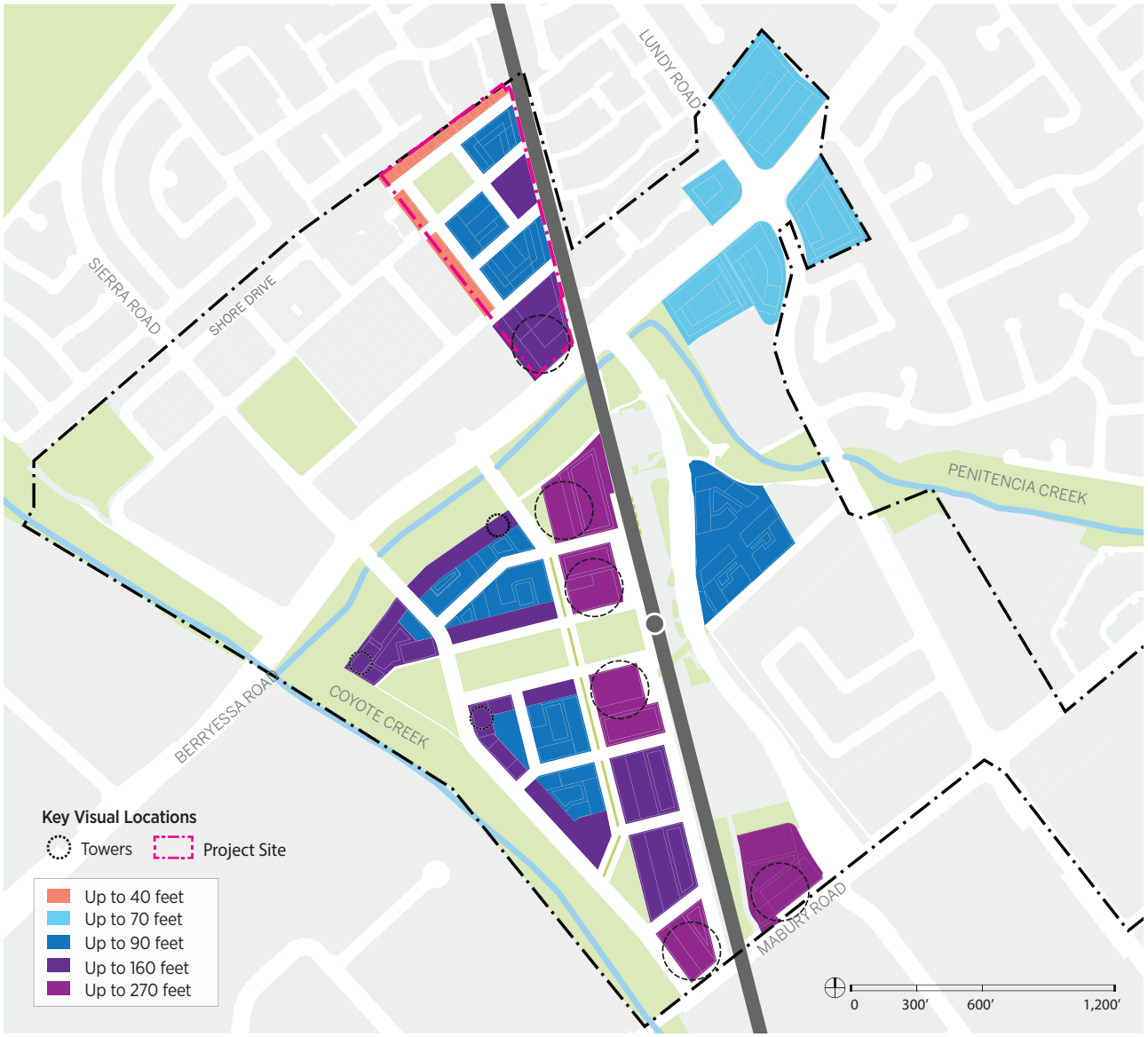
- **Program 2: Education, Marketing, and Outreach –** Provide employees and/or residents with information on available travel options.

- **Parking 1: Unbundled Parking –** Detach the cost of parking from rent or leases.



Source: City of San José, 2021.

BERRYESSA BART URBAN VILLAGE PLAN LAND USE DESIGNATIONS | FIGURE 2.2-6



Source: City of San José.

BERRYESSSA BART URBAN VILLAGE PLAN BUILDING HEIGHTS

FIGURE 2.2-7

A development project sponsor would work with the City's Director of Planning, Building, and Code Enforcement or the Director's Designee and TMA and select the TDM programs/measures that best fit the proposed project prior to the issuance of building permits.

2.3 PROJECT OBJECTIVES

Pursuant to CEQA Guidelines Section 15124, the EIR must include a statement of the objectives sought by the proposed project. The objectives for the project are:

1. Construct residential development with connections to public transit, open space and creeks, and existing neighborhoods;
2. Use the area adjacent to the Berryessa BART Station for Transit Oriented Development;
3. Provide a range of housing with accessibility to alternative forms of transportation including public transit, walking, and cycling;
4. Enhance pedestrian-oriented design by providing residential uses proximate to commercial development;
5. Achieve sustainability policies, goals, and standards of the Berryessa BART Urban Village Plan;
6. Increase access to local and regional trail systems by improving sidewalks.
7. Provide opportunities for job creation via additional commercial development consistent with the Berryessa BART Urban Village Plan requirements.

2.4 REQUIRED PERMITS AND APPROVALS

This EIR would provide decision-makers in the City of San José, other public agencies, and the general public with relevant environmental information to use in considering the project. If the proposed project is approved, the EIR could be used by the City in conjunction with discretionary approvals including, but not limited to, the following:

- PD Rezoning
- PD Permit
- Subdivision Maps
- Tree Removal Permits
- Public Works clearances including Grading

SECTION 3.0 ENVIRONMENTAL SETTING, IMPACTS, AND MITIGATION

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

3.1	Aesthetics	3.11	Land Use and Planning
3.2	Agriculture and Forestry Resources	3.12	Mineral Resources
3.3	Air Quality	3.13	Noise
3.4	Biological Resources	3.14	Population and Housing
3.5	Cultural Resources	3.15	Public Services
3.6	Energy	3.16	Recreation
3.7	Geology and Soils	3.17	Transportation
3.8	Greenhouse Gas Emissions	3.18	Tribal Cultural Resources
3.9	Hazards and Hazardous Materials	3.19	Utilities and Service Systems
3.10	Hydrology and Water Quality	3.20	Wildfire

The discussion for each environmental subject includes the following subsections:

Environmental Setting – This subsection 1) provides a brief overview of relevant plans, policies, and regulations that compose the regulatory framework for the project and 2) describes the existing, physical environmental conditions at the project site and in the surrounding area, as relevant.

Impact Discussion – This subsection includes the recommended checklist questions from Appendix G of the CEQA Guidelines to assess impacts.

- **Project Impacts –** This subsection discusses the project's impact on the environmental subject as related to the checklist questions. For significant impacts, feasible mitigation measures are identified. "Mitigation measures" are measures that will minimize, avoid, or eliminate a significant impact (CEQA Guidelines Section 15370). Each impact is numbered to correspond to the checklist question being answered. For example, Impact BIO-1 answers the first checklist question in the Biological Resources section. Mitigation measures are also numbered to correspond to the impact they address. For example, MM BIO-1.3 refers to the third mitigation measure for the first impact in the Biological Resources section.
- **Cumulative Impacts –** This subsection discusses the project's cumulative impact on the environmental subject. Cumulative impacts, as defined by CEQA, refer to two or more individual effects, which when combined, compound or increase other environmental impacts. Cumulative impacts may result from individually minor, but collectively significant effects taking place over a period of time. CEQA Guideline Section 15130 states that an EIR should discuss cumulative impacts "when the project's incremental effect is cumulatively considerable." The discussion does not need to be in as great detail as is necessary for project impacts, but is to be "guided by the standards of practicality and reasonableness." The purpose of the cumulative analysis is to allow decision makers to better understand the

impacts that might result from approval of past, present, and reasonably foreseeable future projects, in conjunction with the proposed project addressed in this EIR.

The CEQA Guidelines advise that a discussion of cumulative impacts should reflect both their severity and the likelihood of their occurrence (CEQA Guidelines Section 15130(b)). To accomplish these two objectives, the analysis should include either a list of past, present, and probable future projects or a summary of projections from an adopted general plan or similar document (CEQA Guidelines Section 15130(b)(1)). This EIR uses the list of projects approach.

The analysis must determine whether the project's contribution to any cumulatively significant impact is cumulatively considerable, as defined by CEQA Guideline Section 15065(a)(3). The cumulative impacts discussion for each environmental issue accordingly addresses the following issues: 1) would the effects of all of past, present, and probable future (pending) development result in a significant cumulative impact on the resource in question; and, if that cumulative impact is likely to be significant, 2) would the contribution from the proposed project to that significant cumulative impact be cumulatively considerable?

Table 2.4-1 identifies the approved (but not yet constructed or occupied) and pending projects within one mile of the project site that are evaluated in the cumulative analysis.[1] Only one pending/approved project (Flea Market South project) is located within one mile of the site. the remaining projects are provided for information purposes.

Table 2.4-1: Cumulative Projects List

Project Name	Location	Description
Approved but Not yet Constructed/Occupied		
Flea Market South	1590 Berryessa Road	Planned Development Zoning to allow up to 3,450 residential units and 3.4 million sf of commercial sf (approved project)
Under Construction		
Supermicro	708 and 850 Ridder Park	Site Development Permit for construction of a 209,320-square foot light industrial building with associated at-grade parking and improvements (under construction)
1605 Industrial	1605 Industrial	Planned Development Permit to build an approximately 180,500 square foot industrial warehouse building (under construction)

[1] City of San José. Key Economic Development Projects. Accessed September 9, 2021. https://gis.sanjoseca.gov/maps/devprojects/

For each resource area, cumulative impacts may occur over different geographic areas. For example, the project effects on air quality would combine with the effects of projects in the entire air basin, whereas noise impacts would primarily be localized to the surrounding area. The geographic area that could be affected by the proposed project varies depending upon the type of environmental issue being considered. Section 15130(b)(3) of the CEQA Guidelines states that lead agencies should define the geographic scope of the area affected by the cumulative effect. Table 2.4-2 provides a summary of the different geographic areas used to evaluate cumulative impacts.

Table 2.4-2: Geographic Considerations in Cumulative Analysis

Resource Area	Geographic Area
Aesthetics	Project site and adjacent parcels
Agriculture and Forestry Resources	Countywide
Air Quality	San Francisco Bay Area Air Basin
Biological Resources	Project site and adjacent parcels
Cultural Resources	Project site and adjacent parcels
Energy	Energy provider's service area
Geology and Soils	Project site and adjacent parcels
GHGs	Planet-wide
Hazards and Hazardous Materials	Project site and adjacent parcels
Hydrology and Water Quality	Coyote Creek watershed
Land Use and Planning/Population and Housing	Citywide
Minerals	Identified mineral recovery or resource area
Noise and Vibration	Project site and adjacent parcels
Public Services and Recreation	Citywide
Transportation/Traffic	Citywide
Tribal Cultural Resources	Project site and adjacent parcels
Utilities and Service Systems	Citywide
Wildfire	Within or adjacent to the wildfire hazard zone

3.1 AESTHETICS

3.1.1 Environmental Setting

3.1.1.1 *Regulatory Framework*

State

Senate Bill 743

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

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

SB 743 also states that aesthetic impacts do not include impacts on historical or cultural resources. Further, it clarifies that local governments retain their ability to regulate a project's transportation, aesthetics, and parking impacts outside of the CEQA process.

Streets and Highway Code Sections 260 through 263

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

In Santa Clara County, the one state-designated scenic highway is SR 9 from the Santa Cruz County line to the Los Gatos City Limit. Eligible State Scenic Highways (not officially designated) include

[2] An "infill site" is defined as "a lot located within an urban area that has been previously developed, or on a vacant site where at least 75 percent of the perimeter of the site adjoins or is separated only by an improved public right-of-way from, parcels that are developed with qualified urban uses."
A "transit priority area" is defined as "an area within 0.5 mile of a major transit stop that is existing or planned, if the planned stop is scheduled to be completed within the planning horizon included in a Transportation Improvement Program adopted pursuant to Section 450.216 or 450.322 of Title 23 of the Code of Federal Regulations."
A "major transit stop" means "a site containing an existing rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods." Source: Office of Planning and Research. "Changes to CEQA for Transit Oriented Development – FAQ." October 14, 2014. Accessed April 26, 2019. http://www.opr.ca.gov/ceqa/updates/sb-743/transit-oriented.html.

[3] California Department of Transportation. "Scenic Highways.". Accessed April 26, 2019. https://dot.ca.gov/programs/design/lap-landscape-architecture-and-community-livability/lap-liv-i-scenic-highways.

SR 17 from the Santa Cruz County line to SR 9, SR 35 from Santa Cruz County line to SR 9, Interstate 280 from the San Mateo County line to SR 17, and the entire length of SR 152 within the County.

Regional and Local

San José Municipal Code

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

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

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

City Design Guidelines and Design Review Process

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

City Council Policy 4-2: Lighting

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

City Council Policy 4-3: Private Outdoor Lighting on Private Developments

Council Policy 4-3 requires private development to use energy-efficient outdoor lighting that is fully shielded and not directed skyward. Low-pressure sodium lighting is required unless a photometric study is completed, and the proposed lighting referred to Lick Observatory for review and comment. One of the purposes of this policy is to provide for the continued enjoyment of the night sky and for continuing operation of Lick Observatory, by reducing light pollution and sky glow.

Envision San José 2040 General Plan

The Envision San José 2040 General Plan identifies "gateways", freeways, and rural scenic corridors where preservation and enhancement of views of the natural and man-made environment are crucial.

Various policies in the City's General Plan have been adopted for the purpose of reducing or avoiding impacts related to aesthetics, as listed below.

General Plan Policies – Aesthetics	
Attractive City	
Policy CD-1.1	Require the highest standards of architectural and site design, and apply strong design controls for all development projects, both public and private, for the enhancement and development of community character and for the proper transition between areas with different types of land uses.
Policy CD-1.2	Install and maintain attractive, durable, and fiscally- and environmentally-sustainable urban infrastructure to promote the enjoyment of space developed for public use. Include attractive landscaping, public art, lighting, civic landmarks, sidewalk cafes, gateways, water features, interpretive/way-finding signage, farmers markets, festivals, outdoor entertainment, pocket parks, street furniture, plazas, squares, or other amenities in spaces for public use. When resources are available, seek to enliven the public right-of-way with attractive street furniture, art, landscaping, and other amenities.
Policy CD-1.7	Require developers to provide pedestrian amenities, such as trees, lighting, recycling and refuse containers, seating, awnings, art, or other amenities, in pedestrian areas along project frontages. When funding is available, install pedestrian amenities in public rights-of-ways.
Policy CD-1.8	Create an attractive street presence with pedestrian-scaled building and landscaping elements that provide an engaging, safe, and diverse walking environment. Encourage compact, urban design, including use of smaller building footprints, to promote pedestrian activity throughout the City.
Policy CD-1.9	Give the greatest priority to developing high-quality pedestrian facilities in areas that will most promote transit use and bicycle and pedestrian activity. In pedestrian-oriented areas such as Downtown, Villages, Corridors, or along Main Streets, commercial and mixed-use building frontages should be placed at or near the street-facing property line with entrances directly to the public sidewalk. In these areas, strongly discourage parking areas located between the front of buildings and the street to promote a safe and attractive street façade and pedestrian access to buildings.
Policy CD-1.11	To create a more pleasing pedestrian-oriented environment, for new building frontages, include design elements with a human scale, varied and articulated facades using a variety of materials, and entries oriented to public sidewalks or pedestrian pathways. Provide windows or entries along sidewalks and pathways; avoid blank walls that do not enhance the pedestrian experience. Encourage

General Plan Policies – Aesthetics	
	inviting, transparent facades for ground-floor commercial spaces that attract customers by revealing active uses and merchandise displays.
Policy CD-1.12	Use building design to reflect both the unique character of a specific site and the context of surrounding development and to support pedestrian movement throughout the building site by providing convenient means of entry from public streets and transit facilities where applicable, and by designing ground level building frontages to create an attractive pedestrian environment along building frontages. Unless it is appropriate to the site and context, franchise-style architecture is strongly discouraged
Policy CD-1.13	Use design review to encourage creative, high-quality, innovative, and distinctive architecture that helps to create unique, vibrant places that are both desirable urban places to live, work, and play and that lead to competitive advantages over other regions.
Policy CD-1.17	Minimize the footprint and visibility of parking areas. Where parking areas are necessary, provide aesthetically pleasing and visually interesting parking garages with clearly identified pedestrian entrances and walkways. Encourage designs that encapsulate parking facilities behind active building space or screen parked vehicles from view from the public realm. Ensure that garage lighting does not impact adjacent uses, and to the extent feasible, avoid impacts of headlights on adjacent land uses.
Policy CD-1.18	Encourage the placement of loading docks and other utility uses within parking structures or at other locations that minimize their visibility and reduce their potential to detract from pedestrian activity
Policy CD-1.23	Further the Community Forest Goals and Policies in this Plan by requiring new development to plant and maintain trees at appropriate locations on private property and along public street frontages. Use trees to help soften the appearance of the built environment, help provide transitions between land uses, and shade pedestrian and bicycle areas.
Lighting	
Policy CD-5.6	Design lighting locations and levels to enhance the public realm, promote safety and comfort, and create engaging public spaces. Seek to balance minimum energy use of outdoor lighting with goal of providing safe and pleasing well-lit spaces. Consider the City's outdoor lighting policies in development review processes.
Urban Villages Design	
Policy CD-7.3	Review development proposed within an Urban Village Area prior to approval of an Urban Village Plan for consistency with any applicable design policies pertaining to the proposed use. Review proposed mixed-use projects that include residential units for consistency with the Design Policies for Urban Villages. Following adoption of an Urban Village Plan, review new development for consistency with design policies included within the Urban Village Plan as well as for consistency with any other applicable design policies.

General Plan Policies – Aesthetics	
Community Empowerment	
Policy VN-2.3	Ensure that community members have the opportunity to provide input on the design of public and private development within their community.

Berryessa BART Urban Village Plan

The following policies within the draft Berryessa BART Urban Village Plan pertain to the purposes of reducing or avoiding impacts related to aesthetics.

Urban Village Plan Policies – Aesthetics	
Land Use	
Policy LU-4.1	Allow new commercial infill projects within the existing neighborhoods on a parcel-by-parcel basis, if project scale, building massing, and land uses are comparable with those of adjacent properties. Residential infill projects consistent with densities supported by the sites General Plan Land Use Designation shall also be supported.

3.1.1.2 *Existing Conditions*

Project Site

The northern portion of the project site has been cleared and graded, with paved surfaces designated as parking area for trucks and vehicles. The southern portion of the project site contains three rectangular-shaped one-story concrete industrial buildings with flat roofs, a small modular/portable office structure, ancillary structures/sheds, and a paved surface parking lot. A landscaped area with trees is located on the southern end of the site. An existing vegetated man-made pond divides the northern graded area and the southern paved area. Other trees (further described in Section 3.4 Biological Resources) such as eucalyptus and cypress are located along the project site perimeter.

Refer to Photos 1 through 3 for existing conditions on the project site.

Surrounding Land Uses

The project site is surrounded by the BART/UPRR tracks to the east, Berryessa Road, the San José Flea Market, and paved surface parking lot to the south, and residential uses to the west and north. Development in the project area is a mix of commercial, residential, and industrial land uses. Building heights vary by land use from one to six stories.

Residential developments to the north of the site consist of two-story single-family houses with attached two-car garages. These residences are painted neutral colors, ranging from off-white to brown, and made of stucco siding and shingle roofs. Across the northwestern most portion of the site, residences consist of modern-style two to three-story townhouses with a mixture of gable and hip roofs. Color schemes are generally neutral and contain brick exterior accent walls (e.g., white, and light brown or brown with red brick walls). The front facades are primarily made of stucco and brick.

Across the southwestern portion of the project site, there is a modern-style five-story apartment complex. The street-facing portion of the apartment complex is primarily made of stucco and is painted yellow, and other portions maintain a white-, gray, and -brown color scheme.

Refer to Photos 4 through 6 for conditions of the surrounding area.

Photo 1: View of existing project site, facing south.

Photo 2: View of existing project site, facing east.

PHOTOS 1 & 2

Photo 3: View of existing project site from across Berryessa Road, facing north.

Photo 4: View of surrounding townhouses, located across the northwestern most portion of the project site.

PHOTOS 3 & 4

Photo 3: View of existing project site from across Berryessa Road, facing north.

Photo 4: View of surrounding townhouses, located across the northwestern most portion of the project site.

PHOTOS 3 & 4

3.1.2 Impact Discussion

For the purpose of determining the significance of the project's impact on aesthetics, except as provided in Public Resources Code Section 21099, would the project:

a) Have a substantial adverse effect on a scenic vista?
b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?
c) In non-urbanized areas, substantially degrade the existing visual character or quality of public views of the site and its surroundings?[4] If the project is in an urbanized area, would the project conflict with applicable zoning and other regulations governing scenic quality?
d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?

3.1.2.1 *Project Impacts*

The proposed project would meet the criteria of SB 743 because it is a mixed-use residential project located within a transit priority area (refer to Figure 3.1-1).[5] Consistent with Public Resources Code Section 21099, the project would have a less than significant aesthetics impact by statute. While the project would have a less than significant aesthetics impact, this EIR addresses the CEQA checklist questions for informational purposes as they pertain to the City of San José's design and aesthetics policies.

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

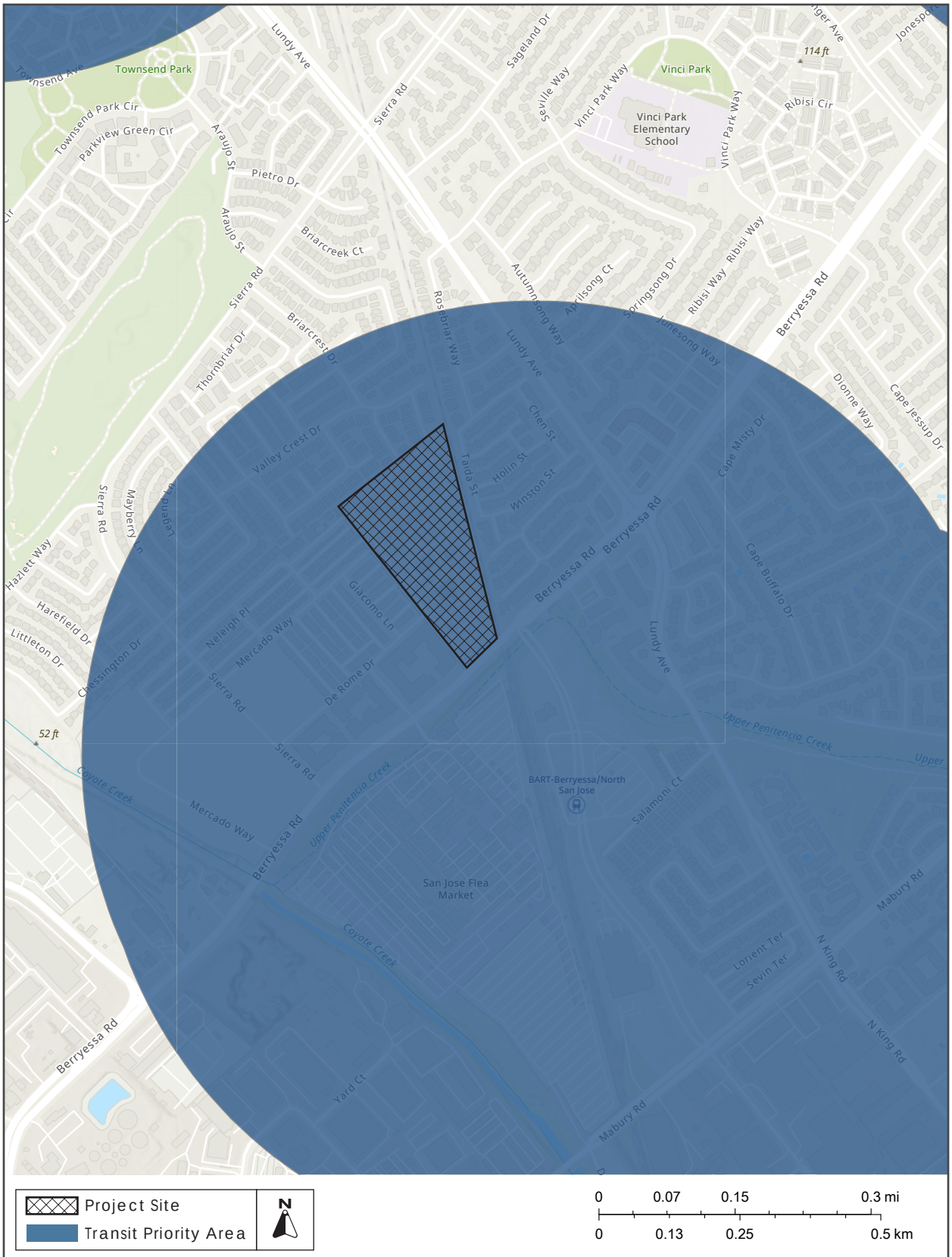
There are no City-designated scenic corridors in the project area. The topography of the project site and vicinity is relatively flat and prominent viewpoints of the mountains to the east are limited, as buildings, trees, and infrastructure (e.g., overhead utility lines, elevated roadways, etc.) obscure viewpoints.

Existing development surrounding the project site is residential; however, views of the Diablo Range foothills and mountains are only visible from roadways. Therefore, the proposed construction of residential and commercial development up to 160 feet in height would not block existing residential views of the Diablo Range foothills and mountains to the east of the project site. **(Less than Significant Impact)**

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

The project site is not located along a state scenic highway. The nearest officially state-designated scenic highway is State Route 9 (approximately one quarter mile west of State Route 17),

[4] Public views are those that are experienced from publicly accessible vantage points.
[5] Metropolitan Transportation Commission. Accessed September 9, 2021. https://www.arcgis.com/apps/mapviewer/index.html?layers=370de9dc4d65402d992a769bf6ac8ef5.



Esri Community Maps Contributors, City of San Jose, County of Santa Clara, Esri, HERE, Garmin, SafeGraph, INCREMENT P, METI/NASA, USGS, Bureau of Land Management, EPA, NPS, US Census Bureau. USDA. Esri. NASA. NGA. USGS. FEMA. 9/10/2021

TRANSIT PRIORITY AREA | FIGURE 3.1-1

approximately 12 miles southwest of the project site. Therefore, the proposed project would not damage scenic resources within a designated state scenic highway. **(No Impact)**

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

The project site is located in an urbanized area. The proposed project would change the visual conditions of the project site, which is currently developed with industrial buildings and ancillary structures, an associated parking lot, a vegetated man-made pond, and trees. Development of the project site would change the appearance of the site due to the type, size, and intensity of the proposed development. The proposed development would include three multi-family buildings that would reach up to 15 stories and have a maximum height of 160 feet above the ground surface. The project would also include up to 47 three-story single-family and townhouse units that would be a maximum height of 40 feet and located along the northern and western borders of the site. The site would also include a commercial building that would be a maximum height of 10 stories (160 feet above the ground surface).

The project design would be consistent with the design of buildings within the surrounding area. As discussed in Section 3.1.1.2 Existing Conditions, residential developments in the vicinity vary from one- to six-stories in height. Additionally, the proposed project would be consistent with the City's Design Guidelines, applicable General Plan policies, BBUV Plan Urban Design policies, and design standards. The project would not significantly degrade the existing visual character of the site or its surroundings. Therefore, the project would not conflict with applicable regulations governing scenic quality. **(No Impact)**

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

The proposed project would allow for construction of residential and commercial buildings up to 160 feet in height and would include outdoor security night lighting, standard pole lighting along the public street system, and interior lighting. There are existing sources of light in the project area (e.g., exterior and interior lighting from other developments, street lighting) and the project would not be introducing new sources of light in an undeveloped non-urban area. San José City Council Policy 4-3 calls for private development to use energy-efficient outdoor lighting that is fully shielded and not directed skyward. All lighting installed by the project would be full-cutoff lighting, designed in conformance with City Council Policy 4-3. Design and construction of the project in conformance with General Plan design and lighting policies would not adversely affect views.

The design of the proposed project would also be subject to the City's design review process and would be required to use exterior materials that do not result in daytime glare, consistent with General Plan policies, applicable Urban Village design policies, Residential Design Guidelines, and Commercial Design Guidelines.

For all these reasons, the project would not significantly impact adjacent uses with daytime glare from building materials. **(No Impact)**

3.1.2.2 *Cumulative Impacts*

Would the project result in a cumulatively considerable contribution to a significant cumulative aesthetics impact?

The geographic area for cumulative aesthetic impacts is the project site and adjacent parcels. Given the project site is within a transit priority area per SB 743, the project would have no impact on aesthetics. Therefore, the project does not have the potential to combine aesthetic impacts with other projects (including the Flea Market project, south of Berryessa Road). Therefore, the project would not contribute to cumulative aesthetic impacts. **(No Cumulative Impact)**

3.2 AGRICULTURE AND FORESTRY RESOURCES

3.2.1 Environmental Setting

3.2.1.1 *Regulatory Framework*

State

Farmland Mapping and Monitoring Program

The California Department of Conservation's Farmland Mapping and Monitoring Program (FMMP) assesses the location, quality, and quantity of agricultural land and conversion of these lands over time. Agricultural land is rated according to soil quality and irrigation status. The best quality land is called Prime Farmland. In CEQA analyses, the FMMP classifications and published county maps are used, in part, to identify whether agricultural resources that could be affected are present on-site or in the project area.

California Land Conservation Act

The California Land Conservation Act (Williamson Act) enables local governments to enter into contracts with private landowners to restrict parcels of land to agricultural or related open space uses. In return, landowners receive lower property tax assessments. In CEQA analyses, identification of properties that are under a Williamson Act contract is used to also identify sites that may contain agricultural resources or are zoned for agricultural uses.[6]

Fire and Resource Assessment Program

The California Department of Forestry and Fire Protection (CAL FIRE) identifies forest land, timberland, and lands zoned for timberland production that can (or do) support forestry resources.[7] Programs such as CAL FIRE's Fire and Resource Assessment Program and are used to identify whether forest land, timberland, or timberland production areas that could be affected are located on or adjacent to a project site.[8]

3.2.1.2 *Existing Conditions*

The 13-acre project site is designated as Urban Village in the City's General Plan. The project site is located within an existing developed area. The site is used for industrial purposes. Approximately 12.7 acres of the site is zoned Light Industrial, and 0.3 acres of the site is zoned Agricultural (landscaped portion at the southeast corner). The site is designated by the California Department of

[6] California Department of Conservation. "Williamson Act." http://www.conservation.ca.gov/dlrp/lca.
[7] Forest Land is land that can support 10 percent native tree cover and allows for management of forest resources (California Public Resources Code Section 12220(g)); Timberland is land not owned by the federal government or designated as experimental forest land that is available for, and capable of, growing trees to produce lumber and other products, including Christmas trees (California Public Resources Code Section 4526); and Timberland Production is land used for growing and harvesting timber and compatible uses (Government Code Section 51104(g)).
[8] California Department of Forestry and Fire Protection. "Fire and Resource Assessment Program." Accessed December 17, 2020. http://frap.fire.ca.gov/.

Conservation as Urban and Built-Up Land[9] and is not the subject of a Williamson Act contract. The site is surrounded by residential, commercial, and transportation (BART tracks) uses. None of the properties adjacent to the project site are used for agriculture, nor are any designated as forest land.

3.2.2 Impact Discussion

For the purpose of determining the significance of the project's impact on agriculture and forestry resources, would the project:

a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?
b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?
c) Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code Section 12220(g)), timberland (as defined by Public Resources Code Section 4526), or timberland zoned Timberland Production (as defined by Government Code Section 51104(g))?
d) Result in a loss of forest land or conversion of forest land to non-forest use?
e) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use or conversion of forest land to non-forest use?

3.2.2.1 *Project Impacts*

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

The project site and surrounding properties are not used, zoned, or designated for agricultural purposes. The site is designated by the California Department of Conservation as Urban and Built-Up Land. For these reasons, implementation of the proposed project would not convert Prime Farmland, Unique Farmland or Farmland of Statewide Importance to a non-agricultural use. **(No Impact)**

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

As stated in Section 3.2-1, the majority of the site is zoned Light Industrial; a small, landscaped portion of the site (0.3 acres), at the southeast corner, is zoned Agricultural. Although the small, landscaped portion is zoned for Agricultural, the site is not currently used for agricultural purposes,

[9]Urban Built-Up Land includes sites occupied by structures with a building density of at least one unit to 1.5 acres, or approximately six structures to a 10-acre parcel. Common examples include residential, industrial, commercial, institutional facilities, cemeteries, airports, golf courses, sanitary landfills, sewage treatment, and water control structures. California Department of Conservation. "Farmland Mapping and Monitoring Program." Accessed September 9, 2021. http://www.conservation.ca.gov/dlrp/fmmp/Pages/Index.aspx.

nor is it intended for agricultural use. The site was formerly used for agricultural purposes (in the 1960s, see Section 3.9, Hazards and Hazardous Materials). However, the site is not designated as Prime Farmland or Farmland of Statewide Importance and, therefore, is not suitable for farmland/ agricultural use. Based on the BBUV Plan, this portion of the site is designated as a Transit Employment Center. The proposed Planned Development zoning for the site is consistent with the zoning of the development surrounding the site. The site is not the subject of a Williamson Act contract. For these reasons, The proposed project would not, therefore, conflict with existing zoning for agricultural use or a Williamson Act contract. **(No Impact)**

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

The project site and surrounding properties are not used or zoned for forestry or timberland purposes. For these reasons, implementation of the proposed project would not conflict with zoning of forest land or timberland. **(No Impact)**

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

The project site and surrounding properties are not designated as forest land. Therefore, the proposed project would not result in a loss of forest land or conversion of forest land to a non-forest use. **(No Impact)**

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

As described above, the project site does not contain farmland or forest land and is not located within the vicinity of farmland or forest land. Implementation of the proposed project, therefore, would not result in the conversion of farmland to non-agricultural use or forest land to non-forest use. **(No Impact)**

3.2.2.2 *Cumulative Impacts*

Would the project result in a cumulatively considerable contribution to a significant cumulative agricultural and forestry resources impact?

As discussed above, implementation the proposed project would not impact agricultural, forestry, or timberland resources. Therefore, the proposed project would not contribute to a significant cumulative impact to these resources. **(No Cumulative Impact)**

3.3 AIR QUALITY

The following discussion is based upon an Air Quality Assessment prepared by Illingworth & Rodkin, Inc. on August 26, 2021. A copy of this report is included in Appendix B of this document.

3.3.1 Environmental Setting

3.3.1.1 *Background Information*

Criteria Pollutants

Air quality in the Bay Area is assessed related to six common air pollutants (referred to as criteria pollutants), including ground-level ozone (O_3), nitrogen oxides (NO_x), particulate matter (PM), carbon monoxide (CO), sulfur oxides (SO_x), and lead.[10] Criteria pollutants are regulated because they result in health effects. An overview of the sources of criteria pollutants and their associated health are summarized in Table 3.3-1. The most commonly regulated criteria pollutants in the Bay Area are discussed further below.

Table 3.3-1: Health Effects of Air Pollutants

Pollutants	Sources	Primary Effects
Ozone (O_3)	Atmospheric reaction of organic gases with nitrogen oxides in sunlight	• Aggravation of respiratory and cardiovascular diseases • Irritation of eyes • Cardiopulmonary function impairment
Nitrogen Dioxide (NO_2)	Motor vehicle exhaust, high temperature stationary combustion, atmospheric reactions	• Aggravation of respiratory illness • Reduced visibility
Fine Particulate Matter ($PM_{2.5}$) and Coarse Particulate Matter (PM_{10})	Stationary combustion of solid fuels, construction activities, industrial processes, atmospheric chemical reactions	• Reduced lung function, especially in children • Aggravation of respiratory and cardiorespiratory diseases • Increased cough and chest discomfort • Reduced visibility
Toxic Air Contaminants (TACs)	Cars and trucks, especially diesel-fueled; industrial sources, such as chrome platers; dry cleaners and service stations; building materials and products	• Cancer • Chronic eye, lung, or skin irritation • Neurological and reproductive disorders

High O_3 levels are caused by the cumulative emissions of reactive organic gases (ROG) and NO_x. These precursor pollutants react under certain meteorological conditions to form high O_3 levels. Controlling the emissions of these precursor pollutants is the focus of the Bay Area's attempts to

[10] The area has attained both state and federal ambient air quality standards for CO. The project does not include substantial new emissions of sulfur dioxide or lead. These criteria pollutants are not discussed further.

reduce O_3 levels. The highest O_3 levels in the Bay Area occur in the eastern and southern inland valleys that are downwind of air pollutant sources.

PM is a problematic air pollutant of the Bay Area. PM is assessed and measured in terms of respirable particulate matter or particles that have a diameter of 10 micrometers or less (PM_{10}) and fine particulate matter where particles have a diameter of 2.5 micrometers or less ($PM_{2.5}$). Elevated concentrations of PM_{10} and $PM_{2.5}$ are the result of both region-wide emissions and localized emissions.

Toxic Air Contaminants

TACs are a broad class of compounds known to have health effects. They include but are not limited to criteria pollutants. TACs are found in ambient air, especially in urban areas, and are caused by industry, agriculture, diesel fuel combustion, and commercial operations (e.g., dry cleaners). TACs are typically found in low concentrations, even near their source (e.g., diesel particulate matter [DPM] near a freeway).

Diesel exhaust is the predominant TAC in urban air and is estimated to represent about three-quarters of the cancer risk from TACs. Diesel exhaust is a complex mixture of gases, vapors, and fine particles. Medium- and heavy-duty diesel trucks represent the bulk of DPM emissions from California highways. The majority of DPM is small enough to be inhaled into the lungs. Most inhaled particles are subsequently exhaled, but some deposit on the lung surface or are deposited in the deepest regions of the lungs (most susceptible to injury).[11] Chemicals in diesel exhaust, such as benzene and formaldehyde, have been previously identified as TACs by the California Air Resources Board (CARB).

Sensitive Receptors

Some groups of people are more affected by air pollution than others. CARB has identified the following persons who are most likely to be affected by air pollution: children under 16, the elderly over 65, athletes, and people with cardiovascular and chronic respiratory diseases. These groups are classified as sensitive receptors. Locations that may contain a high concentration of these sensitive population groups include residential areas, hospitals, daycare facilities, elder care facilities, and elementary schools.

3.3.1.2 *Regulatory Framework*

Federal and State

Clean Air Act

At the federal level, the United States Environmental Protection Agency (EPA) is responsible for overseeing implementation of the Clean Air Act and its subsequent amendments. The federal Clean Air Act requires the EPA to set national ambient air quality standards for the six common criteria pollutants (discussed previously), including PM, O_3, CO, SO_x, NO_x, and lead.

[11] California Air Resources Board. "Overview: Diesel Exhaust and Health." Accessed August 8, 2021. https://www.arb.ca.gov/research/diesel/diesel-health.htm.

CARB is the state agency that regulates mobile sources throughout the state and oversees implementation of the state air quality laws and regulations, including the California Clean Air Act. The EPA and the CARB have adopted ambient air quality standards establishing permissible levels of these pollutants to protect public health and the climate. Violations of ambient air quality standards are based on air pollutant monitoring data and are determined for each air pollutant. Attainment status for a pollutant means that a given air district meets the standard set by the EPA and/or CARB.

Risk Reduction Plan

To address the issue of diesel emissions in the state, CARB developed the Risk Reduction Plan to Reduce Particulate Matter Emissions from Diesel-Fueled Engines and Vehicles. In addition to requiring more stringent emission standards for new on-road and off-road mobile sources and stationary diesel-fueled engines to reduce particulate matter emissions by 90 percent, the plan involves application of emission control strategies for existing diesel vehicles and equipment to reduce DPM (in additional to other pollutants). Implementation of this plan, in conjunction with stringent federal and CARB-adopted emission limits for diesel fueled vehicles and equipment (including off-road equipment), will significantly reduce emissions of DPM and NO_X.

Regional

2017 Clean Air Plan

The Bay Area Air Quality Management District (BAAQMD) is the agency primarily responsible for assuring that the federal and state ambient air quality standards are maintained in the San Francisco Bay Area. Regional air quality management districts, such as BAAQMD, must prepare air quality plans specifying how state and federal air quality standards will be met. BAAQMD's most recently adopted plan is the Bay Area 2017 Clean Air Plan (2017 CAP). The 2017 CAP focuses on two related BAAQMD goals: protecting public health and protecting the climate. To protect public health, the 2017 CAP describes how BAAQMD will continue its progress toward attaining state and federal air quality standards and eliminating health risk disparities from exposure to air pollution among Bay Area communities. To protect the climate, the 2017 CAP includes control measures designed to reduce emissions of methane and other super-greenhouse gases (GHGs) that are potent climate pollutants in the near-term, and to decrease emissions of carbon dioxide by reducing fossil fuel combustion.[12]

CEQA Air Quality Guidelines

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

[12] BAAQMD. *Final 2017 Clean Air Plan.* April 19, 2017. Accessed September 9, 2021. http://www.baaqmd.gov/plans-and-climate/air-quality-plans/current-plans.

Local

Envision San José 2040 General Plan

Various policies in the Envision San José 2040 General Plan have been adopted for the purpose of reducing or avoiding impacts related to air quality, as listed below. In addition, goals and policies throughout the General Plan encourage a reduction in vehicle miles traveled through land use, pedestrian, bicycle, and transit access improvements; parking strategies that reduce automobile travel through parking supply and pricing management; and requirements for Transportation Demand Management programs for large employers.

General Plan Policies – Air Quality	
Air Pollutant Emission Reduction Policies	
Policy MS-10.1	Assess projected air emissions from new development in conformance with the Bay Area Air Quality Management District CEQA Guidelines and relative to state and federal standards. Identify and implement feasible air emission reduction measures.
Policy MS-10.5	In order to reduce vehicle miles traveled and traffic congestion, require new development within 2,000 feet of an existing or planned transit station to encourage the use of public transit and minimize the dependence on the automobile through the application of site design guidelines and transit incentives.
Toxic Air Contaminants Policies	
Policy MS-11.1	Require completion of air quality modeling for sensitive land uses such as new residential developments that are located near sources of pollution such as freeways and industrial uses. Require new residential development projects and projects categorized as sensitive receptors to incorporate effective mitigation into project designs or be located an adequate distance from sources of toxic air contaminants to avoid significant risks to health and safety.
Policy MS-11.2	For projects that emit toxic air contaminants, require project proponents to prepare health risk assessments in accordance with BAAQMD-recommended procedures as part of environmental review and employ effective mitigation to reduce possible health risks to a less than significant level. Alternatively, require new projects (such as, but not limited to, industrial, manufacturing, and processing facilities) that are sources of TACs to be located an adequate distance from residential areas and other sensitive receptors.
Construction Air Emission Minimization Policies	
Policy MS-13.1	Include dust, particulate matter, and construction equipment exhaust control measures as conditions of approval for subdivision maps, site development and planned development permits, grading permits, and demolition permits. At a minimum, conditions shall conform to construction mitigation measures recommended in the current BAAQMD CEQA Guidelines for the relevant project size and type.

General Plan Policies – Air Quality	
Policy MS-13.2	Construction and/or demolition projects that have the potential to disturb asbestos (from soil or building material) shall comply with all the requirements of the California Air Resources Board's air toxic control measures (ATCMs) for Construction, Grading, Quarrying, and Surface Mining Operations.

Berryessa BART Urban Village Plan

The following policies within the draft Berryessa BART Urban Village Plan pertain to the purposes of reducing or avoiding impacts related to air quality.

Urban Village Plan Policies – Air Quality	
Parking	
Policy DP-1.1	Require the implementation of a set of Mandatory and Additional transportation demand management (TDM) measures consistent with the Berryessa BART Urban Village TDM plan as part of entitlements and subsequent permit approvals (and applicable City's TDM ordinance, as amended). Applicants shall work with the City to select from a list of Mandatory TDMs and Additional TDMs measures that are most applicable to a development project. This set of Mandatory TDMs and Additional TDMs measures shall be discussed and selected between the City and project sponsors at the zoning stage and subsequently refined at the permit stage.
Policy DP-1.3	Require residential development projects to unbundle all off-street parking from the lease or sale of residential units.
Policy DP-2.3	Residential and commercial development projects are encouraged to develop a share-parking strategy at the Master Planned Development (PD) permit level, where applicable in the Districts. Applicants should work with TMA (or assigned third party) who will work with the City to identify sharable off-street parking opportunities and broker share-parking deals between applicants and projects. The sharing of off-street parking with other developments located in different districts is encouraged
Policy DP-3.1	Residential and commercial development projects in the four Districts must become members of the Berryessa Transportation Management Association (TMA), a public-private partnership created to manage parking and transportation demands in the Urban Village on behalf of all users.
Policy DP-3.2	All commercial development in the four districts that build parking over 50% of the provided parking should allow the Berryessa TMA to manage, price, and collect revenue from that parking over the 50% provided. The amount of parking considered as over the 50% should be calculated using the shared-parking ratios of 1.5 spaces/1,000 square feet or net leasable space (including retail) and 1 space/dwelling unit. Determination of the total amount of parking shared and managed by the TMA should take place at the development permit stage when applicants discuss with the City total associated parking for a given project.

3.3.1.3 *Existing Conditions*

The Bay Area is considered a non-attainment area for ground-level O_3 and $PM_{2.5}$ under both the federal Clean Air Act and state Clean Air Act. The area is also considered nonattainment for PM_{10} under the state act, but not the federal act. The area has attained both state and federal ambient air quality standards for CO. As part of an effort to attain and maintain ambient air quality standards for O_3 and PM_{10}, BAAQMD has established thresholds of significance for these air pollutants and their precursors. These thresholds are for O_3 precursor pollutants (ROG and NO_X), PM_{10}, and $PM_{2.5}$, and apply to both construction period and operational project impacts.

The closest sensitive receptors to the project site are the residences approximately 25 feet north and west of the site. There are also residences located to the east of the site, east of the BART/UPRR track. In addition, Genius Kids Berryessa is a daycare facility with children ages two months to 12 years of age located opposite of Berryessa Road, approximately 700 feet east of the project site.

Existing Air Pollutant Levels

As mentioned previously, the San Francisco Bay Area Air Basin, within which the project site is located, has non-attainment status for ground level ozone, fine particulate matter ($PM_{2.5}$), and respirable particulate matter (PM_{10}). The San Francisco Bay Area Air Basin has attainment or undetermined status for all other regional criteria pollutants for which the US EPA and CARB have set standards. The nearest official monitoring station is located at 158 East Jackson Street in San José, approximately two miles southwest of the site.[13] Pollutant monitoring results for the years 2017 to 2019 at the San José monitoring station are shown in Table 3.3-2. The station monitors ozone, carbon monoxide, nitrogen oxide, PM_{10} and $PM_{2.5}$ levels.

[13] BAAQMD, Meteorology and Measurement Division. 2019 Air Monitoring Network Plan. July 2019. Accessed September 8, 2021. https://www.baaqmd.gov/~/media/files/technical-services/2019_network_plan-pdf.pdf?la=en. The San Martin monitoring station only monitors ground-level ozone.

Table 3.3-2: Ambient Air Quality Standards Violations and Highest Concentrations				
Pollutant	**Standard**	**Days Exceeding Standard**		
		2017	**2018**	**2019**
San José Station				
Ozone	State 1-hour	6	2	6
	Federal 8-hour	6	3	9
Carbon Monoxide	Federal 8-hour	0	0	0
	State 8-hour	0	0	0
Nitrogen Dioxide	State 1-hour	1	0	0
	Federal 1-hour	0	0	0
PM_{10}	Federal 24-hour	0	1	0
	State 24-hour	6	6	5
$PM_{2.5}$	Federal 24-hour	18	18	1
Source: BAAQMD. Air Pollution Summaries (2017-2019). Available at: http://www.baaqmd.gov/about-air-quality/air-quality-summaries.				

3.3.2 Impact Discussion

For the purpose of determining the significance of the project's impact on air quality, would the project:

1) Conflict with or obstruct implementation of the applicable air quality plan?
2) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard?
3) Expose sensitive receptors to substantial pollutant concentrations?
4) Result in other emissions (such as those leading to odors) adversely affecting a substantial number of people?

3.3.2.1 *Bay Area Air Quality Management District*

As discussed in CEQA Guidelines Section 15064(b), the determination of whether a project may have a significant effect on the environment calls for judgment on the part of the lead agency and

must be based to the extent possible on scientific and factual data. The City of San José has considered the air quality thresholds updated by BAAQMD in May 2017 and regards these thresholds to be based on the best information available for the San Francisco Bay Area Air Basin and conservative in terms of the assessment of health effects associated with TACs and $PM_{2.5}$. The BAAQMD CEQA Air Quality thresholds used in this analysis are identified in Table 3.3-3 below.

Table 3.3-3: BAAQMD Air Quality Significance Thresholds			
Pollutant	**Construction Thresholds**	**Operation Thresholds**	
	Average Daily Emissions (pounds/day)	**Average Daily Emissions (pounds/day)**	**Annual Average Emissions (tons/year)**
Criteria Air Pollutants			
ROG, NO_x	54	54	10
PM_{10}	82 (exhaust)	82	15
$PM_{2.5}$	54 (exhaust)	54	10
CO	Not Applicable	9.0 ppm (eight-hour) or 20.0 ppm (one-hour)	
Fugitive Dust	Dust Control Measures/Best Management Practices	Not Applicable	
Health Risks and Hazards for New Sources (within a 1,000-foot Zone of Influence)			
Health Hazard	**Single Source**	**Combined Cumulative Sources**	
Excess Cancer Risk	10 per one million	100 per one million	
Hazard Index	1.0	10.0	
Incremental Annual $PM_{2.5}$	0.3 $\mu g/m^3$	0.8 $\mu g/m^3$ (average)	
Notes: ppm = parts per million. $\mu g/m^3$ = micrograms per cubic meter.			

Friant Ranch Case

In a 2018 decision (*Sierra Club v. County of Fresno*), the Supreme Court of California determined that CEQA requires that the potential for the project's emissions to affect human health in the air basin must be disclosed when a project's criteria air pollutant emissions would exceed applicable thresholds and contribute considerably to a significant cumulative impact. State and federal ambient air quality standards are health-based standards and exceedances of those standards result in continued unhealthy levels of air pollutants. As stated in the BAAQMD CEQA Air Quality Guidelines, air pollution by its nature is largely a cumulative impact. No single project is sufficient in size to result in nonattainment of ambient air quality standards. Instead, a project's individual emissions contribute to existing cumulatively significant adverse air quality impacts. In developing

thresholds of significance for air pollutants, BAAQMD considered the emission levels for which a project's individual emissions would be cumulatively considerable. If a project has a less than significant impact for criteria air pollutants, it is assumed not to have an adverse health effect with respect to those pollutants.

3.3.2.2 *Project Impacts*

a) Would the project conflict with or obstruct implementation of the applicable air quality plan?

Clean Air Plan

The BAAQMD CEQA Air Quality Guidelines set forth criteria for determining consistency with the 2017 CAP. In general, a project is considered consistent if it: a) supports the primary goals of the Clean Air Plan; b) includes relevant control measures; and c) does not interfere with implementation of CAP control measures. As shown in Table 3.3-4 below, the proposed project would generally be consistent with the intent of 2017 CAP measures intended to reduce automobile trips, as well as energy and water use.

Table 3.3-4: Applicable Control Measures

Control Measure	Project Consistency with Measure Intent
Transportation Measures	
TR2 - Trip Reduction Programs: Implement the regional Commuter Benefits Program (Rule 14-1) that requires employers with 50 or more Bay Area employees to provide commuter benefits. Encourage trip reduction policies and programs in local plans, e.g., general, and specific plans while providing grants to support trip reduction efforts. Encourage local governments to require mitigation of vehicle travel as part of new development approval, to adopt transit benefits ordinances in order to reduce transit costs to employees, and to develop innovative ways to encourage rideshare, transit, cycling, and walking for work trips. Fund various employer-based trip reduction programs.	The project proposes Transit Oriented Development including multi-family residential and commercial office and retail development at an infill, urban location adjacent to the Berryessa BART Station. The project would be required to comply with the mandatory measures in the Berryessa BART Parking and TDM Plan (refer to BBUV Policies listed in Section 3.3.1.2, Regulatory Framework). The project, therefore, is consistent with this measure.
TR9 - Bicycle and Pedestrian Access and Facilities: Encourage planning for bicycle and pedestrian facilities in local plans, e.g., general, and specific plans, fund bike lanes, routes, paths, and bicycle parking facilities.	Sidewalks are found along both sides of all streets near the project site including Berryessa Road, Sierra Road, Shore Road, Mercado Way, and De Rome Drive. An 8-foot wide sidewalk would be replaced with a 12-foot wide sidewalk on Berryessa Road along the project frontage and internal sidewalks would be provided within the

Table 3.3-4: Applicable Control Measures	
Control Measure	**Project Consistency with Measure Intent**
	development. Bicycle lanes within the project vicinity are located on both sides of Berryessa Road, Lundy Avenue, Sierra Road. The project area also includes planned bicycle facilities including bicycle paths, lanes, and bicycle routes in accordance with the San José Better Bike Plan 2025. The project would also include bicycle parking and be consistent with the BBUV Plan policies for walking and biking. Therefore, the project is consistent with this measure.
TR13 - Parking Policies: Encourage parking policies and programs in local plans, e.g., reduce minimum parking requirements; limit the supply of off-street parking in transit-oriented areas; unbundle the price of parking spaces; support implementation of demand-based pricing in high-traffic areas.	Consistent with the parking reduction goals of the Berryessa BART Urban Village Plan, the project is proposing to provide on-site parking with a ratio at or below the City's parking target for the BBUV Plan. The project, therefore, is consistent with this measure.
Energy Measures	
BL2 - Decarbonize Buildings: Explore potential Air District rulemaking options regarding the sale of fossil fuel-based space and water heating systems for both residential and commercial use. Explore incentives for property owners to replace their furnace, water heater or natural-gas powered appliances with zero-carbon alternatives. Update Air District guidance documents to recommend that commercial and multi-family developments install ground source heat pumps and solar hot water heaters.	Electricity is provided to the site by SJCE. SJCE customers are automatically enrolled in the GreenSource program, which provides 80 percent GHG emission-free electricity, and SJCE will provide 100-percent carbon-free base power by 2021. The project is estimated to be fully in operation in 2027, with earlier phases in prior years. The project, therefore, is consistent with this measure.
Natural and Working Lands Measures	
NW2 - Urban Tree Planting: Develop or identify an existing model municipal tree planting ordinance and encourage local governments to adopt such an ordinance. Include tree planting recommendations, BAAQMD's technical guidance, best management practices for local plans, and CEQA review.	The project would comply with the City of San José Tree Removal Ordinance by providing replacement planting for removed trees. The project, therefore, is consistent with this measure.

As shown in Table 3.3-4, the proposed project would include implementation of policies and measures that are consistent with the applicable 2017 CAP control measures. With implementation of these policies and measures, the proposed project would not conflict with the 2017 CAP.

Regional Criteria Air Pollutants

Construction Period Emissions

The California Emissions Estimator Model (CalEEMod) Version 2020.4.0 was used to estimate emissions from construction and operation of the project assuming full build-out conditions. The project land use types and size including 803 apartment units, 24 single-family units, 23 townhouse units, 465,000 square feet of medical office, 15,000 square feet of retail, 0.9 acres of park space, and 2,105 enclosed parking spaces. See Appendix B for the project land use types, size, and other CalEEMod inputs. The CARB EMission FACtors 2021 model (EMFAC2021) model was used to predict emissions from construction truck traffic and trips. Average daily emissions were calculated by dividing the total construction emissions by the total number of construction days. Project construction was estimated to last approximately 44 months or 950 workdays.

Table 3.3-5 below shows daily construction emissions of ROG, NO_x, PM_{10} exhaust, and $PM_{2.5}$ exhaust during construction of the project (from 2023 to 2026).

Table 3.3-5: Construction Period Emissions								
Year	**ROG**		**NOx**		**PM_{10} Exhaust**		**$PM_{2.5}$ Exhaust**	
Construction Emissions Per Year (Tons)								
Year	Unmitigat.	Mitigat.	Unmitigat.	Mitigat.	Unmitigat.	Mitigat.	Unmitigat.	Mitigat.
2023	0.63	0.44	3.94	2.89	0.21	0.10	0.15	0.05
2024	0.68	0.55	3.50	3.17	0.20	0.14	0.13	0.06
2025	0.66	0.55	3.36	3.15	0.19	0.14	0.12	0.06
2026	8.72	4.17	2.91	2.81	0.17	0.12	0.10	0.05
Annualized Daily Construction Emissions (pounds/day)								
Year	Unmitigat.	Mitigat.	Unmitigat.	Mitigat.	Unmitigat.	Mitigat.	Unmitigat.	Mitigat.
2022 (195 workdays)	6.42	4.51	40.39	29.64	2.15	1.04	1.50	0.48
2023 (262 workdays)	5.17	4.24	26.72	24.19	1.57	1.04	0.97	0.47
2025 (261 workdays)	5.07	4.23	25.73	24.18	1.48	1.04	0.89	0.47
2026 (232 workdays)	**75.25**	36.03	25.10	24.24	1.47	1.03	0.87	0.46

Table 3.3-5: Construction Period Emissions								
Year	**ROG**		**NOx**		**PM_{10} Exhaust**		**$PM_{2.5}$ Exhaust**	
BAAQMD Thresholds (pounds per day)	*54* lbs./day		*54* lbs./day		*82* lbs./day		*54* lbs./day	
Exceed Threshold?	**Yes (2026)**	No	No	No	No	No	No	No
Notes: Unmitigat. = Unmitigated, Mitigat. = Mitigated **Bold** = Values exceed BAAQMD thresholds; Workdays – construction workdays								

ROG Emissions

As shown in Table 3.3-5, annualized project construction ROG emissions are predicted to exceed the BAAQMD significance thresholds for ROG during the year 2026. Therefore, the implementation of mitigation measures MM AIR-1.1 to MM AIR-1.4 would be necessary to reduce ROG emissions to below the BAAQMD threshold of 54 pounds per day during construction. These measures would also reduce PM and NO_x emissions during construction.

Impact AIR-1: Construction period emissions would exceed BAAQMD thresholds of 54 pounds per day for ROG exhaust by 21.25 pounds per day, during the final year of construction, which would result in a cumulatively considerable impact to regional ROG emissions.

Mitigation Measures: The project would implement the following mitigation measures to reduce construction emissions.

MM AIR-1.1: Prior to the issuance of any demolition, grading and/or building permits (whichever occurs first), the project applicant shall prepare a construction equipment plan that includes specifications of the equipment to be used during construction. The plan shall be accompanied by a letter signed by a qualified air quality specialist, verifying that the equipment included in the plan meets the standards set forth below:

- All construction equipment larger than 25 horsepower used at the site for more than two continuous days or 20 hours total shall meet U.S. EPA Tier 4 emission standards for ROG, NOx, and PM (PM_{10} and $PM_{2.5}$), if feasible, as confirmed by a qualified air quality consultant and submitted to the City, otherwise:

- If use of Tier 4 equipment is not available, alternatively use equipment that meets U.S. EPA emission standards for Tier 2 or 3 engines and include particulate matter emissions control equivalent to CARB Level 3 verifiable diesel emission control

devices that altogether achieve a 60 percent reduction in particulate matter exhaust in comparison to uncontrolled equipment; alternatively (or in combination);

- Use alternatively fueled equipment with lower emissions that meet the reduction requirements above.

Prior to issuance of any demolition, grading, and/or building permits, whichever occurs first, the project applicant shall submit a copy of the construction equipment plan to the Director of Planning, Building and Code Enforcement or Director's designee, for review and approval.

MM AIR-1.2: Prior to the issuance of any demolition, grading and/or building permits (whichever occurs first), the project applicant shall prepare a construction equipment plan that includes a description of the location of construction site signs to be posted restricting idling of diesel-operated equipment to two minutes or less with clearly listed exceptions based on applicable state regulations. The project applicant shall submit the construction equipment plan to the Director of Planning, Building and Code Enforcement or the Director's designee. Diesel engines, whether for off-road equipment or on-road vehicles, shall not be left idling for more than two minutes, except as provided in exceptions to the applicable state regulations (e.g., traffic conditions, safe operating conditions). The construction sites shall have posted legible and visible signs in designated queuing areas to clearly notify operators of idling limit.

Prior to issuance of any demolition, grading, and/or building permits, whichever occurs first, the project applicant shall submit a copy of the construction equipment plan to the Director of Planning, Building and Code Enforcement or Director's designee, for review and approval.

MM AIR-1.3: Prior to the issuance of any demolition, grading, and/or building permits (whichever occurs first), the project applicant shall include in the construction equipment plan a description of the electrical source of power that the powerline will connect to and identify the approximate route of the powerline through the construction site, and submit to the Director of Planning, Building and Code Enforcement or the Director's designee. The line power to the site shall be provided during the early phases of construction to minimize the use of diesel-powered stationary equipment.

Prior to issuance of any demolition, grading, and/or building permits, whichever occurs first, the project applicant shall submit a copy of the construction equipment plan to the Director of Planning, Building and Code Enforcement or Director's designee, for review and approval.

MM AIR-1.4: Prior to the issuance of any demolition, grading, and/or building permits (whichever occurs first), the project applicant shall include a stipulation in the Declaration of Covenants, Conditions, and Restrictions requiring the use of low volatile organic compound or VOC (i.e., ROG) coatings, that are below current BAAQMD requirements (i.e., Regulation 8, Rule 3: Architectural Coatings), for at least 60 percent of all residential and nonresidential interior paints and 60 percent of exterior paints. This includes all architectural coatings applied during both construction and reapplications throughout the project's operational lifetime. At least 60 percent of coatings applied must meet a "super-compliant" VOC standard of less than 10 grams of VOC per liter of paint. For reapplication of coatings during the project's operational lifetime, the Declaration of Covenants, Conditions, and Restrictions shall contain a stipulation for low VOC coatings to be used. Examples of "super-compliant" coatings are contained in the South Coast Air Quality Management District's website.

Prior to the issuance of any demolition, grading, and/or building permits (whichever occurs first), the project applicant shall submit all construction documents and plans, including the Declaration of Covenants, Conditions, and Restrictions, shall be submitted to the Director of Planning, Building and Code Enforcement, or the Director's designee for review and approval.

The CalEEMod model was used to estimate the effectiveness of mitigation measures MM AIR-1.1 through MM AIR-1.3 using Tier 4 interim construction equipment. In addition, the CalEEMod model was used to estimate the effectiveness of MM AIR-1.4 using 60 percent interior and exterior super-compliant VOC coatings. These measures together were found to reduce on-site construction ROG emissions by 47-percent and below the BAAQMD significant threshold, or average construction emissions of 36 pounds of ROG per day during. With the implementation of MM AIR-1.1 through MM AIR-1.4 during project construction, the project would not result in a significant ROG emissions impact.

Fugitive Dust/PM Emissions

Construction activities, particularly during site preparation and grading, would temporarily generate fugitive dust in the form of PM_{10} and $PM_{2.5}$. Sources of fugitive dust would include disturbed soils at the construction site and trucks carrying uncovered loads of soils. The BAAQMD CEQA Air Quality Guidelines consider these impacts to be less than significant if best management practices (BMPs), listed as Standard Permit Conditions below, are implemented to reduce these emissions.

Standard Permit Condition:

Construction-related Air Quality

- Water active construction areas at least twice daily or as often as needed to control dust emissions.
- Cover trucks hauling soil, sand, and other loose materials, and/or ensure that all trucks hauling such materials maintain at least two feet of freeboard.

- Remove visible mud or dirt track-out onto adjacent public roads using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.).
- Pave new or improved roadways, driveways, and sidewalks as soon as possible.
- Lay building pads as soon as possible after grading unless seeding or soil binders are used.
- Replant vegetation in disturbed areas as quickly as possible.
- Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
- Minimize idling times either by shutting off equipment when not in use or reducing the maximum idling time to five minutes (as required by the California Airborne Toxics Control Measure Title 13, Section 2485 of California Code of Regulations). Provide clear signage for construction workers at all access points.
- Maintain and properly tune construction equipment in accordance with manufacturer's specifications. Check all equipment by a certified mechanic and record a determination of running in proper condition prior to operation.
- Post a publicly visible sign with the telephone number and person to contact at the Lead Agency regarding dust complaints.

With the implementation of the above standard permit condition during construction, the project would not result in a significant impact from PM exposure resulting from fugitive dust emissions.

Operational Period Emissions

Operational air emissions would be generated primarily from vehicles driven by future residents, employees, customers, and vendors. Evaporative emissions from architectural coatings and maintenance products (classified as consumer products) would also be generated under the operational phase of the project.

CalEEMod and Emissions Factors (EMFAC) modeling inputs for operational emissions were based upon project-specific trip generation rates and are described in Appendix B. The CalEEMod vehicle emission factors were updated with the emission rates from EMFAC2021, which were adjusted with the CARB EMFAC off-model adjustment factors. On-road emission rates from 2023 Santa Clara County were applied. CalEEMod was also used to compute emissions associated with consumer products for all land uses, regardless of their types

The project proposes to include a stand-by emergency diesel generator in the commercial building. It was assumed that the ground-floor of the northeast corner of the commercial building would have one emergency diesel generator rated at 1,000 kilowatts (kW) with an approximately 1,341-horsepower diesel engine. This generator would be tested periodically and power the buildings in the event of a power failure. The modeling assumed the generator would be operated primarily for testing and maintenance purposes that require about one to two hours per month of operation.

As discussed in Section 2.2.8 of this EIR, the BBUV established the TDM and Parking Plan to help the BBUV meet its mode split goals and reduce VMT for the plan area. The proposed project would

achieve a 30 percent reduction in VMT per capita by implementing TDM measures in BBUV TDM and Parking Plan, resulting in approximately 30 percent reduction in vehicle trips. The reduction in VMT and vehicle trips would result in reduced vehicular/mobile emissions.
Table 3.3-6 shows the project's estimated operational criteria pollutant annual and daily emissions. The 30 percent reduction in mobile emissions is accounted for in the results, given this reduction would be required as a part of the project.

Table 3.3-6: Operational Period Emissions				
Scenario	**ROG**	**NOx**	**PM_{10}**	**$PM_{2.5}$**
2027 Annual Operational Emissions (*tons/year*)	9.36	3.16	5.62	1.48
BAAQMD Thresholds (tons /year)	*10 tons*	*10 tons*	*15 tons*	*10 tons*
Exceed Threshold?	*No*	*No*	*No*	*No*
2027 Daily Operational Emissions – (*pounds/day*)[1]	51.26	17.31	30.78	8.12
BAAQMD Thresholds (pounds/day)	*54* lbs.	*54* lbs.	*82* lbs.	*54* lbs.
Exceed Threshold?	*No*	*No*	*No*	*No*
Notes: [1] Assumes 365-day operation.				

As shown in Table 3.3-6 above, operational daily and annual criteria pollutant emissions would not exceed the BAAQMD significance thresholds. The project, therefore, would result in a less than significant operational criteria pollutant emissions impact.

The proposed project would not conflict with the 2017 CAP because as discussed above, with the implementation of mitigation measures MM AIR-1.1 through MM AIR-1.4 and standard permit condition for construction, the proposed project's emissions would be below the BAAQMD construction criteria pollutant thresholds. Implementation of the project would not inhibit BAAQMD or partner agencies from continuing progress toward attaining state and federal air quality standards and eliminating health-risk disparities from exposure to air pollution among Bay Area communities, as described within the 2017 CAP. (**Less than Significant Impact with Mitigation Incorporated)**

b) Would the project result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard.

As discussed in the response to checklist question a), the project's operational criteria pollutant emissions would not exceed BAAMD thresholds. With the implementation of mitigation measures MM AIR-1.1 through MM AIR-1.4 and standard permit condition during construction, construction criteria pollutant emissions associated with the project would not exceed the BAAQMD significance thresholds. Since the project would result in a less than significant criteria pollutant impact with mitigation, the project would not result in a cumulatively considerable net increase of any criteria

pollutant for which the region is in non-attainment. **(Less than Significant Impact with Mitigation Incorporated)**

c) Would the project expose sensitive receptors to substantial pollutant concentrations?

TAC and $PM_{2.5}$ Impacts on Sensitive Receptors

Project impacts related to increased community risk can occur by introducing a new source of TACs with the potential to adversely affect existing sensitive receptors in the project vicinity or by significantly exacerbating existing cumulative TAC impacts. This project would introduce new sources of TACs during construction (i.e., on-site construction activity and truck hauling emissions) and operation (i.e., mobile sources and stationary sources) within 1,000 feet of sensitive receptors (i.e., residences approximately 50 feet north and west of the site, and children attending the Genius Kids Berryessa daycare).

Project construction activity would generate dust and equipment exhaust that would affect nearby sensitive receptors. This project operation would increase traffic that would increase the air pollutant and TAC emissions in the area. In addition, the project would include the installation of an emergency generator powered by diesel engines that would also have TACs and air pollutants emissions. As a result, project impacts, from construction and operational TAC emissions, to existing sensitive receptors were analyzed for temporary construction activities and long-term operational conditions.

Community Risks

Community risk impacts were addressed by predicting increased cancer risk, the increase in annual $PM_{2.5}$ concentrations and calculating the Hazard Index (HI) for non-cancer health risks. The risk impacts from the project are the combination of risks from construction and operation sources. These sources include on-site construction activity, construction truck hauling, stand-by emergency generator operation, and increased traffic from the project.

The project increase in cancer risk was computed by summing the project construction cancer risk and operation cancer risk contributions. Unlike the increased maximum cancer risk, the annual $PM_{2.5}$ concentration and HI values are not additive but based on the annual maximum values for the entirety of the project. The project's maximally exposed individual (MEI) is identified as the sensitive receptor that is most impacted by the project construction and operations.

Sensitive receptors for this assessment include locations where sensitive populations would be present for extended periods of time (i.e., chronic exposures). This includes existing residences to the north, west, and east of the project site; children attending the Genius Kids Berryessa daycare; and future residents at the Flea Market site to the south of Berryessa Road, as shown in Figure 3.3-1. Residential receptors are assumed to include all receptor groups (i.e., third trimester, infants, children, and adults) with continuous exposure to project emissions.

Source: Illingworth & Rodkin, Inc., August 26, 2021.

LOCATIONS OF OFF-SITE SENSITIVE RECEPTORS | FIGURE 3.3-1

Community Risks from Project Construction

The primary community risk impact issues associated with construction emissions are cancer risk and exposure to $PM_{2.5}$. A community risk assessment of the project's construction activities, which includes on-site construction and hauling activity, was completed. The assessment evaluated

potential health effects to nearby sensitive receptors from construction emissions of DPM and $PM_{2.5}$. This assessment included dispersion modeling to predict the off-site concentrations resulting from project construction, so that increased cancer risks and non-cancer health effects could be evaluated.

The CalEEMod and EMFAC2021 models were used to estimate total annual PM_{10} exhaust emissions (assumed to be DPM) for the off-road construction equipment and for exhaust emissions from on-road construction worker, vendor, and hauling vehicles. The annual on-road emissions result from haul truck travel during demolition and grading activities, worker travel, and vendor deliveries during construction.

The maximum modeled annual DPM and $PM_{2.5}$ concentrations, which include both the DPM and fugitive $PM_{2.5}$ concentrations, were identified at nearby sensitive receptors to find the MEI. Results of this assessment show that the construction MEIs would be located in two places. The cancer risk MEI was located at a residence on the first floor (five feet above ground) to the east of the project site across the BART tracks. The $PM_{2.5}$ concentration MEI was located at an adjacent residence on the first floor (five feet above ground) to the north of the project site. Table 3.3-7 summarizes the maximum cancer risks, $PM_{2.5}$ concentrations, and HIs for project-related construction activities.

Community Risks from Project Operations

An analysis was completed of TACs and $PM_{2.5}$ impacts (to off-site sensitive receptors) from the increase in vehicle/traffic emissions resulting from the project. To address the added community risks, the impact from traffic was assessed using the CT-EMFAC 2017 emissions model, AERMOD dispersion model and cancer risk calculations following BAAQMD guidelines. Vehicle emissions from eastbound and westbound traffic on Berryessa Road, within about 1,000 feet of the project site, were evaluated.

As stated above, the project is assumed to include one 1,000-kW emergency diesel generator powered by a 1,341-HP diesel engine on the ground-floor of the northeast corner of the commercial building. The emissions from the operation of the generator were calculated using the CalEEMod model, as previously described. Table 3.3-7 summarizes the maximum cancer risks, $PM_{2.5}$ concentrations, and health hazard indexes resulting from project related operational activities.

Table 3.3-7: Construction and Operation Risk Impacts at the Off-site Project MEIs				
Source		**Cancer Risk (per million)**	**Annual $PM_{2.5}$ ($\mu g/m^3$)**	**Hazard Index**
Project Construction (Years 0-4)	Unmitigated MEIs	**23.38 (infant)**	**0.40**	0.01
	Mitigated MEI*	4.67 (infant)	0.09	<0.01
Project Traffic on Berryessa Road and Project Site (Yrs 5-30)				
	Unmitigated MEIs	0.77 (infant)	0.21	<0.01
	Mitigated MEI	1.01 (infant)	0.21	<0.01
Project Generators (Years 5-30)	Unmitigated MEIs	0.04 (infant)	<0.01	<0.01
	Mitigated MEI	0.24 (infant)	<0.01	<0.01
Total/Maximum Project Impact (Yrs 0-30)	Unmitigated MEIs	**24.19 (infant)**	**0.40**	0.01
	Mitigated MEI*	5.92 (infant)	0.21	<0.01
BAAQMD Single-Source Threshold		***10.0***	***0.3***	***1.0***
Exceed Threshold?	Unmitigated MEIs	***Yes***	***Yes***	*No*
	Mitigated MEI*	*No*	*No*	*No*
Genius Kids Berryessa Daycare Infant Receptor				
Project Construction (Years 0-4)	Unmitigated	**17.92 (infant)**	0.08	<0.01
	Mitigated*	3.69 (infant)	0.02	<0.01
Project Traffic (Years 5-12)		1.31	0.11	0.02
Project Generator (Years 5-12)		0.06	<0.01	<0.01
Unmitigated Total/Maximum Project (Yrs. 0-4)	Unmitigated	**19.29 (infant)**	0.11	0.02
	Mitigated*	5.06 (infant)	0.11	0.02
BAAQMD Single-Source Threshold		***10.0***	***0.3***	***1.0***
Exceed Threshold?	Unmitigated	***Yes***	*No*	*No*
	Mitigated*	*No*	*No*	*No*
Source: Illingworth & Rodkin, Inc. *1655 Berryessa Mixed-Use Development Air Quality Assessment*. August 26, 2021.				

The unmitigated cancer risk MEI, shown on Figure 3.3-1, would be exposed to four years of construction cancer risks and 26 years of operational (includes traffic and emergency backup generator) cancer risks. As stated previously, the cancer risks from construction and operation of the project were summed together. The annual $PM_{2.5}$ concentration and HI values are based on annual maximum levels for the entirety of the project. Therefore, the construction and operational period $PM_{2.5}$ MEI are the same.

As shown in Table 3.3-7, the unmitigated maximum cancer risks and annual $PM_{2.5}$ concentration from construction and operation activities would exceed the single-source significance thresholds. Implementation of mitigation measures MM AIR-1.1 through MM AIR-1.4 would reduce the cancer risk and annual $PM_{2.5}$ concentration to below the BAAQMD single-source significance thresholds. The HI from unmitigated construction and operation activities would not exceed the single-source significance threshold.

The mitigation measures MM AIR-1.1 through MM AIR-1.4 would reduce construction impacts on the off-site receptors and not project operational impacts. Mitigation is not necessary for operational TAC and $PM_{2.5}$ impacts to sensitive receptors alone, since the cancer risk, $PM_{2.5}$ concentrations, and HI would be below BAAQMD thresholds at the project (operational) MEI shown on CalEEMod was used to compute mitigated emissions assuming that all equipment larger than 25 horsepower met U.S. EPA Tier 4 standards along with enhanced BAAQMD best management practices for construction (Standard Permit Condition "Construction-related Air Quality") were included. With the implementation of Standard Permit Condition "Construction-related Air Quality" and mitigation measures MM AIR-1.1 through MM AIR-1.4, the project's construction cancer risk levels (assuming infant exposure) would be reduced by 80 percent to 4.67 cases per million for the residential MEI and 3.69 cases per million for the daycare MEI, which would be below BAAQMD's single-source thresholds. The project's annual $PM_{2.5}$ concentrations from construction would be reduced by 78 percent to 0.09 $\mu g/m^3$ at the residential MEI and 0.02 $\mu g/m^3$ at the daycare MEI (which would be below BAAQMD's single-source thresholds). As a result, with the implementation of the above-referenced standard permit condition and mitigation measures, the project's combined construction and operational TAC and $PM_{2.5}$ impacts on off-site sensitive receptors would be less than significant. **(Less Than Significant Impact with Mitigation Incorporated)**

Health Effects

As stated in Section 3.3.2.1, based on the Sierra Club vs. County of Fresno case, in developing thresholds of significance for air pollutants, BAAQMD considered the emission levels for which a project's individual emissions would be cumulatively considerable. If a project has a less than significant impact for criteria pollutants, it is assumed to have no adverse health effect. As a result, with the implementation of Standard Permit Condition "Construction-related Air Quality" and mitigation measures MM AIR-1.1 through MM AIR-1.4, the project would not result in an adverse health impact from exposure to criteria pollutants. **(Less than Significant Impact with Mitigation Incorporated**

d) Would the project result in other emissions (such as those leading to odors) adversely affecting a substantial number of people?

Odors are generally considered an annoyance rather than a health hazard. During construction, the various diesel-powered equipment and vehicles on-site would create localized odors, but these odors would be temporary and not likely to be noticeable for extended periods of time outside the site boundaries. Land uses that have the potential to be sources of operational odors that generate complaints include, but are not limited to, wastewater treatment plants, landfills, composting operations, and food manufacturing facilities. Residential and commercial developments, such as the proposed project, do not typically generate objectionable odors. Therefore, the project would not result in odor emissions that would adversely impact a substantial number of people during construction or operation. **(Less than Significant Impact)**

3.3.2.3 *Cumulative Impacts*

Would the project result in a cumulatively considerable contribution to a significant cumulative air quality impact?

Past, present, and future development projects contribute to the region's adverse air quality impacts on a cumulative basis. By its very nature, air pollution is largely a cumulative impact. No single project is sufficient in size to result in the region being in nonattainment of ambient air quality standards. Instead, a project's individual emissions contribute to existing cumulatively significant adverse air quality impacts. As discussed in checklist questions a) and b), the project's operational criteria pollutant emissions would not exceed BAAMD thresholds. With the implementation of mitigation measures MM AIR-1.1 through MM AIR-1.4 and standard permit condition during construction, construction criteria pollutant emissions associated with the project would not exceed the BAAQMD significance thresholds. Therefore, the project would not result in a cumulatively considerable contribution toward regional emissions. The project would result in a less than significant cumulatively considerable contribution to a significant regional air quality impact. **(Less than Cumulatively Considerable Contribution to a Significant Cumulative Impact)**

Cumulative Impact of All TAC and $PM_{2.5}$ Sources on the Off-site Project MEI

Community health risk assessments evaluate all substantial sources of TACs that can affect sensitive receptors that are located within 1,000 feet of a project site (i.e., influence area). These sources include rail lines, freeways or highways, busy surface streets, and stationary sources identified by BAAQMD. A review of the project area indicates that traffic on Berryessa Road and Lundy Avenue exceed 10,000 vehicles per day. Other nearby streets are assumed to have traffic volumes less than 10,000 vehicles per day (refer to Figure 3.3-2 for the location of nearby existing TAC and $PM_{2.5}$ sources).

The same inputs (with the exception of ADT on Berryessa Road) and modeling used to compute the risks and hazards risks from project traffic on Berryessa Road were used to assess cumulative traffic impacts on the unmitigated and mitigated project MEIs. In addition, cumulative traffic on Lundy Avenue was also modeled.

Source: Illingworth & Rodkin, Inc., August 26, 2021.

NEARBY EXISTING TAC AND $PM_{2.5}$ SOURCES AND MEIS | FIGURE 3.3-2

Permitted stationary sources of air pollution near the project site were identified using BAAQMD's Permitted Stationary Sources 2018 GIS website, which identifies the location of nearby stationary sources and their estimated risk and hazard impacts, including emissions and adjustments to account for new California Office of Environmental Health Hazard Assessment (OEHHA) guidance. Two sources were identified using this tool with one source being a diesel generator and one being a gas dispensing facility.

Construction of the approved residential and commercial project at the San José Flea Market site, 200 feet south of the project site (south of Berryessa Road) was considered in the analysis of cumulative TAC impacts on off-site sensitive receptors.[14] For the purpose of this analysis, it was conservatively assumed the entire construction period from the proposed project would overlap with the nearby development's construction schedule. This approach provides an overestimate of the community risk and hazard levels because it assumes that maximum impacts from the nearby development occurs concurrently with the proposed project at the proposed project's MEIs.

Table 3.3-8 shows results for both the project and cumulative community risk impacts at the unmitigated and mitigated project MEIs (shown on Figure 3.3-2).

Table 3.3-8: Impacts from Cumulative TAC Sources at Off-Site MEIs

Source		Cancer Risk (per million)	Annual $PM_{2.5}$ ($\mu g/m^3$)	Hazard Index
Total/Maximum Project Impact	Unmitigated MEIs	**24.19 (infant)**	**0.40**	0.01
	Mitigated MEI	5.92 (infant)	0.21	<0.01
	BAAQMD Single-Source Threshold	***10.0***	***0.3***	***0.1***
Berryessa Road, ADT 35,574	Unmitigated MEIs	2.00	0.03	<0.01
	Mitigated MEI	3.54	0.31	<0.01
Lundy Avenue, ADT 18,590	Unmitigated MEIs	0.09	0.01	<0.01
	Mitigated MEI	0.07	<0.01	<0.01
Santa Clara VTA (Plant #23553, Generator)				
	Unmitigated: Cancer MEI 830 feet, $PM_{2.5}$ MEI	0.28	<0.01	<0.01
	Mitigated MEI: 700 feet	0.39	-	<0.01
Berryessa Shell (Plant #112269, Gas Dispensing Facility)				
	Unmitigated: Cancer MEI 575 feet, $PM_{2.5}$ MEI	1.09	<0.01	<0.01
	Mitigated MEI: 640 feet	0.92	-	<0.01
San José Flea Market Mitigated Construction Emissions 175 feet south of project site		<6.30	<0.02	<0.01
Combined Sources	Unmitigated MEIs	<33.95	<0.48	<0.06

[14] The mitigated construction risks and hazard impact values for this development was available from their air quality technical report conducted by Illingworth & Rodin, Inc. for the certified San José Flea Market PD Zoning EIR.

Table 3.3-8: Impacts from Cumulative TAC Sources at Off-Site MEIs			
Source	**Cancer Risk (per million)**	**Annual $PM_{2.5}$ ($\mu g/m^3$)**	**Hazard Index**
Mitigated MEI	<17.14	<0.57	<0.06
BAAQMD Cumulative Source Threshold	***100***	***0.8***	***10.0***
Exceed Threshold? Unmitigated MEIs	*No*	*No*	*No*
Mitigated MEI	*No*	*No*	*No*
Source: Illingworth & Rodkin, Inc. *1655 Berryessa Mixed-Use Development Air Quality Assessment*. August 26, 2021.			

As shown in Table 3.3-8, the project would have an exceedance with respect to community risk caused by project construction and operation activities, since the maximum unmitigated cancer risk and $PM_{2.5}$ concentration exceeds the BAAQMD single-source thresholds. As previously discussed, implementation of the standard permit conditions and mitigation measures MM AIR-1.1 through MM AIR-1.4 during construction would reduce the cancer risk and the $PM_{2.5}$ concentration to below BAAQMD single-source thresholds at the project MEI.

The combined increased cancer risk, annual $PM_{2.5}$ concentration, and HI values at the unmitigated and mitigated project MEIs would not exceed the BAAQMD cumulative source thresholds. Therefore, the project would not result a significant cumulative TAC or $PM_{2.5}$ impact to sensitive receptors from the combined TAC sources. (**Less Than Significant Cumulative Impact**)

3.3.3 Non-CEQA Effects

Per *California Building Industry Association v. Bay Area Air Quality Management District*, 62 Cal. 4th 369 *(BIA v. BAAQMD)*, effects of the environment on the project are not considered CEQA impacts. The following discussion is included for informational purposes only because the City of San José requires health risk assessments for new residential developments near sources of air pollution. Where risks are above thresholds, the City encourages the use of proper actions to reduce exposures. General Plan Policy MS-11.1 related to the exposure of new sensitive receptors to existing TAC sources are as follows:

- General Plan Policy MS-11.1: Require completion of air quality modeling for sensitive land uses such as new residential developments that are located near sources of pollution such as freeways and industrial uses. Require new residential development projects and projects categorized as sensitive receptors to incorporate effective mitigation into project designs or be located an adequate distance from sources of toxic air contaminants (TACs) to avoid significant risks to health and safety.

Therefore, a health risk assessment was completed to analyze the effect that existing TAC and $PM_{2.5}$ sources would have on the project's proposed sensitive receptors (i.e., residents). The same TAC and $PM_{2.5}$ sources identified to describe project impacts were used in this health risk assessment. Community risk effects from the existing TAC sources and new TAC sources introduced by the project are reported in Table 3.3-9.

Table 3.3-9: Effects of Cumulative TAC and $PM_{2.5}$ Sources on Project Sensitive Receptors			
Source	**Cancer Risk (per million)**	**Annual $PM_{2.5}$ ($\mu g/m^3$)**	**Hazard Index**
Berryessa Road, ADT 35,574	1.20	0.09	<0.01
Lundy Avenue, ADT 18,590	0.18	0.01	<0.01
Santa Clara VTA (Plant #23553, Generator) Project Site: 950 feet	0.22	<0.01	<0.01
Berryessa Shell (Plant #112269, Gas Dispensing Facility) Project Site: 700 feet	0.78	-	<0.01
San José Flea Market Mitigated Construction Emissions – 175 feet south of project site	<6.30	<0.02	<0.01
BAAQMD Single-Source Threshold	***10***	***0.3***	***1.0***
Exceed Threshold?	*No*	*No*	*No*
Cumulative Total	<8.68	<0.13	<0.05
BAAQMD Cumulative Source Threshold	***100***	***0.8***	***10.0***
Exceed Threshold?	*No*	*No*	*No*
Source: Illingworth & Rodkin, Inc. *1655 Berryessa Mixed-Use Development Air Quality Assessment*. August 26, 2021.			

The risks from the singular TAC and $PM_{2.5}$ sources were compared against the BAAQMD single-source threshold. The risks from all of the sources are then combined and compared against the BAAQMD cumulative source threshold. As shown in Table 3.3-9, none of the sources would exceed the single-source or cumulative source thresholds.

3.4 BIOLOGICAL RESOURCES

The following discussion is based upon a Biological Resources Report prepared by H.T. Harvey & Associates on January 10, 2019, and an Arborist Report prepared by H.T. Harvey & Associates on October 29, 2018. Copies of these reports are included, respectively, in Appendices C and D of this document.

3.4.1 Environmental Setting

3.4.1.1 *Regulatory Framework*

Federal and State

Endangered Species Act

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

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

Migratory Bird Treaty Act

The federal Migratory Bird Treaty Act (MBTA) prohibits killing, capture, possession, or trade of migratory birds except in accordance with regulations prescribed by the Secretary of the Interior. Hunting and poaching are also prohibited. The taking and killing of birds resulting from an activity is not prohibited by the MBTA when the underlying purpose of that activity is not to take birds.[15] Nesting birds are considered special-status species and are protected by the USFWS. The CDFW also protects migratory and nesting birds under California Fish and Game Code Sections 3503, 3503.5, and 3800. The CDFW defines taking as causing abandonment and/or loss of reproductive efforts through disturbance.

[15] United States Department of the Interior. "Memorandum M-37050. The Migratory Bird Treaty Act Does Not Prohibit Incidental Take." Accessed December 17, 2020. https://www.doi.gov/sites/doi.gov/files/uploads/m-37050.pdf.

United States Army Corps of Engineers, Regional Water Quality Control Board, CDFW, and USFWS

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

Fish and Game Code Section 1602

Streambeds and banks, as well as associated riparian habitat, are regulated by the CDFW per Section 1602 of the Fish and Game Code. Work within the bed or banks of a stream or the adjacent riparian habitat requires a Streambed Alteration Agreement from the CDFW.

Regional

Santa Clara Valley Habitat Plan/Natural Community Conservation Plan

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

Local

San José Tree Removal Ordinance

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

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

City Council Policy 6-34 Riparian Corridor Protection and Bird-Safe Design

In 2016, the City released Council Policy 6-34 to provide guidance on the implementation of riparian corridor protection consistent with all City policies and requirements that provide for riparian protection. Council Policy 6-34 indicates that riparian setbacks should be measured from the outside edges of riparian habitat or the top of bank, whichever is greater, and that development of new buildings and roads generally should be set back 100 feet from the riparian corridor. However, Council Policy 6-34 also indicates that a reduced setback may be considered under limited circumstances, including the existence of legal uses within the minimum setback, and utility or equipment installations or replacements that involve no significant disturbance to the riparian corridor during construction and operation and that generate only incidental human activity.

In addition, Council Policy 6-34 provides guidance for bird-safe design on buildings located in areas north of State Route 237 in riparian and bayland habitats. To be bird-safe, buildings should: 1) avoid mirrors and large areas of reflective glass; 2) avoid transparent glass skyways, walkways, or entryways, free-standing glass walls, and transparent building corners; 3) avoid funneling open space to a building façade; 4) strategically place landscaping to reduce reflection and views of foliage inside or through glass; 5) avoid or minimize up-lighting and spotlights; and 6) turn non-emergency lighting off, or shield it, at night to minimize light from buildings that are visible to birds, especially during bird migration season (February to May and August to November).

Envision San José 2040 General Plan

Various policies in the Envision San José 2040 General Plan have been adopted for the purpose of reducing or avoiding impacts related to biological resources, as listed below.

General Plan Policies – Biological Resources	
Riparian Corridors	
Policy ER-2.1:	Ensure that new public and private development adjacent to riparian corridors in San José are consistent with the provisions of the City's Riparian Corridor Policy Study and any adopted Santa Clara Valley Habitat Conservation Plan/Natural Communities Conservation Plan.
Policy ER-2.2:	Ensure that the 100-foot setback from riparian habitat is the standard to be achieved in all but a limited number of instances, only where no significant environmental impacts would occur.
Policy ER-2.3:	Design new development to protect adjacent riparian corridors from encroachment of lighting, exotic landscaping, noise, and toxic substances into the riparian zone.
Policy ER-2.4:	When disturbances to riparian corridors cannot be avoided, implement appropriate measures to restore and/or mitigate damage and allow for fish passage during construction.
Policy ER-2.5:	Restore riparian habitat through native plant restoration and removal of non-native/invasive plants along riparian corridors and adjacent areas.

General Plan Policies – Biological Resources	
Special Status Plants and Animals	
Policy ER-4.1	Preserve and restore habitat areas that support special-status species. Avoid development in such habitats unless no feasible alternatives exist, and mitigation is provided of equivalent value.
Policy ER-4.3	Prohibit planting of invasive non-native plant species in natural habitats that support special-status species.
Policy ER-4.4	Require that development projects incorporate mitigation measures to avoid and minimize impacts to individuals of special-status species.
Migratory Birds	
Policy ER-5.1	Avoid implementing activities that result in the loss of active native birds' nests, including both direct loss and indirect loss through abandonment, of native birds. Avoidance activities that could result in impacts to nests during the breeding season or maintenance of buffers between such activities and active nests would avoid such impacts.
Policy ER-5.2	Require that development projects incorporate measures to avoid impacts to nesting migratory birds.
Urban Natural Interface	
Policy ER-6.3	Employ low-glaring lighting in areas developed adjacent to natural areas, including riparian woodlands. Any high-intensity lighting used near natural areas will be placed as close to the ground as possible and directed downward or away from natural areas.
Policy ER-6.5	Prohibit use of invasive species, citywide, in required landscaping as part of the discretionary review of proposed development.
Policy ER-6.7	Include barriers to animal movement within new development and, when possible, within existing development, to prevent movement of animals (e.g., pets and wildlife) between developed areas and natural habitat areas where such barriers will help to protect sensitive species.
Sustainable Parks and Recreation	
Policy PR-6.5	Design and maintain park and recreation facilities to minimize water, energy and chemical (e.g., pesticides and fertilizer) use. Incorporate native and/or drought-resistant vegetation and ground cover where appropriate.
Community Forest	
Policy MS-21.3	Ensure that San José's Community Forest is comprised of species that have low water requirements and are well adapted to its Mediterranean climate. Select and plant diverse species to prevent monocultures that are vulnerable to pest invasions. Furthermore, consider the appropriate placement of tree species and their lifespan to ensure the perpetuation of the Community Forest.

General Plan Policies – Biological Resources	
Policy MS-21.4	Encourage the maintenance of mature trees, especially natives, on public and private property as an integral part of the community forest. Prior to allowing the removal of any mature tree, pursue all reasonable measures to preserve it.
Policy MS-21.5	As part of the development review process, preserve protected trees (as defined by the Municipal Code), and other significant trees. Avoid any adverse effect on the health and longevity of protected or other significant trees through appropriate design measures and construction practices. Special priority should be given to the preservation of native oaks and native sycamores. When tree preservation is not feasible, include appropriate tree replacement, both in number and spread of canopy.
Policy MS-21.6	As a condition of new development, require, where appropriate, the planting and maintenance of both street trees and trees on private property to achieve a level of tree coverage in compliance with and that implements City laws, policies, or guidelines.
Policy MS-21.9	Where urban development occurs adjacent to natural plant communities (e.g., oak woodland, riparian forest), landscape plantings shall incorporate tree species native to the area and propagated from local sources (generally from within 5-10 miles and preferably from within the same watershed).

Berryessa BART Urban Village Plan

The following policies within the Berryessa BART Urban Village Plan pertain to the purposes of reducing or avoiding impacts related to biological resources.

Urban Village Plan Policies – Biological Resources	
Ecosystem Protection and Community Resilience	
Policy SU-10.2	Development should enable and support habitat connectivity by preserving and creating connected green spaces, streetscapes, and architecture to reduce habitat fragmentation and disruption of water flow.
Policy SU-10.4	Use a diverse array of native plants that would support native habitat and biodiversity of flora and fauna.

3.4.1.2 *Existing Conditions*

General Habitat Conditions and Wildlife Use

The project site is located within the Habitat Plan permit area. Habitat and land cover types on the project site are based upon Habitat Plan mapping with modifications based upon site conditions observed during an October 2018 field survey by H.T. Harvey & Associates (see Appendix C).

The reconnaissance-level field survey identified three general biotic habitat/land use types, as defined by the Habitat Plan:

- urban-suburban, comprising 12.35 acres of the site;
- ornamental woodland, comprising 0.66 acres; and
- man-made pond, comprising 0.34 acres.

The project area, overlaid on these existing habitats/land use types, is shown on Figure 3.4-1.

Urban-Suburban

The urban-suburban land use area makes up the majority of the project site and is occupied by a parking lot and permanent and temporary structures. Landscaping on the site includes vines, shrubs, and mature trees, including Mexican fan palm, Italian cypress, juniper shrubs, and English ivy.

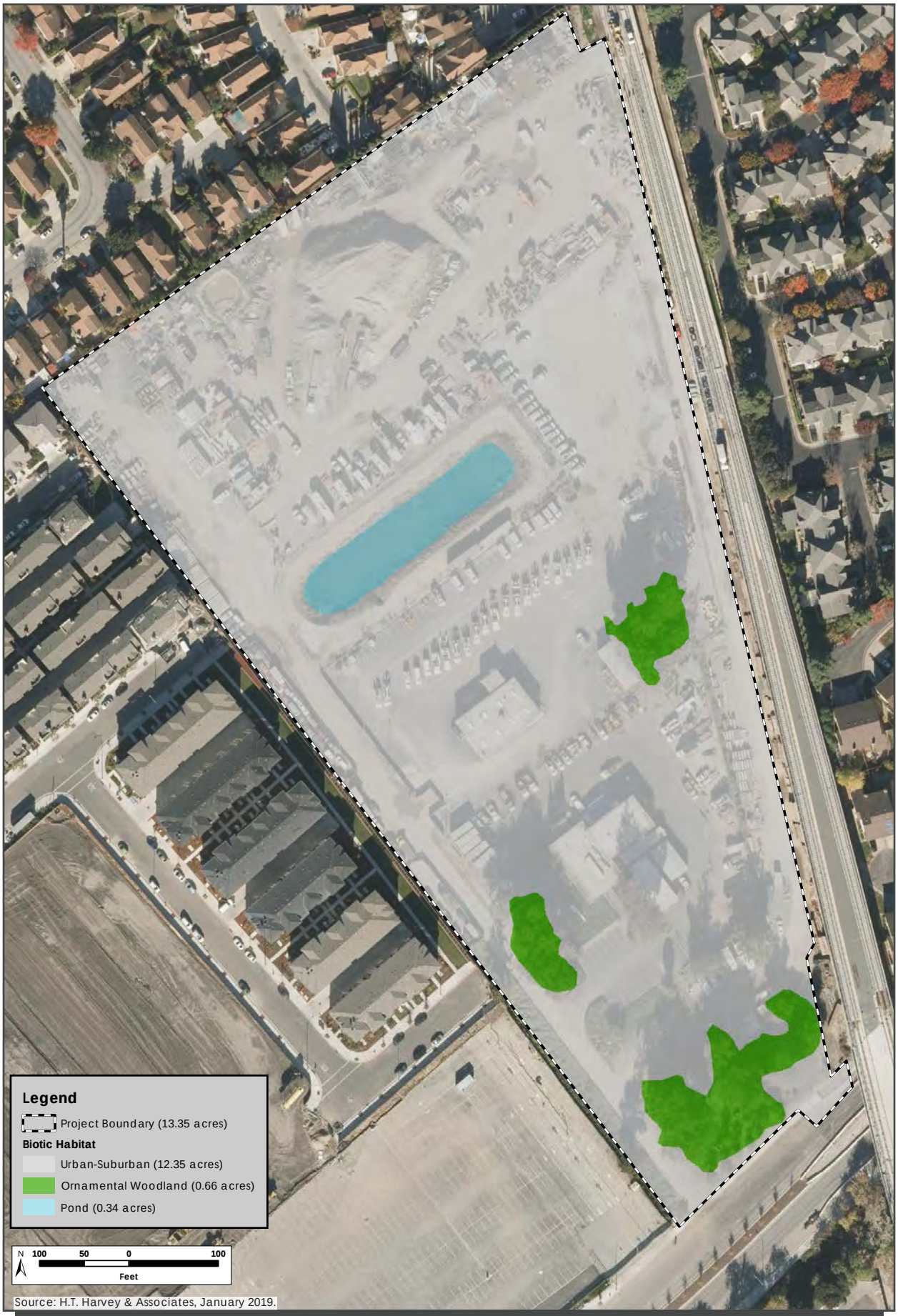
Due to minimal vegetation, the urban-suburban portions of the project site provide relatively low-quality habitat for wildlife species. The wildlife most often associated with these areas are those that are tolerant of periodic human disturbances, including introduced species such as the European starling, rock pigeon, house mouse, and Norway rat. Few birds are likely to nest on the site due to the sparseness of vegetation, but species such as the mourning dove and Anna's hummingbird may nest in the few trees present. Additionally, the eaves of the existing buildings on the project site could be attractive to other nesting birds such as the barn swallow and nonnative European starling. A focused survey completed at the site detected no evidence of raptors having previously nested in the trees within the urban-suburban land cover.

No burrows of small mammals, such as the California ground squirrel or Botta's pocket gopher, were observed in the urban-suburban land cover during the reconnaissance survey. In addition, a focused survey of the exterior of the buildings and the trees did not detect any large cavities that might provide suitable bat roosting habitat. Further, an examination of the nearby BART bridge over Upper Penitencia Creek detected no large cavities that might provide suitable habitat for a large roosting or maternity colony of bats.

Ornamental Woodland

Ornamental woodlands are areas where ornamental and other introduced tree species have been planted or naturalized, forming an open-to-dense canopy. The project site contains areas of ornamental woodland mixed within the urban-suburban land cover type. Tree species observed include mature red ironbark, Aleppo pine, Peruvian pepper, deodar cedar, and a small complement of coast live oak. The understory of the woodlands contains English ivy, prickly lettuce, and stinkwort. English ivy and stinkwort are non-native species that are ranked as highly invasive and moderately invasive, respectively.

Areas of ornamental woodland on the project site provide suitable nesting habitat for a variety of common bird species such as the Californian scrub-jay, American robin, American crow, lesser goldfinch, Bewick's wren, and bushtit. The red-shouldered hawk and Cooper's hawk may use larger



Source: H.T. Harvey & Associates, January 2019.

PROJECT AREA WITH EXISTING HABITATS | FIGURE 3.4-1

trees in this habitat for nesting; however, no old raptor nests were detected within the ornamental woodland habitat during the field survey. Other birds that may forage in this habitat include wintering native species such as white-crowned sparrow, golden-crowned sparrow, and yellow-rumped warbler, several of which were observed foraging during the field survey.

Several species of reptiles and amphibians also occur in the ornamental woodlands habitat. Leaf litter, downed tree branches, and fallen logs provide cover for the western fence lizard, gopher snake, California slender salamander, western toad, and Pacific tree frog. Additional wildlife species that are common in ornamental woodland areas in urban settings include the native striped skunk and raccoon, and the nonnative Virginia opossum and eastern gray squirrel, all of which could use the trees for roosting, foraging, and nesting. No nests of the San Francisco dusky-footed woodrat, a California species of special concern, were observed during a focused survey. Thus, this species is determined to be absent from the project site. Individual bats may roost in trees found on the project site, but an examination of the trees found in the ornamental woodland habitat did not detect any large cavities that might provide suitable habitat for a large roosting colony of bats.

Pond

The man-made pond located on the project site has a depth of 10 feet and was constructed between 1968 and 1981. The pond was possibly constructed for irrigation purposes as an irrigation pond, as the surrounding land uses were predominantly agricultural at the time. The pond serves as a stormwater detention function. The depth of water in the pond at the end of the dry season suggests that it may have been excavated toa depth allowing it to intercept natural groundwater sources. Four culverts were visible around the perimeter of the pond, but none showed signs of flowing water. Given the lack of rain events prior to the survey, the water depth at the time of the survey was approximately one to three feet. It is possible that during the wet season, an additional source of hydrology is from runoff (during and after rain events) entering the pond through the culverts. The soils underlying the pond are classified as hydric.

At the time of the field survey, a native wetland community was growing in and around the man-made pond. Hydrophytic grass species observed include knot grass and herbaceous species observed include broadleaf cattail, alkali bulrush, hardsem bulrush, tall flatsedge, devil’s beggartick, and water smartweed. Tree species present include saplings of arroyo willow and Fremont cottonwood. However, the man-made pond is regularly cleared of vegetation as part of ongoing maintenance activities, which was verified using historic aerial imagery. For this reason, the pond was not mapped as coastal and freshwater marsh habitat.

The man-made pond on the project site provides habitat for a greater diversity of wildlife species compared to adjacent urban-suburban areas however, the heavily disturbed context of the project site, which has a long history of human activity, combined with the extremely limited extent of this habitat, limit the value of this man-made pond of wildlife. Wildlife species expected to occur in this habitat are those species typically associated with freshwater wetland habitats, including common water birds such as the mallard and pied-billed grebe, which were observed in the pond during the field visit. In addition, species such as the song sparrow, bushtit, and northern mockingbird may nest in the herbaceous vegetation and cottonwood saplings around the pond. Other native bird species, including the lesser goldfinch, white-crowned sparrow, and yellow-rumped warbler, could forage in

this habitat. The wetland habitat within the pond is too limited in extent, and close to intense human activity, to be used by nesting tricolored blackbirds (which are special status species).

Several amphibian and reptile species occur in pond habitats, including the western toad, Pacific tree frog, California slender salamander, and western terrestrial garter snake. The site's man-made pond also provides a source of water and foraging habitat for mammals, including the nonnative Virginia opossum, feral cat, Norway rat, house mouse, and native raccoon.

Special-Status Plants

A list of 74 plant species considered to have some potential for occurrence in the project vicinity was compiled using California Natural Diversity Database (CNDDB) and California Native Plant Society (CNPS) records. Analysis of the documented habitat requirements and occurrence records associated with these species showed that all 74 plant species do not have a potential to occur on the project site for at least one of the following reasons: (1) lack of suitable habitat types; (2) absence of specific microhabitat or edaphic requirements, such as serpentine soils; (3) the elevation range of the species is outside of the range on the project site; (4) the site is too disturbed and urbanized to be expected to support the species, and/or (5) the species is presumed extirpated from the project vicinity. Further, the Habitat Plan does not indicate does not indicate any covered plant species as potentially occurring on the project site and does not require special-status plant surveys for the site. Therefore, no special-status plant species are expected to occur on the project site.

Special-Status Animals

Several special-status animal species were identified as potentially occurring in the project vicinity. However, the majority of these species were determined to be absent from the project site. Species considered for occurrence at the site include the California tiger salamander, California red-legged frog, peregrine falcon, burrowing owl, special-status bat species, dusky-footed woodrat, western pond turtle, yellow-legged frog, and tricolored blackbird.

For the California tiger salamander and red-legged frog, the project site was determined to lack high-quality habitat for both species due to the high levels of disturbance; lack of small mammal burrows, which are used by both species for aestivation during the non-breeding season, and isolation from natural habitats in the region. The biological study also determined the site had a lack of suitable habitat for the peregrine falcon, burrowing owl, special-status bat species, and the dusky-footed woodrat.

The nearest habitat for the western pond turtle is Upper Penitencia Creek, approximately 105 feet south of the site, across Berryessa Road, a major six-lane road. However, pond turtles are not expected to occur on the site due to human disturbance (i.e., regular removal of vegetation in the man-made pond as well as construction traffic throughout the site); the two-mile distance separating the site from the nearest occurrences of the species, with intervening high-intensity development and multi-lane roadways; and the lack of friable soils on the site for nesting.

No aquatic habitat to support foothill yellow-legged frogs occurs on the project site, and the nearest known occurrence is located in the foothills of the Diablo Range approximately eight miles east of

the site. The Santa Clara Valley Habitat Plan maps Upper Penitencia Creek as secondary habitat for foothill yellow-legged frogs. However, the yellow-legged frogs have been extirpated from Valley floor areas of Santa Clara County and are no longer known to occur along the County's streams below major reservoirs, including Cherry Flat Reservoir which is located upstream of the project site. Therefore, yellow-legged frogs are not expected to be present on the project site. The on-site man-made pond does not provide suitable nesting habitat for tricolored blackbirds due to its small size, the limited extent of vegetation present to support a nesting colony (due to the regular removal of vegetation in the pond), and high levels of surrounding human disturbance.

Sensitive and Regulated Habitats

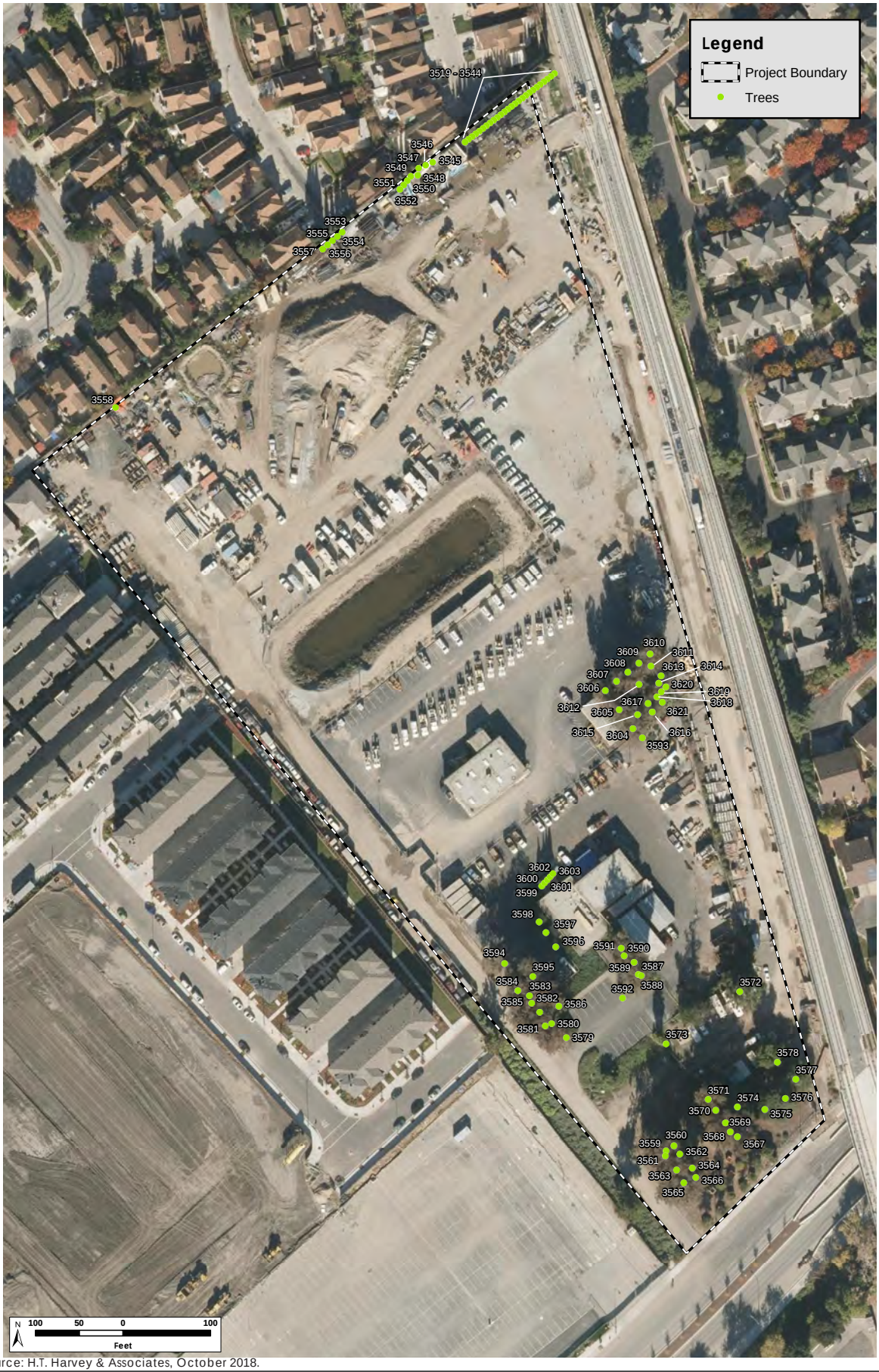
A query of sensitive habitats in the CNDDB identified no communities of special concern as occurring in the project vicinity.

In 2016, the City released Council Policy 6-34 to provide guidance on the implementation of riparian corridor protection consistent with all City policies and requirements that provide for riparian protection. Council Policy 6-34 indicates that riparian setbacks should be measured from the outside edges of riparian habitat or the top of bank, whichever is greater, and that development of new buildings and roads generally should be set back 100 feet from the riparian corridor. No riparian habitat is present on, or within 100 feet of, the project site. The closest riparian habitat is located along Upper Penitencia Creek, approximately 105 feet south of the project site and across Berryessa Road, a major six-lane road.

Although the man-made pond on the site was excavated in uplands, it was excavated to a depth of 10 feet, which allows it to intercept natural groundwater sources. As a result, this pond may be considered waters of the U.S. or state. Additionally, the RWQCB could consider the banks above the high-water mark of the pond, out to the top of the bank, as waters of the state.

Trees

There are a total of 103 trees on-site, as shown on Figure 3.4-2 (refer to Appendix D for a full list of trees on-site). The most common species on the site were Italian cypress and red ironbark. Forty-seven of the 103 trees are ordinance size trees. These include 35 Red ironbarks, 6 Mexican fan palms, and 6 other trees.



Source: H.T. Harvey & Associates, October 2018.

TREE LOCATION MAP | FIGURE 3.4-2

3.4.2 Impact Discussion

For the purpose of determining the significance of the project's impact on biological resources, would the project:

a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife (CDFW) or United States Fish and Wildlife Service (USFWS)?
b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the CDFW or USFWS?
c) Have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?
f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?

3.4.2.1 *Project Impacts*

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

Based on the highly urbanized and developed nature of the project site, natural communities or habitats for special-status plant and wildlife species are not present and would not be impacted, with the exception of nesting birds (described further below).

Special-Status Species

As stated in Section 3.4.1, based on the highly urbanized nature and high levels of disturbance of the project site and area, the site (including the on-site man-made pond), does not include suitable habitat for any special-status plant or animal species. Therefore, the proposed project would not result in a significant impact on any special-status species, with the exception of nesting birds (described below).

Nesting Birds

Development of the project would result in the removal of all trees on the project site. Trees could provide nesting habitat for birds, including migratory birds. Nesting birds are protected under provisions of the MBTA and CDFW code. Construction disturbance during the breeding season

could result in the incidental loss of fertile eggs or nestlings, or otherwise lead to nest abandonment. Disturbance that causes abandonment and/or removal and site grading that disturb a nesting bird on-site or immediately adjacent to the construction zone would constitute a significant impact.

Impact BIO-1: Development of the proposed project and proposed tree removals would result in impacts to nesting birds, if present on the site at the time of construction.

Mitigation Measures: The following mitigation measures would reduce and/or avoid impacts to nesting birds (if present on or adjacent to the site) to a less than significant level.

MM BIO-1.1: Prior to the issuance of any tree removal, demolition, or grading permits (whichever occurs first), the project applicant shall schedule demolition and construction activities to avoid the nesting season. The nesting season for most birds, including most raptors in the San Francisco Bay area, extends from February 1st through August 31st, inclusive.

MM BIO-1.2: If demolition and construction cannot be scheduled between September 1st and January 31st, inclusive, pre-construction surveys for nesting birds shall be completed by a qualified ornithologist to ensure that no nests shall be disturbed during project implementation. This survey shall be completed no more than 14 days prior to the initiation of construction activities during the early part of the breeding season (February 1st through April 30th inclusive) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May 1st through August 31st inclusive). During this survey, the ornithologist shall inspect all trees and other possible nesting habitats immediately adjacent to the construction areas for nests.

MM BIO-1.3: If an active nest is found sufficiently close to work areas to be disturbed by construction, the ornithologist, in consultation with the California Department of Fish and Wildlife, shall determine the extent of a construction free buffer zone to be established around the nest, typically 250 feet, to ensure that raptor or migratory bird nests shall not be disturbed during project construction.

MM BIO-1.4: Prior to any tree removal, or approval of any grading or demolition permits (whichever occurs first), the ornithologist shall submit a report indicating the results of the survey and any designated buffer zones to the satisfaction of the City's Director of Planning, Building and Code Enforcement or Director's designee.

With implementation of mitigation measures MM BIO-1.1 through MM BIO-1.4, the project's impact to nesting birds would be less than significant. **(Less than Significant Impact with Mitigation Incorporated)**

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

On-site Man-Made Pond Habitat

The 0.34-acre man-made pond present on the project site is proposed to be filled by the project. The man-made pond could be considered a state or federally protected wetland, and the San Francisco Bay RWQCB or USACE could impose additional requirements as part of Section 404/401 permits that goes beyond what the City as the Lead Agency would require as mitigation under CEQA (i.e., payment of Habitat Plan fees, see below) to off-set impacts from filling the pond under the State of California Porter-Cologne Water Quality Control Act (refer to the response to checklist question c). Although the pond provides low-quality habitat for wildlife, permanent loss of pond habitat would be considered a significant impact. However, the project would be required to comply with all applicable conditions of the Habitat Plan, including measures requiring land cover and wetland specialty fee payment for pond impacts. These fees are used by the Habitat Plan Agency to create and restore wetland, pond, and riparian habitats in the Habitat Plan area and payment of Habitat Plan fees would reduce the impacts to the pond under CEQA.

Standard Permit Condition:

Santa Clara Valley Habitat Plan

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

Off-site Riparian Habitat: Upper Penitencia Creek

The project site does not contain riparian habitat and is not located within 100 feet of Upper Penitencia Creek riparian area; therefore, the project would not directly impact riparian habitat. The project site is located approximately 105 feet from Upper Penitencia Creek, with Berryessa Road separating the creek from the project site. However, due to the proximity of the project site to the creek, the proposed project could have indirect impacts on Upper Penitencia Creek and associated riparian habitat. As noted above, the project will comply with the requirements of Habitat Plan Condition 3. This condition requires implementation of design phase, construction phase, and post-construction phase measures, including programmatic BMPs, performance standards, and control measures, to minimize increases of peak discharge of stormwater and to reduce runoff of pollutants to protect water quality, including during project construction. In addition, as further described in Section 3.10, Hydrology and Water Quality, construction projects in California causing land disturbances that are equal to one acre or greater must comply with state requirements to control the

discharge of stormwater pollutants under National Pollutant Discharge Elimination System (NPDES) Construction General Permit (as described in Section 3.10, Hydrology and Water Quality).
Prior to the start of construction/demolition, a Notice of Intent must be filed with the State Water Board describing the project. A Storm Water Pollution Prevention Plan must be developed and maintained during the project, and it must include the use of best management practices (BMPs) to protect water quality of Upper Penitencia Creek until the site is stabilized (refer to Section 3.10, Hydrology and Water Quality for the list of BMPs).

Standard permit conditions under the NPDES/Construction General Permit require that the applicant utilize various measures including on-site sediment control best management practices, damp street sweeping, temporary cover of disturbed land surfaces to control erosion during construction, and utilization of stabilized construction entrances and/or wash racks, among other factors.

Additionally, the project must comply with the Regional Water Quality Control Board (RWQCB), San Francisco Bay Region, Municipal Regional Stormwater NPDES Permit (Water Board Order No. R2-2009-0074). This permit requires that all projects implement best management practices (BMPs) and incorporate Low Impact Development practices into the design that prevents stormwater runoff pollution, promotes infiltration, and holds/slows down the volume of water coming from a site. In order to meet these permit and policy requirements, projects must incorporate the use of green roofs, impervious surfaces, tree planters, grassy swales, bioretention and/or detention basins, among other factors. Compliance with both of these permits will prevent water quality impacts and improve stormwater runoff compared to existing conditions at the project site.

The impacts related to the loss of the pond habitat and potential impacts to Upper Penitencia Creek riparian habitat would be reduced to less than significant levels with implementation of the standard permit condition and compliance with construction stormwater requirements. **(Less than Significant Impact)**

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

The 0.34-acre man-made pond present on the project site is proposed to be filled by the project. The depth of water in the pond at the end of the dry season suggests that it may intercept natural groundwater sources, and it may be considered waters of the U.S./state. Any impacts on verified waters of the U.S./state on the project site would require a Section 404 permit from the USACE and/or Section 401 Water Quality Certification or Porter-Cologne Waste Discharge Requirements from the San Francisco RWQCB. The project would comply with all applicable conditions of the Habitat Plan, including measures to protect water quality and payment of land cover and wetland specialty fees for pond impacts. As described in the response to checklist question b), payment of land cover and specialty wetland impact fees for the pond will reduce the project's impact to on-site pond habitat to a less than significant level by contributing to the Habitat Plan's conservation program, which includes creation, maintenance, and management of pond habitats. The San Francisco Bay RWQCB or USACE could impose additional requirements as part of Section 404/401 permits that goes beyond what the City as the Lead Agency would require as mitigation under CEQA

(i.e., payment of Habitat Plan fees) to off-set impacts from filling the pond under the State of California Porter-Cologne Water Quality Control Act.
(Less than Significant Impact)

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

As previously discussed, there are no natural habitats present on the project site (the pond discussed above is man-made), and the site is bordered by existing residential developments to the north and west, Berryessa Road to the south, and the Berryessa BART tracks to the east. Penitencia Creek is a natural migration corridor but separated from the site by six-lane Berryessa Road. Since the site is located in an urbanized environment, implementation of the proposed project would not result in fragmentation of natural habitats. Additionally, species that are capable of moving through the urbanized site are regionally abundant, common species are expected to continue use of the site after construction is completed. Therefore, impacts to wildlife species and migratory wildlife would be less than significant. **(Less than Significant Impact)**

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

The site contains a total of 103 trees, 47 of which are ordinance sized. All trees are proposed to be removed as part of the proposed project.

Removal of trees would be required to conform to the replacement requirements as identified in the Municipal Code Section 13.28.300, General Plan Policies MS-21.4, MS-21.5, and MS-21.6 and City of San José Tree Removal Control (Municipal Code Section 13.31.010 to 13.32.100).

Standard Permit Condition:

Tree Replacement

- A tree removal permit would be required from the City of San José for the removal of ordinance trees. The removed trees would be replaced according to tree replacement ratios required by the City, as provided in Table 3.4-1.

Table 3.4-1: Tree Replacement Ratios				
Circumference of Tree to be Removed	**Type of Tree to be Removed**			**Minimum Size of Each Replacement Tree**
	Native	**Non-Native**	**Orchard**	
38 inches or more	5:1	4:1	3:1	15-gallon
19 up to 38 inches	3:1	2:1	none	15-gallon
Less than 19 inches	1:1	1:1	none	15-gallon
x:x = tree replacement to tree loss ratio Note: Trees greater than or equal to 38-inch circumference shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees. For Multi-Family Residential, Commercial, and Industrial properties, a permit is required for removal of trees of any size. A 38-inch tree equals 12.1 inches in diameter. A 24-inch box tree = two 15-gallon trees Single Family and two-dwelling properties may be mitigated at a 1:1 ratio.				

- For the 103 trees onsite that would be removed, 46 trees would be replaced at a 4:1 ratio, 54 trees would be replaced at a 2:1 ratio, and two trees would be replaced at a 1:1 ratio. There are no native trees on-site. The total number of replacement trees required to be planted would be 294 trees. The species of trees to be planted shall be determined in consultation with the City Arborist and the Department of Planning, Building and Code Enforcement.

- If there is insufficient area to accommodate the required tree mitigation, one or more of the following measures will be implemented, to the satisfaction of the Director of PBCE, at the development permit stage:

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

With implementation of the standard permit condition described above, the project would comply with the City's Municipal Code and General Plan policies; therefore, impacts to trees would be considered less than significant. **(Less than Significant Impact)**

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

Compliance with Santa Clara Valley Habitat Plan

With the aforementioned man-made pond on the project site, the proposed project is considered a covered project under the Habitat Plan and is therefore required to comply with all applicable Habitat Plan conditions as described in a), above. Conditions applicable to the proposed project include Condition 1 (avoid direct impacts on legally protected plant and wildlife species), Condition 3 (maintain hydrologic conditions and protect water quality), and Condition 12 (wetland and pond avoidance and minimization).

For compliance with Condition 1, no state or federally protected plant species occur on the project site, and the majority of state and federally protected wildlife species are determined to be absent from the site or would not be affected by project activities. The Habitat Plan requires projects to minimize construction disturbance during the avian breeding season to reduce potential impacts to nesting birds. However, all migratory bird species and their nests are protected under the MBTA and CDFW Code. Implementation of mitigation measure MM BIO-1.1 through MM BIO-1.4, as described under checklist question a) above, would comply with the requirements of Condition 1.

Condition 3 applies to all projects covered under the Habitat Plan and helps protect watershed health through reducing stormwater discharge and pollutant runoff from project sites. Indirect impacts on water quality in the nearby Upper Penitencia Creek will be avoided and minimized to the greatest extent possible through the implementation of applicable measures outlined in the Habitat Plan, and through compliance with post-construction requirements under the project's Municipal Regional Stormwater National Pollutant Discharge Elimination System (NPDES) permit, as described in Section 3.10, Hydrology and Water Quality.

Condition 12 applies to covered projects that would directly or indirectly affect wetlands or ponds. The purpose of Condition 12 is to minimize impacts on wetlands and ponds and avoid impacts on high-quality wetlands and ponds by prescribing vegetated storm drain water filtration features, proper disposal of cleaning materials, and other requirements. Project proponents are required to pay a wetland fee for impacts on wetlands and ponds to cover the cost of restoration or creation of aquatic land cover types required by the Habitat Plan. As the project requires the filling of the small pond, the project will pay applicable fees.

Nitrogen Deposition Impacts on Serpentine Habitats

All development covered by the Habitat Plan is required to pay a nitrogen deposition fee as mitigation for cumulative impacts to serpentine plants in the HCP/NCCP area. Nitrogen deposition is known to have damaging effects on many of the serpentine plants in the Habitat Plan area, as well as the host plants that support the Bay Checkerspot butterfly. All major remaining populations of the butterfly and many of the sensitive serpentine plant populations occur in areas subject to air pollution from vehicle exhaust and other sources throughout the Bay Area including the project area. Because serpentine soils tend to be nutrient poor, and nitrogen deposition artificially fertilizes serpentine soils,

facilitating the spread of invasive plant species. The displacement of these species, and subsequent decline of the several federally listed species, including the butterfly and its larval host plants, has been documented on Coyote Ridge in central Santa Clara County.

Nitrogen tends to be efficiently recycled by the plants and microbes in infertile soils such as those derived from serpentine, so that fertilization impacts could persist for years and result in cumulative habitat degradation. The impacts of nitrogen deposition upon serpentine habitat and the Bay Checkerspot butterfly can be correlated to the amount of new vehicle trips that a project is expected to generate. The nitrogen deposition fees collected under the Habitat Plan for new vehicle trips will be used as mitigation to purchase and manage conservation land for the Bay Checkerspot butterfly and other sensitive species.
With implementation of mitigation measures MM BIO-1.1 through MM BIO-1.4, and the standard permit condition listed under checklist question e), which requires conformance the Habitat Plan to reduce or offset impacts to riparian habitat and wetlands, the project would not conflict with the Habitat Plan. **(Less than Significant Impact with Mitigation Incorporated)**

3.4.2.2 *Cumulative Impacts*

Would the project result in a cumulatively considerable contribution to a significant cumulative biological resources impact?

The geographic area for cumulative biological impacts is the project site and adjacent parcels (and Santa Clara County for special status species and nesting birds). The project, in combination with the Flea Market project south of Berryessa Road, could contribute to cumulative effects to the Upper Penitencia Creek and its riparian habitat. Both projects would comply with standard permit conditions and project-specific mitigation measures related to NPDES Permit measures to protect water quality in the creek. The Flea Market project would implement mitigation measures related to the City’s setback requirements to reduce impacts to the Upper Penitencia Creek riparian area.

Both projects will pay applicable Habitat Plan fees and comply with the Habitat Plan to offset the cumulative effects on sensitive habitats (such as the Upper Penetencia Creek riparian area) and of nitrogen deposition from new vehicle trips to serpentine habitats protected by the Habitat Plan. Many pending and approved projects in the region that impact resources similar to those impacted by the proposed project would be covered activities under the Habitat Plan and would mitigate impacts to sensitive habitats through the Habitat Plan, which would require payment of fees for habitat restoration.

The geographic area for cumulative impacts to migratory wildlife would be Santa Clara County. Both projects (and other pending and approved projects in the region) would be required to comply mitigation measures to reduce impacts to nesting birds during construction to less than significant. No other special status species are expected to occur on the project site, and therefore, the project would not contribute to impacts to other special status species.

Therefore, with the implementation of mitigation measures and adherence to the standard permit conditions, the proposed project would not result in a significant cumulative impact to biological resources. **(Less than Significant Cumulative Impact with Mitigation Incorporated)**

3.5 CULTURAL RESOURCES

The following discussion is based upon Archaeological Literature Review Letters for the project site and surrounding area prepared by Holman & Associates on October 24, 2018, and February 7, 2020. The reports are on file with the City of San José. Also referenced is a Historic Assessment for the San José Flea Market prepared by Archives and Architecture in 2005 (revised 2006).

3.5.1 Environmental Setting

3.5.1.1 *Regulatory Framework*

Federal and State

National Historic Preservation Act

Federal protection is legislated by the National Historic Preservation Act of 1966 (NHPA) and the Archaeological Resource Protection Act of 1979. These laws maintain processes for determination of the effects on historical properties eligible for listing in the National Register of Historic Places (NRHP). Section 106 of the NHPA and related regulations (36 Code of Federal Regulations [CFR] Part 800) constitute the primary federal regulatory framework guiding cultural resources investigations and require consideration of effects on properties that are listed or eligible for listing in the NRHP. Impacts to properties listed in the NRHP must be evaluated under CEQA.

California Register of Historical Resources

The California Register of Historical Resources (CRHR) is administered by the State Office of Historic Preservation and encourages protection of resources of architectural, historical, archeological, and cultural significance. The CRHR identifies historic resources for state and local planning purposes and affords protections under CEQA. Under Public Resources Code Section 5024.1(c), a resource may be eligible for listing in the CRHR if it meets any of the NRHP criteria.[16]

Historical resources eligible for listing in the CRHR must meet the significance criteria described previously and retain enough of their historic character or appearance to be recognizable as historical resources and to convey the reasons for their significance. A resource that has lost its historic character or appearance may still have sufficient integrity for the CRHR if it maintains the potential to yield significant scientific or historical information or specific data.

The concept of integrity is essential to identifying the important physical characteristics of historical resources and, therefore, in evaluating adverse changes to them. Integrity is defined as “the authenticity of a historical resource’s physical identity evidenced by the survival of characteristics that existed during the resource's period of significance.” The processes of determining integrity are similar for both the CRHR and NRHP and use the same seven variables or aspects to define integrity that are used to evaluate a resource's eligibility for listing. These seven characteristics include 1) location, 2) design, 3) setting, 4) materials, 5) workmanship, 6) feeling, and 7) association.

[16] California Office of Historic Preservation. “CEQA Guidelines Section 15064.5(a)(3) and California Office of Historic Preservation Technical Assistance Series #6.” Accessed August 31, 2020. http://www.ohp.parks.ca.gov/pages/1069/files/technical%20assistance%20bulletin%206%202011%20update.pdf.

California Native American Historical, Cultural, and Sacred Sites Act

The California Native American Historical, Cultural, and Sacred Sites Act applies to both state and private lands. The act requires that upon discovery of human remains, construction or excavation activity must cease, and the county coroner be notified.

Public Resources Code Sections 5097 and 5097.98

Section 15064.5 of the CEQA Guidelines specifies procedures to be used in the event of an unexpected discovery of Native American human remains on non-federal land. These procedures are outlined in Public Resources Code Sections 5097 and 5097.98. These codes protect such remains from disturbance, vandalism, and inadvertent destruction, establish procedures to be implemented if Native American skeletal remains are discovered during construction of a project, and establish the Native American Heritage Commission (NAHC) as the authority to resolve disputes regarding disposition of such remains.

Pursuant to Public Resources Code Section 5097.98, in the event of human remains discovery, no further disturbance is allowed until the county coroner has made the necessary findings regarding the origin and disposition of the remains. If the remains are of a Native American, the county coroner must notify the NAHC. The NAHC then notifies those persons most likely to be related to the Native American remains. The code section also stipulates the procedures that the descendants may follow for treating or disposing of the remains and associated grave goods.

Regional and Local

San José Historic Preservation Ordinance

The City of San José Historic Preservation Ordinance (Chapter 13.48 of the Municipal Code) is designed to identify, protect, and encourage the preservation of significant resources and foster civic pride in the City's cultural resources. The Historic Preservation Ordinance requires the City to establish a Historic Landmarks Commission, maintain a Historic Resources Inventory (HRI), preserve historic properties using a Landmark Designation process, require Historic Preservation Permits for alterations of properties designated as a Landmark or within a City historic district, and provide financial incentives through a Mills Act Historical Property Contract.

City Council's Development Policy on the Preservation of Historic Landmarks

The City Council's Development Policy on the Preservation of Historic Landmarks (as amended May 23, 2006) calls for preservation of candidate or designated landmark structures, sites, or districts wherever possible. The City also has various historic design guidelines that suggest various methods for the restoration or rehabilitation of older/historic structures and establish a general framework for the evaluation of applications involving historic preservation issues. The City offers a number of historic preservation incentives, including use of the State Historic Building Code, Mills Act/Historical Property Contracts, and various land use and zoning incentives.

Envision San José 2040 General Plan

Various policies in the Envision San José 2040 General Plan have been adopted for the purpose of reducing or avoiding impacts related to cultural resources, as listed below.

General Plan Policies – Cultural Resources	
Landmarks and Districts	
Policy LU-13.2	Preserve candidate or designated landmark buildings, structures, and historic objects, with first priority given to preserving and rehabilitating them for their historic use, second to preserving and rehabilitating them for a new use, or third to rehabilitation and relocation on-site. If the City concurs that no other option is feasible, candidate or designated landmark structures should be rehabilitated and relocated to a new site in an appropriate setting.
Policy LU-13.3	For landmark structures located within new development areas, incorporate the landmark structures within the new development as a means to create a sense of place, contribute to a vibrant economy, provide a connection to the past, and make more attractive employment, shopping, and residential areas.
Policy LU-13.4	Require public and private development projects to conform to the adopted City Council Policy on the Preservation of Historic Landmarks.
Policy LU-13.6	Evaluate areas with a concentration of historically and/or architecturally significant buildings, structures, or sites and, if qualified, preserve them through the creation of Historic Districts.
Policy LU-13.9	Promote the preservation, conservation, rehabilitation, restoration, reuse, and/or reconstruction, as appropriate, of contextual elements (e.g., structures, landscapes, streetlamps, street trees, sidewalk design, signs) related to candidate and/or landmark buildings, structures, districts, or areas.
Policy LU-13.15	Implement City, State, and Federal historic preservation laws, regulations, and codes to ensure the adequate protection of historic resources.
Historic Structures of Lesser Significance	
Policy LU-14.1	Preserve the integrity and enhance the fabric of areas or neighborhoods with a cohesive historic character as a means to maintain a connection between the various structures in the area.
Policy LU-14.4	Discourage demolition of any building or structure listed on or eligible for the Historic Resources Inventory as a Structure of Merit by pursuing the alternatives of rehabilitation, re-use on the subject site, and/or relocation of the resource.
Archaeology and Paleontology	
Policy ER-10.1	For proposed development sites that have been identified as archaeologically or paleontologically sensitive, require investigation during the planning process in order to determine whether potentially significant archeological or paleontological information may be affected by the project and then require, if needed, that appropriate mitigation measures be incorporated into the project design.

General Plan Policies – Cultural Resources	
Policy ER-10.2	Recognizing that Native American human remains may be encountered at unexpected locations, impose a requirement on all development permits and tentative subdivision maps that upon their discovery during construction, development activity will cease until professional archaeological examination confirms whether the burial is human. If the remains are determined to be Native American, applicable state laws shall be enforced.
Policy ER-10.3	Ensure that City, State, and Federal historic preservation laws, regulations, and codes are enforced, including laws related to archaeological and paleontological resources, to ensure the adequate protection of historic and pre-historic resources.

3.5.1.2 *Existing Conditions*

The 13-acre project site consists of two parcels (APN 241-03-024 and APN 241-03-025) and is bounded by Berryessa Road to the south, the BART rail line to the east, and residential development to the north and west. The site contains industrial buildings constructed in 1973 and associated small portable office building and trailers constructed from the 1980s.

In October and November 2018, a records search was completed at the Northwest Information Center of the California Historical Resources Information System (CHRIS), affiliated with Sonoma State University.[17] Records reviewed all recorded archaeological resources within the project site and one quarter mile of the site, and historic resources studies within and adjacent to the site. Additionally, a CHRIS archaeological records and cultural resources studies search was completed to identify resources within one quarter mile of the project site, including the San José Flea Market site which is located 200 feet south of the project site across Berryessa Road.

Historic Uses of the Site

Historically, by 1850, the project site was part of lands owned by John Trimble. By 1862, Oscar Decatur Dryden owned 23 acres of Pueblo Farm Lot 29, bounded on the west by William C. Shore and on the south by what was then called the County Road to Berryessa by 1862. Dryden sold the property in 1865 to James Richardson who within a few years sold the land to Patrick Lee. In 1869, Lee sold off 14 acres to Henry Smith who then sold the property in 1870 to August Murasky of San Francisco. In 1870, Lee Murasky and his wife Mary and two children were living on the adjacent 9.63 acres. Lee Murasky sold his property, which included a house, to August Murasky whose lands then totaled 23.63 acres.

August Murasky was born in Germany and was naturalized in 1887. He and his Irish wife Ann raised their son William F. and daughter Helena on the property. Ann Murasky remained the owner of the property until at least 1914. The Western Pacific Railroad that spans between Santa Clara and Alameda counties began construction in 1917. The section that bounds the project site to the east was not completed until 1921. The construction of the railroad resulted in the reconfiguration of property, and it may be that small portions of northeastern section of land owned by Daniel Lundy in 1876

[17] The baseline conditions are the environmental conditions, at the site and project area, existing at the time the original Notice of Preparation was published in April 2019.

(three long parcels facing what is now Lundy Avenue) became part of the subject property. By 1929, the Murasky land had been split into two 11.5-acre pieces. The southwestern half of the property later became a portion of the San José Flea Market parking lot. The farmstead associated with the Dryden, Lee and Murasky families appears to have been located on the northwestern half of the property, just within the parking lot area. William F. Murasky, and later son Fred F. Murasky, still owned the land until at least the 1950s.

Buildings on Site

In the late nineteenth and early twentieth centuries, the project site was used for agricultural purposes, probably first for hay and stock, and later for orchard production. The land contained at least one house and outbuildings. These residential and support buildings are no longer extant on the property.

The site has been owned by the Facchino family since the 1970s. The Facchino family started a trucking business in 1931 on 6th and Taylor Streets near downtown San José. The Facchinos purchased the property and redeveloped the land in 1973 for use as a freight terminal for Facchino Freight lines. The site was developed with a maintenance building, office dock building, and a small portable office building which remain extant on the property. The industrial buildings on-site are primarily made of concrete with a typical construction for industrial buildings in the 1970s. The agricultural use of the property (orchards) was removed between 1973 and 1980.[18] The site is currently used for industrial purposes by AT&T, Maniglia Landscaping, and a towing company (for vehicle parking and storage).

The buildings and structure on the project site are less than 50 years old and are not listed on the CRHR, NRHP, or City of San José's Historic Resources Inventory.[19] Based on the eligibility criteria for listing on the CRHR and NRHP, a property less than 50 years old would only qualify for listing if it is of exceptional importance.[20] The industrial buildings on-site are primarily constructed of concrete in a typical architectural manner for industrial buildings in the 1970s. The historical uses on the site have been agricultural and there are no remaining buildings or structures on site associated with that use. The property is not considered to be of exceptional importance and, therefore, is not considered a historic resource.

Adjacent Historic Resources

The project site is bounded to the east by the Western Pacific Railroad tracks, which is no longer a functioning railroad and serves as the BART right of way that spans between Santa Clara and Alameda counties. This section of the railroad line was completed in 1921 and was previously

[18]City of San José. Permit and Property Information. Accessed September 10, 2021. https://sjpermits.org/permits/online-permits.html.

[19] The baseline conditions are the environmental conditions, at the site and project area, existing at the time the original Notice of Preparation was published in April 2019, at which point the on-site structures were not 50 years of age.

[20] California Office of Historic Preservation, Department of Parks and Recreation. Technical Assistance Series #6. California Register and National Register: A Comparison (for purposes of determining eligibility for the California Register). Accessed September 10, 2021. https://ohp.parks.ca.gov/pages/1069/files/technical%20assistance%20bulletin%206%202011%20update.pdf.

determined to be ineligible for listing in the CRHR, NRHP, and the City of San José's Historic Resources Inventory. A portion of the San José Flea Market property is located approximately 200 feet south of the site. By the 1980s, the San José Flea Market was significantly expanded to 120 acres to include a surface parking lot that extended from the location where there are now residences (approximately 50 feet west of the site) to the area adjacent to Coyote Creek, and to the area immediately north of Mabury Road (which is a part of the 61.5-acre Flea Market site). The San José Flea Market was established in 1960 as a permanently sited, open-air market that originally consisted of approximately 40 acres. The buildings and structures on the site are not distinguished; most of the built environment of the flea market consists of vernacular structures or temporary covers that have been erected in the last forty years. The site contains a small number of buildings that pre-date the establishment of the flea market, but these buildings are also vernacular in construction and do not represent important patterns of development that occurred on the site prior to 1960. The significance of the original flea market site is the character of the permanent, open-air, public market, within the context of local commerce in San Jose from 1960 to about 1980. The San José Flea Market was previously determined to be a cultural resource of exceptional importance to the San José because of its association with eras and events of cultural interest and value that contribute to local and regional history, heritage, and culture in a distinctive, significant, and important way. The former parking area to the west of the project site is outside the period of significance for the San José Flea Market (1960 to circa 1980) has been redeveloped to residential uses since 2016. The project site is not part of the San José Flea Market that was determined to be eligible for listing on the CRHR and as a Candidate City Landmark.

Archaeological Resources

Previous Archaeological Studies Completed for the Project Site

The project site was included in seven archaeological studies, including notable studies completed in the early to late 2000s, with no archaeological resources identified within the project footprint. In 2001, an archaeological and architectural survey was prepared for a dozen sites in San José including Site 11 that encompassed all lands on the north side of Berryessa from the railroad tracks west to Coyote Creek, including the subject property. Researchers concluded Site 11 (including the project site) had a high potential for buried archaeological sites because if its proximity to Coyote Creek and its long history of flood events. Most of that location was covered by a parking lot and a visual survey was not completed. Based on historical research, a high potential for buried historic-era archaeological features associated with the Murasky family was identified. Based on the high potential for prehistoric and historic-era archaeological deposits, subsurface exploration was recommended.

In 2008 and 2010, the project site was studied as a part of the Berryessa BART Extension project. On the north side of Berryessa Road within the current Project Area, researchers noted the potential historic-era archaeological resources associated with the Murasky farm. The farm complex was located on the northwest corner of Berryessa Road and the Central Pacific Railroad. The land was owned by a number of Euro-Americans in the1800s.

In this area of San José, Native American archaeological sites have been recorded on the wide valley terraces within one half mile of major rivers and creeks, and adjacent to the original San Francisco

Bay shoreline. Often these resources have been buried by alluvium or fill. The project site is on the wide valley terrace located approximately 105 feet north of the minor channelized Penitencia Creek and 0.3 miles from the current channelized course of the major Coyote Creek. Based solely on its location, there is a moderate to high possibility of Native American archaeological sites within the project site.

As a part of the 2018 records search, a review of historical maps of the project site was completed to provide a better understanding of historic-era land use patterns and Penitencia Creek's alignment. Considering that Penitencia Creek originally flowed closer to the project site, the site's potential for containing buried resources is high. There is a moderate to high potential for historic-era features associated with the house north of Berryessa and west of the railroad.

Previously Identified Archaeological Resources Adjacent to the Site

There are two cultural resources have been mapped to the west of (and adjacent to) the project site. The closest archaeological site is beyond the northeastern boundary of the project footprint. As a part of the Silicon Valley BART Extension project, hand excavations of shovel test units and control units sampled 6.9 cubic meters of soil and the findings were used to define boundaries when possible. The Late Period/Early Ethnographic Period habitation site contained at least eight hearths and piths, and two burials identified 50 to 110 centimeters below surface, capped by alluvium and railroad ballast. Along with the concentrations of charcoal, ash, and heat affected rock, artifacts included a pestle, obsidian biface fragment, a soapstone earspool, and a glass trade bead. When the property was inhabited, Penitencia and Coyote Creeks were closer to that area.

3.5.2 Impact Discussion

For the purpose of determining the significance of the project's impact on cultural resources, would the project:

a) Cause a substantial adverse change in the significance of a historical resource pursuant to CEQA Guidelines Section 15064.5?
b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to CEQA Guidelines Section 15064.5?
c) Disturb any human remains, including those interred outside of dedicated cemeteries?

3.5.2.1 *Project Impacts*

a) Would the project cause a substantial adverse change in the significance of a historical resource pursuant to CEQA Guidelines Section 15064.5?

The industrial buildings and structures on the site were constructed circa 1973, are less than 50 years old and are not considered to be of exceptional importance. The project does not contain any on-site resources that have been determined eligible for listing on the CRHR, NRHP, or City of San José Historic Resources Inventory. Therefore, the site does not contain any historical resources under CEQA.

A former parking lot associated with the San José Flea Market is located within 200 feet of the project site. However, the former parking lot falls outside the period of significance for the San José Flea Market from 1960 to circa 1980. While the San José Flea Market is considered a historical resource under CEQA, the former parking lot is not and was redeveloped for residential use in 2016. Therefore, there would be no associated impacts related to construction vibration and the project would have no impact to historical resources. **(No Impact)**

b) Would the project cause a substantial adverse change in the significance of an archaeological resource pursuant to CEQA Guidelines Section 15064.5?

The proposed project would require construction activities such as grading and excavation, which may result in the accidental destruction or disturbance of archaeological sites that could convey important information about San José's history. Upper Penitencia Creek is located approximately 105 feet south of the project site, and Coyote Creek is located approximately 2,000 feet west of the project site. Both creeks are considered sensitive areas for buried prehistoric/Native American resources; due to the project's proximity to the creeks and previous archaeological studies, there is a moderate to high potential for archaeological resources to be unearthed during construction. In the addition, the site has a moderate to high potential to contain historic-era archaeological features associated with the Murasky family.

In accordance with General Plan policy ER-10.3, the proposed project would implement mitigation measures CUL-1.1 through CUL-1.3 to reduce or avoid impacts to subsurface cultural resources.

Impact CUL-1: Subsurface archaeological resources could be encountered during project construction.

Mitigation Measures: The project would implement the following mitigation measures to reduce impacts to buried archaeological resources.

MM CUL-1.1: Prior to issuance of any grading permits and prior to construction-related ground disturbance, a qualified archaeologist in coordination with a Native American Tribal Representative shall complete mechanical presence/absence exploration to explore for buried historical and Native American resources. Subsurface exploration shall be completed by an archaeologist trained in current California methods for prehistoric and historic archaeological resources. Narrow, deep trenches shall be created to search for Native American use of this site, and shallower, wide trenches employed near the potentially sensitive historic areas.

The results of the presence/absence exploration shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee and the City's Historic Preservation Officer for review and approval prior to issuance of any grading permit. Based on the findings of the presence/absence exploration, an archaeological resources treatment plan (as described in MM CUL-1.2) shall be prepared by a qualified archaeologist in consultation with the Native American Tribal representative, if necessary.

MM CUL-1.2: If required by MM CUL-1.1, the project applicant, prior to issuance of any grading permits, shall retain a qualified archaeologist to prepare a treatment plan in consultation with a Tribal representative that reflects the permit-level detail pertaining to depths and locations of all ground disturbing activities. The treatment plan shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee and the City's Historic Preservation Officer prior to approval of any grading permit. The treatment plan shall contain, at a minimum:

- Identification of the scope of work and range of subsurface effects (including location map and development plan), including requirements for preliminary field investigations.
- Description of the environmental setting (past and present) and the historic/prehistoric background of the parcel (potential range of what might be found).
- Development of research questions and goals to be addressed by the investigation (what is significant vs. what is redundant information).
- Detailed field strategy to record, recover, or avoid the finds and address research goals.
- Analytical methods.
- Report structure and outline of document contents.
- Disposition of the artifacts.
- Appendices: all site records, correspondence, and consultation with Native Americans, etc.

Implementation of the plan, by a qualified archaeologist, shall be required prior to the issuance of any grading permits. The treatment plan shall utilize data recovery methods to reduce impacts to subsurface resources. The project applicant shall submit copies of the treatment plan to the Director of Planning, Building and Code Enforcement or the Director's designee.

MM CUL-1.3: Prior to issuance of any grading permits, the project applicant shall report any preliminary field investigation, grading, or other construction activities findings to the Director of Planning, Building, and Code Enforcement or Director's designee. Any historic or prehistoric material identified in the project area during the preliminary field investigation and/or during excavation activities shall be evaluated for eligibility for listing in the California Register of Historic Resources as determined by the California Office of Historic Preservation. The techniques used for data recovery shall follow the protocols identified in the approved treatment plan. All documentation and recordation shall be submitted to the Northwest Information Center and Native American Heritage Commission/Sacred Land Files prior to the issuance of an occupancy permit. A

copy of the evaluation shall be submitted to the Director of Planning, Building, and Code Enforcement or Director's designee, and the Tribe.

In addition, the project applicant would be required to implement the following standard permit condition.

Standard Permit Condition: The project shall implement the following condition to reduce the impacts to subsurface cultural resources:

- **Subsurface Cultural Resources**. If prehistoric or historic resources are encountered during excavation and/or grading of the site, all activity within a 50-foot radius of the find shall be stopped, the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee and the City's Historic Preservation Officer shall be notified, and a qualified archaeologist in consultation with a Native American Tribal representative registered with the Native American Heritage Commission that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3 shall examine the find. The archaeologist in consultation with the Tribal representative shall 1) evaluate the find(s) to determine if they meet the definition of a historical or archaeological resource; and (2) make appropriate recommendations regarding the disposition of such finds prior to issuance of building permits. Recommendations could include collection, recordation, and analysis of any significant cultural materials. A report of findings documenting any data recovery shall be submitted to Director of PBCE or the Director's designee and the City's Historic Preservation Officer and the Northwest Information Center (if applicable). Project personnel shall not collect or move any cultural materials.

Implementation of mitigation measures MM CUL-1.1 through MM CUL-1.3 and standard permit conditions above would reduce project impacts to unknown buried archaeological resources (if present on-site) to a less than significant level. **(Less than Significant Impact with Mitigation Incorporated)**

c) Would the project disturb any human remains, including those interred outside of dedicated cemeteries?

The project has a high potential for buried archaeological sites including Native American resources. Buried human remains have previously been encountered in the vicinity of the project site. The disturbance of these remains, if encountered during construction, could result in an impact.

Consistent with General Plan policy ER-10.2, the proposed project would be required to comply with the following conditions to ensure human remains would not be disturbed.

Standard Permit Condition:

- If any human remains are found during any field investigations, grading, or other construction activities, all provisions of California Health and Safety Code Sections 7054 and 7050.5 and Public Resources Code Sections 5097.9 through 5097.99, as amended per

Assembly Bill 2641, shall be followed. In the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site, or any nearby area reasonably suspected to overlie adjacent remains. The project applicant shall immediately notify the Director of PBCE or the Director's designee and the qualified archaeologist, who shall then notify the Santa Clara County Coroner. The Coroner shall make a determination as to whether the remains are Native American. If the remains are believed to be Native American, the Coroner shall contact the NAHC within 24 hours. The NAHC will then designate a Most Likely Descendant (MLD). The MLD shall inspect the remains and make a recommendation on the treatment of the remains and associated artifacts. If one of the following conditions occurs, the landowner or his authorized representative shall work with the Coroner to reinter the Native American human remains and associated grave goods with appropriate dignity in a location not subject to further subsurface disturbance:

- The NAHC is unable to identify a MLD or the MLD failed to make a recommendation within 48 hours after being given access to the site.
- The MLD identified fails to make a recommendation; or
- The landowner or his authorized representative rejects the recommendation of the MLD, and the mediation by the NAHC fails to provide measures acceptable to the landowner.

With implementation of standard permit conditions noted above, the proposed project would have a less than significant impact on buried human remains. **(Less than Significant Impact)**

3.5.2.2 *Cumulative Impacts*

Would the project result in a cumulatively considerable contribution to a significant cumulative cultural resources impact?

Archaeological Resources and Human Remains

The geographic area for cumulative impacts to archaeological resources is defined as all locations within 1,000 feet of the project site. It is assumed that surrounding projects would affect similar cultural resources. The development of cumulative projects in the vicinity of the project site, including the proposed project, could significantly impact unknown buried archaeological resources. The cumulative projects are required to comply with the federal, state, and local regulations (discussed in Section 3.5.1.1 Regulatory Framework) put in place to protect cultural resources.

The project would comply with applicable regulations, and redevelopment of the site would implement mitigation measures MM CUL-1.1 through MM CUL-1.3 and standard permit conditions to avoid and/or minimize impacts to buried cultural resources to a less than significant level. For this reason, the proposed project would not have a cumulatively considerable contribution to a significant cumulative cultural resources impact. **(Less than Significant Cumulative Impact with Mitigation Incorporated)**

Historic Resources

The cumulative historic resource impact area is the BBUV Plan area. As discussed under checklist question a) above, the project site does not contain historic structures on-site and would not impact the former Flea Market parking formerly located to the west of the site (which has been redeveloped with residences) or Flea Market structures south of the site (an eligible historic resource) given the project site and Flea Market are separated by Berryessa Road and the Flea Market site was approved, by City Council, to be redeveloped to residential and commercial uses. The proposed project, therefore, would not contribute to a cumulative impact on historic properties. **(No Cumulative Impact)**

3.6 ENERGY

3.6.1 Environmental Setting

3.6.1.1 *Regulatory Framework*

Federal and State

Energy Star and Fuel Efficiency

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

Renewables Portfolio Standard Program

In 2002, California established its Renewables Portfolio Standard Program, with the goal of increasing the percentage of renewable energy in the state's electricity mix to 20 percent of retail sales by 2010. Governor Schwarzenegger issued Executive Order (EO) S-3-05, requiring statewide emissions reductions to 80 percent below 1990 levels by 2050. In 2008, EO S-14-08 was signed into law, requiring retail sellers of electricity serve 33 percent of their load with renewable energy by 2020. In October 2015, Governor Brown signed SB 350 to codify California's climate and clean energy goals. A key provision of SB 350 requires retail sellers and publicly owned utilities to procure 50 percent of their electricity from renewable sources by 2030. SB 100, passed in 2018, requires 100 percent of electricity in California to be provided by 100 percent renewable and carbon-free sources by 2045.

Executive Order B-55-18 To Achieve Carbon Neutrality

In September 2018, Governor Brown issued an executive order, EO-B-55-18 To Achieve Carbon Neutrality, setting a statewide goal "to achieve carbon neutrality as soon as possible, and no later than 2045, and achieve and maintain net negative emissions thereafter." The executive order requires CARB to "ensure future Scoping Plans identify and recommend measures to achieve the carbon neutrality goal." EO-B-55-18 supplements EO S-3-05 by requiring not only emissions reductions, but also that, by no later than 2045, the remaining emissions be offset by equivalent net removals of CO_2 from the atmosphere through sequestration.

California Building Standards Code

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

every three years.[21] Compliance with Title 24 is mandatory at the time new building permits are issued by city and county governments.[22]

California Green Building Standards Code

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

Advanced Clean Cars Program

CARB adopted the Advanced Clean Cars program in 2012 in coordination with the EPA and National Highway Traffic Safety Administration. The program combines the control of smog-causing pollutants and GHG emissions into a single coordinated set of requirements for vehicle model years 2015 through 2025. The program promotes development of environmentally superior passenger cars and other vehicles, as well as saving the consumer money through fuel savings.[23]

Local

Climate Smart San José

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

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

San José Reach Code

In 2019, the San José City Council approved Ordinance No. 30311 and adopted Reach Code Ordinance (Reach Code) to reduce energy related GHG emissions consistent with the goals of

[21] California Building Standards Commission. "California Building Standards Code." Accessed September 8, 2021. https://www.dgs.ca.gov/BSC/Codes#@ViewBag.JumpTo.
[22] California Energy Commission (CEC). "2019 Building Energy Efficiency Standards." Accessed September 8, 2021. https://www.energy.ca.gov/programs-and-topics/programs/building-energy-efficiency-standards/2019-building-energy-efficiency.
[23] California Air Resources Board. "The Advanced Clean Cars Program." Accessed September 8, 2021. https://www.arb.ca.gov/msprog/acc/acc.htm.

Climate Smart San José. In December 2020, the City Council updated the Reach Code to prohibit all natural gas infrastructure in new construction. This ordinance applies to any new construction starting August 1, 2021. The Reach Code also requires electric vehicle (EV) charging infrastructure for all building types (above current CALGreen requirements), and solar readiness for non-residential buildings (with certain exception such as the local agency substantiating that additional local utility infrastructure design requirements, may adversely impact the construction cost of the project).

City of San José Municipal Code

The City's Municipal Code includes regulations associated with energy efficiency and energy use. City regulations include an Energy and Water Building Performance Ordinance (Chapter 17.85) to minimize the use and waste of energy, water and other resources in commercial and multi-family residential buildings, Water Efficient Landscape Standards for New and Rehabilitated Landscaping (Chapter 15.10), requirements for Transportation Demand Programs for employers with more than 100 employees (Chapter 11.105), and a Construction & Demolition Diversion (CDD) Program that requires recycling of construction and demolition materials (Chapter 9.10).

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

In October 2008, the City adopted City Council Policy 6-32, which establishes baseline green building standards for private sector new construction and provides a framework for the implementation of these standards. This policy requires that applicable projects achieve minimum green building performance levels using the Council adopted standards.

Envision San José 2040 General Plan

The Envision San José 2040 General Plan includes the following policies that are specific to energy resources and applicable to the proposed project:

General Plan Policies – Energy	
Policy MS-1.1	Demonstrate leadership in the development and implementation of green building policies and practices. Ensure that all projects are consistent with or exceed the City's Green Building Ordinance and City Council Policies as well as State and/or regional policies which require that projects incorporate various green building principles into their design and construction.
Policy MS-2.2	Encourage maximized use of on-site generation of renewable energy for all new and existing buildings.
Policy MS-2.3	Utilize solar orientation (i.e., building placement), landscaping, design, and construction techniques for new construction to minimize energy consumption.
Policy MS-2.4	Promote energy efficient construction industry practices.
Policy MS-2.11	Require new development to incorporate green building practices, including those required by the Green Building Ordinance. Specifically target reduced energy use through construction techniques (e.g., design of building envelopes and systems to maximize energy performance), through architectural design (e.g., design to maximize cross ventilation and interior daylight) and through site design techniques

General Plan Policies – Energy	
	(e.g., orienting buildings on sites to maximize the effectiveness of passive solar design).
Policy MS-3.1	Require water-efficient landscaping, which conforms to the State's Model Water Efficient Landscape Ordinance, for all new commercial, institutional, industrial, and developer-installed residential development unless for recreation or other area functions.
Policy MS-5.5	Maximize recycling and composting from all residents, businesses, and institutions in the City.
Policy MS-14.1	Promote job and housing growth in areas served by public transit and that have community amenities within a 20-minute walking distance.
Policy MS-14.3	Consistent with the California Public Utilities Commission's California Long Term Energy Efficiency Strategic Plan, as revised and when technological advances make it feasible, require all new residential and commercial construction to be designed for zero net energy use.
Policy MS-14.4	Implement the City's Green Building Policies (see Green Building Section) so that new construction and rehabilitation of existing buildings fully implements industry best practices, including the use of optimized energy systems, selection of materials and resources, water efficiency, sustainable site selection, and passive solar building design and planting of trees and other landscape materials to reduce energy consumption.

Berryessa BART Urban Village Plan

The following policies within the Berryessa BART Urban Village Plan pertain to the purposes of reducing or avoiding impacts related to energy.

Urban Village Plan Policies – Energy	
Sustainability and Resiliency	
Policy SU-1.1	All new development shall meet or exceed the City's Building Reach Code.
Policy SU-1.3	Discourage the use of natural gas as an energy source.
Policy SU-2.1	All new development projects that include two or more buildings should study district cooling and heating to facilitate the performance of Zero Net Carbon (ZNC) buildings. All district energy systems should be powered by carbon- and greenhouse gas-free energy from San José Clean Energy.
Policy SU-2.4	All new development should obtain LEED® certification or GreenPoint rating
Policy SU-3.1	All development, regardless of size, should track energy performance consistent with the Energy and Water Building Performance Ordinance.

Urban Village Plan Policies – Energy	
Policy SU-4.1	All new residential development in each of the four Districts should have at least 80% of the total parking stalls provided as "Electric Vehicle (EV)- capable," with at least 20% "Electric Vehicle Charging Infrastructure (EVCI)-ready" (above the City's Energy Reach Code).
Policy SU-4.2	All new commercial development in each of the four Districts should have at least 50% of the total parking stalls provided as "Electric Vehicle (EV)- capable," with at least 20% "Electric Vehicle Charging Infrastructure (EVCI)-ready" (above the City's Energy Reach Code).
Policy SU-6.1	New and retrofitted residential or non-residential development shall comply with the San José Municipal Code Section 17.85.410.
Policy SU-8.1	Strive to divert and reuse 10% more than the requirements listed in the Construction & Demolition Diversion (CDD) Program of construction debris from all new development and retrofits from landfills.
Policy SU-8.3	Encourage the use of recycled building materials during construction for all new and retrofitted development, with the maximum recycled content threshold established in the appropriate green building rating system.

2030 Greenhouse Gas Reduction Strategy

The 2030 Greenhouse Gas Reduction Strategy (GHGRS) is the latest update to the City's previously adopted 2011 GHGRS and is designed to meet statewide GHG reduction targets for 2030 set by Senate Bill 32. As a qualified Climate Action Plan, the 2030 GHGRS allows for tiering and streamlining of GHG analyses under CEQA. The GHGRS identifies General Plan policies (including the policies identified above) and strategies to be implemented by development projects in the areas of green building/energy use, multimodal transportation, water conservation, and solid waste reduction. These seven strategies include:

1. San José Clean Energy – The City will implement the SJCE program to provide residents and businesses access to cleaner energy at competitive rates.
2. Zero Net Carbon Residential Construction – The City will implement its building reach code ordinance (adopted September 2019) and its prohibition of natural gas infrastructure ordinance (adopted October 2019) to guide the city's new construction toward zero net carbon (ZNC) buildings.
3. Renewable Energy Development – The City will expand development of rooftop solar energy through the provision of technical assistance and supportive financial incentives to make progress toward the Climate Smart San José goal of becoming a one-gigawatt solar city.
4. Natural Gas Building Retrofits – The City will support a transition to building decarbonization through increased efficiency improvements in the existing building stock and reduced use of natural gas appliances and equipment.
5. Zero Waste Goal – As an expansion to Climate Smart San José, the City will update its Zero Waste Strategic Plan and reassess zero waste strategies. Throughout the development of the update, the City will continue to divert 90 percent of waste away from landfills through source reduction, recycling, food recovery and composting, and other strategies.

6. Caltrain Modernization Project – The City will continue to be a partner in the Caltrain Modernization Project to enhance local transit opportunities while simultaneously improving the city's air quality.
7. Water Conservation – The City will expand its water conservation efforts to achieve and sustain long-term per capita reductions that ensure a reliable water supply with a changing climate, through regional partnerships, sustainable landscape designs, green infrastructure, and water-efficient technology and systems.

3.6.1.2 *Existing Conditions*

Total energy usage in California was approximately 7,802 trillion British thermal units (Btu) in the year 2019, the most recent year for which this data was available.[24] Out of the 50 states, California is ranked second in total energy consumption and 46th in energy consumption per capita. The breakdown by sector was approximately 19 percent (1,456 trillion Btu) for residential uses, 19 percent (1,468 trillion Btu) for commercial uses, 23 percent (1,805 trillion Btu) for industrial uses, and 39 percent (3,073 trillion Btu) for transportation.[25] This energy is primarily supplied in the form of natural gas, petroleum, nuclear electric power, and hydroelectric power.

Electricity

Electricity in Santa Clara County in 2019 was consumed primarily by the commercial sector (76 percent), followed by the residential sector consuming 24 percent. In 2019, a total of approximately 16,664 gigawatt hours (GWh) of electricity was consumed in Santa Clara County.[26]

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

California's total system electric generation in 2019 was approximately 277,704 gigawatt-hours (GWh), which was down 2.7 percent from 2018's total generation of approximately 285,488 GWh. California's in-state electric generation increased by three percent to 200,475 GWh compared to approximately 194,842 GWh in 2018.[27] This increase was due to increased generation from in-state large hydroelectric power plants, up 50 percent (11,049 GWh) from 2018.

In 2019, natural gas represented the largest portion of the state's energy sources (at 43 percent). Solar, wind, and hydro generation accounted for more than 40 percent of all renewable electricity generation.[28]

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[24] United States Energy Information Administration. "State Profile and Energy Estimates, 2019." Accessed September 8, 2021. https://www.eia.gov/state/?sid=CA#tabs-2.
[25] Ibid.
[26] California Energy Commission. Energy Consumption Data Management System. "Electricity Consumption by County." Accessed September 8, 2021. http://ecdms.energy.ca.gov/elecbycounty.aspx.
[27] CEC. "2019 Total System Electric Generation." Accessed September 8, 2021. https://www.energy.ca.gov/data-reports/energy-almanac/california-electricity-data/2019-total-system-electric-generation.
[28] Ibid.

Natural Gas

PG&E provides natural gas services within the City of San José. In 2019, approximately one percent of California's natural gas supply came from in-state production, while the remaining supply was imported from other western states and Canada.[29] In 2019 residential and commercial customers in California used 33 percent of the state's natural gas, power plants used 26 percent, the industrial sector used 35 percent, and other uses used six percent.[30] Transportation accounted for one percent of natural gas use in California. In 2019, Santa Clara County used approximately two percent of the state's total consumption of natural gas.[31]

Fuel for Motor Vehicles

In 2019, 15.4 billion gallons of gasoline were sold in California.[32] The average fuel economy for light-duty vehicles (autos, pickups, vans, and sport utility vehicles) in the United States has steadily increased from about 13.1 miles per gallon (mpg) in the mid-1970s to 24.9 mpg in 2019.[33] Federal fuel economy standards have changed substantially since the Energy Independence and Security Act was passed in 2007. That standard, which originally mandated a national fuel economy standard of 35 miles per gallon by the year 2020, was updated in March 2020 to require all cars and light duty trucks achieve an overall industry average fuel economy of 40.4 mpg by model year 2026. [34,35]

On-Site Energy Use

The project site currently contains two industrial buildings and ancillary structures (including a modular office building), and an associated parking lot. Energy is used on-site primarily for building lighting, heating, and cooling, and vehicle trips to and from the project site. An estimate of the electricity and natural gas used by the existing buildings on-site is shown in Table 3.6-1.

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[29] California Gas and Electric Utilities. 2020 *California Gas Report.* Accessed September 8, 2021. https://www.socalgas.com/sites/default/files/2020-10/2020_California_Gas_Report_Joint_Utility_Biennial_Comprehensive_Filing.pdf.

[30] United States Energy Information Administration. "State Profile and Energy Estimates, 2019." Accessed September 8, 2021. https://www.eia.gov/state/?sid=CA#tabs-2.

[31] California Energy Commission. "Natural Gas Consumption by County." Accessed September 8, 2021. http://ecdms.energy.ca.gov/gasbycounty.aspx.

[32] California Department of Tax and Fee Administration. "Net Taxable Gasoline Gallons." Accessed September 8, 2021. https://www.cdtfa.ca.gov/dataportal/dataset.htm?url=VehicleTaxableFuelDist.

[33] United States Environmental Protection Agency. "The 2020 EPA Automotive Trends Report: Greenhouse Gas Emissions, Fuel Economy, and Technology since 1975." January 2021. https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P1010U68.pdf

[34] United States Department of Energy. *Energy Independence & Security Act of 2007.* Accessed September 8, 2021. http://www.afdc.energy.gov/laws/eisa.

[35] Public Law 110–140—December 19, 2007. *Energy Independence & Security Act of 2007.* Accessed September 8, 2021. http://www.gpo.gov/fdsys/pkg/PLAW-110publ140/pdf/PLAW-110publ140.pdf.

Table 3.6-1: Estimated Annual Energy Use of Existing Buildings			
Building	**Electricity Use (kWh)**	**Gasoline[1] (gallons)**	**Natural Gas Use (kBtu)**
AT&T Industrial Building	33,048	106,814	2,173
Maniglia Landscape Industrial Building	51,759	167,290	3,403
Total Estimated Existing Energy Usage	**84,807**	**274,104**	**5,576**

Notes: Results based on CalEEMod for existing uses. September 8, 2021

kWh = kilowatt per hour

kBtu = kilo-British Thermal Unit

Gasoline Use

AT&T Industrial Building: 54,096 VMT/24.9 mpg = 2,173 gallons per year

Magnilia Landscape Industrial Building 84,723 VMT/24.9 mpg = 3,403 gallons per year

Source: Illingworth & Rodkin. *1655 Berryessa Mixed-Use Development Air Quality Assessment*. August 26, 2021.

As shown in the Table 3.6-1 above, the existing on-site uses would consume approximately 84,807 kWh of electricity and 274,104 kBtu of natural gas. Using the U.S. EPA fuel economy estimate of 24.9 miles per gallon, the existing uses consume approximately 5,580 gallons of gasoline per year.[36]

3.6.2 Impact Discussion

For the purpose of determining the significance of the project's impact on energy, would the project:

a) Result in a potentially significant environmental impact due to wasteful, inefficient, or unnecessary consumption of energy resources, during project construction or operation?
b) Conflict with or obstruct a state or local plan for renewable energy or energy efficiency?
c) Result in a substantial increase in demand upon energy resources in relation to projected supplies?

3.6.2.1 *Project Impacts*

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

Energy would be consumed during the construction and operational phases of the proposed project. The construction phase would require energy for the manufacture and transportation of building materials, preparation of the site for grading, and the actual construction of the buildings. Petroleum-

[36] United States Environmental Protection Agency. "The 2020 EPA Automotive Trends Report: Greenhouse Gas Emissions, Fuel Economy, and Technology since 1975." January 2021. https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P1010U68.pdf (see Table 3.6-1 above for calculations)

based fuels such as diesel fuel and gasoline would be the primary sources of energy for these tasks. Given there may be exceptions to the prohibition of natural gas for commercial uses, for the purposes of disclosing the most energy consumption in this analysis, it was assumed that the commercial building on-site would use natural gas. Implementation of the proposed development would consume energy (in the form of electricity and natural gas) during operation, primarily from building heating and cooling, lighting, and water heating, as well as gasoline for vehicle trips to and from the site.

Energy Efficiency During Construction

The anticipated construction schedule assumes that the project would be built over a period of approximately 44 months. The project would require site preparation, grading, trenching, building construction, paving, and finishing of the building interior. The overall construction schedule and process is already designed to be efficient in order to avoid excess monetary costs. That is, equipment and fuel would not be used wastefully on the site because of the added expense associated with renting the equipment, maintaining it, and fueling it. Therefore, the opportunities for future efficiency gains during construction are limited. Additionally, implementation of the City's standard permit conditions detailed in Section 4.3, Air Quality would restrict equipment idling times to five minutes or less and would require the applicant to post signs on the project site reminding workers to shut off idling equipment. For these reasons, the construction of the project would not use energy in a wasteful manner.

Estimated Energy Use of Project Operation

Operation of the project would consume energy for multiple purposes including, but not limited to, building heating and cooling, lighting, appliances, and electronics. Operational energy would also be consumed during each vehicle trip generated by future employees and customers. Estimates of future operational energy usage are shown below, in Table 3.6-2.

As shown in Table 3.6-2, the project would result in an increase in energy demand for electricity. gasoline, and natural gas in comparison with existing conditions. The energy use increase does not take into account the efficiency measures incorporated into the project. The project would be built to the 2019 CALGreen requirements and Title 24 energy efficiency standards, which would improve the efficiency of the overall project and lower the estimated energy use.

The project would include the following green building features, which would reduce energy use:

- The project is located adjacent to a major transit center, the Berryessa BART Station.
- Bicycle parking would be provided on-site.
- The proposed buildings would meet or exceed the requirements of the California Building Energy Efficiency Standards.
- The proposed buildings would include water conserving fixtures.
- The project would implement construction waste management methods during construction to reduce the amount of construction waste.
- Residential components of the project would be 100 percent electric

Table 3.6-2: Estimated Annual Energy Use of the Proposed Project			
Proposed Project	**Electricity (kWh)**	**Gasoline (gallons)[1]**	**Natural Gas (kBtu)**
Multi-Family Residential Units	3,104,700	381,563	0
Townhouse Units	115,515	10,929	0
Single-Family Units	187,997	15,287	0
Medical Office Uses	7,984,050	827,620	3,109,050[2]
Retail Uses	482,550	61,694	7,533,000[2]
Enclosed Parking[3]	4,580,480	0	0
Total Operational Energy Use	**16,455,292**	**1,297,093**	**10,642,050**
Existing Uses			
Industrial Buildings	84,807	5,576	274,104
Net Energy Increase	**16,370,485**	**1,291,517**	**10,367,946**

Notes:

[1] The estimated gasoline demand is based on the estimated VMT of for the project and the EPA average fuel economy of 24.9 mpg:

Gasoline Use

Multi-Family Units: 9,500,926 VMT/24.9 mpg = 381,563 gallons per year

Townhouse Units: 272,131 VMT/24.9 mpg = 10,929 gallons per year

Single-Family Units: 380,650 VMT/24.9 mpg = 15,287 gallons per year

Medical Office: 20,607,744 VMT/24.9 mpg = 827,620 gallons per year

Retail 1,536,174 VMT/24.9 mpg = 61,694 gallons per year

[2] Per the Reach Code, natural gas would not likely be used for the proposed project. If the City determines that electricity usage is not feasible for commercial/industrial, the City may consider exceptions to this requirement (e.g., where there is evidence suitable to the local enforcing agency substantiating that additional local utility infrastructure design requirements may adversely impact the construction cost of the project.). Therefore, as a conservative estimate, it is assumed that natural gas would be used for the commercial component.

[3] Electricity usage for parking is high because the CalEEMod land use for enclosed parking garages assumes continuous lighting and ventilation.

Source: Illingworth & Rodkin, Inc. 1655 Berryessa Mixed-Use Development Air Quality Assessment – Attachment 2: CalEEMod Input Assumptions and Outputs. August 26, 2021.

The project would not represent a wasteful or inefficient use of energy resources because the project would be required to comply with Title 24 and CALGreen requirements to reduce energy consumption. As required by the City's Private Sector Green Building Policy and the Green Building Ordinance, the project would achieve LEED Silver Certification for the commercial component and GreenPoint Rated 50 points for the residential component. The project would also meet the energy efficiency performance requirements of the San José Reach Code such as the proposed residential developments including all electric and no natural gas usage, and as a result, the project's residential development would not use natural gas. Additionally, the project would comply with TDM measures

in the BBUV Parking and TDM Plan, which would reduce vehicle trips and the amount of gasoline usage associated with the project. New automobiles used by employees and residents of the proposed project would be subject to fuel economy and efficiency standards applied throughout the State of California, which means that over time the fuel efficiency of vehicles associated with the project site would improve. For these reasons implementation of the project would not result in wasteful, inefficient, or unnecessary consumption of energy. **(Less than Significant Impact)**

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

The project would comply with the current energy efficiency standards set forth in Title 24, Climate Smart San José, the City's Reach Code and Private Sector Green Building Policy, and the City's Municipal Code chapters identified in Section 3.6.1.1 Regulatory Framework pertaining to energy, water, and construction and demolition efficiencies. In addition, the project would enroll in SJCE's TotalGreen program, which provides 100 percent carbon-free energy, consistent with the state's Renewables Portfolio Standard Program and SB 350. For these reasons, the project would comply with state and local plans for renewable energy and energy efficiency.
(Less than Significant Impact)

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

Electricity

As discussed previously, California's total system electric generation in 2019 was approximately 277,704 GWh (a decrease of 2.7 percent from 2018). Despite this decrease, consumption is still expected to increase one percent per year in the future. Efficiency and production capabilities would help meet increased electricity demand in the future, such as improving energy efficiency in existing and future buildings, establishing energy efficiency targets, inclusion of microgrids and zero-net energy buildings, and integrating renewable technologies.[37] The project would be built to the most recent CALGreen requirements, Title 24 energy efficiency standards, and meet LEED Silver standards, which would improve the energy efficiency of the overall project.

Electricity supply and demand data and reporting is provided at the state level. The project would result in a net increase of 16,370,485 (16.4 GWh) of electricity use per year on the site, which is less than 0.006 percent increase in the state's annual use. Also refer to the discussion under Impact EN-1 of why the project would not result in wasteful, inefficient, or unnecessary consumption of energy. The project's increase in electricity usage is not considered to have a substantial effect on the state's supply.

[37] CEC. *2016 Integrated Energy Policy Report*. February 2017.

Natural Gas

In 2019, the State of California used approximately 7,802 trillion Btu of natural gas.[38] Based on the City's Reach Code, it is assumed that the proposed multi-family and single-family developments would not use natural gas. As stated previously, this analysis assumes that the commercial building on-site would use natural gas. Based on this assumption, the project would increase natural gas usage by approximately 10,367,950 kBtu per year, or approximately 0.00001 percent of the state's current natural gas usage. The project would comply with the City's Reach Code requirements (including no natural gas use for the proposed residential developments) and, therefore, the project's increase in natural gas usage would not be considered to have a substantial effect on the state's supply.

Fuel for Motor Vehicles

Project trips would increase gasoline use by approximately 1,291,520 gallons per year in comparison to existing conditions.[39] This increase is small when compared to the 15.4 billion gallons of gasoline consumed in California in 2019. Further, as discussed under checklist question a), the project's gasoline use would also be reduced with implementation of TDM measures. Further, new automobiles purchased by future occupants of the project would be subject to fuel economy and efficiency standards applied throughout the State of California, which means that over time, the fuel efficiency of vehicles associated with the project would improve. As such, the project would not result in a significant increase in gasoline demand relative to projected supply. Also, refer to the discussion under checklist question a) as to why the project would not result in wasteful, inefficient, or unnecessary consumption of energy.

For all the reasons discussed above, the project would not result in a substantial increase in demand upon energy resources in relation to projected supplies. **(Less than Significant Impact)**

3.6.2.2 *Cumulative Impacts*

Would the project result in a cumulatively considerable contribution to a significant cumulative energy impact?

The geographic area for cumulative energy impacts is the State of California. Past, present, and future development projects contribute to the state's energy impacts. If a project is determined to have a significant energy impact, it is concluded that the impact is cumulatively considerable. As discussed above, the project would not result in significant energy impacts or conflict or obstruct a state or local plan for energy efficiency. The project, therefore, would not have a cumulatively considerable contribution to a significant cumulative energy impact. **(Less than Significant Cumulative Impact)**

[38] United States Energy Information Administration. "State Profile and Energy Estimates, 2019." Accessed September 8, 2021. https://www.eia.gov/state/?sid=CA#tabs-2.
[39] 1,196,627 (annual gallons of gasoline consumed under project) minus 366,558 (annual gallons consumed under existing conditions) equals 830,069 gallons.

3.7 GEOLOGY AND SOILS

This section in part is based upon a Limited Geotechnical Investigation completed by Cornerstone Earth Group on October 15, 2008, and a Custom Soil Resource Report based on the U.S. Department of Agriculture web soil survey tool completed on September 21, 2021. A copy of these reports are included in Appendix E of this EIR.

3.7.1 Environmental Setting

3.7.1.1 *Regulatory Framework*

State

Alquist-Priolo Earthquake Fault Zoning Act

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

Seismic Hazards Mapping Act

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

California Building Standards Code

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

California Division of Occupational Safety and Health Regulations

Excavation, shoring, and trenching activities during construction are subject to occupational safety standards for stabilization by the California Department of Industrial Relations, Division of Occupational Safety and Health (Cal/OSHA) under Title 8 of the California Code of Regulations and

Excavation Rules. These regulations minimize the potential for instability and collapse that could injure construction workers on the site.

Public Resources Code Section 5097.5

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

Regional and Local

City of San José Municipal Code

Title 24 of the San José Municipal Code includes the 2019 California Building, Plumbing, Mechanical, Electrical, Existing Building, and Historical Building Codes. Requirements for building safety and earthquake hazard reduction are also addressed in Chapter 17.40 (Dangerous Buildings) and Chapter 17.10 (Geologic Hazards Regulations) of the Municipal Code. Requirements for grading, excavation, and erosion control are included in Chapter 17.04 (Building Code, Part 6 Excavation and Grading). In accordance with the Municipal Code, the Director of Public Works must issue a Certificate of Geologic Hazard Clearance prior to the issuance of grading and building permits within defined geologic hazard zones, including State Seismic Hazard Zones for Liquefaction.

Envision San José 2040 General Plan

Various policies in the Envision San José 2040 General Plan have been adopted for the purpose of reducing or avoiding impacts related to geologic and seismic hazards, as listed below.

General Plan Policies - Geology, Soils, and Seismic Hazards	
Seismic Hazards	
Policy EC-3.1	Design all new or remodeled habitable structures in accordance with the most recent California Building Code and California Fire Code as amended locally and adopted by the City of San José, including provisions regarding lateral forces.
Policy EC-3.2	Within seismic hazard zones identified under the Alquist-Priolo Fault Zoning Act, California Seismic Hazards Mapping Act and/or by the City of San José, complete geotechnical and geological investigations and approve development proposals only when the severity of seismic hazards have been evaluated and appropriate mitigation measures are provided as reviewed and approved by the City of San José Geologist. State guidelines for evaluating and mitigating seismic hazards and the City-adopted California Building Code will be followed.

General Plan Policies - Geology, Soils, and Seismic Hazards	
Geologic and Soil Hazards	
Policy EC-4.1	Design and build all new or remodeled habitable structures in accordance with the most recent California Building Code and municipal code requirements as amended and adopted by the City of San José, including provisions for expansive soil, and grading and storm water controls.
Policy EC-4.2	Approve development in areas subject to soils and geologic hazards, including un-engineered fill and weak soils and landslide-prone areas, only when the severity of hazards have been evaluated and if shown to be required, appropriate mitigation measures are provided. New development proposed within areas of geologic hazards shall not be endangered by, nor contribute to, the hazardous conditions on the site or on adjoining properties. The City of San José Geologist will review and approve geotechnical and geological investigation reports for projects within these areas as part of the project approval process.
Policy EC-4.4	Require all new development to conform to the City of San José's Geologic Hazard Ordinance.
Policy EC-4.5	Ensure that any development activity that requires grading does not impact adjacent properties, local creeks, and storm drainage systems by designing and building the site to drain properly and minimize erosion. An Erosion Control Plan is required for all private development projects that have soil disturbance of one acre or more, are adjacent to a creek/river, and/or are located in hillside areas. Erosion Control Plans are also required for any grading occurring between October 15 and April 15.
Policy EC-4.7	Consistent with the San José Geologic Hazard Ordinance, prepare geotechnical and geological investigation reports for projects in areas of known concern to address the implications of irrigated landscaping to slope stability and to determine if hazards can be adequately mitigated.
Policy ES-4.9	Permit development only in those areas where potential danger to health, safety, and welfare of the persons in that area can be mitigated to an acceptable level.

3.7.1.2 *Existing Conditions*

Regional Geology

The project site is located in the Santa Clara Valley, an alluvial basin that is bounded by the Santa Cruz Mountains to the west, the Hamilton/Diablo Range to the east, and the San Francisco Bay to the north. The Santa Clara Valley was formed when sediments derived from the Santa Cruz Mountains and the Hamilton/Diablo Range were exposed by the continued tectonic uplift and regression of the inland sea that had previously inundated the area. Sediments of the Santa Clara Valley are composed of water-bearing Pliocene-Pleistocene and Upper Quaternary sediments, which are underlain by older non-water-bearing rocks. The Upper Quaternary sediments consist of up to 1,000 feet of poorly sorted gravel, sand, and clay, which were deposited in alluvial fan and deltaic depositional environments.

Site Geology

Topography, Soils, and Groundwater

The project site is located on the floor of the Santa Clara Valley. The project site slopes gently north toward the San Francisco Bay, with an average elevation of approximately 82 feet above mean sea level (msl). The site is underlain with still clay and silt to depths of approximately 15 feet below the ground surface.[40] Because the project site and surrounding area are relatively flat and the site is not located within a potential landslide zone.

Shallow groundwater on the project site is likely present at depths of approximately 5 to 15 feet, varying seasonally. Groundwater flows toward the south or southwest.

Earthquakes, Fault Rupture, and Seismic Ground Failure

The San Francisco Bay Area is classified as the most seismically active region in the United States. The significant earthquakes that occur in the Bay Area are generally associated with crustal movement along well-defined active fault zones of the San Andreas Fault System, which regionally trends in a northwesterly direction. The United States Geological Survey (USGS) estimates that there is a 72 percent chance of at least one magnitude 6.7 earthquake occurring in the Bay Area by 2043.[41] The Hayward Fault is the most likely to generate an earthquake of this magnitude in the next 30 years.

The site is not located within a designated Alquist-Priolo Earthquake Fault Zone[42] or in a Santa Clara County Fault Hazard Zone[43] and no active faults have been mapped on-site. The site is not within a landslide hazard zone. Faults in the region are, however, capable of generating earthquakes of magnitude 7.0 or higher, and strong to very strong ground shaking would be expected to occur at the project site during a major earthquake on one of the nearby faults.

The major earthquake faults in the project area are the San Andreas, Hayward, and Calaveras Faults. The Hayward and Calaveras Faults are located approximately two and four miles northeast of the project site, respectively. The San Andreas Fault is located approximately 18 miles southwest of the project site. A moderate to major earthquake on the Hayward Fault is most likely to generate the strongest ground shaking at the site.

Liquefaction is the result of seismic activity and is characterized as the transformation of loose water-saturated soils from a solid state to a liquid state during ground shaking. During ground shaking, such as during earthquakes, cyclically induced stresses may cause increased pore water pressures within

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[40] Cornerstone Earth Group. *Limited Geotechnical Investigation.* October 15, 2008. Accessed September 11, 2021. U.S. Department of Natural Resources Conservation Service. Web Soil Survey: Custom Soil Resource Report. Accessed September 11, 2021. https://websoilsurvey.sc.egov.usda.gov/App/WebSoilSurvey.aspx.
[41] United States Geological Survey. "Earthquake Outlook for the San Francisco Bay Region 2014 – 2043." August 2016. Accessed September 11, 2021. https://pubs.usgs.gov/fs/2016/3020/fs20163020.pdf.
[42] California Geological Survey. "Earthquake Zones of Required Investigation: San José West Quadrangle." Accessed September 11, 2021. https://maps.conservation.ca.gov/cgs/EQZApp/app/.
[43] Santa Clara County. "Geologic Hazard Zones." Accessed September 11, 2021. https://sccplanning.maps.arcgis.com/apps/webappviewer/index.html?id=5ef8100336234fbdafc5769494cfe373.

the soil voids, resulting in liquefaction. The project site is located within a state-designated and Santa Clara County liquefaction hazard zone.

Lateral Spreading

Lateral spreading typically occurs as a form of horizontal displacement of relatively level alluvial material toward an open face such as a body of water, channel, or excavation, and is commonly associated with liquefaction. The project site is not located adjacent to any waterways and, therefore, has low potential for lateral spreading.

Soils

Soil shrinking and swelling is the result of the soil absorbing water in the winter and drying in the summer. Shrink/swell potential is directly correlated to the clay content of the soil. The shrinking and swelling action can damage improperly designed and/or constructed improvements. Soils that underlie the site are moderately to highly expansive.[44]

Construction on compressible soils can result in differential compaction. Differential compaction is the non-uniform compaction of soil strata, which results in movement of near-surface soils. The project site is not mapped within a compressible soil hazard zone.

Paleontological Resources

Geologic units of Holocene age are generally not considered sensitive for paleontological resources, because biological remains younger than 10,000 years are not usually considered fossils. These sediments have low potential to yield fossil resources or to contain significant nonrenewable paleontological resources. These recent sediments, however, may overlie older Pleistocene sediments with high potential to contain paleontological resources. Pleistocene sediments, often found at depths of greater than 10 feet below the ground surface, have yielded the fossil remains of plants and extinct terrestrial vertebrates. Based on the underlying geologic formation of the project site, the project site has a high sensitivity (at depth) for paleontological resources.[45]

3.7.2 Impact Discussion

For the purpose of determining the significance of the project's impact on geology and soils, would the project:

a) Directly or indirectly cause potential substantial adverse effects, including the risk of loss, injury, or death involving:
    - Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault (refer to Division of Mines and Geology Special Publication 42)?

[44] U.S. Department of Natural Resources Conservation Service. Web Soil Survey: Custom Soil Resource Report. Accessed September 11, 2021. https://websoilsurvey.sc.egov.usda.gov/App/WebSoilSurvey.aspx.
[45] City of San José. *Envision San José 2040 General Plan Program EIR.* June 2011. P. 677.

- Strong seismic ground shaking?
- Seismic-related ground failure, including liquefaction?
- Landslides?

b) Result in substantial soil erosion or the loss of topsoil?

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

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

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

f) Directly or indirectly destroy a unique paleontological resource or site or unique geological feature?

3.7.2.1 *Project Impacts*

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

The project site could be subject to strong seismic ground shaking and seismic-related ground failure, including liquefaction, or landslides in the event of a large earthquake. Consistent with the City's General Plan and Municipal Code, to avoid and/or minimize potential damage from seismic shaking, the proposed project would be built using standard engineering and seismic safety design techniques. Consistent with these requirements, the following condition shall be implemented to ensure the proposed development is designed to address seismic hazards.

Standard Permit Condition:

- To avoid or minimize potential damage from seismic shaking, the project shall be constructed using standard engineering and seismic safety design techniques. Building design and construction at the site shall be completed in conformance with the recommendations of an approved geotechnical investigation. The report shall be reviewed and approved by the City of San José Department of Public Works as part of the building permit review and issuance 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 the project shall be designed to reduce the risk to life or property on site and off site to the extent feasible and in compliance with the Building Code.

With implementation of the above standard permit condition, seismic and seismic-related impacts would be less than significant, and the proposed project would not exacerbate existing geologic conditions on adjacent properties. **(Less than Significant Impact)**

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

Ground disturbance would be required for site preparation, removal of existing improvements, and on-site improvements. Ground disturbance would expose soils and increase the potential for wind- or water-related erosion and sedimentation at the site until construction is complete.

The City's National Pollutant Discharge Elimination System (NPDES) Municipal Permit, urban runoff policies, and the Municipal Code are the primary means of enforcing erosion control measures through the grading and building permit process. The EIR for the General Plan concluded that with the regulatory programs currently in place, the possible impacts of accelerated erosion during construction would be less than significant[46]. The City shall require all phases of the project to comply with all applicable City regulatory programs pertaining to construction related erosion, including the following standard permit conditions:

Standard Permit Condition:

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

With implementation of the above standard permit conditions, and compliance with applicable regulations and City policies, construction of the proposed project would have a less than significant impact due to erosion. **(Less than Significant Impact)**

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

The project site is located in an area of moderate expansion potential and very strong ground shaking during an earthquake. As discussed under checklist question a) above, the proposed project would be constructed in compliance with the CBC to address soil instability and development of the project site would not change or exacerbate the geologic conditions of the project area and would not result in a significant geology hazards impact. The project would also be subject to the standard permit condition listed under checklist question a) above, which requires compliance with recommendations of the Geotechnical Investigation and review and approval by the Department of Public Works. **(Less than Significant Impact)**

[46] City of San José. *Draft Program Environmental Impact Report for the Envision San José 2040 General Plan.* SCH# 2009072096. Page 515.

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

The project site is located on expansive soil as defined in Section 1803.5.3 of the CBC. Development of the proposed project, however, would be required to implement the standard permit condition listed under checklist question a) above, in conformance with the General Plan and current practices in the City of San José, to lessen impacts from expansive soils to a less than significant level.

With implementation of the above standard permit condition, the proposed project would result in a less than significant impact due to expansive soils. **(Less than Significant Impact)**

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

The project site is located within an urbanized area of San José where sewers are available to dispose of wastewater from the project site. The proposed project would connect to the existing sanitary system. The site would not need to support septic tanks or alternative wastewater disposal systems. **(No Impact)**

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

The General Plan EIR recognized that while development allowed under the General Plan could directly impact paleontological resources, implementation of General Plan policies and existing regulations and programs would reduce potential impacts to a less than significant level. As such, the following standard permit condition would be applied to the proposed project to reduce and avoid impacts to unidentified paleontological resources.

Standard Permit Condition:

Paleontological Resources

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

With implementation of the above standard permit conditions, potential impacts to paleontological resources would be reduced to a less than significant level. **(Less than Significant Impact)**

3.7.2.2 *Cumulative Impacts*

Would the project result in a cumulatively considerable contribution to a significant cumulative geology and soils impact?

The geographic area for cumulative geology and soils impacts is the project site and adjacent parcels. The cumulative projects (the proposed project and approved Flea Market project immediately south of Berryessa Road) in the project vicinity would be subject to similar geology, soils, and seismicity conditions as the proposed project. The cumulative projects would implement standard permit conditions related to geologic hazards and would be constructed consistent with the CBC and design-level geotechnical recommendations in order to avoid impacts from seismicity and geologic and soils hazards, and/or reduce impacts to a less than significant level. The cumulative projects would also be subject to similar CEQA requirements and standard permit conditions as the proposed project with regard to avoidance and lessening of paleontological impacts. For these reasons, the cumulative projects would not result in significant cumulative geology and soils impacts. **(Less than Significant Cumulative Impact)**

3.7.3 Non-CEQA Effects

General Plan Policy EC-4.2 states that development is allowed in areas subject to soil and geologic hazards, including un-engineered fill, weak soils, and landslide-prone areas, only when the severity of hazards have been evaluated and, if shown to be required, appropriate mitigation measures are provided. New development proposed within areas of geologic hazards shall not be endangered by, nor contribute to, the hazardous conditions on the site or on adjoining properties. To ensure this, the policy requires the City of San José Geologist to review and approve geotechnical and geological investigation reports for projects within these areas as part of the project approval process. In addition, Policy EC-4.4 requires all new development to conform to the Geologic Hazard Ordinance. Geologic conditions in the project area would require that the proposed structures be designed and built in conformance with the CBC.

Because the proposed project would be required to comply with the geotechnical report, CBC, and regulations identified in the Envision San José 2040 General Plan that ensure geologic hazards are adequately addressed, the project would comply with General Plan policies EC-4.2 and EC-4.4.

3.8 GREENHOUSE GAS EMISSIONS

The following discussion is based, in part, on a Greenhouse Gas Reduction Strategy (GHGRS) compliance checklist prepared by the project applicant in September 2021. A copy of this checklist is attached as Appendix F to the EIR.

3.8.1 Environmental Setting

3.8.1.1 *Background Information*

Gases that trap heat in the atmosphere, GHGs, regulate the earth's temperature. This phenomenon, known as the greenhouse effect, is responsible for maintaining a habitable climate. In GHG emission inventories, the weight of each gas is multiplied by its global warming potential (GWP) and is measured in units of CO_2 equivalents (CO_2e). The most common GHGs are carbon dioxide (CO_2) and water vapor but there are also several others, most importantly methane (CH_4), nitrous oxide (N_2O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF_6). These are released into the earth's atmosphere through a variety of natural processes and human activities. Sources of GHGs are generally as follows:

- CO_2 and N_2O are byproducts of fossil fuel combustion.
- N_2O is associated with agricultural operations such as fertilization of crops.
- CH_4 is commonly created by off-gassing from agricultural practices (e.g., keeping livestock) and landfill operations.
- Chlorofluorocarbons (CFCs) were widely used as refrigerants, propellants, and cleaning solvents, but their production has been stopped by international treaty.
- HFCs are now used as a substitute for CFCs in refrigeration and cooling.
- PFCs and SF_6 emissions are commonly created by industries such as aluminum production and semiconductor manufacturing.

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

3.8.1.2 *Regulatory Framework*

State

Executive Order S-3-05

California Executive Order (EO) S-3-05, signed into law in June 2005, set GHG reduction targets for the State of California. EO S-3-05 established the following targets: reduce GHG emissions to 2000 levels by 2010, reduce GHG emissions to 1990 levels by 2020, and reduce GHG emissions to 80 percent below 1990 levels by 2050.

Assembly Bill 32

Under the California Global Warming Solutions Act, also known as AB 32, CARB established a statewide GHG emissions cap for 2020, adopted mandatory reporting rules for significant sources of GHGs, and adopted a comprehensive plan, known as the Climate Change Scoping Plan, identifying how emission reductions would be achieved from significant GHG sources.

In 2016, SB 32 was signed into law, amending the California Global Warming Solution Act. SB 32, and accompanying Executive Order B-30-15, require CARB to ensure that statewide GHG emissions are reduced to 40 percent below the 1990 level by 2030. CARB updated its Climate Change Scoping Plan in December of 2017 to express the 2030 statewide target in terms of million metric tons of CO_2E ($MMTCO_2e$). Based on the emissions reductions directed by SB 32, the annual 2030 statewide target emissions level for California is 260 $MMTCO_2e$.

Senate Bill 375

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

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

Regional

2017 Clean Air Plan

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

BAAQMD CEQA Air Quality Guidelines

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

Local

City of San José Municipal Code

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

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

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

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

Climate Smart San José

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

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

Reach Code Ordinance

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

Envision San José 2040 General Plan

Various policies in the City's 2040 General Plan have been adopted for reducing or avoiding impacts related to greenhouse gas emissions, as listed below. In addition, goals, and policies throughout the 2040 General Plan encourage a reduction in vehicle miles traveled through land use, pedestrian, bicycle, and access to transit improvements, parking strategies that reduce automobile travel through parking supply and pricing management, and requirements for Transportation Demand Management programs for large employers. Additional policies have been adopted to reduce energy use (and thus emissions from fuel use). Refer to Sections 3.3 Air Quality, 3.6 Energy, and 3.17 Transportation for these additional policies.

General Plan Policies - GHG Emissions	
Policy MS-1.1	Demonstrate leadership in the development and implementation of green building policies and practices. Ensure that all projects are consistent with or exceed the City's Green Building Ordinance and City Council Policies as well as State and/or regional policies which require that projects incorporate various green building principles into their design and construction.
Policy MS-2.3	Utilize solar orientation (i.e., building placement), landscaping, design, and construction techniques for new construction to minimize energy consumption.
Policy MS-2.6	Promote roofing design and surface treatments that reduce the heat island effect of new and existing development and support reduced energy use, reduced air pollution, and a healthy urban forest. Connect businesses and residents with cool roof rebate programs through City outreach efforts.
Policy MS-2.11	Require new development to incorporate green building policies, including those required by the Green Building Ordinance. Specifically, target reduced energy use through construction techniques (e.g., design of building envelopes and systems to maximize energy performance), through architectural design (e.g., design to maximize cross ventilation and interior daylight) and through site design techniques (e.g., orienting buildings on sites to maximize effectiveness of passive solar design.).
Policy MS-14.4	Implement the City's Green Building Policies so that new construction and rehabilitation of existing buildings fully implements industry best practices, including the use of optimized energy systems, selection of materials and resources,

General Plan Policies - GHG Emissions	
	water efficiency, sustainable site selection, passive solar building design, and planting of trees and other landscape materials to reduce energy consumption.

Berryessa BART Urban Village Plan

The following policies within the Berryessa BART Urban Village Plan pertain to the purposes of reducing or avoiding impacts related to GHGs.

Urban Village Plan Policies – GHG Emissions	
Sustainability and Resiliency	
Policy SU-1.1	All new development shall meet or exceed the City's Building Reach Code.
Policy SU-1.2	Incorporate "passive solar" design strategies, such as solar orientation and daylighting, where feasible.
Policy SU-3.1	All development, regardless of size, should track energy performance consistent with the Energy and Water Building Performance Ordinance.
Policy SU-4.1	All new residential development in each of the four Districts should have at least 80% of the total parking stalls provided as "Electric Vehicle (EV)- capable," with at least 20% "Electric Vehicle Charging Infrastructure (EVCI)-ready" (above the City's Energy Reach Code).
Policy SU-4.2	All new commercial development in each of the four Districts should have at least 50% of the total parking stalls provided as "Electric Vehicle (EV)- capable," with at least 20% "Electric Vehicle Charging Infrastructure (EVCI)-ready" (above the City's Energy Reach Code).
Policy SU-5.1	Encourage the use of low-flow plumbing fixtures such as aerators for faucets, reduced-flow shower heads, and high-efficiency toilet and urinal flush valves in new development.
Policy SU-5.2	Innovative indoor water recycling techniques are encouraged, including rainwater capture systems, dual plumbing, and greywater/black water recapture/reuse systems.
Policy SU-5.3	All new commercial developments over 20,000 square feet should use recycled water for toilets, urinals, irrigation and/or cooling systems.
Policy SU-6.1	New and retrofitted residential or non-residential development shall comply with the San José Municipal Code Section 17.85.410.
Policy SU-8.1	Strive to divert and reuse 10% more than the requirements listed in the Construction & Demolition Diversion (CDD) Program of construction debris from all new development and retrofits from landfills.
Policy SU-8.3	Encourage the use of recycled building materials during construction for all new and retrofitted development, with the maximum recycled content threshold established in the appropriate green building rating system.

San José 2030 Greenhouse Gas Reduction Strategy

The 2030 GHGRS is the latest update to the City's GHGRS and is designed to meet statewide GHG reduction targets for 2030 set by Senate Bill 32. As a qualified Climate Action Plan, the 2030 GHGRS allows for tiering and streamlining of GHG analyses under CEQA. The GHGRS identifies General Plan policies and strategies to be implemented by development projects in the areas of green building/energy use, multimodal transportation, water conservation, and solid waste reduction. Projects that comply with the policies and strategies outlined in the 2030 GHGRS, would have less than significant GHG impacts under CEQA.[47]

3.8.1.3 *Existing Conditions*

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

The site is currently used for industrial purposes and GHG emissions would primarily result from vehicle trips to and from the site. The project site is located within a PDA, as it is within one half mile the Berryessa BART Station.[48]

3.8.2 Impact Discussion

For the purpose of determining the significance of the project's impact on greenhouse gas emissions, would the project:

a) Generate GHG emissions, either directly or indirectly, that may have a significant impact on the environment?
b) Conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing the emissions of GHGs?

3.8.2.1 *Project Impacts*

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

Construction

The proposed development would result in a temporary increase in GHG emissions associated with construction activities including operation of construction equipment and emissions from construction workers' personal vehicles traveling to and from the project site. Construction related GHG emissions vary depending on the level of activity, length of the construction period, specific

[48] City of San José. "Regulated and Special Projects." Accessed September 9, 2021. https://www.sanjoseca.gov/your-government/departments/planning-building-code-enforcement/planning-division/environmental-planning/stormwater-management/regulated-and-special-projects

construction operations, types of equipment, and number of personnel. Neither the City of San José nor BAAQMD have established a quantitative threshold or standard for determining whether a project's construction related GHG emissions are significant. Based on CalEEMod calculations, the project would emit a total of approximately 416 metric tons/year of CO_2e. Because construction would be temporary (approximately 44 months) and would not result in a permanent increase in emissions, the project would not interfere with the implementation of AB 32 in 2020 or SB 32 in 2030.

Operation

Per CEQA Guidelines Section 15064(b), the determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the Lead Agency and must be based to the extent possible on scientific and factual data. The project would achieve LEED Silver Certification (for the commercial component) and GreenPoint rating score of at least 50 points (for the project's residential component). Since the project is consistent with the General Plan land use designation for the site, compliance with the mandatory measures and voluntary measures required by the City, and compliance with the 2030 GHGRS, the project would result in a less than significant GHG emissions impact.

Construction of the proposed project would be temporary and would result in a less than significant impact related to the implementation of AB 32 and SB 32. During operations of the proposed project, the project would comply with mandatory and voluntary measures required by the City and would comply with the 2030 GHGRS, therefore, the project would result in a less than significant GHG emissions impact. **(Less than Significant Impact)**

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

Consistency with 2030 San José Greenhouse Gas Reduction Strategy

As discussed in Section 3.4.1.2, Regulatory Framework, the project would be subject to the City's recently approved 2030 GHGRS

The 2030 GHGRS identifies required General Plan policies and strategies to be implemented by development projects in the areas of green building/energy use, multimodal transportation, water conservation, and solid waste reduction. Compliance with these mandatory policies and strategies and any voluntary measures proposed by the project ensure a project's consistency with the GHGRS. The proposed project is consistent with the General Plan and Land Use/Transportation Diagram designation of Urban Village. The proposed project would be required to comply with Policy 6-32, the City's Green Building Ordinance, and CBC requirements as well as General Plan GHGRS policies, and would attain a LEED silver certification. The proposed project incorporates applicable mandatory measures of the GHGRS (refer to Appendix F), including connections to existing bicycle and pedestrian facilities, and planting and retention of trees to reduce energy use. The proposed project would be required to comply with the Reach Code which aligns with Climate Smart San José goals. In addition, all new development (including the proposed project) would be required to be designed for energy efficiency and conservation per Climate Smart San José. The project would

comply with Building Energy Efficiency Standards (Title 24) and the City's Green Building Ordinance and the most recent CALGreen requirements.

The proposed project would be consistent with applicable GHGRS strategy and consistency options intended to reduce GHG emissions.

Climate Smart San José

Climate Smart San José, adopted by the City, is a communitywide initiative intended to create a more sustainable, connected, and economically inclusive City. Climate Smart San José is aligned with General Plan growth patterns and General Plan policies which prioritize automobile-alternative transportation modes, encourage denser development, and ensure energy-efficient features are included in new buildings.

As discussed in Section 3.7, Energy, the project would be designed and constructed in compliance with the City of San José Council Policy 6-32 and the City's Green Building Ordinance. In addition, Action MS-2.11 of the General Plan requires new development to incorporate energy conservation and efficiency through site design, architectural design, and construction techniques. The proposed project is in a Planned Growth Area of the City which is well-served by transit. For these reasons, the project is consistent with the City's climate action goals as set forth in Climate Smart San José.

The proposed project would be consistent with the City's climate action goals in Climate Smart San José and would be consistent with the applicable GHGRS strategy and consistency options intended to reduce GHG emissions. Therefore, the proposed project would not conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing the emissions of GHGs. **(Less than Significant Impact)**

3.8.2.2 *Cumulative Impacts*

Would the project result in a cumulatively considerable contribution to a significant cumulative GHG emissions impact?

The discussion above addresses the project's contribution to the cumulative GHG emissions impacts on a regional, statewide, and global basis. Cumulatively considerable GHG emission impacts from cumulative development in San José would be avoided by implementing measures included in the City's GHGRS and Climate Smart San José. Since the project would implement these measures, the project would not result in a cumulatively considerable contribution to a significant cumulative GHG impact. **(Less than Significant Cumulative Impact)**

3.9 HAZARDS AND HAZARDOUS MATERIALS

The following discussion is based, in part, on a Phase I Environmental Site Assessment and Summary of Mitigation Measures completed by Cornerstone Earth Group on December 10, 2018. A copy of these reports are included in Appendix G of this EIR.

3.9.1 Environmental Setting

3.9.1.1 *Regulatory Framework*

Overview

The storage, use, generation, transport, and disposal of hazardous materials and waste are highly regulated under federal and state laws. In California, the EPA has granted most enforcement authority over federal hazardous materials regulations to the California Environmental Protection Agency (CalEPA). In turn, local agencies have been granted responsibility for implementation and enforcement of many hazardous materials regulations under the Certified Unified Program Agency (CUPA) program.

Worker health and safety and public safety are key issues when dealing with hazardous materials. Proper handling and disposal of hazardous material is vital if it is disturbed during project construction. Cal/OSHA enforces state worker health and safety regulations related to construction activities. Regulations include exposure limits, requirements for protective clothing, and training requirements to prevent exposure to hazardous materials. Cal/OSHA also enforces occupational health and safety regulations specific to lead and asbestos investigations and abatement.

Federal and State

Federal Aviation Regulations Part 77

Federal Aviation Regulations, Part 77 Objects Affecting Navigable Airspace (FAR Part 77) sets forth standards and review requirements for protecting the airspace for safe aircraft operation, particularly by restricting the height of potential structures and minimizing other potential hazards (such as reflective surfaces, flashing lights, and electronic interference) to aircraft in flight. These regulations require that the Federal Aviation Administration (FAA) be notified of certain proposed construction projects located within an extended zone defined by an imaginary slope radiating outward for several miles from an airport's runways, or which would otherwise stand at least 200 feet in height above the ground.

Comprehensive Environmental Response, Compensation, and Liability Act

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), commonly known as Superfund, was enacted by Congress on December 11, 1980. This law created a tax on the chemical and petroleum industries and provided broad federal authority to respond directly to releases or threatened releases of hazardous substances that may endanger public health or the environment. Over five years, $1.6 billion was collected and the tax went to a trust fund for cleaning

up abandoned or uncontrolled hazardous waste sites. CERCLA accomplished the following objectives:

- Established prohibitions and requirements concerning closed and abandoned hazardous waste sites;
- Provided for liability of persons responsible for releases of hazardous waste at these sites; and
- Established a trust fund to provide for cleanup when no responsible party could be identified.

The law authorizes two kinds of response actions:

- Short-term removals, where actions may be taken to address releases or threatened releases requiring prompt response; and
- Long-term remedial response actions that permanently and significantly reduce the dangers associated with releases or threats of releases of hazardous substances that are serious, but not immediately life-threatening. These actions can be completed only at sites listed on the EPA's National Priorities List.

CERCLA also enabled the revision of the National Contingency Plan (NCP). The NCP provided the guidelines and procedures needed to respond to releases and threatened releases of hazardous substances, pollutants, or contaminants. The NCP also established the National Priorities List. CERCLA was amended by the Superfund Amendments and Reauthorization Act on October 17, 1986.[49]

Resource Conservation and Recovery Act

The Resource Conservation and Recovery Act (RCRA), enacted in 1976, is the principal federal law in the United States governing the disposal of solid waste and hazardous waste. RCRA gives the EPA the authority to control hazardous waste from the "cradle to the grave." This includes the generation, transportation, treatment, storage, and disposal of hazardous waste. RCRA also sets forth a framework for the management of non-hazardous solid wastes.

The Federal Hazardous and Solid Waste Amendments (HSWA) are the 1984 amendments to RCRA that focused on waste minimization, phasing out land disposal of hazardous waste, and corrective action for releases. Some of the other mandates of this law include increased enforcement authority for the EPA, more stringent hazardous waste management standards, and a comprehensive underground storage tank program.[50]

[49] United States Environmental Protection Agency. "Superfund: CERCLA Overview." Accessed August 26, 2021. https://www.epa.gov/superfund/superfund-cercla-overview.
[50] United States Environmental Protection Agency. "Summary of the Resource Conservation and Recovery Act." Accessed August 26, 2021. https://www.epa.gov/laws-regulations/summary-resource-conservation-and-recovery-act.

Government Code Section 65962.5

Section 65962.5 of the Government Code requires CalEPA to develop and update a list of hazardous waste and substances sites, known as the Cortese List. The Cortese List is used by state and local agencies and developers to comply with CEQA requirements. The Cortese List includes hazardous substance release sites identified by the Department of Toxic Substances Control (DTSC) and State Water Resources Control Board (SWRCB).[51]

Toxic Substances Control Act

The Toxic Substances Control Act (TSCA) of 1976 provides the EPA with authority to require reporting, record-keeping and testing requirements, and restrictions relating to chemical substances and/or mixtures. Certain substances are generally excluded from TSCA, including, among others, food, drugs, cosmetics, and pesticides. The TSCA addresses the production, importation, use, and disposal of specific chemicals including polychlorinated biphenyls (PCBs), asbestos, radon, and lead-based paint.

California Accidental Release Prevention Program

The California Accidental Release Prevention (CalARP) Program aims to prevent accidental releases of regulated hazardous materials that represent a potential hazard beyond the boundaries of a property. Facilities that are required to participate in the CalARP Program use or store specified quantities of toxic and flammable substances (hazardous materials) that can have off-site consequences if accidentally released. The Santa Clara County Department of Environmental Health reviews CalARP risk management plans as the CUPA.

Asbestos-Containing Materials

Friable asbestos is any asbestos-containing material (ACM) that, when dry, can easily be crumbled or pulverized to a powder by hand, allowing the asbestos particles to become airborne. Common examples of products that have been found to contain friable asbestos include acoustical ceilings, plaster, wallboard, and thermal insulation for water heaters and pipes. Common examples of non-friable ACMs are asphalt roofing shingles, vinyl floor tiles, and transite siding made with cement. The EPA phased out use of friable asbestos products between 1973 and 1978. National Emission Standards for Hazardous Air Pollutants (NESHAP) guidelines require that potentially friable ACMs be removed prior to building demolition or remodeling that may disturb the ACMs.

CCR Title 8, Section 1532.1

The United States Consumer Product Safety Commission banned the use of lead-based paint in 1978. Removal of older structures with lead-based paint is subject to requirements outlined by the Cal/OSHA Lead in Construction Standard, CCR Title 8, Section 1532.1 during demolition activities. Requirements include employee training, employee air monitoring, and dust control. If lead-based paint is peeling, flaking, or blistered, it is required to be removed prior to demolition.

[51] California Environmental Protection Agency. "Cortese List Data Resources." Accessed September 1, 2021. https://calepa.ca.gov/sitecleanup/corteselist/.

Medical Waste Management Act

The Medical Waste Management Act, part of the California Health and Safety Code 117600-118360, regulates the generation, handling, storage, treatment and disposal of medical waste. The Medical Waste Management Program ensures protection of public health and safety and the environment, through the implementation and enforcement of regulations that apply to the handling, storage, treatment, and disposal of biohazardous waste. California Department of Public Health is the local enforcement agency for the Medical Waste Management Act.

Regional and Local

Envision San José 2040 General Plan

Various policies in the Envision San José 2040 General Plan have been adopted for the purpose of reducing or avoiding impacts related to hazards and hazardous materials, as listed below.

General Plan Policies - Hazards and Hazardous Materials	
Environmental Contamination	
Policy EC-6.6	Address through environmental review for all proposals for new residential, park and recreation, school, day care, hospital, church, or other uses that would place a sensitive population in close proximity to sites on which hazardous materials are or are likely to be located, the likelihood of an accidental release, the risks posed to human health and for sensitive populations, and mitigation measures, if needed, to protect human health.
Policy EC-7.1	For development and redevelopment projects, require evaluation of the proposed site's historical and present uses to determine if any potential environmental conditions exist that could adversely impact the community or environment.
Policy EC-7.2	Identify existing soil, soil vapor, groundwater and indoor air contamination and mitigation for identified human health and environmental hazards to future users and provide as part of the environmental review process for all development and redevelopment projects. Mitigation measures for soil, soil vapor and groundwater contamination shall be designed to avoid adverse human health or environmental risk, in conformance with regional, state, and federal laws, regulations, guidelines and standards.
Policy EC-7.4	On redevelopment sites, determine the presence of hazardous building materials during the environmental review process or prior to project approval. Mitigation and remediation of hazardous building materials, such as lead-paint and asbestos-containing materials, shall be implemented in accordance with state and federal laws and regulations.
Policy EC-7.5	On development and redevelopment sites, require all sources of imported fill to have adequate documentation that it is clean and free of contamination and/or acceptable for the proposed land use considering appropriate environmental screening levels for contaminants. Disposal of groundwater from excavations on construction sites shall comply with local, regional, and state requirements.

General Plan Policies - Hazards and Hazardous Materials	
Policy EC-7.8	Where an environmental review process identifies the presence of hazardous materials on a proposed development site, the City will ensure that feasible mitigation measures that will satisfactorily reduce impacts to human health and safety and to the environment are required of or incorporated into the projects. This applies to hazardous materials found in the soil, groundwater, soil vapor, or in existing structures.
Policy EC-7.9	Ensure coordination with the County of Santa Clara Department of Environmental Health, Regional Water Quality Control Board, Department of Toxic Substances Control, or other applicable regulatory agencies, as appropriate, on projects with contaminated soil and/or groundwater or where historical or active regulatory oversight exists.
Policy EC-7.11	Require sampling for residual agricultural chemicals, based on the history of land use, on sites to be used for any new development or redevelopment to account for worker and community safety during construction. Mitigation to meet appropriate end use such as residential or commercial/industrial shall be provided.
Safe Airport	
Policy TR-14.2	Regulate development in the vicinity of airports in accordance with Federal Aviation Administration regulations to maintain the airspace required for the safe operation of these facilities and avoid potential hazards to navigation.
Policy TR-14.3	For development in the Airport Influence Area overlays, ensure that land uses and development are consistent with the height, safety and noise policies identified in the Santa Clara County Airport Land Use Commission comprehensive land use plans for Mineta San José International and Reid Hillview airports, or find, by a two-thirds vote of the governing body, that the proposed action is consistent with the purposes of Article 3.5 of Chapter 4 of the State Aeronautics Act, Public Utilities Code Section 21670 et seq.
Community Health, Safety, and Wellness	
Policy CD-5.8	Comply with applicable Federal Aviation Administration regulations identifying maximum heights for obstructions to promote air safety.

3.9.1.2 *Existing Conditions*

Site History and Uses

The project site was occupied by orchards, row crops, and a residence with several associated outbuildings from 1930s to the 1960s. A residence and several associated outbuildings were present on the southeast corner of the project since the 1930s and were removed during the 1990s. From the 1970s to the 1990s, the site was occupied by the two existing industrial buildings (constructed in 1973), the existing man-made pond, row crops to the north of the pond, and the residences outbuildings. By 1980, the site was occupied by the two existing industrial buildings and a small structure. Since the 2000s, following removal of the residence and outbuildings, various businesses have occupied a portion of the site and since 2016, the existing conditions on the site have remained

constant. The project site currently contains two industrial buildings and ancillary structures (including a small modular office structure), an associated parking lot, a vegetated man-made pond, and trees (refer to Figure 2.2-3). A towing company occupies the northern portion of the site for storage of vehicles (e.g., trucks). Based on information presented by Valley Water in leaking underground storage tank (LUST) case closure documents, an inactive water supply well is present on the southern portion of the project site (as referred to in the description of the Facchino Freight Lines LUST case in Table 3.9-1).

An oil-water separator is present on-site on the north side of the industrial building occupied by AT&T (which is the northernmost building on-site). The oil-water separator was cleanout out and filled with concrete during the late 1990s. Hazardous waste lab packs, aerosol cans, and universal wastes including batteries and electronic devices are generated at the site. New oil is stored and waste oil, used filters, and waste antifreeze are also generated at the site.

Hazardous Materials Database Listings

A review of federal, state, and local regulatory agency databases provided by Environmental Data Resources (EDR) was completed as a part of the Phase I ESA to evaluate the likelihood of contamination incidents at and near the project site. Table 3.9-1 below shows the regulatory databases the project site is listed on which indicate uses that previously or potentially could contaminate the site and/or surrounding areas.

Table 3.9-1: On-site Environmental Database Listings

Facility	Environmental Databases	Environmental Condition
Facchino Freight Lines	Historical Underground Storage Tank (UST) GeoTracker	Four USTs installed at the site in 1974 that contained gasoline, diesel, engine oil and waste oil, were removed from the project site in 1987. Soil and groundwater were reported to be impacted by petroleum hydrocarbons. As a result, Facchino Freight Lines was identified as a leaking underground storage tank (LUST) on the Historical UST. In 1994, impacted soil was excavated and groundwater within the excavation was treated by aeration and bioremediation. The Santa Clara Valley Water District (Valley Water) stated that over-excavation was effective in removing the majority of affected soil and beneficial uses of water are not threatened. Valley Water issued a case closure letter in December 1996.* Valley Water noted that verification soil samples indicated moderate levels of total petroleum hydrocarbons as diesel (TPHd) and total petroleum hydrocarbons as oil (TPHo) remained. The site is listed on the State Water Resources Control Board Geotracker database pursuant Government Code Section 65962.5 as a closed LUST case.** The inactive water supply well on the southern portion of the project site is not considered an environmental concern.

Table 3.9-1: On-site Environmental Database Listings		
Facility	**Environmental Databases**	**Environmental Condition**
Transport International Pool	HAZNET	The facility was listed on the HAZNET database, which contains data extracted from the copies of the hazardous waste manifests received year by the Department of Toxic Substances Control. Listed wastes disposed between 1998 and 2006 were categorized as unspecific aqueous solution, waste oil, and mixed oil.
White GMC of San José	HAZNET	The facility was listed on the HAZNET and noted to have disposed photochemical/photo processing waste in 2006.
American Metal and Iron	HAZNET	The facility was noted to have disposed waste oil and mixed oil, unspecified organic liquid mixtures, organic and inorganic soils, and off-specification, aged or surplus organics in 2008.
Santa Clara Valley Transportation Authority (VTA)	HAZNET	The HAZNET database indicated VTA disposed unidentified wastes from the site in 2013.
Magnolia Landscape, Inc.	HAZNET California Environmental Reporting System (CERS)	The facility was listed on the HAZNET database for disposal of waste oil, mixed oil, and waste oil in 2009 and 2013. The facility was also listed as being subject to the CERS, a statewide web-based system that facilitates electronically collecting and reporting various hazardous materials., hazardous waste and compliance/ enforcement data as mandated by the California Health and Safety Code and other legislation. Reported violations in 2014 were noted to include failure to properly handle, manage, label, and recycle used oil., fuel filters, and other materials, along with other administrative recordkeeping violations.
AT&T	CERS	Based on an inspection completed at the site in 2018, the facility manifests hazardous waste lab packs (including surplus epoxy resin), non-empty aerosol cans, compressed gas cylinders, and generates universal wastes including batteries and electronic devices. No violations were reported.

* State Water Resources Control Board. *GeoTracker: Facchino Freight Lines*. Accessed September 5, 2021. https://geotracker.waterboards.ca.gov/profile_report?global_id=T0608500595.

** California Environmental Protection Agency. Cortese List Data Resources. Accessed September 5, 2021. https://calepa.ca.gov/sitecleanup/corteselist/.

Soil and Groundwater Investigations

Given the historical agricultural uses at the site, shallow soil samples were analyzed for organochlorine pesticides at the northern section of the site in 2008, 2011, and 2018. Several samples showed that the identified pesticide (primarily dieldrin and chlordane) concentrations exceeded their

respective U.S. Environmental Protection Agency Regional Screening Levels (RSLs) for residential uses. Two soil samples reflected DDT concentrations exceeded the total threshold limit concentration (TTLC), which is the level at which a solid waste is considered hazardous and is pertinent when evaluating disposal options for excess soil that may be disposed from the site. One soil sample showed PCB concentrations exceeding residential screening levels.

Given the potential presence of total petroleum hydrocarbons (TPH) from the former USTs and the site is used for truck parking and storage, soil and groundwater samples were also analyzed for TPH as gasoline, diesel, and oil. In 2008, soil samples were also collected and analyzed for TPH, organochlorine pesticides, and metals at the on-site man-made pond. Based on the sample results, TPHs, organochlorine pesticides, and metals were below their respective regulatory screening levels and natural background levels.

Soil and groundwater samples were also analyzed for TPH in 2011 and 2018. However, none of these samples were detected above State Water Resources Control Board environmental screening levels (ESLs). Therefore, TPH is not considered an environmental concern at the site.

Asbestos-Containing Materials, Termite Control Pesticides, and Lead-Based Paint

The Consumer Product Safety Commission banned the use of lead as an additive in paint in 1978. Based on the age of the buildings on-site (constructed in 1973), lead-based paint may be present. Soil adjacent to structures that are based with lead-containing paint can become impacted with lead as a result of the weathering and/or peeling of painted surfaces. Soil near wood framed structures can also be impacted by pesticides historically used to control termites. Lead and/or pesticides are often identified in soil near old residences and associated outbuildings, such as those historically located on the southeast portion of the project site. Additionally, the ages of the buildings on-site indicate the potential presence of asbestos.

Off-site Properties and Uses

Historical uses of the site's surrounding area included mainly of agricultural land (e.g., orchards, row crops, and greenhouses) with widely spaced residences. The Southern Pacific Railroad right-of-way (recently utilized by BART) has been located adjacent and northeast of the site since at least the 1930s. A feed lot and meat packing plant were historically present on the property to the south of the site (across Berryessa Road), which was converted for use into the San José Flea Market by the early 1960s. By the mid-1970s, the property southwest of the site was used for Flea Market parking; since 2016, this property and other properties to the west have been developed with mixed-use multi-family residences with retail below. Residential developments have also been located to north of the since the early 1990s.

Based on a review of regulatory databases for properties listed within one mile of the site, no nearby off-site spill incidents were reported that were likely to significantly affect soil, soil vapor, or groundwater beneath the site. This assessment was based on interpretation of types of incidents, the locations of the reported incidents in relation to the site, and groundwater flow direction.

3.9.2 Impact Discussion

For the purpose of determining the significance of the project's impact on hazards and hazardous materials, would the project:

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

3.9.2.1 *Project Impacts*

a) Would the project create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?

Construction of the proposed project would require export of up to 165,000 cubic yards of soil that may be contaminated from historical activities and have the potential to create hazard during transportation. Implementation of mitigation measures MM HAZ-1.1 through MM HAZ-1.3 and MM HAZ-2.1 (discussed under checklist question b) below), the project would not result in a significant hazard from the transport, use, or disposal of hazardous materials.

The project is proposed to be used for recreation, residential, medical office, and retail purposes. Operation of the proposed project could include the use and storage of small quantities of chemicals for janitorial cleaning and landscape maintenance. The use of these materials would be in regulated quantities and in accordance with the manufacturers' instructions for use, storage, and disposal of such products. All potentially hazardous materials generated from the medical office would be disposed of in compliance with applicable federal, state, and local regulations (as described in Section 3.9.1.1 Regulatory Framework) in accordance with a Hazardous Materials Business Plan, which would be required for the proposed facility. The small quantities of cleaning supplies and maintenance chemicals that would be transported, used, and stored on-site; therefore, the project

would not generate substantial hazardous emissions or accidental chemical releases that would pose a risk to site users or adjacent residential land uses.

Compliance with applicable federal, state, and local regulations and mitigation measures would avoid significant hazards to the public or the environment created by the routine transport, use, or disposal of these substances. **(Less Than Significant Impact with Mitigation Incorporated)**

b) Would the project create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?

Construction

Soil samples from the site were previously collected and analyzed for organochlorine pesticides, due to the site's former agricultural uses, and soil and groundwater samples were analyzed for TPH, due former USTs and the truck parking and storage uses on-site. Based on 2011 and 2018 soil sampling results, the site's soils on the northern section of the site, (where the towing company vehicle storage area and the man-made pond are located) contain organochlorine pesticide and PCB concentrations above regulatory screening levels (which were shown in several samples). Samples for TPHs were collected in soil and groundwater beneath the site; however, based on the results, no samples of TPHs were detected above regulatory screening levels. Since the samples were primarily collected in the northern portion of the site, there is a potential for contaminated soils in other portions of the site. If soils are not properly handled during construction, this could result in the accidental release of contaminated into the environment. The release of these contaminants could be hazardous to construction workers and adjacent residents. Accordingly, the project will implement mitigation measures MM HAZ-1.1 through MM HAZ-1.3 described below. As noted in MM HAZ-1.3, the project will complete soil sampling for the southern portion of the site to determine if elevated pesticide, pesticide-related metals, lead, and TPH are present in soils.

Impact HAZ-1: Residual concentrations of chemicals including organochlorine pesticides and pesticide-related metals (in the southern portion of the site) from prior agricultural use, USTs, and truck parking and storage at the site could expose construction workers, neighboring uses, and the environment to hazardous materials.

Mitigation Measures: The project applicant will implement the following mitigation measures during project construction to reduce impacts to construction workers, neighboring uses, and the environment related to soil and groundwater quality.

MM HAZ-1.1: Prior to the issuance of any demolition or grading permits (whichever occurs first), the project applicant shall enter into an agreement with the Santa Clara County Department of Environmental Health's (SCCDEH's) Site Cleanup Program to provide regulatory oversight. The applicant shall meet with the SCCDEH and perform additional soil and groundwater sampling and testing to adequately define the known and suspected contamination. A Corrective

Action/Risk Management Plan (e.g., Remedial Action Work Plan and/or Soil Management Plan) shall be prepared and submitted to the agency for their approval to demonstrate that cleanup standards shall be met for the development of the site. The Corrective Action/Risk Management plan shall describe measures necessary to protect the health and safety of construction workers and future site occupants and establish appropriate management practices for handling and monitoring impacted soil, soil vapor and groundwater that potentially may be encountered during construction activities. All measures identified in the plan(s) shall be implemented during all phases of construction, as applicable. The Corrective Action/Risk Management Plan shall also describe protocols for profiling of soil planned for off-site disposal. The plan shall be prepared by an environmental professional and submitted to the SCCDEH.

MM HAZ-1.2: Prior to the issuance of any demolition or grading permits (whichever occurs first), a Health and Safety Plan (HASP) shall be prepared to establish health and safety protocols for construction workers at the site. All measures identified in the plan(s) shall be implemented during all phases of construction, as applicable. The HASP shall be prepared by an environmental professional and submitted to the SCCDEH.

MM HAZ-1.3: Prior to the issuance of any demolition or grading permits (whichever occurs first), additional shallow soil sampling shall be completed at the southern portion of the site including areas near the existing industrial buildings and former residence and outbuildings. The site shall be sampled for organochlorine pesticides and associated metals (including lead and arsenic). If elevated concentrations of these contaminants are discovered, the project applicant shall notify the Director of Planning, Building, and Code Enforcement or the Director's Designee and SCCDEH and prepare a remedial action plan in accordance with SCCDEH requirements. The sampling, preparation of the remedial action plan, and remediation shall be completed by an environmental professional, under the oversight of SCCDEH.

With implementation of mitigation measures MM HAZ-1.1 through MM HAZ-1.3 above, the proposed project would not result in significant impacts construction workers, neighboring residents, or the environment due the release of contaminated soil or groundwater.

<u>Removal of Oil-Water Separator</u>

The project proposes to remove the oil-water separator located near the AT&T industrial building. Soil beneath the oil-water separator could contain concentrations of TPHs which could affect construction workers and the environment. Mitigation MM HAZ-2.1 would be implemented to reduce impacts on the construction workers and the environment during construction.

Impact HAZ-2: Project construction could expose construction workers to potential total petroleum hydrocarbons (TPHs) in the soil beneath the oil-water separator.

MM HAZ-2.1: Prior to the issuance of any grading permits, upon removal of the site's oil-water separator soil separator, soil underlying the separator shall be evaluated for the presence of TPH, volatile organic compounds (VOCs), and metals. The confirmation sampling shall be completed by an environmental professional following commonly accepted sampling protocols which shall be coordinated with SCCDEH and the City of San José Environmental Services Department. The sampling data shall be provided to SCCDEH, and approval shall be received prior to issuance of any grading permits. If elevated concentrations of these contaminants are discovered, the project applicant shall notify the Director of Planning, Building, and Code Enforcement or Director's Designee and the SCCDEH and prepare a remedial action plan in accordance with SCCDEH requirements. The sampling, preparation of the remedial action plan, and remediation shall be completed by an environmental professional, under the oversight of SCCDEH.

With implementation of mitigation measure MM HAZ-2.1, the proposed project would not result in significant impacts construction workers, neighboring residents, or the environment due the release of contaminated soil or groundwater resulting from the removal of the oil separator.

Water Supply Well Abandonment/Groundwater Quality

An inactive water supply well is located on the southern section of the site. The project would include the destruction of this well during construction. Abandoned wells can act as a conduit for the vertical migration of groundwater contamination. Also, if groundwater levels rise, an abandoned well can become an artisan well with uncontrolled water flow that can adversely impact neighboring properties. Well destruction would comply with the permitting requirements under the Valley Water's Water Resources Protection Ordinance and Water Ordinance 90-1 and ensure that well destruction would not cause pollution or contamination of groundwater, or otherwise jeopardize the health, safety, or welfare of the people and impacts would be less than significant.

Asbestos-Containing Materials and Lead-Based Paint

Due to the age of the structures on-site, building materials may contain asbestos and/or lead-based paint, which could expose construction workers to toxins and particulates during demolition. The Bay Area Air Quality Management District (BAAQMD) and National Emissions Standards for Hazardous Air Pollutants (NESHAP) guidelines require the removal of potentially friable asbestos-containing materials (ACMs) prior to building demolition or renovation that may disturb the ACM. The following standard permit conditions shall be implemented in order to reduce potential impacts from the presence of ACMs and lead based paint.

Standard Permit Conditions:

Asbestos and Lead-Based Paint

1. In conformance with state and local laws, a visual inspection/pre-demolition survey, and possible sampling, shall be conducted prior to the demolition of on-site building(s) to determine the presence of ACMs and/or LBP.
2. During demolition activities, all building materials containing lead-based paint shall be removed in accordance with Cal/OSHA Lead in Title 8, California Code of Regulations (CCR), Section 1532.1, including employee training, employee air monitoring, and dust control. Any debris or soil containing lead-based paint or coatings shall be disposed of at landfills that meet acceptance criteria for the type of lead being disposed.
3. All potentially friable ACMs shall be removed in accordance with NESHAP guidelines prior to demolition or renovation activities that may disturb ACMs. All demolition activities shall be undertaken in accordance with Cal/OSHA standards contained in Title 8, CCR, Section 1529, to protect workers from asbestos exposure.
4. A registered asbestos abatement contractor shall be retained to remove and dispose of ACMs identified in the asbestos survey performed for the site in accordance with the standards stated above.
5. Materials containing more than one-percent asbestos are also subject to BAAQMD regulations. Removal of materials containing more than one-percent asbestos shall be completed in accordance with BAAQMD requirements and notifications.
6. Based on Cal/OSHA rules and regulations, the following conditions are required to limit impacts to construction workers.
    - Prior to commencement of demolition activities, a building survey, including sampling and testing, shall be completed to identify and quantify building materials containing lead-based paint.
    - During demolition activities, all building materials containing lead-based paint shall be removed in accordance with Cal/OSHA Lead in Construction Standard, Title 8, CCR, Section 1532.1, including employee training, employee air monitoring and dust control.
    - Any debris or soil containing lead-based paint or coatings shall be disposed of at landfills that meet acceptance criteria for the type of waste being disposed.

With implementation of the above standard permit conditions, the project would not result in significant impacts to construction workers, neighboring properties, or the environment due to the release of ACMs or lead-based paint.

Operations

As discussed under checklist question a), the use and storage of small quantities of chemicals for janitorial cleaning and landscape maintenance, maintenance chemicals that would be transported, used, and stored on-site would not result in substantial chemical releases that would pose a risk to site users or adjacent residential land uses. In addition, medical offices would manage wastes in accordance with the Medical Waste Management Act. The project would comply with applicable federal, state, and local handling, storage, and disposal requirements which would avoid significant hazards to the public and environment.

With implementation of the mitigation measures and standard permit conditions listed above, the proposed project would not create a significant hazard through the release of hazardous materials. **(Less than Significant Impact with Mitigation Incorporated)**

c) Would the project emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?

The closest school to the project site is Challenger School - Berryessa Elementary School (located at 711 East Gish Road), which is located approximately one mile west of the site. The project site is not within one-quarter mile of an existing or proposed school. Therefore, the proposed project would not emit hazardous emissions or handle hazardous materials within one-quarter mile of an existing or proposed school. **(Less than Significant Impact)**

d) Would the project be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?

The project site is listed as a closed LUST on the State Water Resources Control Board's GeoTracker pursuant Government Code 65962.5. The four USTs that contained gasoline, diesel, engine oil, and waste oil were removed from the site in 1987. As discussed in Section 3.9.1, the impacted soil was remediated and removed, and Valley Water issued a case closure letter in December 1996. Although residual TPH remained in the soil, implementation of the mitigation measures MM HAZ-1.1 through MM HAZ-1.3, and MM HAZ-2.1 would ensure the proper sampling protocols and handling of soil and groundwater. Therefore, the project would not create a significant hazard to the public or the environment due to its inclusion on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5. **(Less than Significant Impact with Mitigation Incorporated)**

e) If 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, would the project result in a safety hazard or excessive noise for people residing or working in the project area?

The project site is not located within the Norman Y. Mineta San José International Airport Influence Area (AIA) and, therefore, is not subject to the policies in the Comprehensive Land Use Plan. The maximum height of proposed development is 160 feet above the ground surface. Pursuant to FAR Part 77, any proposed structure on the site of a height greater than approximately 95 feet above ground level must be filed with the FAA for airspace safety review, which would take place prior to the City's issuance of a grading permit. The project applicant will file the project with the FAA for airspace safety review to obtain FAA issuance of a determination of no hazard. Issuance of a "determination of no hazard," and applicant compliance with any conditions set forth in such FAA determination, would ensure that the project would not adversely impact air safety. The proposed project would not result in a safety hazard or excessive noise due to airport operations (the site is outside the Comprehensive Land Use Plan airport safety zone and 60 dBA CNEL contour line in the

City's Airport Master Plan EIR[52]). As a result, the project would not result in a safety hazard or excessive noise for people residing or working the project area. **(Less than Significant Impact)**

f) Would the project impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?

During construction activity, the project would not obstruct public streets or otherwise interfere with emergency operations as all construction activity would be staged onsite. Built structures proposed by the project would be constructed in accordance with current building and fire codes to ensure structural stability and safety in the event of a seismic or seismic-related hazard. In addition, SJFD would review the site development plans to ensure fire protection design features are incorporated and adequate emergency access is provided. For these reasons, the proposed project would not impair implementation of or physically interfere with the City's San José Emergency Operations and Evacuation Plans. **(No Impact)**

g) Would the project expose people or structures, either directly or indirectly, to a significant risk of loss, injury, or death involving wildland fires?

The project site is not located within a Fire Hazard Severity Zone as designated by the State of California Department of Forestry and Fire Protection.[53] **(No Impact)**

3.9.2.2 *Cumulative Impacts*

Would the project result in a cumulatively considerable contribution to a significant cumulative hazards and hazardous materials impact?

The geographic area for cumulative hazards and hazardous materials impacts is the project site and adjacent parcels. Similar to the proposed project, the approved residential and commercial development (Flea Market) site located approximately 200 feet south of the project site, across Berryessa Road, has residual contamination from former USTs and former agricultural uses. Both projects will implement mitigation measures that require preparation of a Corrective Risk Management Plan, a HASP, as well as confirmation sampling of TPHs, pesticides, and pesticide related metals under the oversight of SCCDEH.

Further, redevelopment of both sites would require demolition of existing buildings that may contain lead-based paint and/or ACMs. Demolition of these structures could expose construction workers, neighboring properties, and the environment to hazardous levels of lead and/or ACMs. Both projects would implement standard permit conditions that would require a pre-demolition survey and sampling to determine the presence of ACMs and lead-based paint and protocols for the removal and

[52] City of San José. *Amendment to Norman Y. Mineta San José International Airport Master Plan Integrated Final EIR.* April 2020. P. 279.
[53] CALFire. *Map of Very High Fire Hazard Severity Zones.* Accessed February 8, 2022. https://osfm.fire.ca.gov/media/5935/san_jose.pdf

disposal of these materials. Both projects would require the removal of wells, which would be abandoned in accordance with Valley Water's standards.

With the implementation of the above-referenced mitigation measures and standard conditions for both projects, the cumulative projects would not result in significant cumulative hazardous materials impacts to the pubic or environment.

The approved residential and commercial (Flea Market) project and proposed project would be reviewed by the SJFD, and therefore, would not interfere with an emergency evacuation plan. Both projects would contain buildings with heights (above 95 feet above the ground surface) that require the project applicant to file the project with FAA for airspace review. Both projects will comply with FAA requirements and, therefore, would not result in a safety hazard due to airport operations.

For these reasons, the cumulative projects would not result in significant cumulative hazards and hazardous materials impacts. **(Less than Significant Cumulative Impact with Mitigation Incorporated)**

3.10 HYDROLOGY AND WATER QUALITY

3.10.1 Environmental Setting

3.10.1.1 *Regulatory Framework*

Federal and State

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

National Flood Insurance Program

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

Statewide Construction General Permit

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

Regional and Local

San Francisco Bay Basin Plan

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

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

Municipal Regional Permit Provision C.3.

The San Francisco Bay RWQCB issued a Municipal Regional Permit (MRP) to regulate stormwater discharges from municipalities and local agencies (co-permittees) in Alameda, Contra Costa, San Mateo, and Santa Clara Counties, and the cities of Fairfield, Suisun City, and Vallejo.[54] Under Provision C.3 of the MRP, new and redevelopment projects that create or replace 10,000 square feet or more of impervious surface area are required to implement site design, source control, and Low Impact Development (LID)-based stormwater treatment controls to treat post-construction stormwater runoff. LID-based treatment controls are intended to maintain or restore the site's natural hydrologic functions, maximizing opportunities for infiltration and evapotranspiration, and using stormwater as a resource (e.g., rainwater harvesting for non-potable uses). The MRP also requires that stormwater treatment measures are properly installed, operated, and maintained.

In addition to water quality controls, the MRP requires new development and redevelopment projects that create or replace one acre or more of impervious surface to manage development-related increases in peak runoff flow, volume, and duration, where such hydromodification is likely to cause increased erosion, silt pollutant generation, or other impacts to local rivers, streams, and creeks. Projects may be deemed exempt from these requirements if they do not meet the size threshold, drain into tidally influenced areas or directly into the Bay, or drain into hardened channels, or if they are infill projects in subwatersheds or catchment areas that are greater than or equal to 65 percent impervious.

Municipal Regional Permit Provision C.12.f

Provision C.12.f of the MRP requires co-permittee agencies to implement a control program for polychlorinated biphenyls (PCBs) that reduces PCB loads by a specified amount during the term of the permit, thereby making substantial progress toward achieving the urban runoff PCBs wasteload allocation in the Basin Plan by March 2030.[55] Programs must include focused implementation of PCB control measures, such as source control, treatment control, and pollution prevention strategies. Municipalities throughout the Bay Area are updating their demolition permit processes to incorporate the management of PCBs in demolition building materials to ensure PCBs are not discharged to storm drains during demolition. As of July 1, 2019, buildings constructed between 1955 and 1978 that are proposed for demolition must be screened for the presence of PCBs prior to the issuance of a demolition permit.

Water Resources Protection Ordinance and District Well Ordinance 90-1

Valley Water operates as the flood control agency for Santa Clara County. Their stewardship also includes creek restoration, pollution prevention efforts, and groundwater recharge. Permits for well construction and destruction work, most exploratory boring for groundwater exploration, and projects

[54] MRP Number CAS612008
[55] San Francisco Bay Regional Water Quality Control Board. *Municipal Regional Stormwater Permit, Provision C.12.* November 19, 2015.

within Valley Water property or easements are required under Valley Water's Water Resources Protection Ordinance and District Well Ordinance.

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

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

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

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

Floodplain Ordinance – Municipal Code 17.08

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

Envision San José 2040 General Plan

Various policies in the Envision San José 2040 General Plan have been adopted for the purpose of reducing or avoiding impacts related to hydrology and water quality, as listed below.

General Plan Policies - Hydrology and Water Quality	
Flooding and Stormwater Runoff	
Policy EC-5.1	The City shall require evaluation of flood hazards prior to approval of development projects within a Federal Emergency Management Agency designated floodplain. Review new development and substantial improvements to existing structures to ensure it is designed to provide protection from flooding with a one percent annual chance of occurrence, commonly referred to as the "100-year" flood or whatever designated benchmark FEMA may adopt in the future. New development should also provide protection for less frequent flood events when required by the State.

General Plan Policies - Hydrology and Water Quality	
Policy EC-5.3	Preserve designated floodway areas for non-urban uses.
Policy EC-5.7	Allow new urban development only when mitigation measures are incorporated into the project design to ensure that new urban runoff does not increase flood risks elsewhere.
Stormwater	
Policy ER-8.1	Manage stormwater runoff in compliance with the City's Post-Construction Urban Runoff (6-29) and Hydromodification Management (8-14) Policies.
Policy ER-8.3	Ensure that private development in San José includes adequate measures to treat stormwater runoff.
Policy ER-8.4	Assess the potential for surface water and groundwater contamination and require appropriate preventative measures when new development is proposed in areas where storm runoff will be directed into creeks upstream from groundwater recharge facilities.
Policy ER-8.5	Ensure that all development projects in San José maximize opportunities to filter, infiltrate, store and reuse or evaporate stormwater runoff onsite.
Water	
Policy ER-9.5	Protect groundwater recharge areas, particularly creeks and riparian corridors.
Water Conservation and Quality	
Policy MS-3.4	Promote the use of green roofs (i.e., roofs with vegetated cover), landscape-based treatment measures, pervious materials for hardscape, and other stormwater management practices to reduce water pollution.
Policy MS-3.5	Minimize area dedicated to surface parking to reduce rainwater that comes into contact with pollutants.
Water Supply, Sanitary Sewer and Storm Drainage	
Policy IN-3.7	Design new projects to minimize potential damage due to storm waters and flooding to the site and other properties.

Berryessa BART Urban Village Plan

The following policies within the Berryessa BART Urban Village Plan pertain to the purposes of reducing or avoiding impacts related to hydrology and water quality.

Urban Village Plan Policies – Hydrology and Water Quality	
Open Space and Placemaking	
Policy OS-4.4	Explore the integration of green stormwater infrastructure and flood management solutions into passive recreation opportunities.

Urban Village Plan Policies – Hydrology and Water Quality	
Ecosystem Protection and Community Resilience	
Policy SU-11.1	Manage stormwater runoff in compliance with Provision C.3 of the Municipal Regional Stormwater Permit and the City's Post-Construction Urban Runoff (6-29) and Hydromodification Management (8-14) Policies.
Policy SU-11.2	All private development shall strive to capture, treat, or reuse 100% of stormwater runoff on-site using Low Impact Development (LID) principles and Green Stormwater Infrastructure (GSI).
Policy SU-11.4	In-lieu of achieving 100% on-site stormwater management, stormwater should be treated at the nearest centralized/regional stormwater facility outside the boundaries of the Urban Village, if feasible and permitted by applicable regulatory resource agencies.
Policy SU-11.6	Reduce impervious surfaces throughout the Urban Village where feasible through site design techniques, such as pervious pavement, green roofs, and landscaping.
Policy SU-11.7	Encourage the use of water permeable paving surfaces in paved areas (i.e., pedestrian, bicycle, vehicle (parking) areas, etc.) to increase natural percolation and on-site drainage of stormwater.
Policy SU-11.8	Promote the use of LID and GSI elements for individual developments to slow run-off speeds and increase filtration at the source, including green roofs, rain gardens, bioretention areas, flow-through planter boxes, storm-water tree filters with bioretention soils, and pervious pavement roadside parking.
Policy SU-12.1	Identify flooding risks from major storm and flooding events and design ground-floor uses to address the potential risk of property damage.
Policy SU-12.5	Private and public streets shall be cleared of debris regularly to maximize stormwater runoff infrastructure.

3.10.1.2 *Existing Conditions*

Coyote Watershed

The project site is located within the Coyote watershed, which is in the northeast part of Santa Clara County near the southern end of the San Francisco Bay.[56] The watershed covers approximately 320 square miles and originates in the Mount Diablo Range. The two largest tributaries/subwatersheds in the Coyote Creek Watershed are Upper Penitencia Creek and Lower Silver-Thompson Creek. The project site lies within the Upper Penitencia Creek subwatershed.

Upper Penitencia Creek Subwatershed

Upper Penitencia Creek is a tributary of Coyote Creek. Upper Penitencia Creek is located in the northeast part of Santa Clara County near the southern end of the San Francisco Bay. Upper

[56] City of San José. San Jose Watersheds. Accessed September 11, 2021. 636618313753300000 (sanjoseca.gov).

Penitencia Creek joins Coyote Creek at about 10 miles from the San Francisco Bay. The total area of the Upper Penitencia Creek subwatershed is about 24 square miles.[57]

Elevations in the Upper Penitencia Creek watershed range from nearly 3,000 feet above msl in the upper watershed, to 280 feet msl at Dorel Drive near the base of the mountains, to 80 feet msl at the junction of Upper Penitencia Creek and Coyote Creek. The upper watershed, upstream of Dorel Drive, occupies about 21 square miles and includes Upper Penitencia Creek and its principal tributary, Arroyo Aguague.

The area below Dorel Drive contrasts sharply with the upper watershed. The creek emerges from the hills at the top of an alluvial fan that merges with other fans to form the plains that border the San Francisco Bay. Most of the lower watershed was once in agricultural uses, particularly orchards, truck drops and cut flowers. This has given way almost entirely to urban uses. Undeveloped land is now limited to a few scattered parcels still used for agriculture, and the corridor along portions of Upper Penitencia Creek.

Flow in Upper Penitencia Creek is classified as intermittent, which means that the creek is normally dry or nearly dry during the summer months. Low flows are partially regulated by Cherry Flat Reservoir, a 500-acre-foot reservoir located about five miles upstream of Dorel Drive.

Groundwater

The project site is located in the Santa Clara Plain subbasin, which covers 280 square miles extending from the southern San Francisco Bay to the Coyote Narrows near Metcalf Road.[58] Previous studies completed for the project determined that groundwater was likely to be present at depths of five to fifteen feet below the ground surface (bgs).[59] Groundwater levels at the site may fluctuate with time due to seasonal conditions, rainfall, and irrigation practices.

Flood Conditions

Based on the FEMA flood maps, a portion of the southern part of the project site is in Flood Zone X, while the majority of the site is in Flood Zone D.[60] Flood Zone X is defined as an area of minimal flood hazard and Flood Zone D indicates an undetermined flood hazard.

Existing Drainage Conditions

The project area is served by underground storm drainage systems which discharge to a detention basin and biotreatment cell between Coyote Creek and Mercado Way. The existing uses include

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[57] Schaaf & Wheeler. *The San Jose Flea Market Mixed Use Development: Flooding and Drainage Evaluation Updated*. March 24, 2020.
[58] Valley Water. 2016 Groundwater Management Plan. Accessed September 11, 2021. https://www.valleywater.org/your-water/where-your-water-comes/groundwater.
[59] Cornerstone Earth Group. *Phase I Environmental Site Assessment: 1651, 1655 and 12161 Berryessa Road*. Section 5: Physical Setting. December 10, 2018.
[60] Federal Emergency Management Agency (FEMA). FEMA's National Flood Hazard Layer (NFHL) Viewer. Accessed August 5, 2021. Available at: https://hazards-fema.maps.arcgis.com/apps/webappviewer/index.html?id=8b0adb51996444d4879338b5529aa9cd

industrial buildings, a paved surface parking lot, and a man-made pond. The existing site is estimated to be approximately 38 percent impervious pavement.

3.10.2 Impact Discussion

For the purpose of determining the significance of the project's impact on hydrology and water quality, would the project:

a) Violate any water quality standards or waste discharge requirements or otherwise substantially degrade surface or ground water quality?
b) Substantially decrease groundwater supplies or interfere substantially with groundwater recharge such that the project may impede sustainable groundwater management of the basin?
c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river or through the addition of impervious surfaces, in a manner which would:
    - result in substantial erosion or siltation on- or off-site;
    - substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site;
    - create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff; or
    - impede or redirect flood flows?
d) In flood hazard, tsunami, or seiche zones, risk release of pollutants due to project inundation?
e) Conflict with or obstruct implementation of a water quality control plan or sustainable groundwater management plan?

3.10.2.1 *Project Impacts*

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

Construction

Construction activities could result in a temporary increase in stormwater pollutants during ground disturbing activities. Construction of the proposed project would disturb more than one acre; therefore, compliance with the Construction General Permit (including submitting an NOI to the RWQCB and development of a SWPPP to control discharge associated with construction activities) is required. Penitencia Creek is located approximately 105 feet south of the site. The creek and the project site are separated by Berryessa Road. Therefore, the project would not result in the discharge of pollutants into the creek.

Because the project would remove and replace the existing pavement on the site, the project would be required to conform to the current stormwater quality requirements of the City of San José

Grading Ordinance, including implementation of erosion and dust control during site preparation, and the City's Zoning Ordinance requirements for keeping adjacent streets free of dirt and mud during construction. These requirements are included in the standard permit conditions listed below.

Standard Permit Condition:

Construction-related water quality

- Burlap bags filled with drain rock shall be installed around storm drains to route sediment and other debris away from the drains.
- Earthmoving or other dust-producing activities shall be suspended during periods of high winds.
- All exposed or disturbed soil surfaces shall be watered at least twice daily to control dust, as necessary.
- Stockpiles of soil or other materials that can be blown away by the wind shall be watered or covered.
- All trucks hauling soil, sand, and other loose materials shall be required to cover all trucks or maintain at least two feet of freeboard.
- All paved access roads, parking areas, staging areas and residential streets adjacent to the construction sites shall be swept daily (with water sweepers).
- Vegetation in disturbed areas shall be replanted as quickly as possible.
- All unpaved entrances to the site shall be filled with rock to knock mud from truck tires prior to entering City streets. A tire wash system shall be installed if requested by the City.
- The project applicant shall comply with the City of San José Grading Ordinance, including implementing erosion and dust control during site preparation and with the City of San José Zoning Ordinance requirements for keeping adjacent streets free of dirt and mud during construction.

Dewatering

Because shallow groundwater on the project site is likely present at depths of approximately 5 to 15 feet, and excavation could extend to 30 feet below grade, project development could require groundwater pumping and dewatering during construction. Dewatering would be conducted in accordance with City's standard permit condition and impacts from dewatering would be less than significant.

Standard Permit Condition:

Construction-related water quality

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

PCBs in Demolition Materials

During demolition, polychlorinated biphenyls (PCBs) in building materials could be released and exposed to stormwater runoff from the project site during rain events. The project would comply with the regulatory requirements in the standard permit condition, discussed in Section 4.9, Hazards and Hazardous Materials, to reduce the impacts of PCBs on water quality. Construction of the proposed project, with the implementation of the standard permit conditions, would not result in significant construction-related water quality impacts from the release of PCBs.

With implementation of the above standard permit condition, the proposed project would not violate water quality standards or degrade water quality due to project construction activities. **(Less than Significant Impact)**

Post-Construction

The project would replace the impervious surfaces on the project site, including the existing buildings and pavement. Under Provision C.3 of the RWQCB's MRP and consistent with Post-Construction Urban Runoff Policy 6-29, redevelopment projects that add and/or replace more than 10,000 square feet of impervious surface are required to design and construct stormwater treatment controls to treat post-construction stormwater runoff. Amendments to the MRP require that all post-construction runoff be treated by using LID treatment controls (e.g., biotreatment facilities). The project would be required to comply with Provision C.3 of the MRP to reduce potential post-construction water quality impacts.

Consistent with MRP and NPDES requirements, the project proposes to install bioretention areas throughout the project site that would treat, retain, and release stormwater runoff generated by the proposed project prior to entering the storm drainage system. Details of specific site design, pollutant source control, and stormwater treatment control measures demonstrating compliance with the aforementioned policies shall be included in the project design as part of future Planned Development Permits for the build-out of the site to the satisfaction of the Director of Planning, Building and Code Enforcement. **(Less than Significant Impact)**

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

The project site is located in a developed urban area and is not within a designated groundwater recharge zone for the groundwater basin. The proposed project does not include installation of new groundwater wells and would not deplete groundwater supplies. The existing on-site well inactive and is not a source of water. As stated previously, since shallow groundwater on the project site is likely present at depths of approximately 5 to 15 feet, the project could require groundwater pumping and dewatering during construction. Construction dewatering would result in a temporary reduction in groundwater levels at the project site. Due to the temporary nature, dewatering during construction is not considered a substantial decrease in groundwater supplies.

For these reasons, the project would not substantially decrease groundwater supplies or interfere substantially with groundwater recharge. **(Less than Significant Impact)**

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

The proposed project would redevelop the entire project site. The site is approximately 38 percent impervious (pavement and buildings) under existing conditions. The site drains to the stormwater detention basin and biotreatment cell adjacent to Coyote Creek through existing City storm drain systems. The proposed project would create and/or replace more than one acre of impervious surfaces and would increase the amount of impervious areas compared to existing conditions. With the proposed project, impervious surfaces would be increased from 38 percent to 70 percent of the site.

The existing storm drain systems would be replaced under the project site. Although the project would increase the amount of impervious surfaces at the site which would result in an increase of stormwater runoff, the project would comply with the MRP and City of San José Policy 6-29, which would remove pollutants and reduce the rate and volume of runoff from the project site, as stormwater from the site would drain into the existing detention basin and biotreatment cell adjacent to Coyote Creek. The project would also comply with construction water quality best management practices (standard permit condition) which reduces erosion and the impacts of construction on water quality. The project would connect to the City's existing drainage system and would not cause the system to exceed capacity. The project site is not located in a flood hazard area and, therefore, would not impede or redirect flood flows. The site is not within a subwatershed that is less than 65 percent impervious and is not subject to the HMP requirement under City Policy 8-14 (as described in Section 3.10.1.1).[61] Therefore, the project would not substantially alter the existing drainage pattern of the project site or area. **(Less than Significant Impact)**

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

As discussed in Section 3.10.1.2 Existing Conditions, a portion of the southern part of the project site is in Flood Zone X, while the majority of the site is in Flood Zone D. Flood Zone X is defined as an area of minimal flood hazard and Flood Zone D indicates an undetermined flood hazard. The project site is not located in a special flood hazard area (100-year flood zone). Due to the project site's inland

[61] City of San José. Hydromodification Applicability Map. Accessed September 22, 2021. https://www.sanjoseca.gov/home/showpublisheddocument/27925/636691773051670000

location and distance from large bodies of water (i.e., the San Francisco Bay), it is not subject to seiche or tsunami hazards.[62]

As discussed under checklist question a) in Section 3.9 Hazards and Hazardous Materials, no hazardous materials besides cleaning supplies, maintenance chemicals, diesel fuel, and herbicides and pesticides for landscape maintenance would be routinely stored or used by the project. Additionally, the project would be required to comply with Post-Construction Urban Runoff Policy 6-29 and Provision C.3 of the RWQCB Municipal Regional NPDES Permit requirements to reduce the impacts of stormwater runoff on post-construction water quality (refer to checklist question a). For these reasons, the project would result in a less than significant risk for releasing pollutants due to inundation. **(Less than Significant Impact)**

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

Water Quality Control

As discussed in checklist question a), the project would comply with the City's Post-Construction Urban Runoff Policy 6-29 and Provision C.3 of the RWQCB Municipal Regional NPDES Permit requirements and would implement the City's standard permit conditions addressing construction- and operational-related surface runoff quality. Thus, the project would not conflict with or obstruct implementation of the San Francisco Bay Basin Plan.

Santa Clara Plain and Llagas Subbasin Groundwater Management Plan

As discussed in the response to checklist question b), the project site is within the Santa Clara Plain groundwater subbasin, and this subbasin has not been identified in the Groundwater Management Plan as being overdrafted. Implementation of the project would not interfere with any actions set forth by Valley Water in its Groundwater Management Plan in regard to groundwater recharge, transport of groundwater, and/or groundwater quality. In addition, as discussed under checklist question b), the project would not substantially decrease groundwater supplies or substantially interfere with groundwater recharge. **(Less than Significant Impact)**

[62] California Department of Conservation. California Tsunami and Maps Data. Accessed September 11, 2021. https://www.conservation.ca.gov/cgs/tsunami/maps.

3.10.2.2 *Cumulative Impacts*

Would the project result in a cumulatively considerable contribution to a significant cumulative hydrology and water quality impact?

The geographic area for cumulative hydrology and water quality impacts is the Upper Penitencia Creek and Coyote Creek watersheds. Cumulative developments near the project site would be subject to similar hydrological and urban runoff conditions. All cumulative projects occurring within San José would be required to implement the same project conditions related to construction water quality as the proposed project (including preparation of a SWPPP if disturbance if greater than one acre). In addition, all cumulative projects would be required to meet applicable MRP, City Council Policy 6-24, and City Council Policy 8-14 requirements on a project-specific basis. For these reasons, the cumulative projects, including the proposed project, would not result in significant cumulative hydrology or water quality impacts. **(Less than Significant Cumulative Impact)**

3.11 LAND USE AND PLANNING

3.11.1 Environmental Setting

3.11.1.1 *Regulatory Framework*

Regional and Local

Envision San José 2040 General Plan

The Envision San José 2040 General Plan includes numerous policies and actions aimed at avoiding or mitigating an environmental effect, as listed in the applicable sections of this EIR. Relevant policies adopted for the purpose of avoiding or mitigating land use impacts are summarized below.

General Plan Policies - Land Use	
Policy CD-1.12	Use building design to reflect both the unique character of a specific site and the context of surrounding development and to support pedestrian movement throughout the building site by providing convenient means of entry from public streets and transit facilities where applicable, and by designing ground level building frontages to create an attractive pedestrian environment along building frontages. Unless it is appropriate to the site and context, franchise-style architecture is strongly discouraged.
Policy CD-1.15	Consider the relationship between street design, use of the public right-of-way, and the form and uses of adjoining development. Address this relationship in the Urban Village Planning process, development of new zoning ordinances, and the review of new development proposals in order to promote a well-designed, active, and complete visual street environment.
Policy CD-2.3	Enhance pedestrian activity by incorporating appropriate design techniques and regulating uses in private developments, particularly in Downtown, Urban Villages, Main Streets, and other locations where appropriate. 1. Include attractive and interesting pedestrian-oriented streetscape features such as street furniture, pedestrian scale lighting, pedestrian oriented way-finding signage, clocks, fountains, landscaping, and street trees that provide shade, with improvements to sidewalks and other pedestrian ways. 2. Strongly discourage drive-up services and other commercial uses oriented to occupants of vehicles in pedestrian-oriented areas. Uses that serve the vehicle, such as car washes and service stations, may be considered appropriate in these areas when they do not disrupt pedestrian flow, are not concentrated in one area, do not break up the building mass of the streetscape, are consistent with other policies in this Plan, and are compatible with the planned uses of the area. 3. Provide pedestrian connections as outlined in the Community Design Connections Goal and Policies. 4. Locate retail and other active uses at the street level. 5. Create easily identifiable and accessible building entrances located on street frontages or paseos. 6. Accommodate the physical needs of elderly populations and persons with disabilities. 7. Integrate existing or proposed transit stops into project designs.

General Plan Policies - Land Use	
Policy CD-2.11	Within the Downtown and Urban Village Area Boundaries, consistent with the minimum density requirements of the pertaining Land Use/Transportation Diagram designation, avoid the construction of surface parking lots except as an interim use, so that long-term development of the site will result in a cohesive urban form. In these areas, whenever possible, use structured parking, rather than surface parking, to fulfill parking requirements. Encourage the incorporation of alternative uses, such as parks, above parking structures.
Policy CD-4.9	For development subject to design review, the design of new or remodeled structures will be consistent or complementary with the surrounding neighborhood fabric (including but not limited to prevalent building scale, building materials, and orientation of structures to the street).
Policy CD-5.8	Comply with applicable Federal Aviation Administration regulations identifying maximum heights for obstructions to promote air safety.
Policy IP-1.6	Ensure that proposals to rezone and prezone properties conform to the Land Use/Transportation Diagram and advance 2040 General Plan Vision, goals and policies and benefit community welfare.
Policy IP-1.8	Consider and address potential land use compatibility issues, the form of surrounding development, and the availability and timing of infrastructure to support the proposed land use when reviewing rezoning or prezoning proposals.
Policy IP-5.4	Prepare and implement Urban Village Plans carefully, with sensitivity to concerns of the surrounding community, and property owners and developers who propose redevelopment of properties within the Urban Village areas. Proceed generally in the order of the following timeline, although some steps may be taken concurrently: 1. City Council approves commencement of the Plan growth Horizon which includes the Urban Village Area during a Major 2040 General Plan Review. Completing Urban Village Plans for Urban Villages within the current Horizon is of greatest priority, but it is possible to prepare an Urban Village Plan for an Urban Village in an upcoming Horizon. 2. The City completes preparation of, and Council reviews an Urban Village Plan. 3. The City or private property owners initiate rezoning for specific properties within the Urban Village as needed to implement the Urban Village Plan. Because most Urban Village sites initially have commercial zoning, rezoning will be necessary to provide for redevelopment and intensification with residential or residential mixed-use projects on those sites. 4. Private property owners or developers propose individual site designs and building architecture to be reviewed and determined through a Development Permit application and review process.

Berryessa BART Urban Village Plan

The following policies within the Berryessa BART Urban Village Plan pertain to the purposes of reducing or avoiding impacts related to land use.

Urban Village Plan Policies - Land Use	
Policy LU-1.1	Prioritize the development of residential projects in land use designations that support the residential capacities of each District. While other land uses are not strictly prohibited under the residential land use designations, the goal is to foster the development of residential development in specific areas of each District.
Policy LU-1.2	Develop commercial projects adjacent to the BART station, and on lands planned for employment uses, at intensities that support the employment capacities and jobs-density envisioned by this Plan, and support BART ridership.
Policy LU-1.6	Provide flexibility to allocate more commercial FAR [floor area ratio] or residential density on certain areas of the Urban Village to support urban designed envisioned in each District, with emphasis on the development of "Towers," provided that such FARs do not exceed the maximum building heights for those areas.
Policy LU-3.1	Encourage ground-floor active uses in the Transit Employment Center land use designation in the Facchino District along Berryessa Road, with direct pedestrian access from Berryessa Road.
Policy LU-4.1	Ensure that all land uses in the Berryessa BART Urban Village support pedestrian activity, multi-modal accessibility, and an urban character radiating from the BART station.
Policy LU-5.1	Ensure that all land uses in the Berryessa BART Urban Village support pedestrian activity, multi-modal accessibility, and an urban character radiating from the BART station.
Policy LU-5.2	Plan and design any parking structure to have ground-floor commercial, neighborhood-serving community commercial, community amenity spaces, or civic/cultural space on any side of the parking structure facing a public right-of-way.

3.11.1.2 *Existing Conditions*

On-site and Surrounding Land Uses

The project site currently contains two industrial buildings, a portable office structure, ancillary structures, an associated parking lot, a vegetated man-made pond, and trees. The site is surrounded by the BART/UPRR tracks to the east, Berryessa Road, the San José Flea Market, and surface parking lot to the south, and residential uses to the west and north. The Berryessa BART/Transit Center is approximately 1,000 feet south of the site. Upper Penitencia Creek is located approximately 105 feet south of the site.

Envision San José 2040 General Plan and BBUV Plan Land Use Designations

The 13-acre project site is located within the BBUV, which surrounds the Berryessa/North San José BART Station. The BBUV Plan encompasses 270 acres. The Plan adjusts the area's planned growth set in the Envision San José 2040 General Plan and includes an employment capacity of 4.2 million square feet of commercial uses (16,502 jobs) and a residential capacity of 6,516 dwelling units.

The General Plan and BBUV Plan designate the project site as the Facchino District which has land use designations of Urban Residential (75 units to 250 dwelling units/acre), Transit Employment

Center (the floor area ratio (FAR) range is 3.0 to 5.0, supporting between 288,000 square feet and 480,000 square feet of commercial space), and Open Space, Parkland, and Habitat.

Zoning

Approximately 12.7 acres of the site is zoned Light Industrial, and 0.3 acre is zoned Agricultural. The Light Industrial Zoning District is intended for a wide variety of industrial uses and excludes uses with unmitigated hazardous or nuisance effects. The regulations contained in this district are intended to provide for a wide range of agricultural uses as well as implementing the goals and policies of the general plan.

3.11.2 Impact Discussion

For the purpose of determining the significance of the project's impact on land use and planning, would the project:

a) Physically divide an established community?
b) Cause a significant environmental impact due to a conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect?

3.11.2.1 *Project Impacts*

a) Would the project physically divide an established community?

The project would be consistent with the with the BBUV Plan which prioritizes connectivity and accessibility and includes General Plan Transit Oriented Development (TOD) initiatives to create pedestrian-oriented development in the project area. The proposed project would widen the sidewalk along the Berryessa Road frontage, from eight feet to 12 feet, improving pedestrian connectivity between surrounding land uses. The project does not propose new freeways and highways, major arterial streets, or railroad lines. The proposed project would, therefore, not physically divide an established community. **(No Impact)**

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

General Plan and Urban Village Plan

As discussed in Section 3.11.1.2, the project site is designated as Urban Village (UV) in the General Plan. The project site is approximately 13 acres. Approximately four acres of the site is designated Urban Residential (allows 75 to 250 residential units per acre), 2.1 acres of the site is designated Transit Employment Center (allows 288,000 to 480,000 square feet of commercial space), 2.0 acres of the site is designated Mixed-Use Neighborhood (allows up to 30 units per acre), and 0.9 acres of the site is proposed to be Open Space, Parkland, and Habitat (which has no BBUV Plan density requirements) in the BBUV Plan. The remaining four acres of the site is designated for internal

roadways. The project proposes up to 803 multi-family residential units within the Urban Residential designation, up to 24 single-family units and 23 townhouse units within the Mixed-Use Neighborhood designation, up to a 480,000 square foot commercial building within the Transit Employment Center designation, and a public park within the Open Space, Parkland, and Habitat designation. The project would be consistent with the General Plan and BBUV Plan designations, density, and height requirements (shown on Figures 2.2-6 and 2.2-7). The maximum allowable development on the project site is 1,000 residential units in the Urban Residential designation, 480,000 square feet of commercial space in the Transit Employment Center designation, and 60 dwelling units in the Mixed-Use Neighborhood designation. The project proposes 850 residential units and 480,000 square feet of commercial space.

The project's commercial building would front Berryessa Road and include 15,000 square feet of retail (along with 465,000 square feet of medical office space). The existing sidewalk along Berryessa Road would be improved as part of the project implementation. The project would, therefore, be consistent with BBUV Policies LU-3.1 and 4.1 which encourage ground floor active uses in the Transit Employment Center designation and direct pedestrian access from Berryessa Road.[63] The proposed project would be consistent with the policies and requirements set forth in the BBUV Plan. Therefore, the project would not conflict with General Plan or BBUV Plan, and impacts would be considered less than significant. **(Less than Significant Impact)**

Zoning District

Land use conflicts can arise from a new development or land use that would cause impacts to persons or the physical environment in the vicinity of the project site or elsewhere. Potential incompatibility may arise from placing a particular development or land use at an inappropriate location, or from some aspect of the project's design or scope. Depending on the nature of the impact and its severity, land use compatibility conflicts can range from minor irritations and nuisance to potentially significant effects on human health and safety.

The project's conformance with various City policies adopted for the purpose of avoiding or mitigating an environmental effect is discussed in various other sections of this EIR (e.g., Air Quality, Biological Resources, and Noise, Hazards and Hazardous Materials). The proposed project would require a Planned Development rezoning for the site to allow for the proposed development. Upon approval of the Planned Development Rezoning, the proposed project would be consistent with the City's land use policies and zoning. The proposed zoning would be consistent with the surrounding Planned Development zoning districts, including Mixed Use Neighborhood, Residential Neighborhood, and Transit Employment Center. For these reasons, the project would not create a significant environmental impact or create a conflict with any plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect **(Less than Significant Impact)**

[63] Active Uses: Uses and occupancy types that encourage actual or visual engagement between building tenants and the public. Examples include but are not limited to retail storefronts, bars and restaurants, entertainment venues and businesses, personal services businesses, art galleries, gyms and fitness studios, offices, salons, etc.

3.11.2.2 *Cumulative Impacts*

Would the project result in a cumulatively considerable contribution to a significant cumulative land use and planning impact?

The geographic area for the project's cumulative land use and planning impacts would be the project site and surrounding neighborhood, including the BBUV Plan area. The cumulative projects (including the proposed project and approved Flea Market project) would improve connectivity and not divide an established community. The projects would be consistent with the provisions of the proposed BBUV Plan. Therefore, the proposed project would not contribute to a significant cumulative land use and planning impact. **(Less than Significant Cumulative Impact)**

3.12 MINERAL RESOURCES

3.12.1 Environmental Setting

3.12.1.1 *Regulatory Framework*

State

Surface Mining and Reclamation Act

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

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

3.12.1.2 *Existing Conditions*

The Communications Hill area in central San José is the only area within the City of San José that is designated by the State Mining and Geology Board as containing mineral deposits of regional significance. The project site is located approximately five miles north of the Communications Hill area.

3.12.2 Impact Discussion

For the purpose of determining the significance of the project's impact on mineral resources, would the project:

a) Result in the loss of availability of a known mineral resource that would be of value to the region and residents of the state?
b) Result in the loss of availability of a locally important mineral resource recovery site delineated on a local general plan, specific plan, or other land use plan?

3.12.2.1 *Project Impacts*

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

As discussed above in Section 3.12.1.2 Existing Conditions, the Communications Hill area is the only area within the City of San José that is designated as containing mineral deposits of regional significance. The project site is not on or adjacent to Communications Hill. **(No Impact)**

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

The project site is not identified as a natural resource area containing mineral resources on a local general plan, specific plan, or other land use plan. Therefore, the proposed project would not result in the loss of availability of a locally important mineral resource recovery site. **(No Impact)**

3.12.2.2 *Cumulative Impacts*

Would the project result in a cumulatively considerable contribution to a significant cumulative mineral resources impact?

As discussed above, the project site is not designated as a mineral resource recovery site in a local land use plan, nor does the project site contain any known mineral resource. The proposed project, therefore, would not contribute to a significant cumulative impact to mineral resources. **(No Cumulative Impact)**

3.13 NOISE

The following discussion is based upon a Noise and Vibration Assessment prepared by Illingworth & Rodkin, Inc. on August 26, 2021. A copy of this report is included as Appendix H of this EIR.

3.13.1 Environmental Setting

3.13.1.1 *Background Information*

Noise

Factors that influence sound as it is perceived by the human ear, include the actual level of sound, period of exposure, frequencies involved, and fluctuation in the noise level during exposure. Noise is measured on a decibel scale, which serves as an index of loudness. The zero on the decibel scale is based on the lowest sound level that the healthy, unimpaired human ear can detect. Each 10 decibel increase in sound level is perceived as approximately a doubling of loudness. Because the human ear cannot hear all pitches or frequencies, sound levels are frequently adjusted or weighted to correspond to human hearing. This adjusted unit is known as the A-weighted decibel, or dBA.

Since excessive noise levels can adversely affect human activities and human health, federal, state, and local governmental agencies have set forth criteria or planning goals to minimize or avoid these effects. Noise guidelines are generally expressed using one of several noise averaging methods, including L_{eq}, DNL, or CNEL.[64] These descriptors are used to measure a location's overall noise exposure, given that there are times when noise levels are higher (e.g., when a jet is taking off from an airport or when a leaf blower is operating) and times when noise levels are lower (e.g., during lulls in traffic flows on freeways or in the middle of the night). L_{max} is the maximum A-weighted noise level during a measurement period.

Vibration

Ground vibration consists of rapidly fluctuating motions or waves with an average motion of zero. Vibration amplitude can be quantified using Peak Particle Velocity (PPV), which is defined as the maximum instantaneous positive or negative peak of the vibration wave. PPV has been routinely used to measure and assess ground-borne construction vibration. Studies have shown that the threshold of perception for average persons is in the range of 0.008 to 0.012 inches/second (in/sec) PPV.

[64] L_{eq} is a measurement of average energy level intensity of noise over a given period of time. Day-Night Level (DNL) is a 24-hour average of noise levels, with a 10 dB penalty applied to noise occurring between 10:00 PM and 7:00 AM. Community Noise Equivalent Level (CNEL) includes an additional five dB applied to noise occurring between 7:00 PM and 10:00 PM. Where traffic noise predominates, the CNEL and DNL are typically within two dBA of the peak-hour L_{eq}.

3.13.1.2 *Regulatory Framework*

State and Local

California Building Standards Code

The CBC establishes uniform minimum noise insulation performance standards to protect persons within new buildings housing people, including hotels, motels, dormitories, apartments, and dwellings other than single-family residences. Title 24 mandates that interior noise levels attributable to exterior sources do not exceed 45 L_{dn}/CNEL in any habitable room. Exterior windows must have a minimum Sound Transmission Class (STC) of 40 or Outdoor-Indoor Transmission Class (OITC) of 30 when the property falls within the 65 dBA DNL noise contour for a freeway or expressway, railroad, or industrial source.

California Green Building Standards Code

For commercial uses, CalGreen (Section 5.507.4.1 and 5.507.4.2) requires that wall and roof-ceiling assemblies exposed to the adjacent roadways have a composite STC rating of at least 50 or a composite OITC rating of no less than 40, with exterior windows of a minimum STC of 40 or OITC of 30 when the commercial property falls within the 65 dBA L_{dn} or greater noise contour for a freeway or expressway, railroad, or industrial or stationary noise source. The state requires interior noise levels to be maintained at 50 dBA $L_{eq(1\text{-}hr)}$ or less during hours of operation at a proposed commercial use.

Envision San José 2040 General Plan

The Envision San José 2040 General Plan includes noise compatibility guidelines for various land uses. For reference, these guidelines are provided in Table 3.13-1 below.

Table 3.13-1: General Plan Land Use Compatibility Guidelines

Land Use Category	Exterior DNL Value in Decibels					
	55	60	65	70	75	80
1. Residential, Hotels and Motels, Hospitals and Residential Care						
2. Outdoor Sports and Recreation, Neighborhood Parks and Playgrounds						
3. Schools, Libraries, Museums, Meeting Halls, and Churches						
4. Office Buildings, Business Commercial, and Professional Offices						
5. Sports Arena, Outdoor Spectator Sports						
6. Public and Quasi-Public Auditoriums, Concert Halls, and Amphitheaters						

Normally Acceptable:
Specified land use is satisfactory, based upon the assumption that any buildings involved are of normal conventional construction, without any special noise insulation requirements.

Conditionally Acceptable:
Specified land use may be permitted only after detailed analysis of the noise reduction requirements and noise mitigation features included in the design.

Unacceptable:
New construction or development should generally not be undertaken because mitigation is usually not feasible to comply with noise element policies. Development will only be considered when technically feasible mitigation is identified that is also compatible with relevant design guidelines.

In addition, various policies in the Envision San José 2040 General Plan have been adopted for the purpose of reducing or avoiding impacts related to noise, as listed below.

General Plan Policies – Noise and Vibration	
Noise and Vibration	
Policy EC-1.1	Locate new development in areas where noise levels are appropriate for the proposed uses. Consider federal, state and City noise standards and guidelines as a part of new development review. Applicable standards and guidelines for land uses in San José include: <u>Interior Noise Levels</u> • The City's standard for interior noise levels in residences, hotels, motels, residential care facilities, and hospitals is 45 dBA DNL. Include appropriate site and building design, building construction and noise attenuation techniques in new development to meet this standard. For sites with exterior noise levels of 60 dBA DNL or more, an acoustical analysis following protocols in the City-adopted California Building Code is required to demonstrate that development projects can meet this standard. The acoustical analysis shall base required noise attenuation techniques on expected 2040 General Plan traffic volumes to ensure land use compatibility and 2040 General Plan consistency over the life of this plan. <u>Exterior Noise Levels</u> • The City's acceptable exterior noise level objective is 60 dBA DNL or less for residential and most institutional land uses (Table EC-1). The acceptable exterior noise level objective is established for the City, except in the environs of the Norman Y. Mineta San José International Airport, the Downtown Core Area, and along major roadways. For the remaining areas of the City, the following standards apply: – For new multi-family residential projects and for the residential component of mixed-use development, use a standard of 60 dBA DNL in usable outdoor activity areas, excluding balconies and residential stoops and porches facing existing roadways. There will be common use areas available to all residents that meet the 60 dBA exterior standard. Use noise attenuation techniques such as shielding by buildings and structures for outdoor common use areas. – For single-family residential uses, use a standard of 60 dBA DNL for exterior noise in private usable outdoor activity areas, such as back yards.
Policy EC-1.2	Minimize the noise impacts of new development on land uses sensitive to increased noise levels (Categories 1, 2, 3 and 6) by limiting noise generation and by requiring use of noise attenuation measures such as acoustical enclosures and sound barriers, where feasible. The City considers significant noise impacts to occur if a project would: • Cause the DNL at noise sensitive receptors to increase by five dBA DNL or more where the noise levels would remain "Normally Acceptable," or • Cause the DNL at noise sensitive receptors to increase by three dBA DNL or more where noise levels would equal or exceed the "Normally Acceptable" level.

General Plan Policies – Noise and Vibration	
Policy EC-1.3	New nonresidential land uses will mitigate noise generation to 55 dBA DNL at the property line when located adjacent to existing or planned noise sensitive residential and public/quasi-public land uses.
Policy EC-1.4	Include appropriate noise attenuation techniques in the design of all new General Plan streets projected to adversely impact noise sensitive uses.
Policy EC-1.6	Regulate the effects of operational noise from existing and new industrial and commercial development on adjacent uses through noise standards in the City's Municipal Code.
Policy EC-1.7	Require construction operations within San José to use best available noise suppression devices and techniques and limit construction hours near residential uses per the City's Municipal Code. The City considers significant construction noise impacts to occur 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. For such large or complex projects, a construction noise logistics plan that specifies hours of construction, noise, and vibration minimization measures, posting or notification of construction schedules, and designation of a noise disturbance coordinator who would respond to neighborhood complaints will be required to be in place prior to the start of construction and implemented during construction to reduce noise impacts on neighboring residents and other uses.
Policy EC-1.9	Noise studies are required for land use proposals where known or suspected loud intermittent noise sources occur which may impact adjacent existing or planned land uses. For new residential development affected by noise from heavy rail, light rail, BART or other single-event noise sources, mitigation will be implemented so that recurring maximum instantaneous noise levels do not exceed 50 dBA L_{max} in bedrooms and 55 dBA L_{max} in other rooms.
Policy EC-1.14	Require acoustical analyses for proposed sensitive land uses in areas with exterior noise levels exceeding the City's noise and land use compatibility standards to base noise attenuation techniques on expected Envision General Plan traffic volumes to ensure land use compatibility and General Plan consistency.
Policy EC-2.1	Near light and heavy rail lines or other sources of ground-borne vibration, minimize vibration impacts on people, residences, and businesses through the use of setbacks and/or structural design features that reduce vibration to levels at or below the guidelines of the Federal Transit Administration. Require new development within 100 feet of rail lines to demonstrate prior to project approval that vibration experienced by residents and vibration sensitive uses would not exceed these guidelines.

General Plan Policies – Noise and Vibration	
Policy EC-2.3	Require new development to minimize continuous vibration impacts to adjacent uses during demolition and construction. For sensitive historic structures, including ruins and ancient monuments or building that are documented to be structurally weakened, a continuous vibration limit of 0.08 in/sec PPV (peak particle velocity) will be used to minimize the potential for cosmetic damage to a building. A continuous vibration limit of 0.20 in/sec PPV will be used to minimize the potential for cosmetic damage at buildings of normal conventional construction. Equipment or activities typical of generating continuous vibration include but are not limited to excavation equipment; static compaction equipment; vibratory pile drivers; pile-extraction equipment; and vibratory compaction equipment. Avoid use of impact pile drivers within 125 feet of any buildings, and within 300 feet of historical buildings, or buildings in poor condition. On a project-specific basis, this distance of 300 feet may be reduced where warranted by a technical study by a qualified professional that verifies that there will be virtually no risk of cosmetic damage to sensitive buildings from the new development during demolition and construction. Transient vibration impacts may exceed a vibration limit of 0.08 in/sec PPV only when and where warranted by a technical study by a qualified professional that verifies that there will be virtually no risk of cosmetic damage to sensitive buildings from the new development during demolition and construction.

City of San José Municipal Code

Chapter 20.100.450 of the Municipal Code establishes allowable hours of construction within 500 feet of a residential unit between 7:00 AM and 7:00 PM Monday through Friday unless permission is granted with a development permit or other planning approval. No construction activities are permitted on the weekends at sites within 500 feet of a residence.

On May 21, 2020, City Manager Dave Sykes signed an Emergency Order to extend construction hours to 6:00 AM to 8:00 PM Monday through Saturday for project sites with an approved development permit or other planning approval that are at least 50,000 square feet of development or at least 50 residential units. The Emergency Order is effective immediately and was brought to the City Council for ratification on June 9, 2020 (Resolution No. 79557). The declaration will remain in place until terminated by the Director of Emergency Services or the City Council, or upon the termination or expiration of the Proclamation of Local Emergency.

3.13.1.3 *Existing Conditions*

Existing Noise Environment

The existing noise environment in the project area primarily results from vehicular traffic along Berryessa Road and residential streets, passing of BART trains, aircraft flyovers associated with the Norman Y. Mineta San José International Airport. A noise monitoring survey was completed from June 2, 2021, to June 4, 2021. The survey included one long-term measurement and three short-term measurements. The long-term measurement was located north of the project site at the eastern end of Valley Crest Court (adjacent to the BART/UPRR tracks). The LT-1 measurement served to quantify noise resulting from BART and UPRR rail activity. Maximum noise levels measured during train

passbys ranged from 74 to 75 dBA L_{max}. Daytime hourly average noise levels ranged between 51 and 58 dBA L_{eq} and nighttime hourly average noise levels ranged between 39 and 56 dBA L_{eq}. The day-night average noise level on June 3, 2021, was 58 dBA DNL.

Short-term measurements were completed at Krebs Court near the northern property line of the project site, Mercado Way near the western property line of the project site, and near the southwestern corner of the site along Berryessa Road. Short-term measurement data is shown in Table 3.13-2 below. Measurement locations are shown on Figure 3.13-1.

Table 3.13-2: Summary of Short-Term Noise Measurement Data (dBA)

Location, Date, and Time	L_{max}	$L_{(1)}$	$L_{(10)}$	$L_{(5)}$	$L_{(90)}$	L_{eq}
ST-1: Southern End of Krebs Court June 2, 2021 10:40-10:50 AM	54	52	46	40	39	43
ST-2: Eastern End of Mercado Way June 2, 2021 11:00-11:10 AM	63	56	51	44	42	48
ST-3: Southeastern Corner of Project Site Near Berryessa Road June 2, 2021 11:20-11:30 AM	81	79	75	66	57	70

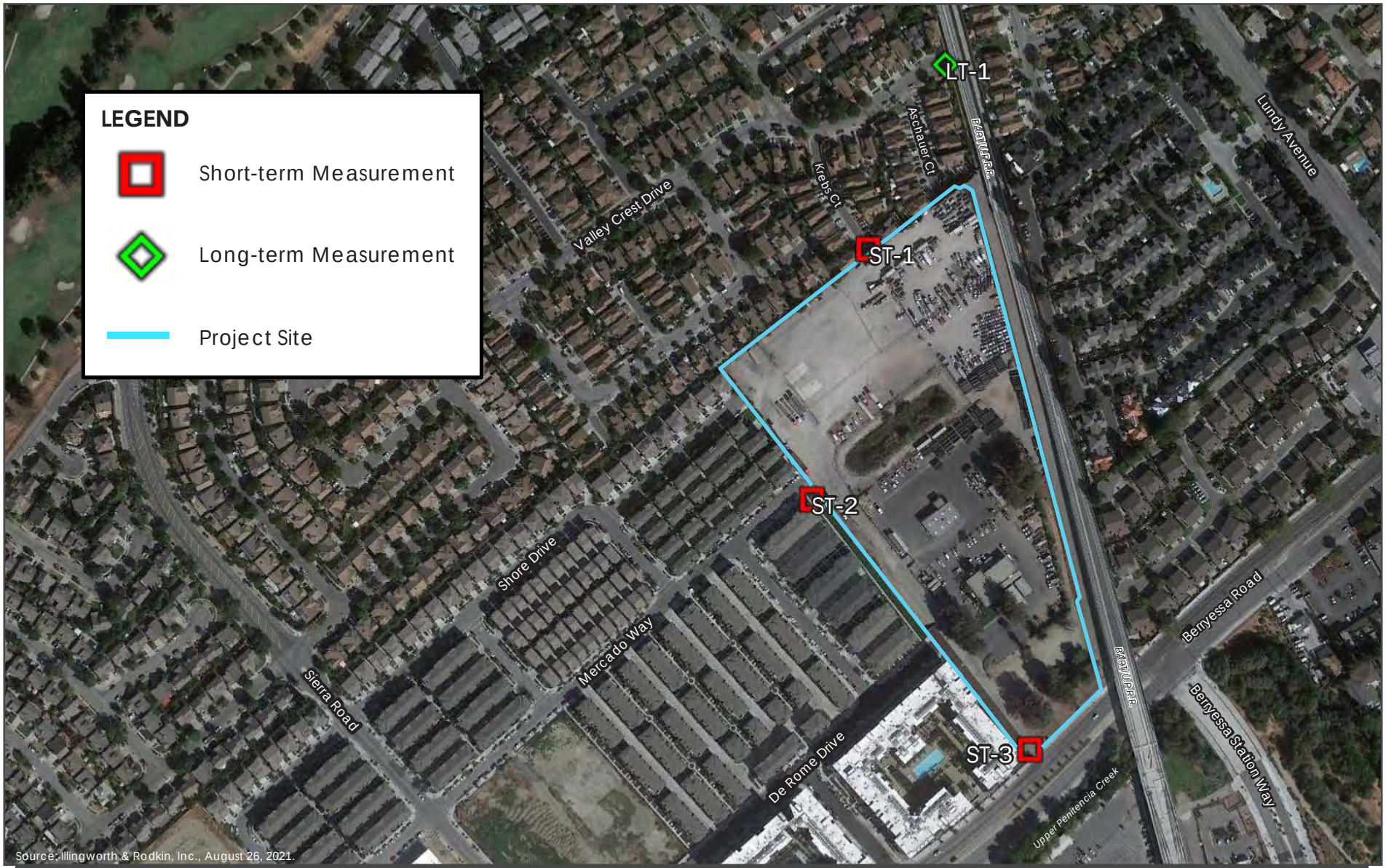
Source: Illingworth & Rodkin. *1655 Berryessa Mixed-Use Development Noise Assessment.* August 26, 2021.

Existing Vibration Environment

The BART/UPRR tracks are located approximately 30 feet east of the project site. The BART Silicon Valley Phase 1 Extension was designed with vibration mitigation measures in place to reduce impacts at nearby sensitive receptors to not exceed the Federal Transportation Authority's 72 VdB threshold for residences and buildings where people usually sleep, and frequent groundborne vibration events occur.

Noise Sensitive Receptors

The closest sensitive receptors to the project site are the residences approximately 25 feet north and west of the site. There are also residences located to the east of the site, east of the BART/UPRR track. In addition, Genius Kids Berryessa is a daycare facility with children ages two months to 12 years of age located opposite of Berryessa Road, approximately 700 feet east of the project site.



Source: Illingworth & Rodkin, Inc., August 26, 2021.

NOISE MEASUREMENT LOCATIONS | FIGURE 3.13-1

3.13.2 Impact Discussion

For the purpose of determining the significance of the project's impact on noise, would the project result in:

a) Generation of a substantial temporary or permanent increase in ambient noise levels in the vicinity of the project in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?
b) Generation of excessive groundborne vibration or groundborne noise levels?
c) For a project located within the vicinity of a private airstrip or an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?

3.13.2.1 *Project Impacts*

a) Would the project result in generation of a substantial temporary or permanent increase in ambient noise levels in the vicinity of the project in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?

Construction Noise Impacts

The potential for temporary noise impacts due to project construction activities would depend upon the noise generated by various pieces of construction equipment, the timing and duration of noise-generating activities, and the distance between construction noise sources and noise-sensitive areas. As stated in Section 3.13.1.2, construction noise impacts primarily result when construction activities occur during noise-sensitive times of the day (e.g., early morning, evening, or nighttime hours), the construction occurs in areas immediately adjoining noise-sensitive land uses, or when construction lasts over extended periods of time. Policy EC-1.7 of the City's General Plan requires all construction operations within the City to use best available noise suppression devices and techniques and to limit construction hours near residential uses per the Municipal Code allowable hours. Further, the City considers significant construction noise impacts to occur 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 nearest residences are located 25 feet north and west of the site and the nearest commercial uses are vendors and office structures at the San José Flea Market, approximately 215 feet south of the site.

Construction activities for individual projects are typically carried out in stages. During each stage of construction, there would be a different mix of equipment operating, and noise levels would vary by stage and vary within stages, based on the amount of equipment in operation and the location at which the equipment is operating. Typical construction noise levels at a distance of 50 feet and noise level ranges by construction phase are shown in Table 3.13-3.

Table 3.13-3: Typical Ranges of Construction Noise Levels at 50 feet, Leq (dBA)								
Construction Activity	**Domestic Housing**		**Office, Building, Hotel, Hospital, School, Public Works**		**Industrial Parking Garage, Religious Amusement and Recreations, Store, Service Station**		**Public Works Roads and Highways, Sewers, and Trenches**	
	I	**II**	**I**	**II**	**I**	**II**	**I**	**II**
Ground clearing	83	83	84	84	84	83	84	84
Excavation	88	75	89	79	89	71	88	78
Foundations	81	81	78	78	77	77	88	88
Building Construction	81	65	87	75	84	72	79	78
Finishing	88	72	89	72	89	74	84	84
I – all pertinent equipment present at site. **II –** minimum required equipment present at site.								

Project construction is anticipated to begin in 2023 and last approximately 44 months. Pile driving would not be used as a foundation construction technique.[65] Based on the typical construction noise levels shown in Table 3.13-3, project construction is expected to generate noise levels ranging from 72 to 88 L_{eq} at a distance of 50 feet during construction of residential buildings and 75 to 89 dBA L_{eq} during construction of the commercial building. Construction noise levels will vary throughout construction depending on intensity of construction activity and primary location of construction work being performed. Noise levels will be higher when construction activity is located near shared property lines.

Project construction would include substantial noise generating activities occurring for a period of greater than 12 months and would be located within 500 feet of residential uses. Based on the General Plan Policy EC-1.7, this could result in a significant impact to noise-sensitive receptors. This impact would be reduced to less than significant with the implementation of mitigation measure MM NOI-1.1 below.

Impact NOI-1: Project construction would result in elevated noise levels of five dBA or more at nearby residences for a period exceeding 12 months.

Mitigation Measures: The project would implement the following mitigation measure to reduce impacts related to construction noise.

MM NOI-1.1: Prior to the issuance of any demolition or grading permits (whichever occurs first), an acoustic engineer shall prepare and implement a construction noise logistics plan, in accordance with General Plan Policy EC-1.7, prior to issuance

[65] If pile driving activities were anticipated during construction, noise levels generated by these activities would be expected to reach up to 99 dBA L_{eq}.

of any demolition or grading permits. A typical construction noise logistics plan will includes, but is not limited to, the following measures to reduce construction noise levels:

- Construction shall be limited to the hours of 7:00 AM to 7:00 PM Monday through Friday for any on-site or off-site work within 500 feet of any residential unit. Construction outside of these hours may be approved through a development permit based on a site-specific "construction noise mitigation plan" and a finding by the Director of Planning, Building, and Code Enforcement that the construction noise mitigation plan is adequate to prevent noise disturbance of affected residential uses.
- The contractor shall use "new technology" power construction equipment with state-of-the-art noise shielding and muffling devices. All internal combustion engines used on the project site shall be equipped with adequate mufflers and shall be in good mechanical condition to minimize noise created by faulty or poorly maintained engines or other components.
- The unnecessary idling of internal combustion engines shall be prohibited.
- Staging areas and stationary noise-generating equipment shall be located as far as possible from noise-sensitive receptors such as residential uses (a minimum of 200 feet).
- The surrounding neighborhood shall be notified early and frequently of the construction activities.
- A "noise disturbance coordinator" shall be designated to respond to any local complaints about construction noise. The disturbance coordinator would determine the cause of the noise complaints (e.g., beginning work too early, bad muffler, etc.) and institute reasonable measures warranted to correct the problem. A telephone number for the disturbance coordinator would be conspicuously posted at the construction site.
- Implementation of a constriction noise logistics plan, which would include the following measures:

  - Utilize "quiet" models of air compressors and other stationary noise sources where technology exists.
  - Equip all internal combustion engine-driven equipment with mufflers, which are in good condition and appropriate for the equipment.
  - Construct temporary noise barriers, where feasible, to screen stationary noise-generating equipment when located within 200 feet of adjoining sensitive land uses. Temporary noise barrier fences would provide a 5 dBA noise reduction if the noise barrier interrupts the line-of-sight

between the noise source and receptor and if the barrier is constructed in a manner that eliminates any cracks or gaps.

- If stationary noise-generating equipment must be located near receptors, adequate muffling of the equipment (with enclosures where feasible and appropriate) shall be used. Any enclosure openings or venting shall face away from sensitive receptors.
- Ensure that generators, compressors, and pumps are housed in acoustical enclosures.
- Locate cranes as far from adjoining noise-sensitive receptors as possible.
- During final grading, substitute graders for bulldozers, where feasible. Wheeled heavy equipment are quieter than track equipment and should be used where feasible.
- Substitute nail guns for manual hammering, where feasible.
- Substitute electrically powered tools for noisier pneumatic tools, where feasible.
- The contractor shall prepare a detailed construction plan identifying the schedule for major noise-generating construction activities. The construction plan shall identify a procedure for coordination with adjacent residential land uses so that construction activities can be scheduled to minimize noise disturbance.

With implementation of the mitigation measure MM NOI-1.1, compliance of GP Policy EC-1.7, and Municipal Code requirements, noise levels would be reduced by 5 to 10 dBA, the project would not result in a substantial increase in temporary ambient noise levels at the at adjacent noise sensitive receptor locations in excess of City standards.

Permanent Noise Impacts

A permanent noise increase would be considered significant if the project would increase noise levels at noise-sensitive receptors by three (3) dBA DNL or more where ambient noise levels exceed the "normally acceptable" threshold. Where future noise levels are at or below the "normally acceptable" threshold, noise level increases of five (5) dBA DNL or more would be considered significant. As discussed in Section 3.13.1.2, the normally acceptable standard for residential land uses is 60 dBA DNL. Existing ambient noise levels in the project vicinity exceed 60 dBA DNL; therefore, a significant impact would occur if traffic resulting from the project would permanently increase ambient levels by three dBA DNL.

<u>Traffic Noise</u>

Traffic volumes were reviewed to calculate potential project-generated traffic noise level increases from roadways that would serve the project. Roadway traffic volumes with and without the project under 2030 and 2040 conditions with construction of either the Berryessa or Mabury Interchange Networks were compared to calculate the traffic noise increase attributable to the project during AM and PM peak hour conditions. For the purposes of this analysis, 2040 traffic volumes without project were compared to the 2040 conditions (with construction of either the Berryessa or Maybury

Interchanges), which provides a conservative estimate (when compared to 2030 conditions). A three (3) dBA L_{eq} noise level increase (with the addition of project traffic) was estimated to occur along a segment of Oakland Road approximately 100 feet north of US Route 101 during the AM peak hour. However, the traffic volumes along Oakland Road are substantially lower than those along US Route 101 which serves as the primary noise source in the vicinity. Because of this, the three (3) dBA L_{eq} AM peak hour increase would not result in a three (3) dBA DNL increase at the nearest noise-sensitive use, an RV park (on Oakland Road) located approximately 900 feet to the north of US 101 The permanent increase in noise at the nearest receptors (residences) to the project site due to the addition of project traffic would be lower than three (3) dBA DNL. Therefore, the permanent increase in project-generated traffic noise would not result in a significant impact due to a noise increase in excess of City standards.

Park Use

Use of the on-site park proposed on Parcel E could occasionally result in observable noise levels at the nearby residences. Noise sources associated with park use include children playing and small gatherings. The greatest noise levels resulting from use of the park would be expected from groups of children playing, which could result in noise levels ranging from 59 to 67 dBA L_{eq} at a distance of 50 feet. The nearest noise-sensitive uses to the park are single family residential backyards located approximately 200 feet from the center of the park. At this distance and when accounting for shielding provided by the Parcel A homes, noise levels from park use could reach up to 50 dBA Leq at the nearest residential backyard. The use of the park would not exceed 55 dBA DNL at any nearby noise-sensitive use. Therefore, the permanent increase in noise due to on-site park uses would not result in a significant impact due to a noise level increase in excess of City standards.

Mechanical Equipment

The nearest noise-sensitive receptors are single and multi-family residences located along the northwestern and southwestern borders of the project site, 25 feet north and 25 feet west of the site, respectively. Noise levels produced by heating, ventilation, and air conditioning (HVAC) equipment typical for the proposed multi-family buildings would reach about 66 dBA at a distance of three feet during operation. Noise sources representing HVAC equipment placed at credible worst-case locations near the outer perimeter of the rooftops of the multi-family buildings and commercial building to be located at Parcels D, F, G, H, and I, and in between the Parcel C townhouses were included in the SoundPLAN model and noise levels were calculated at receivers representative of the nearby noise-sensitive residences. An emergency backup generator associated with the commercial building would also be included with the project. Although the generator's exact specifications, location, and noise data were not available. Based on experience with similar projects, it is assumed that there would be one 1,000 kW generator located on commercial building (Parcel I). Often, generators are located on rooftops or in ground-level enclosures. Testing at full load of a typical 1,000 kW generator unequipped with any sound attenuation can be expected to result in noise levels of up to 102 dBA L_{eq} at a distance of 23 feet. A noise source representing this worst-case generator and placed at the northern corner on top of the commercial building, nearest the residences to the west, was added to the noise model. Table 3.13-4 shows the calculated noise levels from HVAC equipment noise assuming continuous, 24-hour operation and HVAC equipment noise with a simultaneous two-hour generator test.

Table 3.13-4: Calculated Noise Levels Resulting from Operation of Mechanical Equipment				
Location	**HVAC Only**		**HVAC and Generator Testing**	
	Peak Hour (dBA L_{eq})	**Day-night Level (dBA DNL)**	**Peak Hour (dBA L_{eq})**	**Day-night Level (dBA DNL)**
Residences to East and Northeast	23 to 38	29 to 44	85 to 89	74 to 78
Residences to Northwest	32	38 to 39	65 to 67	54 to 56
Residences to Southwest	36 to 37	43	74 to 79	63 to 68

As shown in Table 3.13-4, noise levels resulting from operation of HVAC equipment alone would not result in noise levels exceeding General Plan or Municipal Code standards. However, with a worst-case, two-hour test of a 1,000-kW generator, the 55 dBA DNL criterion would be exceeded at multiple residences near the project site, which would result in a significant impact. The following mitigation measure would be implemented to reduce the impact to less than significant.

Impact NOI-2: Noise from the project's mechanical equipment could exceed 55 dBA DNL at sensitive residential noise-receptors near the project site.

Mitigation Measures: The following mitigation would reduce the impacts of the project's mechanical noise equipment on nearby noise sensitive receptors to less than significant.

MM NOI-2.1: Prior to the issuance of any demolition or grading permits (whichever occurs first), the project applicant shall select and design mechanical equipment and generators to reduce excessive noise levels at the nearby noise-sensitive land uses to meet the City's 55 dBA DNL noise level requirement. A qualified acoustical consultant shall be retained to review mechanical noise as these systems are selected to determine specific noise reduction measures necessary to reduce noise to comply with the City's Municipal Code noise level requirements. Noise reduction measures could include, but are not limited to, selection of equipment that emits low noise levels and installation of noise barriers, such as enclosures and parapet walls, to block the line-of-sight between the noise source and the nearest receptors. Other alternate measures may be optimal, such as locating equipment in less noise-sensitive areas, such as along the building façades farthest from adjacent neighbors, where feasible. The proposed mechanical equipment shall be approved by the City's Director of Planning, Building, and Code Enforcement.

With the implementation of mitigation measure MM NOI-2.1 which would ensure mechanical equipment would be in compliance with the City's noise standards, the permanent increase in noise due to the project's mechanical equipment uses would not result in a significant impact due to a noise

level increase in excess of City standards. **(Less than Significant Impact with Mitigation Incorporated)**

b) Would the project result in generation of excessive groundborne vibration or groundborne noise levels?

Construction of the project would generate vibration when heavy equipment or impact tools are used. Construction activities would include the demolition of existing structures, site preparation work, excavation of the below-grade parking level, foundation work, and new building framing and finishing. Pile driving is not anticipated as a foundation construction technique for the project, however, for the purposes of this analysis, vibration levels from pile driving were considered.

Policy EC-2.3 of the City's General Plan establishes a vibration limit of 0.08 in/sec PPV to reduce the potential for cosmetic damage to sensitive historic structures, and a vibration limit of 0.2 in/sec PPV to minimize damage at buildings of normal conventional construction. Vibration limits exceeding these thresholds have the potential to cause cosmetic damage to adjacent buildings.[66]

Table 3.13-5 below presents typical vibration levels from construction equipment at a reference distance of 25 feet and calculated vibration levels at distances representative of nearby structures to the project site.

Table 3.13-5: Vibration Levels for Construction Equipment (in/sec PPV)

Equipment		Reference Distance 25 feet	Residences to Northwest 15 feet	Residences to Southwest 50 feet
Impact Pile Driver	Upper Range	1.158	**2.031**	**0.540**
	Lower Range	0.664	**1.130**	**0.300**
Sonic Pile Driver	Upper Range	0.734	**1.287**	**0.342**
	Lower Range	0.170	**0.298**	0.079
Clam shovel drop		0.202	**0.354**	0.094
Hydromill (slurry wall)	In soil	0.008	0.014	0.004
	In rock	0.017	0.030	0.008
Vibratory roller		0.210	**0.368**	0.098
Hoe ram		0.089	0.156	0.042
Large bulldozer		0.089	0.156	0.042
Caisson drilling		0.089	0.156	0.042
Loaded trucks		0.076	0.133	0.035

[66] Cosmetic damage is defined as hairline cracking in the plaster, the opening of old cracks, the loosening of paint or the dislodging of loose objects. Minor damage is defined as hairline cracking in masonry or the loosening of plaster. Major structural damage is defined as wide cracking or the shifting of foundation or bearing walls.

Table 3.13-5: Vibration Levels for Construction Equipment (in/sec PPV)			
Equipment	**Reference Distance 25 feet**	**Residences to Northwest 15 feet**	**Residences to Southwest 50 feet**
Jackhammer	0.035	0.061	0.016
Small bulldozer	0.003	0.005	0.001

Notes:
Bolded numbers denote exceedances in vibration levels.
Source: Illingworth & Rodkin, Inc. *1655 Berryessa Mixed-Use Development Noise Assessment*. August 26, 2021.

Based on the conclusions in the approved Flea Market Planned Development Rezoning EIR, the structures on the Flea Market site are eligible for listing on the CRHR and the City's historic inventory. The structures on the Flea Market site (which is the nearest historic/potentially historic structures to the site) are approximately 400 feet to the south and while the site was deemed historically significant the structures alone were not; the project site and Flea Market site are separated by Berryessa Road. For these reasons, the project would not result significant physical damage to historic structures.

As shown in Table 3.13-5, vibration levels, particularly from pile driving (if used during project construction), would have the potential to exceed City of San José guidelines and could result in damage to nearby structures. The following mitigation measure MM NOI-3.1 would be implemented to reduce potential vibration impacts from construction.

Impact NOI-3: Vibration levels would have the potential to exceed San José's General Plan guidelines at residential uses in the site vicinity (0.2 in/sec PPV) and could result in damage to nearby structures.

Mitigation Measures: The project would implement the following mitigation measure to reduce impacts related to vibration.

MM NOI-3.1: Prior to the issuance of any demolition or grading permits (whichever occurs first), a qualified Professional Structural Engineer, licensed in the State of California, shall prepare a construction vibration monitoring plan to reduce construction-related vibration impacts below 0.2 in/sec PPV. The plan shall include, but is not limited to, the following measures:

- Prohibit impact pile driving as a method of construction within 125 feet of any surrounding vibration-sensitive building. Prohibit vibratory pile driving as a method of construction within 85 feet of any surrounding vibration-sensitive building. As an alternative, drilled piles, which generate substantially lower levels of vibration, may be used.
- Limit the use of vibratory rollers, hoe rams, large bulldozers, and caisson drilling, and avoid clam shovel drops within 20 feet of the

property lines shared with residences and commercial structures adjacent to the site.

- Place operating equipment on the construction site at least 30 feet from vibration-sensitive receptors.
- Use a smaller vibratory roller, such as the Caterpillar model CP433E vibratory compactor, when compacting materials within 30 feet of adjacent buildings. Only use the static compaction mode when compacting materials within 15 feet of buildings.
- Select demolition methods not involving impact tools.
- Avoid dropping heavy objects or materials within 30 feet of vibration sensitive locations.
- A list of all heavy construction equipment to be used for this project known to produce high vibration levels (tracked vehicles, vibratory compaction, jackhammers, hoe rams, etc.) shall be submitted to the City by the contractor. 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.
- A construction vibration-monitoring plan shall be implemented to document conditions at the residences and commercial structures adjacent to the site prior to, during, and after vibration generating construction activities. All plan tasks shall be undertaken under the direction of a licensed Professional Structural Engineer in the State of California and be in accordance with industry accepted standard methods. The construction vibration monitoring plan should be implemented to include the following tasks:
    - Identification of sensitivity to ground-borne vibration of the residences and commercial structures adjacent to the site. A vibration survey would need to be performed.
    - Performance of a photo survey, elevation survey, and crack monitoring survey for the residences and commercial structures nearest to the site. Surveys shall be performed prior to and after completion of vibration generating construction activities located within 20 feet of the structure. This distance shall be extended to 80 feet for vibratory pile driving and 120 feet for impact pile driving. The surveys shall include internal and external crack monitoring in the structure, settlement, and distress, and shall document the condition of the foundation, walls, and other structural elements in the interior and exterior of the structure.
    - Conduct a post-survey on the structure where either monitoring has indicated high levels or complaints of

damage. Make appropriate repairs where damage has occurred as a result of construction activities.

- The results of any vibration monitoring shall be summarized and submitted in a report shortly after substantial completion of each phase identified I the project schedule. The report shall include a description of measurement methods, equipment used, calibration certificates, and graphics as required to clearly identify vibration-monitoring locations. 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.

Implementation of the construction vibration monitoring plan shall occur during construction activities to reduce vibration levels below 0.2 in/sec PPV.

Prior to the issuance of any demolition or grading permits, the project applicant shall submit the construction vibration monitoring plan to the Director of Planning, Building and Code Enforcement or Director's designee for review and approval.

With implementation of mitigation measure MM NOI-3.1 described above, construction vibration would be reduced to levels below 0.2 in/sec PPV. Therefore, the proposed project would not result in generation of excessive groundborne vibration or groundborne noise levels. **(Less than Significant Impact with Mitigation Incorporated)**

c) For a project located within the vicinity of a private airstrip or an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?

Norman Y. Mineta San José International Airport is a public-use airport located approximately 2.5 miles west of the project site. Based on the City's Airport Master Plan EIR, the project site lies outside the 60 dBA CNEL 2037 noise contour of the Airport. This means that future exterior noise levels due to aircraft from Norman Y. Mineta San José International Airport are compatible with the proposed use. Therefore, the project would not expose people residing or working the project area to excessive noise levels. **(Less than Significant Impact)**

3.13.2.2 *Cumulative Impacts*

Would the project result in a cumulatively considerable contribution to a significant cumulative noise impact?

The geographic area for cumulative noise impacts includes the project site and surrounding area. As described previously, the project site is located within an urban area exposed to noise from vehicular traffic along Berryessa and Mabury Roads, local residential activities, and passbys from BART trains and Norman Y. Mineta San José International Airport airplanes.

The approved residential and commercial development (Flea Market) site located approximately 200 feet south of the project site, across Berryessa Road, would contribute to increased noise in the area. Both projects would implement standard permit conditions and mitigation measures similar to the above standard permit conditions to reduce construction and operational noise impacts. The approved Flea Market project would not result in construction vibration noise impacts and, therefore, the proposed project does not have the potential to result in cumulative vibration impacts with the approved project. With implementation of these mitigation measures and standard permit conditions, the cumulative projects would not result in significant construction, permanent noise, or vibration impacts. **(Less than Significant Cumulative Impact with Mitigation Incorporated)**

3.13.3 Non-CEQA Effects

Per *California Building Industry Association v. Bay Area Air Quality Management District*, 62 Cal. 4th 369 *(BIA v. BAAQMD)*, effects of the environment on the project are not considered CEQA impacts. The following discussion is included for informational purposes in accordance with the City's General Plan Policy EC-1.1, which sets forth exterior and interior noise level standards for proposed developments.

Future Exterior Noise Environment

The future noise environment at the site would continue to result primarily from vehicular traffic along Berryessa Road and BART. Year 2040 peak hour traffic noise levels along Berryessa Road are expected to increase by about three (3) to four (4) dBA L_{eq} over existing conditions. Peak-hour noise levels measured at location LT-1 and at other locations near the site were approximately equal to the measured day-night level. Therefore, calculated peak hour noise levels are assumed to also represent the day-night level. The existing and future noise exposure of the site was calculated using SoundPLAN, which considers site geometry, the characteristics of the noise sources, and shielding from structures and shown in Table 3.13-6.

Table 3.13-6: Calculated Exterior Noise Levels at Proposed Outdoor Use Areas

Location	Calculated Noise Levels (dBA DNL)
Courtyard D	46
Courtyard F	37
Courtyard G	47 to 54

Table 3.13-6: Calculated Exterior Noise Levels at Proposed Outdoor Use Areas	
Location	**Calculated Noise Levels (dBA DNL)**
Courtyard H	56 to 60
Parcel E Park	48 to 51
Source: Illingworth & Rodkin, Inc. 1655 Berryessa Mixed-Use Development Noise Assessment. August 26, 2021.	

As shown in Table 3.13-6, noise levels at proposed outdoor use areas would not exceed the 60 dBA DNL standard for residential spaces or the 65 dBA DNL standard for neighborhood parks established in the General Plan.

Future Interior Noise Environment

Interior noise levels would vary depending upon the design of the buildings, construction materials, and construction methods. Standard residential construction provides approximately 15 dBA of exterior-to-interior noise reduction, assuming windows are partially open for ventilation. Standard new construction with closed windows provides approximately 20 to 25 dBA of noise reduction in interior spaces. Additionally, façade elements contribute to sound isolation. The noise study assumed a minimum of 20 dBA noise reduction for residential buildings and 25 dBA for commercial buildings.

Per City of San José and California Building Code requirements, interior noise levels must be maintained at 45 dBA DNL or less for residences. The Cal Green Code limits noise levels inside occupied non-residential spaces to 50 dBA $L_{eq(1\text{-}hr)}$ during any hours of operation.

The noise assessment found that commercial interior noise levels would not exceed the Cal Green Code standard. However, residential interior noise levels could exceed 45 dBA DNL with windows partially open at the eastern side of Parcel D, eastern and southern sides of Parcel F/G, and eastern and southern sides of Parcel H. Interior noise levels would not exceed 45 dBA DNL with windows closed. An adequate force-air mechanical ventilation system would be required at units located along these segments to allow residents the option of closing windows for the purpose of noise control.

Additionally, BART train passbys would produce noise levels of about 69 to 70 dBA L_{max}. Assuming a 20 dBA exterior-to-interior noise reduction resulting from standard modern construction with windows closed, intermittent noise from train passbys would reach 49 to 50 dBA L_{max} and would not exceed the 50 dBA L_{max} limit established by General Plan Policy EC-1.9.

For consistency with the General Plan's and Cal Green Code's interior noise standards, the project applicant shall implement the following condition of approval.

Condition of Approval:

- **Forced-Air Mechanical Ventilation.** Provide forced-air mechanical ventilation to residential units at locations described below to allow residents the opportunity of closing windows for the purpose of noise control. These locations are also identified in Figure 3.13-2. This noise control measure would be applicable to the following proposed residences and floors located adjacent to the BART/UPRR tracks:

    - Floors two through nine of the eastern sides of the Parcel D multi-family residential building
    - Floors four through nine of the eastern side of the Parcel F/G multi-family residential building
    - Floors five through nine of the southern side of the Parcel F/G multi-family residential building
    - Floors two through ten of the east side of the Parcel H multi-family residential building, and
    - Floors four through ten of the south side of the Parcel H multi-family residential building.

Standard Permit Condition:

Interior Noise Standard for Residential Development

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

Future Vibration Environment

Groundborne vibration would be adequately mitigated by design measures incorporated into the construction of the BART Silicon Valley Phase I Extension. Potential groundborne vibration impacts at receivers along the Phase I alignment were assessed in the BART Silicon Valley Second Supplemental EIR. The BART's track design incorporates measures that mitigate vibration levels to less than 72 VdB at residences located as close as 20 feet from the centerline of the nearest track. The buildings of the proposed project would be located approximately 70 feet, or further, from the centerline of the nearest track. Therefore, vibration levels would not exceed 72 VdB at any of the proposed buildings.

Source: Illingworth & Rodkin, Inc., August 26, 2021.

LOCATIONS WHERE NOISE ABATEMENT MEASURES ARE RECOMMENDED | FIGURE 3.13-2

3.14 POPULATION AND HOUSING

3.14.1 Environmental Setting

3.14.1.1 *Regulatory Framework*

State

Housing-Element Law

State requirements mandating that housing be included as an element of each jurisdiction's general plan is known as housing-element law. The Regional Housing Need Allocation (RHNA) is the state-mandated process to identify the total number of housing units (by affordability level) that each jurisdiction must accommodate in its housing element. California housing-element law requires cities to: 1) zone adequate lands to accommodate its RHNA; 2) produce an inventory of sites that can accommodate its share of the RHNA; 3) identify governmental and non-governmental constraints to residential development; 4) develop strategies and a work plan to mitigate or eliminate those constraints; and 5) adopt a housing element and update it on a regular basis.[67] The City of San José Housing Element and related land use policies were last updated in January 2015 and an update to the Housing Element is currently underway.

Regional and Local

Plan Bay Area 2040

Plan Bay Area 2040 is a long-range transportation, land-use, and housing plan intended support a growing economy, provide more housing and transportation choices, and reduce transportation-related pollution and GHG emissions in the Bay Area. Plan Bay Area 2040 promotes compact, mixed-use residential and commercial neighborhoods near transit, particularly within identified Priority Development Areas (PDAs).[68]

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

Envision San José 2040 General Plan

Various policies in the Envision San José 2040 General Plan have been adopted for the purpose of reducing or avoiding impacts related to population and housing, as listed below.

[67] California Department of Housing and Community Development. "Regional Housing Needs Allocation and Housing Elements" Accessed February 17, 2021. http://hcd.ca.gov/community-development/housing-element/index.shtml.
[68] Association of Bay Area Governments and Metropolitan Transportation Commission. "Project Mapper." http://projectmapper.planbayarea.org/. Accessed February 17, 2021.

General Plan Policies - Population and Housing	
General Plan Phasing / Planning Horizons/ Major Review Policies	
Policy IP-2.9	Focus new residential development into specified Growth Areas to foster the cohesive transformation of these areas into complete Urban Villages. Allow immediate development of all residential capacity planned for the Growth Areas included in the current Plan Horizons.

Berryessa BART Urban Village Plan

The Berryessa BART Urban Village Plan includes a planned growth of 4.2 million square feet of commercial uses (16,502 jobs) and a residential capacity of 6,156 dwelling units.

Furthermore, the following policies within the Berryessa BART Urban Village Plan pertain to the purposes of reducing or avoiding impacts related to population and housing.

Urban Village Plan Policies - Land Use	
Diversity of Housing	
Policy LU-7.1	Ensure that the Inclusionary Housing Ordinance, Commercial Linkage Fee Ordinance, Rent Stabilization Program, Apartment Rent Ordinance, Tenant Protection Ordinance, Ellis Act Ordinance, and other City housing laws and policies are implemented (including amendments thereto from time to time).
Policy LU-7.2	Encourage a mix of unit sizes and types within multi-family residential development to accommodate a diversity of household types within the Urban Village, including singles and family households.
Policy LU-7.5	Encourage the development of condominiums and other forms of ownership housing in the Flea Market and Facchino Districts.
Policy LU-8.1	Encourage the integration of market-rate and deed-restricted affordable units on-site within a housing development.
Policy LU-8.3	Focus the City's affordable housing resources into the Berryessa BART Urban Village to further achievement of the Goal that 25% of the housing in the Village is affordable.

3.14.1.2 *Existing Conditions*

Changes in population, housing, and employment in and of themselves are generally characterized as social and economic effects. While increased population does not necessarily cause direct effects on the physical environment, it could cause indirect environmental effects such as increased vehicle trips and air pollutant emissions. Therefore, this discussion focuses on the relationship between the locations of jobs and housing, based upon the analysis in the Envision San José 2040 General Plan EIR.

Table 3.14-1 below summarizes the existing and projected population and employment data for San José as analyzed in the General Plan EIR. Over half of the city's housing stock consists of single-

family detached units, although multi-family development (i.e., apartments, condominiums, and townhouses) has been the fastest growing housing type in recent years, accounting for 75 percent of all residential construction since 2000.

Table 3.14-1: Population and Employment in San José			
	General Plan Baseline Conditions (2010)	**General Plan Buildout Conditions (2040)**	**ABAG Projections for 2040**
Population	945,942	1,313,811	1,377,145
Households/Dwelling Units	314,038	429,350	448,310
Employed Residents	489,305	665,493	624,620
Jobs	369,450	751,650	554,875
Source: City of San José. *Envision San José 2040 General Plan EIR*. November 2011. ABAG. Projections 2040: Forecasts for Population, Housing and Employment for Nine County San Francisco Bay Area Region. May 2019. Accessed September 12, 2021.			

In January 2021, the City was estimated to have a population of approximately 1,029,785, with an average of 3.14 persons per household.[69] The average household size is expected to decrease from the current ratio of 3.14 people to about 3.06 people by 2040 Citywide.

Jobs/Housing Balance

The term "jobs/housing balance" refers to the ratio of employed residents to jobs in a given community or area. It is used to indicate the general distance between residences and employment locations. A well-balanced ratio (close to one-to-one) can minimize commute distances and the number of vehicle miles traveled.[70] As described throughout this EIR, vehicle miles traveled (VMT) are linked to a variety of environmental impacts (i.e., traffic flows, air quality, energy consumption, etc.).

Important to the analysis of the jobs/housing balance is whether housing is affordable to local employees and whether employment opportunities match the skills and educational characteristics of the local labor force. When considering these factors, sizeable levels of in-commuting and out-commuting may occur, even if a jurisdiction has a statistical balance between jobs and housing. Improving the availability of housing that is suitable for those holding jobs in the community can allow employees to live in proximity to their place of work.

[69] California Department of Finance. "E-5 Population and Housing Estimates for Cities, Counties, and the State, 2011-2021." Accessed September 12, 2021. http://www.dof.ca.gov/Forecasting/Demographics/Estimates/E-5/.
[70] Paradoxically, a balanced ratio of jobs and housing could result in increased VMT by dispersing vehicle travel in such a way as to facilitate a greater overall utilization of existing roadways, while concentrating jobs in a single location may force more commuters to divert from congested roadways to alternative modes of transportation, such as the regional transit system.

The City of San José has historically provided a higher-than-average proportion of housing in Santa Clara County. The current ratio of jobs to employed residents in San José is estimated to be 0.8 to 1, making the city "housing rich".[71] The concentration of housing in San José and employment in other jurisdictions has created a well-established commute pattern (southeast to northwest). It has become apparent that the physical relationship between jobs and housing significantly contributes to several of the primary environmental impacts of concern in the Bay Area, particularly air pollution and the excessive consumption of energy resulting from an inefficient, sprawling land-use pattern.

3.14.2 Impact Discussion

For the purpose of determining the significance of the project's impact on population and housing, would the project:

a) Induce substantial unplanned population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?
b) Displace substantial numbers of existing people or housing, necessitating the construction of replacement housing elsewhere?

3.14.2.1 *Project Impacts*

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

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

The project proposes to demolish approximately 11,000 square feet of industrial space and would construct up to 850 residential units and up to 480,000 square feet of commercial uses. Based on the current average rate of 3.14 people per household in the City of San José, the proposed project would support a population of approximately 2,670. Based on the ratio of one employee per 250 square feet of commercial space, the proposed project would support 1,920 jobs (compared to the approximately 50 jobs that the existing industrial uses provide).

The proposed project would not induce substantial unplanned population growth because the project is consistent with the development assumptions of the General Plan EIR and the proposed BBUV Plan. The project does not propose to extend a road or other infrastructure (refer to Section 3.19 Utilities and Service Systems) that would indirectly induce growth. Therefore, the proposed project would not directly or indirectly induce population growth. **(Less than Significant Impact)**

[71] San José is unique in that all other large cities in the U.S. function as regional job centers, with a greater than 1 to 1 ratio of jobs to employed residents.

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

The site is used for industrial purposes and does not contain residential units or residents. The project would construct up to 850 residential units. For these reasons, the proposed project would not displace people or housing that would necessitate the construction of replacement housing elsewhere. **(No Impact)**

3.14.2.2 *Cumulative Impacts*

Would the project result in a cumulatively considerable contribution to a significant cumulative population and housing impact?

The geographic area for cumulative population and housing impacts is the City boundaries. Past, present, and pending development projects contribute to the City's, County's, and region's population and housing impact. The project is consistent with the planned housing and growth assumptions established in the General Plan and BBUV Plan. The cumulative projects consistent with planned growth and assumptions established in the General Plan would not cause the City to exceed General Plan or planned growth projections. Therefore, the proposed project would not have a cumulatively considerable contribution to a significant cumulative unplanned population growth in the area. **(Less than Significant Cumulative Impact)**

As discussed above under checklist question b), the project would not displace residents. For this reason, the project would not contribute to a cumulative significant displacement of residents necessitating the construction of replacement housing. **(No Cumulative Impact)**

3.15 PUBLIC SERVICES

3.15.1 Environmental Setting

3.15.1.1 *Regulatory Framework*

State

Government Code Section 66477

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

Government Code Section 65995 through 65998

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

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

Regional and Local

Countywide Trails Master Plan

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

San José Greenprint 2009 Update

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

complete 100 miles of interconnected trails by 2022, and 2) complete 130 miles of the network by 2035.

The Greenprint identifies the Alum Rock Planning Area, which includes the project site, as having 435 acres of neighborhood/community-serving parkland including school recreation parkland at a ratio of 3.0 acres per 1,000 population. The Alum Rock Planning Area will need an additional 108.8 acres of neighborhood/community-serving parkland to meet the service level objective of 3.5 acres per 1,000 population. Completion of planned park facilities will help offset the acreage needed. [72] According to the Greenprint, there are no areas in the Alum Rock Planning Area that are underserved by community centers, based on a three-mile radius from residential uses.

Activate San José

Activate San José 2020-2040 (ActivateSJ) complements the Greenprint 2009 Update and details PRNS's plans to maintain, improve, and expand facilities and services throughout the City. ActivateSJ includes goals and benchmarks for park improvements, including enacting Park Condition Assessments, providing City residents with parks within a 10-minute walk, and completing Regional Master Plans for park and trail systems. The project site is not identified in ActivateSJ as a very high need or high need area for park access.[73]

Parkland Dedication Ordinance and the Park Impact Ordinance

The City of San José has adopted the Parkland Dedication Ordinance (PDO, Municipal Code Chapter 19.38) and Park Impact Ordinance (PIO, Municipal Code Chapter 14.25) requiring new residential development to either dedicate sufficient land to serve new residents or pay fees to offset the increased costs of providing new park facilities for new development. Under the PDO and PIO, a project can satisfy half of its total parkland obligation by providing private recreational facilities on-site. For projects over 50 units, it is the City's decision as to whether the project would dedicate land for a new public park site or accept a fee in-lieu of land dedication.

Envision San José 2040 General Plan

Various policies in the Envision San José 2040 General Plan have been adopted for the purpose of reducing or avoiding impacts associated with public facilities and services, as listed below.

General Plan Policies - Public Facilities and Services	
Law Enforcement and Fire Protection	
Policy ES-3.1	Provide rapid and timely Level of Service response time to all emergencies: 1. For police protection, achieve a response time of six minutes or less for 60 percent of all Priority 1 calls, and of eleven minutes or less for 60 percent of all Priority 2 calls.

[72] City of San José. *Greenprint 2009 Update for Parks, Recreation Facilities and Trails*. 2009.
[73] City of San José. *ActivateSJ Strategic Plan (2020-2040).*

General Plan Policies - Public Facilities and Services	
	2. For fire protection, achieve a total response time (reflex) of eight minutes and a total travel time of four minutes for 80 percent of emergency incidents. 3. Enhance service delivery through the adoption and effective use of innovative, emerging techniques, technologies, and operating models. 4. Measure service delivery to identify the degree to which services are meeting the needs of San José's community. 5. Ensure that development of police and fire service facilities and delivery of services keeps pace with development and growth in the city.
Policy ES-3.9	Implement urban design techniques that promote public and property safety in new development through safe, durable construction and publicly visible and accessible spaces.
Policy ES-4.4	Implement the ABAG multi-jurisdictional local hazard mitigation plan through the Safety Element of the Envision General Plan, the requirements for project review of the California Environmental Quality Act (CEQA), and on-going capital improvement programs.
Policy ES-3.11	Ensure that adequate water supplies are available for fire-suppression throughout the City. Require development to construct and include all fire suppression infrastructure and equipment needed for their projects.

3.15.1.2 *Existing Conditions*

Fire Protection

Fire protection services in San José are provided by the San José Fire Department (SJFD). The SJFD responds to all fires, hazardous materials spills, and medical emergencies (including injury accidents). There are currently 34 active fire stations in the City, serving an area of 205 square miles and over 1.3 million residents. The SJFD has established the goal of responding to Priority 1 incidents (emergencies) within eight minutes, 80 percent of the time, and Priority 2 incidents (non-emergencies) within 13 minutes, 80 percent of the time. For 2019-2020, the SJFD responded to Priority 1 incidents within the set time standard 75 percent of the time. SJFD responded to 92 percent of Priority 2 incidents within the set time standard 92 percent of the time. [74]

The closest fire station to the project site is Fire Station 34, located at 1634 Las Plumas Avenue, 1.6 mile southeast of the project site. The fire station is approximately six minutes driving time from the project site.[75]

[74] City of San José. Annual Report on City Services 2019-2020. December 2020. Accessed September 12, 2021. https://www.sanjoseca.gov/home/showpublisheddocument/67957/637467496715000000.
[75] City of San José. Stations. Accessed September 12, 2021. https://www.sanjoseca.gov/your-government/departments-offices/fire/stations.

Police Protection

Police protection services for the project site are provided by the San José Police Department (SJPD). The SJPD employs approximately 1,400 employees, including both sworn and non-sworn officers. Patrolling officers are dispatched via police headquarters, which is at 201 West Mission Street, approximately 2.6 miles southwest of the project site.[76]

SJPD is divided into four geographic divisions: Central, Western, Foothill, and Southern. The project site is directly served by the SJPD Central Division. The Central Division includes four patrol districts totaling approximately 39 square miles.[77]

The SJPD has established the goal of responding to Priority 1 calls (present or imminent dangers to life or major damage to/loss of property) within six minutes and responding to Priority 2 calls (involving injury or property damage, or the potential for either to occur) within 11 minutes. In 2019-2020, the citywide average response time for Priority 1 calls was seven minutes, and the average response time for Priority 2 calls was 21 minutes.[78]

Schools

The project site is served by the Berryessa Union Elementary School District (BUSD), which consists of 10 elementary schools and three middle schools. The number of students enrolled in BUSD transitional kindergarten through eighth grade decreased from 6,842 during the 2019-2020 school year to 6,534 during the 2020-2021 school year.[79] For future students residing on the project site, their assigned schools would be Vinci Park Elementary School and Piedmont Middle School.

The project site is served by the East Side Union High School District (ESUHSD), which consists of 28 high schools including 11 comprehensive or traditional schools, five alternative schools, and 12 charter schools. The number of students enrolled in ESUHSD grades 9 through 12 decreased from 26,537 during the 2019-2020 school year to 25,946 during the 2020-2021 school year. For future students residing on the project site, their assigned school would be Independence High School.

Parks

The City's Department of Parks, Recreation, and Neighborhood Services is responsible for the development, operation, and maintenance of parks, trails, community centers, and other recreational facilities in San José. The City manages approximately of 3,500 acres of regional and neighborhood/community-serving parkland.[80]

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[76] San José Police Department. Department Information. Accessed September 12, 2021. https://www.sjpd.org/about-us/inside-sjpd/department-information.
[77] San José Police Department. "Central Division". Accessed September 12, 2021. https://www.sjpd.org/about-us/organization/bureau-of-field-operations/central-division.
[78] City of San José. Annual Report on City Services 2019-2020. December 2020. Accessed September 12, 2021.
[79] California Department of Education, Educational Demographics Unit. "DataQuest: District Enrollment by Grade." Accessed September 12, 2021. http://dq.cde.ca.gov/dataquest.
[80] City of San José. ActivateSJ Strategic Plan (2020-2040). Accessed September 12, 2021. https://www.sanjoseca.gov/home/showpublisheddocument/43503/637178743945470000.

City parks in the vicinity of the project site include Vinci Park, at Vinci Park Way and Hikodo Drive (0.5-mile northeast of the site), and Townsend Park, at Townsend Avenue and Townsend Circle (0.5-mile north of the site). Vinci Park is an eight-acre park with barbeque areas and a youth playground. Townsend Park is an eight-acre park that includes an exercise course, water play feature, playgrounds, and tennis courts.[81]

The Penitencia Creek trail (adjacent to Upper Penitencia Creek) is a paved trail that extends from King Road to Berryessa BART. The trail is a part of the 163-acre linear park (Penitencia Creek County Park, managed by the Santa Clara County Parks and Recreation Department) and is approximately one quarter mile southeast of the site.[82]

The Coyote Creek trail, which begins approximately 1,600 feet west of the project site, is a 0.25-mile paved trail that extends from Berryessa Road to Mercado Avenue.[83]

Community Centers and Other Recreational Facilities

The City currently has 50 community centers, 7 public skate parks, three municipal golf courses, 17 community gardens, 6 swimming pools, and 2 lake parks.[84,85,86] The nearest community center to the site is the San José Recreation Preschool at Roosevelt Community Center, located at 901 East Santa Clara Street, approximately two miles southwest of the site. The San José Municipal Golf Course is located at 1560 Oakland Road, approximately 0.25 mile north of the site.

Libraries

The nearest library to the site is the Educational Park Branch Library, located at 1722 Educational Park Drive approximately two miles southeast of the site. There are 22 additional libraries located throughout San José that are within the City's library system.

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[81] City of San José. Parks and Trails Map. Accessed September 13, 2021. https://www.sanjoseca.gov/your-government/departments/parks-recreation-neighborhood-services/outdoor-activities
[82] Santa Clara County Parks. Penitencia Creek. Accessed September 13, 2021. https://www.sccgov.org/sites/parks/parkfinder/Pages/PenitenciaCreek.aspx
[83] City of San José. Fact Sheet: Coyote Creek Trail. Accessed February 14, 2021. https://www.sanjoseca.gov/home/showpublisheddocument/20497/636687596865630000
[84] City of San José, Department of Parks, Recreation, and Neighborhood Services. "Community Gardening." https://www.sanjoseca.gov/your-government/departments/parks-recreation-neighborhood-services/reservations-permits/community-garden-plots. Accessed February 5, 2021.
[85] City of San José, Department of Parks, Recreation, and Neighborhood Services. "Parks and Trails." https://www.sanjoseca.gov/your-government/departments/parks-recreation-neighborhood-services/outdoor-activities/-fsiteid-1. Accessed February 5, 2021.
[86] City of San José. *Greenprint 2009 Update for Parks, Recreation Facilities and Trails*. December 2009.

3.15.2 Impact Discussion

For the purpose of determining the significance of the project's impact on public services, would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times, or other performance objectives for any of the public services:

a) Fire protection?
b) Police protection?
c) Schools?
d) Parks?
e) Other public facilities?

3.15.2.1 *Project Impacts*

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

The project, as proposed, would construct up to 850 residential units and 480,000 square feet of commercial space. Implementation of the project would intensify the use of the project site compared to existing conditions and would increase the demand for fire protection services on the project site. Physical improvements to the project site (i.e., structures and buildings) would, however, be constructed in conformance with current CBC and fire codes, and SJFD would review project plans to ensure appropriate safety features are incorporated to reduce fire hazards. Implementation of the project would not change response times.

According to the General Plan EIR, development allowed under the General Plan is not anticipated to require the construction of new fire stations, other than those currently planned.[87] The expansion of existing facilities may be required to accommodate additional equipment and employees. In the event expanded or additional facilities are determined to be necessary, it is assumed that adherence to General Plan policies would reduce the physical impacts from development of SJFD facilities to a less than significant level, although supplemental environmental review would be required. Implementation of General Plan policies and actions would ensure adequate long-term provision of services throughout the City. The project is considered in the General Plan's planned growth and would not, by itself, necessitate the expansion of existing facilities. Therefore, planned growth would not result in a significant impact related to fire protection.

[87] City of San José. *Integrated Final Program Environmental Impact Report for the Envision San José 2040 General Plan.* SCH# 2009072096. September 2011. Pages 626-629.

For these reasons, the proposed project would not require new or expanded fire protection facilities in order to maintain acceptable service ratios, response times, or other performance objectives for fire protection services. **(Less than Significant Impact)**

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

The General Plan EIR concluded that population growth under the General Plan would increase demand for police protection services, including additional officers and equipment. Police services would continue to be dispatched from police headquarters and no additional stand-alone police facilities are anticipated; however, expansion of existing facilities on developed sites may be required. The SJPD may increase the number of community policing centers located in existing commercial buildings or incorporated into new private development within Growth Areas; however, this would not be a direct response to the proposed project.

In the event additional or expanded facilities are determined to be necessary, it is assumed that implementation of General Plan policies would reduce the physical impacts from development of police facilities to a less than significant level, although supplemental environmental review would be required. Implementation of General Plan policies and actions would also help the SJPD to meet and maintain the City's response time objectives over the long term. The project is considered in the General Plan's planned growth and would not, by itself, necessitate the expansion of existing facilities. Therefore, planned growth would not result in a significant impact to police protection. **(Less than Significant Impact)**

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

Within the Berryessa Union Elementary School District, students from the project site would be closest to Vinci Park Elementary School located at 1311 Vinci Park Way and Piedmont Middle School located at 955 Piedmont Road in San José. Total enrollment in the BUSD was 6,842 students in 2019/2020.[88] The BUESD elementary school and middle school student generation rates are 0.046 and 0.016 students, respectively.[89] These rates are used for both single-family and multi-family attached residential units. Using these rates, the proposed project (i.e., 850 residential units) would generate an estimated 39 students that would attend Vinci Park Elementary School and 13 students

[88] California Department of Education, Educational Demographics Unit. "DataQuest: District Enrollment by Grade." Accessed February 4, 2021. http://dq.cde.ca.gov/dataquest.

[89] The BUSD and ESUHSD student generation rates were used for the approved Flea Market project, across Berryessa Road. Student generation rates for the proposed project would be similar to the approved residential development at the Flea Market site.

that would attend Piedmont Middle School. In 2020/2021, Vinci Park Elementary School had 534 students enrolled, and Piedmont Middle School had 721 students enrolled. Both schools' enrollment has declined by approximately 10 to 15 percent over the last six years.

High school students from the project site would attend Independence High School, located at 1776 Educational Park Drive in San José. Total enrollment in the ESUHSD was 25,946 students in 2020/2021. The ESUHSD student generation rate is 0.02 students per single-family or multi-family residential unit. The proposed project would generate an estimated 17 high school students.[90] Independence High School had 2,820 students enrolled in the 2019/2020 school year, a decrease of approximately 10 percent over the last six years.

The Envision San José 2040 General Plan EIR identified an available capacity of 72 students across the BUSD and 210 students across the ESUHSD, meaning that both districts were operating nearly at or above capacity when the General Plan was prepared. There are a number of methods that can be used to accommodate the increased numbers of students at existing schools. These methods include: 1) the provision of portable or relocatable classrooms, 2) expansion of existing schools, 3) the opening of existing schools previously considered surplus, 4) adjustment of school attendance boundaries, 5) the busing of students to schools with surplus capacity, or 6) the conversion to year-round schools with a four-track schedule.

State law (Government Code Section 65996) specifies an acceptable method of offsetting a project's effect on the adequacy of school facilities as the payment of a school impact fee prior to issuance of a building permit. California Government Code Sections 65995-65998 sets forth provisions for the payment of school impact fees by new development as the exclusive means of "considering and mitigating impacts on school facilities that occur or might occur as a result of any legislative or adjudicative act, or both, by any state or local agency involving, but not limited to, the planning, use, or development of real property" (§65996(a)). The legislation goes on to say that the payment of school impact fees "are hereby deemed to provide full and complete school facilities mitigation" under CEQA. (§65996(b)). The school district is responsible for implementing the specific methods for mitigating school impacts under the Government Code. The school impact fees and the school districts' methods of implementing measures specified by Government Code 65996 would offset project-related increases in student enrollment.

Although residential development under the proposed project could generate new students in the area, the project would conform to Government Code Section 65996, which requires the project to pay school impact fees and is considered adequate mitigation for increased demands upon school facilities. **(Less than Significant Impact)**

[90] Ibid.

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

The City's service level objectives for parkland include providing public parkland or recreational open space within one third mile of all residents and providing new or expanded facilities to serve new residential development in order to maintain performance standards.

Implementation of the proposed project would redevelop the project site with a mix of uses, including 850 residential units. It is anticipated that the residential units on the project site would result in 2,670 new residents on-site.[91] The project's new residents would result in an incremental increase in demand on existing recreational facilities in the area, including Vinci Park and Townsend Park. Office and retail workers occupying the 480,000 square feet of proposed commercial development would also increase the demand on nearby recreational facilities.

To meet the City's parkland goals for the Alum Rock Planning area, the project would need to provide 2.6 acres of parkland (i.e., a ratio of three acres of parkland per 1,000 residents). The project includes 0.9 acres of public park space. The project would conform to the City's Parkland Dedication Ordinance and Park Impact Ordinance and would be required to pay PDO/PIO fees to offset the increased demand for parks and recreational facilities.

The PDO/PIO fees generated by the residential development would be used to provide neighborhood-serving facilities within a 0.75-mile radius of the project site and/or community-serving facilities within a three-mile radius (General Plan Policies PR-2.4 and PR-2.5). Therefore, the proposed project would not result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities or the need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts to parks. **(Less than Significant Impact)**

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

The Educational Park Branch Library, located at 1722 Educational Park Drive approximately two miles southeast of the site, is the closest library to the project site. There are 22 additional libraries located throughout San José.

Development approved under the City's General Plan will increase the City's residential population to 1,313,811. The existing and planned library facilities in the City will provide approximately 0.68

[91] Based upon the City's average of 3.20 persons per household.

square feet of library space per capita for the anticipated population under the General Plan by the year 2035, which is above the City's service goal of 0.59 square feet per capita.

The proposed project would contribute to Citywide demand for library services; however, the General Plan EIR concluded that development allowed under the General Plan would be adequately served by existing and planned library facilities. Therefore, the proposed project would not result in substantial increase in use of San José facilities or otherwise require the construction of new library facilities. **(Less than Significant Impact)**

3.15.2.2 *Cumulative Impacts*

Would the project result in a cumulatively considerable contribution to a significant cumulative public services impact?

Fire Protection Services

The geographic area for cumulative fire protection services is the City boundaries. The General Plan EIR concluded that buildout under the General Plan would not be anticipated to require the construction of new fire stations, aside from those already planned. In the event new or expanded facilities are required, construction of those facilities would be subject to site-specific CEQA environmental review. For these reasons, the proposed project would not have a cumulatively considerable impact with respect to fire protection services. **(Less than Significant Cumulative Impact)**

Police Protection Services

The geographic area for cumulative police protection services is the City boundaries. The General Plan EIR concluded that population growth under the General Plan would increase demand for police protection services. Although no additional stand-alone police facilities are anticipated, expansion of existing facilities on developed sites may be required.

In the event new or expanded facilities are required, construction of those facilities would be subject to site-specific CEQA environmental review. It is assumed that implementation of General Plan policies would reduce the physical impacts from development of police facilities to a less-than-significant level. For these reasons, the proposed project would not have a cumulatively considerable impact with respect to police protection services. **(Less than Significant Cumulative Impact)**

Schools

The geographic area for cumulative impacts to schools is the BUESD and ESUHSD boundaries since the project site is located within these two school districts. The cumulative projects within these districts include residential development projects that would generate new students. Although schools in the vicinity of the project sire are experiencing reductions in enrollment, the General Plan EIR noted that the districts were operating at or above capacity. Additional student enrollment from the cumulative projects may not be accommodated by existing school facilities.

No net new school facilities are anticipated, though BUESD and ESUHSD will continue to renovate and expand existing facilities, as necessary. Given the developed nature of the existing school campuses, it is anticipated that environmental impacts associated with future renovations could be mitigated to a less-than-significant level.

As required by state law (Government Code Section 65996), development projects shall pay the appropriate school impact fees to impacted school districts to offset the increased demands on school facilities caused by the development. The cumulative projects (including the proposed project), in conformance with state law (Government Code Section 65996), would not result in significant cumulative impacts to schools. **(Less than Significant Cumulative Impact)**

Parks

The geographic area for cumulative parks impacts is the City boundaries. The buildout of the General Plan and cumulative projects (including the proposed project) would incrementally increase the demand for park facilities but would also create new public open space. The cumulative projects within the City of San José would be required to fund park improvements and dedicate land through compliance with the City's PDO and PIO, which help ensure the provision of parklands in compliance with City standards. In addition, impacts to other open spaces would be mitigated through the contribution of property taxes. For these reasons, the cumulative projects (including the proposed project) would not result in significant cumulative impacts to parks. **(Less than Significant Cumulative Impact)**

Libraries

The geographic area for cumulative library impacts is the City boundaries. The cumulative projects (including the proposed project) would contribute to Citywide demand for library services; however, the General Plan EIR concluded that development allowed under the General Plan would be adequately served by existing and planned library facilities. In the event new or expanded library facilities are required, construction of those facilities would be subject to site-specific CEQA environmental review. It is assumed that implementation of General Plan policies would reduce the physical impacts from development of police facilities to a less than significant level. For these reasons, the proposed project would not have a cumulatively considerable impact with respect to libraries. **(Less than Significant Cumulative Impact)**

3.16 RECREATION

3.16.1 Environmental Setting

3.16.1.1 *Regulatory Framework*

State

Government Code Section 66477

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

Regional and Local

Greenprint 2009 Update

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

The Greenprint identifies the Alum Rock Planning Area, which includes the project site, as having 435 acres of neighborhood/community-serving parkland including school recreation parkland at a ratio of 3.0 acres per 1,000 population. The Alum Rock Planning Area will need an additional 108.8 acres of neighborhood/community-serving parkland to meet the service level objective of 3.5 acres per 1,000 population. Completion of planned park facilities will help offset the acreage needed.[92] According to the Greenprint, there are no areas in the Alum Rock Planning Area that are underserved by community centers, based on a three-mile radius from residential uses.

Activate San José

Activate San José 2020-2040 (ActivateSJ) complements the Greenprint 2009 Update and details PRNS's plans to maintain, improve, and expand facilities and services throughout the City. ActivateSJ includes goals and benchmarks for park improvements, including enacting Park Condition Assessments, providing City residents with parks within a 10-minute walk, and completing Regional Master Plans for park and trail systems. The project site is not identified in ActivateSJ as a very high need or high need area for park access.[93]

[92] City of San José. *Greenprint 2009 Update for Parks, Recreation Facilities and Trails*. 2009.
[93] City of San José. *ActivateSJ Strategic Plan (2020-2040).*

Parkland Dedication Ordinance and the Park Impact Ordinance

The City of San José has adopted the Parkland Dedication Ordinance (PDO) and Park Impact Ordinance (PIO) requiring new residential development to either dedicate sufficient land to serve new residents or pay fees to offset the increased costs of providing new park facilities for new development. Under the PDO and PIO, a project can satisfy half of its total parkland obligation by providing private recreational facilities on-site. For projects over 50 units, it is the City's decision as to whether the project will dedicate land for a new public park site or accept a fee in-lieu of land dedication. Deed-restricted affordable housing projects that meet the City's affordability criteria are subject to the PDO and PIO and receive a 50 percent credit toward the parkland obligation. The acreage of parkland required is based on the minimum acreage dedication formula outlined in the PDO.

Envision San José 2040 General Plan

Various policies in the Envision San José 2040 General Plan have been adopted for the purpose of reducing or avoiding impacts associated with public facilities and services, as listed below.

General Plan Policies - Recreation	
Parks, Trails, Open Space, and Recreation	
Policy PR-1.1	Provide 3.5 acres per 1,000 population of neighborhood/community serving parkland through a combination of 1.5 acres of public park and 2.0 acres of recreational school grounds open to the public per 1,000 San José residents.
Policy PR-1.2	Provide 7.5 acres per 1,000 population of citywide/regional park and open space lands through a combination of facilities provided by the City of San José and other public land agencies.
Policy PR-1.3	Provide 500 square feet per 1,000 population of community center space.
Policy PR-1.9	As Village and Corridor areas redevelop, incorporate urban open space and parkland recreation areas through a combination of high-quality, publicly accessible outdoor spaces provided as part of new development projects; privately, or in limited instances publicly, owned and maintained pocket parks; neighborhood parks where possible; as well as through access to trails and other park and recreation amenities.
Policy PR-2.6	Locate all new residential developments over 200 units in size within 1/3 of a mile walking distance of an existing or new park, trail, open space, or recreational school grounds open to the public after normal school hours or include one or more of these elements in its project design.

Berryessa BART Urban Village Plan

The following policies within the Berryessa BART Urban Village Plan pertain to the purposes of reducing or avoiding impacts related to recreation.

Urban Village Plan Policies – Recreation	
Open Space and Placemaking	
Policy OS-1.1	Provide a system of parks and plazas that serves the needs of both the existing and future Berryessa BART Urban Village residents and surrounding community.
Policy OS-1.7	As properties near the Berryessa/North San José BART station develop with higher-intensity uses, the City, community, and private developers should facilitate the creation of pocket parks within new development.
Policy OS-3.2	Privately-owned publicly accessible open spaces should clearly demonstrate a recreational benefit to the residents and visitors of the Urban Village and not just to commercial businesses that need outdoor seating areas.
Policy OS-3.5	All new development shall incorporate some amount of publicly accessible open space, such as plazas and pocket parks, or small areas for seating, into their development that is privately owned and maintained.

3.16.1.2 *Existing Conditions*

The City's Department of Parks, Recreation, and Neighborhood Services is responsible for the development, operation, and maintenance of parks, trails, community centers, and other recreational facilities in San José. The City manages approximately of 3,500 acres of regional and neighborhood/community-serving parkland.[94]

City parks in the vicinity of the project site include Vinci Park, at Vinci Park Way and Hikodo Drive (0.5-mile northeast of the site), and Townsend Park, at Townsend Avenue and Townsend Circle (0.5-mile north of the site). Vinci Park is an eight-acre park with barbeque areas and a youth playground. Townsend Park is an eight-acre park that includes an exercise course, water play feature, playgrounds, and tennis courts.[95]

The Penitencia Creek trail (adjacent to Upper Penitencia Creek) is a paved trail that extends from King Road to Berryessa BART. The trail is a part of the 163-acre linear park (Penitencia Creek County Park, managed by the Santa Clara County Parks and Recreation Department) and is approximately one quarter mile southeast of the site.[96]

[94] City of San José. ActivateSJ Strategic Plan (2020-2040). Accessed September 12, 2021. https://www.sanjoseca.gov/home/showpublisheddocument/43503/637178743945470000.
[95] City of San José. Parks and Trails Map. Accessed September 13, 2021. https://www.sanjoseca.gov/your-government/departments/parks-recreation-neighborhood-services/outdoor-activities
[96] Santa Clara County Parks. Penitencia Creek. Accessed September 13, 2021. https://www.sccgov.org/sites/parks/parkfinder/Pages/PenitenciaCreek.aspx

3.16.2 Impact Discussion

For the purpose of determining the significance of the project's impact on recreation:

a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?
b) Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?

3.16.2.1 *Project Impacts*

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

The proposed project would construct 850 residential units, resulting in an estimated 2,670 residents on the site, and 0.9 acre of public park space. The project also includes 480,000 square feet of proposed commercial development.

The new residents and employees on the project site would increase demand on local recreational facilities, including parks. The proposed public park space would provide passive recreational uses and reduce the demand on existing parks and other recreational facilities.

As described in Section 3.15 Public Services, the project would conform to the City's Parkland Dedication Ordinance and Park Impact Ordinance and would pay PDO/PIO fees to offset the increased demand for parks and recreational facilities. With inclusion of the proposed public parks and open space, and adherence to the City's PDO and PIO, the proposed project would not result in substantial physical deterioration of recreational facilities. **(Less than Significant Impact)**

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

The proposed project includes construction of a 0.9-acre park. The impacts (e.g., construction related water quality impacts, trees/nesting birds, construction noise, hazards and hazardous materials, and hydrology and water quality) from construction of these facilities would be reduced to less than significant with the implementation of standard permit conditions and mitigation measures described throughout the EIR. Therefore, construction of on-site recreational facilities would not result in an adverse physical effect on the environment. **(Less than Significant Impact)**

3.16.2.2 *Cumulative Impacts*

Would the project result in a cumulatively considerable contribution to a significant cumulative recreation impact?

The geographic area for cumulative recreation impacts is the City's boundaries. Cumulative projects generating new residents must comply with the City's requirements for parkland dedication, provisions of public open space/parkland, and/or payment of in-lieu fees to minimize impacts of new residents on existing park and recreation facilities. Cumulative projects which include construction or expansion of recreational facilities would be required to implement standard permit conditions and mitigation measures to reduce impacts on the environment from the construction of these facilities to less than significant. For these reasons, the cumulative projects would not result in a significant cumulative recreation impact. **(Less than Significant Cumulative Impact)**

3.17 TRANSPORTATION

The following discussion is based upon a Transportation Analysis prepared by Hexagon Transportation Consultants, Inc. on September 17, 2021. A copy of this report is included in Appendix I of this document.

As shown in Table 1.2-1, Notice of Preparation (NOP) comments on the subject of transportation were received from the California Department of Transportation (CalDoT), Santa Clara Valley Transportation Authority (VTA), and County of Santa Clara Roads and Airports Department. The comments recommended analysis of nearby intersections and freeway segments, congestion impacts, and bicycle and pedestrian networks. The comments also recommended including calculations of trip generation assumptions and development of a Transportation Demand Management (TDM) plan. Refer to discussion under checklist questions a) and b) below.

3.17.1 Environmental Setting

3.17.1.1 *Regulatory Framework*

State

Regional Transportation Plan

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

Senate Bill 743

Senate Bill (SB) 743 establishes criteria for determining the significance of transportation impacts using a vehicle miles traveled metric intended to promote the reduction of greenhouse gas (GHG) emissions, the development of multimodal transportation networks, and a diversity of land uses. Specifically, SB 743 requires the replacement of automobile delay—described solely by level of service or similar measures of vehicular capacity or traffic congestion—with vehicle miles traveled (VMT) as the recommended metric for determining the significance of transportation impacts. The Governor's Office of Planning and Research (OPR) approved the CEQA Guidelines implementing SB 743 on December 28, 2018. Local jurisdictions were required to implement a VMT policy by July 1, 2020.

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

Regional and Local

Congestion Management Program

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

Transportation Analysis Policy (City Council Policy 5-1)

As established in City Council Policy 5-1, Transportation Analysis Policy (2018), the City of San José uses VMT as the metric to assess transportation impacts from new development. According to the policy, an employment (e.g., office or research and development) or residential project's transportation impact would be less than significant if the project VMT is 15 percent or more below the existing average regional per capita VMT. For industrial projects (e.g., warehouse, manufacturing, distribution), the impact would be less than significant if the project VMT is equal to or less than existing average regional per capita VMT. The threshold for a retail project is whether it generates net new regional VMT, as new retail typically redistributes existing trips and miles traveled as opposed to inducing new travel. Screening criteria have been established to determine which projects require a detailed VMT analysis. If a project meets the relevant screening criteria, it is considered to a have a less than significant VMT impact.

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

Envision San José 2040 General Plan

Various policies in the Envision San José 2040 General Plan have been adopted for the purpose of reducing or avoiding impacts related to transportation, as listed below.

General Plan Policies – Transportation	
Policy TR-1.1	Accommodate and encourage use of non-automobile transportation modes to achieve San José's mobility goals and reduce vehicle trip generation and vehicle miles traveled.
Policy TR-1.2	Consider impacts on overall mobility and all travel modes when evaluating transportation impacts of new developments or infrastructure projects.
Policy TR-2.8	Require new development where feasible to provide on-site facilities such as bicycle storage and showers, provide connections to existing and planned facilities, dedicate land to expand existing facilities or provide new facilities such as sidewalks and/or bicycle lanes/paths, or share in the cost of improvements.
Policy TR-3.3	As part of the development review process, require that new development along existing and planned transit facilities consist of land use and development types and intensities that contribute towards transit ridership. In addition, require that new development is designed to accommodate and to provide direct access to transit facilities.
Policy TR-7.1	Require large employers to develop and maintain TDM programs to reduce the vehicle trips and vehicle miles generated by their employees through the use of shuttles, provision for car-sharing, bicycle sharing, carpool, parking strategies and other measures.
Policy TR-8.6	Allow reduced parking requirements for mixed-use developments and for developments providing shared parking or a comprehensive TDM program, or developments located near major transit hubs or within Villages and Corridors and other growth areas.
Policy TR-9.1	Enhance, expand, and maintain facilities for walking and bicycling, particularly to connect with and ensure access to transit and to provide a safe and complete alternative transportation network that facilitates non-automobile trips.

Berryessa BART Urban Village Plan

The following policies within the BBUV Plan pertain to the purposes of reducing or avoiding impacts related to transportation.

Urban Village Plan Policies – Transportation	
Policy LU-2.7	Prohibit new surface parking in the Urban Village, unless it is approved to support the functioning of entertainment, civic, cultural, placemaking, and other interim uses, as defined in the Land Use Chapter. Surface parking is only allowed in the Transit Employment Center designation of the Flea Market South District to support interim uses.
Policy LU-4.2	Require that new development supports the multi-modal circulation system developed for the Berryessa BART Urban Village Plan, which provides direct multi-modal connections to all residents, visitors, and employees within a half-mile radius from the BART station.
Policy LU-4.5	Future multi-modal connections under the BART tracks (including motor vehicle connections) should be consistent with the circulation system developed for the Berryessa BART Urban Village Plan and block layout of the Flea Market South District.
Policy CS-3.2	All pedestrian infrastructure shall be designed with safety and convenience in mind, in compliance with the Americans with Disabilities Act and City of San José Complete Streets Design Guidelines and Standards.
Policy CS-3.3	Encourage the installation of paseos that enhance the pedestrian environment and improve connectivity throughout the Urban Village Area.
Policy CS-3.4	Connect streets, paseos, and Coyote Creek and Penitencia Creek trails to the larger public street network and to the open space system.
Policy CS-3.5	Improve pedestrian crossings at Urban Village boundaries to provide access to the Berryessa BART Station for those traveling on foot.
Policy CS-3.6	Develop and implement a coherent wayfinding system for the Urban Village for more convenient travel.
Policy CS-4.3	Expand the bicycle network by adding facilities within the Urban Village.
Policy CS-4.4	New developments shall provide high quality, desirable bicycle parking and/or storage facilities along sidewalks, in parking garages, and building entrances and public sites as defined in the San José Municipal Code.

3.17.1.2 *Existing Conditions*

Existing Roadway Network

Roadway access to the project area is described below.

Regional Access

US-101 is an eight-lane freeway (six mixed-flow and two high-occupancy vehicle lanes) in the vicinity of the project area. US-101 provides connections to Interstate (I-)880, I-680/280, State Route (SR) 237, and SR 87. Access to the project area is provided via an interchange at Oakland Road.

I-880 is an eight-lane freeway (six mixed-flow and two high-occupancy vehicle lanes) in the vicinity of the project area. It extends along the eastern side of San Francisco Bay from San José to Oakland. South of its interchange with I-280 in west San José, I-880 becomes SR 17 and extends southward to Santa Cruz. Access to and from the project site from I-880 is provided via its interchanges with US-101 and Old Bayshore Highway/Gish Road.

I-680 is an eight-lane freeway in the vicinity of the site. It extends north to Sacramento and south to an interchange with US-101 in San José, at which point it makes a transition into I-280 to San Francisco. North of SR 237, I-680 has toll express lanes in the southbound direction. Express toll lanes in the northbound direction are currently under construction. Access to and from I-680 to the site is provided via its interchange with Berryessa Road.

Local Access

Berryessa Road is a divided six-lane east-west roadway in the vicinity of the project site, east of Commercial Street to an interchange with I-680. Berryessa Road is a four-lane roadway from Commercial Street west to Mabury Road, where it transitions into Hedding Street. In the project vicinity, Berryessa Road has sidewalks on both sides of the street and on-street bike lanes between Mabury Road and Piedmont Road. Access to and from the project site along Berryessa Road would be provided via its intersection with Sierra Road and Green Street as well as a right-in/right-out-only driveway.

Mabury Road is a four-lane east-west roadway that runs between the Flea Market and White Road. West of the Flea Market site access point, Mabury Road is a two-lane roadway where it intersects Taylor Street. From this intersection, Mabury Road runs parallel to the north side of US-101 and continues west to its intersection with Oakland Road. In the project vicinity, Mabury Road has sidewalks on both sides of the street and on-street bike lanes between the Flea Market access point and White Road. Mabury Road would provide access to and from the project site via its intersections with King Road, BART Station Way.

Lundy Avenue/King Road is generally a divided four-lane north-south roadway that runs from Trade Zone Boulevard in Milpitas south to Mabury Road, where it transitions to King Road. King Road runs from Mabury Road south to Aborn Road, where it transitions to Silver Creek Road. Sidewalks are present on both sides of the roadway throughout the entire length of Lundy Avenue/King Road, with the exception of a segment between Commodore Drive and Salamoni Court, where only a

sidewalk along the east side of the road is provided. On-street bike lanes are present on Lundy Avenue/King Road north of Berryessa Road and south of Salamoni Court. Access to and from the project site is provided via its signalized intersection with Berryessa Road and Sierra Road.

Hedding Street is generally a two-lane east-west roadway that runs west from Mabury Road to Winchester Boulevard, where it transitions to Pruneridge Avenue. North of Mabury Road, Hedding Street transitions to Berryessa Road. On-street bike lanes and sidewalks on both sides of the roadway are present throughout the entire length of Hedding Street. Access to and from the project site is provided via Berryessa Road.

Taylor Street is generally a two-lane east-west roadway that runs west from Mabury Road to The Alameda, where it transitions to Naglee Avenue. Sidewalks on both sides of the roadway are present west of 23rd Street. Between 23rd Street and Mabury Road, only a sidewalk along the north side of the road is available. Access to and from the project site is provided via Taylor Street's transition to Mabury Road.

Jackson Avenue/Flickinger Avenue is a north-south four-lane roadway that extends from Story Road to Berryessa Road where it becomes Flickinger Avenue. Jackson Avenue has a two-lane segment between Alum Rock Avenue and Story Road. Major cross streets include Alum Rock Avenue, McKee Road, Mabury Road, and Berryessa Road. Jackson Avenue has sidewalks on both sides of the street. Access to and from the project site is provided via Berryessa Road and Mabury Road.

McKee Road is a six-lane east-west roadway that extends east from US-101 to east San José. McKee Road has full access interchanges with US-101 and I-680. Major north-south cross streets include King Road, Jackson Avenue, Capitol Avenue, and White Road. McKee Road becomes Julian Street just east of US-101 and has sidewalks on both sides of the street. Access to and from the project site is provided via Lundy Avenue, Berryessa Road, and Mabury Road.

Commercial Street is a three-lane (two westbound travel lanes and one eastbound travel lane) east-west roadway that runs between Berryessa Road and 13th Street, approximately 750 feet west of Oakland Road, where it transitions to Old Bayshore Highway. Sidewalks are present on both sides of Commercial Street, with the exception of a missing segment extending 600 feet west of its intersection with Berryessa Road along the north side of the roadway. Access to and from the project site is provided via Berryessa Road.

Oakland Road is north-south roadway consisting of four lanes between Hedding Street and Commercial Street and six lanes north of Commercial Street until Montague Expressway, where it transitions to Main Street. On-street bike lanes and sidewalks on both sides of the roadway are present throughout the entire length of Oakland Road. Access to and from the project site is provided via Commercial Street and Berryessa Road.

Sierra Road is generally a two-lane east-west roadway that extends north from Berryessa Road and continues east to Flickinger Avenue. Sidewalks on both sides of the roadway are present throughout the entire length of Sierra Road. On-street bike lanes on Sierra Road are present approximately 500 feet west and east of its intersections with Lundy Avenue and Flickinger Avenue. Access to and from the project site is provided via its intersection with De Rome Drive, Mercado Way, and Shore Drive.

Existing Pedestrian, Bicycle, and Transit Facilities

Pedestrian Facilities

Pedestrian facilities near the project site consist mostly of sidewalks along the streets. Sidewalks are found along both sides of all streets near the project site including Berryessa Road, Sierra Road, Shore Road, Mercado Way, and De Rome Drive. Other pedestrian facilities in the project area include crosswalks and pedestrian push buttons at all signalized study intersections.

Existing sidewalks along Berryessa Road provide a pedestrian connection between the project site and pedestrian destinations (such as the Berryessa BART station) in the project vicinity. A sidewalk segment is along the north side of Commercial Street extending 600 feet west of its intersection with Berryessa Road. A sidewalk is provided along only the east side of King Road between Commodore Drive and Salamoni Court. Sierra Road has sidewalks on both sides of the street between Berryessa Road and Hazlett Way, and on the south side only, between Hazlett Way and Lundy Avenue. The existing pedestrian facilities are shown on Figure 3.17-1.

Existing Bicycle Facilities

Bicycle facilities are divided into three classes. Class I bikeways are bicycle paths that are physically separated from motor vehicles and offer two-way bicycle travel. The Penitencia Creek Trail is located in the project area and is a continuous multi-purpose pathway for pedestrians and bicycles that is separated from motor vehicles. It begins at the Berryessa BART Station and extends to the east of I-680 to Alum Rock Park.

Class II bikeways are striped bike lanes on roadways that are marked by signage and pavement markings. Within the vicinity of the project site, striped bike lanes are present on the following roadway segments:

- Berryessa Road, between Mabury Road and Piedmont Road
- Lundy Avenue, north of Berryessa Road to Trade Zone Boulevard
- Sierra Road, between Berryessa road and Hazlett Way and Araujo Street and Tourney Drive
- King Road, south of Salamoni Court/Penitencia Creek Trail
- Mabury Road, Flea Market entrance to White Road and Taylor Street to Berryessa Road
- Commercial Street, north of Berryessa Road to Zanker Road

Class III bikeways are bicycle routes and only have signs to help guide bicyclists on recommended routes to certain locations. In the vicinity of the project site, the following roadway segments are designated bicycle routes:

- Sierra Road, from Hazlett Way to Araujo Street
- 22nd Street/Montferino Drive, from Empire Street to Taylor Street

Source: Hexagon Transportation Consultants, Inc., July 6, 2021.

EXISTING PEDESTRIAN FACILITIES

FIGURE 3.17-1

Class IV bicycle facilities (protected/buffered bike lanes) are currently being installed throughout the City as part of the Better Bikeways project. Designated Class IV separated bike lanes are currently provided along the following roadways:

- Taylor Street, from 23rd Street to the Flea Market entrance
- BART Station Way, from Mabury Road to Berryessa Road

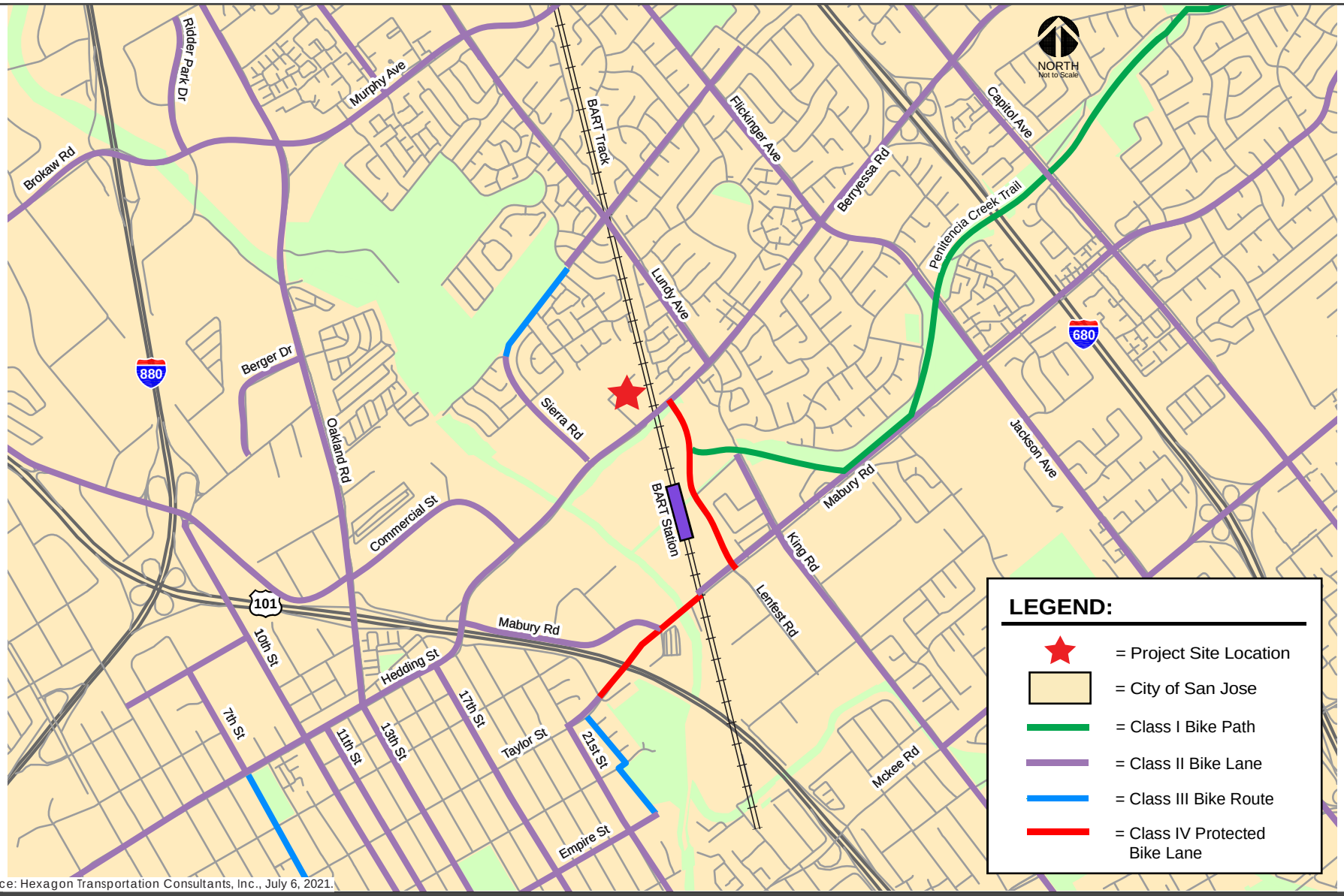
Within the Berryessa BART Station, a bicycle-only path is provided along the east side of Berryessa BART Way between Berryessa Road and Mabury Road. An additional bicycle path is located between the BART tracks and station parking garage and provides access between Mabury Road and the station entrance. Bicycle lockers and racks are provided at the BART station.

Although most of the residential streets near the project site do not have striped bike lanes and are not designated as bicycle routes, due to their low traffic volumes many of them are conducive to bicycle usage. The existing bicycle facilities are shown on Figure 3.17-2.

Existing Transit Services

VTA Bus Service

The project site is primarily served by six VTA bus routes (61, 64A, 64B, 66, 70, 77, and 500). These bus lines are shown on Figure 3.17-3 and described in Table 3.17-1, including their terminus points, closest scheduled stop, and commute hour headways. The nearest existing bus stops to the project site are located at the Berryessa Transit Center, located approximately 2,000 feet south of the project site, and are served by Routes 61, 70, 77, and 500.



Source: Hexagon Transportation Consultants, Inc., July 6, 2021.

EXISTING BICYCLE FACILITIES

FIGURE 3.17-2

Source: Hexagon Transportation Consultants, Inc., July 6, 2021.

EXISTING TRANSIT FACILITIES

FIGURE 3.17-3

Table 3.17-1: Existing Transit Service			
Transit Service	**Route Description**	**Nearest Stop and Distance from Project Site**	**Headway[1]**
Frequent Route 61	Sierra Road and Piedmont Road to Good Samaritan Hospital	Berryessa Transit Center, approximately 2,000 feet south	20 mins
Frequent Route 64A	McKee Road and White Road to Ohlone-Chynoweth Station	King Road/McKee Road, approximately 4,400 feet southeast	40 mins
Frequent Route 64B	McKee Road and White Road to Almaden Expressway and Camden Avenue	King Road/McKee Road, approximately 4,400 feet southeast	40 mins
Frequent Route 66	North Milpitas to Kaiser Hospital in San José	Oakland Road/ Commercial Street, approximately 4,700 feet west	15 to 20 mins
Frequent Route 70	Milpitas BART to Eastridge Mall via Jackson Street	Berryessa Transit Center, approximately 2,000 feet south	40 to 60 mins
Frequent Route 77	Milpitas BART to Eastridge Mall via King Road	Berryessa Transit Center, approximately 2,000 feet south	20 mins
Frequent Rapid Route 500	Berryessa BART to San José Diridon Station	Berryessa Transit Center, approximately 2,000 feet south	20 mins

[1] Headway during peak commute periods in the project area.
min = minute

VTA Light Rail Transit Service

The VTA currently operates the 42.2-mile VTA light rail line system extending from south San José through downtown to the northern areas of San José, Santa Clara, Milpitas, Mountain View, and Sunnyvale. The Alum Rock-Santa Teresa light rail transit (LRT) line (Route 901) runs within the median of Capitol Avenue from Alum Rock Avenue to Montague Expressway. The Berryessa LRT Station is located approximately two miles east of the project site along Capitol Avenue and is served by LRT Route 901 and Bus Route 61.

BART Transit Service

The Berryessa/North San José BART Station, located approximately 2,000 feet south of the project site across Berryessa Road, opened in June 2020 and is served by the Richmond – Berryessa/North San José line (Orange line) and the Berryessa/North San José – Daly City line (Green line).

Existing VMT

To determine whether a project would result in CEQA transportation impacts related to VMT, the City has developed the San José VMT Evaluation Tool to streamline the analysis for development projects. For non-residential or non-office projects, very large projects, or projects that can potentially shift travel patterns, the City's Travel Demand Forecasting (TDF) model can be used to determine project VMT.

Based on the City's VMT Evaluation Tool, the existing VMT for residential uses in the project vicinity is 12.76 per capita and employment uses is 13.52 per employee. The current citywide average VMT for residential uses is 11.91 per capita and the regional average VMT for employment uses is 14.37 per employee. Therefore, the VMT levels of existing residential uses in the project vicinity are currently greater than the average citywide VMT per capita level. The VMT levels of existing employment uses in the project vicinity are less than the regional average VMT per employee.

3.17.2 Impact Discussion

For the purpose of determining the significance of the project's impact on transportation, would the project:

a) Conflict with a program, plan, ordinance or policy addressing the circulation system, including transit, roadways, bicycle lanes, and pedestrian facilities?
b) Conflict or be inconsistent with CEQA Guidelines Section 15064.3, subdivision (b)?
c) Substantially increase hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?
d) Result in inadequate emergency access?

3.17.2.1 *Project Impacts*

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

New development projects in San José should encourage multi-modal travel, consistent with the goals and policies of the City's General Plan to reduce vehicle trip generation and VMT. The City's General Plan identifies both walk and bicycle commute mode split targets as 15 percent or more by the year 2040. This level of pedestrian and bicycle mode share is a reasonable goal for the project, particularly if transit services (including BART) are utilized in combination with bicycle commuting. In addition, the San José Bike Plan 2025 establishes goals, policies, and actions to facilitate bicycling and designates bicycle lanes and corridors along many City streets. In order to further the goals of the City pedestrian and bicycle facilities are encouraged with new development projects.

The San José Bike Plan 2025 shows a variety of bicycle facilities are planned in the project area, including Class IV bicycle lanes along Berryessa Road and Lundy Avenue. In addition, the BBUV

Plan incorporates complete street concepts that may include protected bike lanes along both sides of the Berryessa Road and Mabury Road.

Development within Urban Villages must incorporate additional urban design and architectural elements that facilitate buildings with pedestrian-oriented design and activate the pedestrian public right-of-way. The project site is located within the BBUV boundary and would comply with BBUV transportation policies (listed under Section 3.17.1.1 Regulatory Framework) by connecting public streets to the proposed project for improved connectivity/accessibility, providing bicycle parking, and widening the sidewalk along the project frontage on Berryessa Road for improved safety in compliance with the ADA and City design guidelines. The project's impacts on pedestrian, bicycle, and transit facilities are discussed further below.

Pedestrian and Bicycle Facilities

Pedestrian facilities in the project vicinity consist of sidewalks along both sides of all streets, crosswalks, and pedestrian push buttons at all signalized study intersections. Based on the LTA, the existing network of sidewalks and crosswalks provides good connectivity and provides pedestrians with safe routes to transit services and other points of interest in the area. In addition, the project would widen the existing sidewalk from eight feet to 12 feet along the site's frontage on Berryessa Road to improve connectivity/safety.

It is estimated that the use of a bicycle will account for only a one to three percent mode share for the project. The low projected mode-share for bicycle usage in the project area is likely due to its proximity to the Berryessa Transit Station and its connections to bus routes and BART. The San José Bike Plan 2025 states that Class IV protected bike lanes are planned along Berryessa Road between US-101 and Piedmont Road.

- **Condition of Approval**: The project applicant shall provide an in-lieu monetary contribution for the implementation of the protected bike lanes along its Berryessa Road frontage.

Planned improvements identified in the General Plan and San José Bike Plan are intended to reduce the identified adverse effects to the roadway system by providing the project site with viable connections to surrounding pedestrian/bicycle and transit facilities and provide for a balanced transportation system. With the implementation of the above condition of approval, the project would not conflict with a plan, ordinance, or policy addressing pedestrian or bicycle circulation. **(Less than Significant Impact)**

Transit Facilities

The Envision San José 2040 General Plan identifies the following goals regarding public transit:

- As part of the development review process, require that new development along existing and planned transit facilities consist of land use and development types and intensities that contribute towards transit ridership. In addition, require that new development is designed to accommodate and to provide direct access to transit facilities.

- Pursue development of BART, bus, shuttle, and fixed guideway services on designated streets and connections to major destinations.

The Berryessa BART Station is located 2,000 feet south of the site between Berryessa Road and Mabury Road. Station facilities include a parking structure for park-and-ride commuters, surface parking lots, kiss-and-ride drop-off points, bus transfer bays, and bikeshare stations. Phase 1 of the Silicon Valley BART Extension project included the extension of service to the Berryessa BART Station and began operation in June 2020. Phase 2 would extend service six miles into downtown San José and terminate in Santa Clara, with completion planned for 2030.

The nearest bus stops to the project site are at the Berryessa Transit Center approximately 2,000 feet south of the site and on Lundy Avenue (near Berryessa Road), approximately 1,100 feet east of the site. The new transit trips generated by the project are not expected to create demand in excess of the existing and planned transit service.

The project's proximity to public transit would encourage increased use of transit and be consistent with the General Plan and BBUV Plan strategies and policies. **(Less than Significant Impact)**

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

VMT Methodology

Per Council Policy 5-1, the effects of the proposed project on VMT were evaluated using the methodology outlined in the City's Transportation Analysis Handbook. The City's VMT methodology includes screening criteria that are used to identify types, characteristics, and/or locations of projects that would not exceed the CEQA thresholds of significance. If a project or a component of a mixed-use project meets the screening criteria, it is then presumed that the project or component of the project would result in a less than significant VMT impact and a VMT analysis is not required.

The type of development projects that may meet the screening criteria include the following:

- small infill projects
- local-serving retail (100,000 square feet or less)
- local-serving public facilities
- projects located in Planned Growth Areas with low VMT and High-Quality Transit
- deed-restricted affordable housing located in Planned Growth Areas with High-Quality Transit

The project site is located within the Berryessa BART Urban Village Plan. If the project does not meet all applicable VMT screening criteria, a CEQA-level transportation analysis that evaluates the project's effects on VMT would be required.

VMT Impact Assessment

As discussed above, the project does not meet the City's VMT screening criteria, with the exception of the 15,000 square feet of local-serving retail space and, therefore, a VMT analysis was completed for the residential and office components of the project. Given the large scale of the proposed project and its proximity to a major transit facility, the City's TDF model was utilized to complete the VMT evaluation for the project. The TDF model includes the extension of BART service to the Berryessa BART Station that will significantly alter modes of travel in the project area. Due to the large scale of the project and other planned changes (including roadway improvements and new BART service), a multi-modal model was used to calculate the effects of the proposed project on VMT.

The VMT thresholds of significance for development projects, as established in the Transportation Analysis Policy, include the following two criteria (applicable for the proposed project):

- Projects that include general employment uses (office) are said to create a significant adverse impact when the estimated project generated VMT exceeds the existing regional average VMT per employee minus 15 percent. Currently, the reported regional average is 14.37 VMT per employee. This equates to a significant impact threshold of 12.21 VMT per employee.

- Projects that include residential uses are said to create a significant adverse impact when the estimated project generated VMT exceeds the existing citywide average VMT per capita minus 15 percent or existing regional average VMT per capita minus 15 percent, whichever is lower. Currently, the reported citywide average is 11.94 VMT per capita, which is less than the regional average. This equates to a significant impact threshold of 10.12 VMT per capita.

The results of the VMT evaluation, using the City's TDF Model, show that the proposed project would generate VMT per resident of 8.02 and VMT per employee of 8.39 under Year 2040 conditions, which are both below the established VMT thresholds and would improve VMT under the baseline conditions. Therefore, the proposed project would not result in an impact on the transportation system under Year 2040 conditions based on the City's VMT impact criteria. When compared to Year 2040 GP conditions, the proposed project would result in a reduction of VMT per employee. The VMT per capita and VMT per employee for the proposed project as shown in Table 3.17-2.

Table 3.17-2: VMT Evaluation Summary								
	Residential				**Employment**			
	Number of Units	**VMT**	**VMT per Capita**	**Exceeds Thresholds?**	**Square Footage**	**VMT**	**VMT per Job**	**Exceeds Thresholds?**
Threshold			*10.12*				*12.21*	
2025 Baseline[1]	--		**12.76**	**Yes**	--		**13.52**	**Yes**
2040 General Plan[2]	--	--	--	--	554,000	27,558	14.92	Yes
2040 Proposed Project[2]	850	15,209	8.02	No	465,000[3]	35,118	8.39	No

[1] VMT per capita and per job were obtained from the City of San José VMT Evaluation Tool dated 02/29/2019.

[2.] VMT per capita and per job for Year 2040 were calculated using the City's TDF model

[3.] 465,000 square feet of medical office space. The 15,000 square feet of retail space screens out of the VMT analysis based since it would be local-serving retail space under 100,000 square feet.

The proposed project would implement TDM measures in the BBUV Parking and TDM Plan which would result in an additional 30 percent VMT reduction per resident and per employee (the TDM Plan's measures the project will implement are provided in Section 3.3, Air Quality). Implementation of the BBUV Parking and TDM Plan would help the BBUV district meet its mode split and VMT reduction goals. The project would result in a VMT per resident and a VMT per employee below the established thresholds and would not result in an impact to the transportation system based on the City's VMT impact criteria. **(Less than Significant Impact)**

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

The project would be accessed via driveways on Shore Drive, Mercado Way, De Rome Drive, and Facchino Way (as shown on Figure 2.2-5). The project would be consistent with Circulation Goals and Policies and Streetscape Design Guidelines for public and private streets outlined in the BBUV Plan. Therefore, the project would not substantially increase hazards due to a geometric design feature or incompatible use. **(Less than Significant Impact)**

d) Would the project result in inadequate emergency access?

Emergency vehicle access would be provided via the driveways discussed in response to the above checklist question c). All curb returns along the on-site roadways would be a minimum of 30-feet wide to accommodate service and emergency (such as a fire truck) vehicle circulation. The proposed roadways throughout the project site would be accessible to emergency vehicles at all times. Emergency access would be maintained during construction of the project. The project would be

required to comply with relevant building and fire codes that would ensure free and clear accessways are maintained for emergency situations during operation of the project. Therefore, the project would not result in inadequate emergency vehicle access. **(Less than Significant Impact)**

3.17.2.2 *Cumulative Impacts*

Would the project result in a cumulatively considerable contribution to a significant cumulative transportation impact?

Projects must demonstrate consistency with the General Plan to address cumulative impacts. Consistency with the City's General Plan is based on the project's density, design, and conformance with the General Plan goals and policies. If a project is determined to be inconsistent with the General Plan, a cumulative impact analysis is required per the City's Transportation Analysis Handbook.

The project site is located within the BBUV Plan. According to the General Plan, the Urban Village strategy fosters:

- Mixed residential and employment activities that are attractive to an innovative workforce;
- Revitalization of underutilized properties that have access to existing infrastructure;
- Densities that support transit use, bicycling, and walking; and
- High-quality urban design.

The BBUV is the first regional transit urban village plan to be developed in San José. Regional transit urban villages are locations with access to major transit facilities of regional significance. Recognizing its emerging role as a gateway to the City, the design of new development within this urban village aims for high-quality environments for public circulation and gathering.

The project is consistent with the Envision San José 2040 General Plan and BBUV goals and policies for the following reasons:

- The proposed residential uses for the project site are consistent with the Residential Neighborhood land designation per the Berryessa BART Urban Village Plan.
- The proposed on-site street network would be consistent with planned streetscape design features of Complete Streets and the Berryessa BART Urban Village Plan.
- The project frontages along Berryessa Road would be designed to accommodate the planned Berryessa Road Complete Street improvements including protected bicycle lanes, wider sidewalks, and other pedestrian safety features.
- The project site is adjacent to a major transit station, bus stops, and bicycle lanes on Berryessa Road.

Therefore, the proposed project would be consistent with the BBUV Plan and the Envision San José 2040 General Plan. The project would be considered as part of the cumulative solution to meet the

General Plan's long-range transportation goals and would result in a less-than-significant cumulative impact. **(Less than Significant Cumulative Impact)**

3.17.3 Non-CEQA Effects

As noted above, with the passage of SB 743 amending CEQA's evaluation of transportation impacts and the effective date of the Guidelines implementing SB 743, a project's effects on level of service shall no longer be considered an impact on the environment. The following discussion is included because the City of San José has policies that address LOS as a planning or growth management matter, outside the CEQA process. In the event a deficient level of service (LOS) condition is identified, the City has discretion whether to require a project to address the deficiency by implementing roadway or other transportation improvements to restore or improve the LOS, and the relevant question under CEQA is whether those improvements would result in adverse physical changes to the environment, and not whether LOS has degraded below the condition considered acceptable. A local transportation analysis (LTA) was completed which identified transportation and traffic operational issues that could result from the development of the proposed project.

Trip Generation

The LOS analysis in Appendix H utilized the City of San José TDF model to project long-term traffic growth. The model was used to produce projections of AM (between 7:00 and 9:00 AM) and PM (between 4:00 and 6:00 PM) peak hour traffic for the project based on the proposed type and amount of land uses on the site. The forecasted trip generation estimates are based on the trip-making characteristics of the proposed land uses and reflect the mode of travel and interaction of trips between land uses and use of non-auto-based modes of travel, including BART. Based on the analysis in Appendix H, the proposed project would generate 1,018 trips during the AM peak hour and 1,383 trips during the PM peak hour. Trip generation rates are shown in Table 3.17-3.

Table 3.17-3: Project Trip Generation Estimates

	AM Peak Hour			PM Peak Hour		
	In	**Out**	**Total**	**In**	**Out**	**Total**
Proposed Mixed-Use Project	596	422	1,018	626	757	1,383

Note: AM and PM peak hour trips were based on the City of San José travel demand forecasting model runs completed in May 2021 by Hexagon Transportation Consultants.

In addition, the assignment of project site traffic to the road network and intersections was completing using the TDF model.

Intersection Operations

Intersection Operations Methodology

A study of AM and PM peak-hour traffic conditions for 26 signalized intersections within the City of San José. Intersections were selected for study if the project is expected to add 10 vehicle trips per hour per lane to a signalized intersection that meets additional Transportation Analysis Handbook criteria (see Appendix H). Data for the analysis were also collected to determine existing traffic volumes, lane configurations, and signal timing and phasing.

Traffic conditions at the study intersections were evaluated using Level of Service (LOS). LOS is a qualitative description of operating conditions ranging from LOS A, or free-flow conditions with little or no delay, to LOS F, or jammed conditions with excessive delays. All study intersections were evaluated based on the 2000 Highway Capacity Manual (HCM) level of service methodology using the TRAFFIX software. This method evaluates signalized intersection operations on the basis of average control delay time for all vehicles at the intersection. TRAFFIX is also the CMP-designated intersection level of service methodology, therefore, the City of San José uses the CMP default values for the analysis parameters. Signalized study intersections are subject to the City of San José level of service standards. The City of San José has established LOS D as the minimum acceptable intersection operations standard for all signalized intersections unless superseded by an Area Development Policy.

Intersection operations conditions were evaluated for the following scenarios:

- **Scenario 1: Existing Conditions**. Existing peak hour traffic volumes at all study intersections were obtained from the City of San José or recently completed traffic studies. Due to the current COVID-19 pandemic and its effect on traffic patterns, the City is requiring that all new traffic counts for study intersections be put on hold until further notice. Therefore, as recommended by the City of San José staff, a one percent compounded annual growth factor was applied to traffic counts that are older than two years to estimate traffic conditions in 2021.

- **Scenario 2**: **Year 2030 No Project Conditions**. Year 2030 no project conditions represents a near-term buildout horizon for the proposed project. The City's TDF model was used to forecast traffic growth associated with the planned development growth within the project area. Year 2030 No Project conditions includes the planned BART extension, which is planned to reach Diridon Station by 2030, as well as the planned US-101 Mabury interchange, or other identified future access points to US-101.

- **Scenario 3: Year 2030 Conditions with Project Conditions**. The City's TDF model was used to forecast traffic growth associated with the proposed project under Year 2030 conditions. Year 2030 condition traffic volumes, for the purpose of level of service operations analysis, were produced by applying traffic growth forecasted by the model (future condition forecasts minus base year (2015) forecasts) to the existing traffic volumes.

- **Scenario 4: Year 2040 General Plan No Project Conditions. T**he City's TDF model was used to forecast traffic growth associated with the adopted General Plan land uses as well as the proposed project. Year 2040 condition traffic volumes are produced by applying traffic growth forecasted by the model (future condition forecasts minus base year (2015) forecasts) to the existing traffic volumes. Year 2040 General Plan conditions includes all transportation system improvements as identified in the General Plan. Year 2040 No Project conditions also includes the planned BART extension, which is planned to reach Diridon Station by 2030, as well as the planned US-101 Mabury interchange, or other identified future access points to US-101.

- **Scenario 5: Year 2040 General Plan with Project Conditions.** The City's TDF model was used to forecast traffic growth associated with the proposed project under Year 2040 conditions. Year 2040 General Plan conditions traffic volumes, for the purpose of level of service analysis, were produced by applying traffic growth forecasted by the model (future condition forecasts minus base year (2015) forecasts) to the existing traffic volumes.

This analysis evaluates future roadway networks with US-101 interchange improvements as identified in the US-101/Oakland/Mabury TDP as well as the US-101/Berryessa Interchange Alternative.

Intersection Deficiency Criteria

Based on the City of San José's Transportation Analysis Handbook 2018, an intersection would result in a deficiency if for either peak hour:

- The level of service at the intersection degrades from an acceptable level (LOS D or better) under background conditions to an unacceptable level under background plus project conditions, or

- The level of service at the intersection is an unacceptable level (LOS E or F) under background conditions and the addition of project trips cause both the critical-movement delay at the intersection to increase by four or more seconds and the volume-to-capacity ratio (V/C) to increase by one percent (0.01) or more.

  The exception to this threshold is when the addition of project traffic reduces the amount of average control delay for critical movements, i.e., the change in average control delay for critical movements is negative. In this case, the threshold is when the project increases the critical V/C value by 0.01 or more.

In accordance with the City's standards, an intersection deficiency may also be addressed by implementing measures that would restore the intersection level of service to background conditions or better. The City recommends prioritizing improvements related to alternative transportation modes, parking measures, and/or TDM measures. Improvements that increase vehicle capacity are secondary and must not have unacceptable effects on existing or planned transportation facilities. Unacceptable effects on existing or planned transportation facilities include the following:

- Inconsistent with the General Plan Transportation Network and Street Typologies;
- Reduction of any physical dimension of a transportation facility below the minimum design standards per the San José Complete Streets Design Standards and Guidelines; or
- Substantial deterioration in the quality of existing or planned transportation facilities, including pedestrian, bicycle, and transit systems and facilities, as determined by the Director of Transportation.

Intersection Evaluation

The results of the intersection LOS analysis under existing conditions, Year 2030 No Project, Year 2030 with Project Conditions (includes Maybury Interchange improvements), and Year 2030 with Project Conditions (which includes the Berryessa Interchange improvements) are shown in Table 3.17-4. Table 3.17-5 shows LOS results for existing conditions, Year 2040 No Project, Year 2040 with Project Conditions (includes the Maybury Interchange improvements), and Year 2040 with Project Conditions (which includes the Berryessa Interchange improvements).

The U.S.101/Mabury Road interchange is identified in the City's General Plan as a needed freeway gateway to alleviate congestion at the US-101/Oakland Road interchange. After considering several interchange design options that included partial interchanges at Mabury Road, Oakland Road, and Berryessa Road, the City has developed a preferred interchange plan which includes the implementation of a full interchange at Berryessa Road rather than Mabury Road. Along with the ramps at Berryessa Road, the northbound on-ramp and southbound off-ramp at Oakland Road would be removed. Neither interchange alternative would widen the freeway mainline outside of ramp auxiliary lanes. Both the Maybury and Berryessa Interchange improvements options are studied as a part of this analysis. The two improvement alternatives are mutually exclusive under all study scenarios. Only one of the interchange alternatives will be constructed and the timing of the implementation of these improvements is unknown (although the improvements will be constructed by Year 2040 General Plan buildout).

Table 3.17-4: Existing Conditions and Year 2030 Intersection Levels of Service													
Intersection	**Peak Hr**	**Existing Conditions**		**Year 2030 No Project**		**Year 2030 Project with Mabury Alternative[1]**				**Year 2030 Project with Berryessa Alternative[1]**			
		Avg. Delay[2]	**LOS**	**Avg. Delay[1]**	**LOS**	**Avg. Delay[1]**	**LOS**	**Incr. in Crit. Delay**	**Incr. in V/C**	**Avg. Delay[1]**	**LOS**	**Incr. in Crit. Delay**	**Incr. in V/C**
1. Oakland Rd. and US-101 (N) *	AM	34.4	C	24.2	C	24.3	C	0.0	0.000	20.1	C	-13.3	0.008
	PM	22.0	C	22.7	C	22.6	C	-0.1	-0.002	15.9	B	-5.6	0.183
2. Oakland Rd. and US-101 (S) *	AM	27.3	C	27.9	C	27.9	C	0.0	-0.002	8.1	A	-19.5	-0.0035
	PM	24.5	C	24.6	C	24.6	C	0.0	-0.001	8.8	A	-15.4	-0.418
3. Berryessa Rd. and US-101 (N)	AM	--	--	--	--	--	--	--	--	**60.4**	**E**	--	--
	PM	--	--	--	--	--	--	--	--	18.6	B	--	--
4. Berryessa Rd. and US-101 (S)	AM	--	--	--	--	--	--	--	--	24.4	C	--	--
	PM	--	--	--	--	--	--	--	--	**71.6**	**E**	--	--
5. US-101 and Mabury Rd. (E)	AM	--	--	**57.3**	**E**	**55.2**	**E**	**-2.6**	**-0.007**	--	--	--	--
	PM	--	--	**97.0**	**F**	**97.7**	**F**	**0.9**	**0.002**	--	--	--	--
6. US-101 and Mabury Rd. (W)	AM	--	--	23.3	C	23.0	C	-0.3	-0.007	--	--	--	--
	PM	--	--	36.4	D	35.9	D	-0.6	-0.011	--	--	--	--
7. Eleventh St. and Taylor St.	AM	18.5	B	**65.2**	**E**	**59.8**	**E**	**-4.4**	-0.012	**59.4**	**E**	**-8.9**	**-0.025**
	PM	15.8	B	**59.5**	**E**	**64.8**	**E**	**8.4**	**0.023**	52.0	D	-12.6	0.014
8. Tenth St. and Taylor St.	AM	11.4	B	**79.0**	**E**	**78.4**	**E**	**-1.3**	**0.001**	**76.4**	**E**	**-4.3**	**-0.017**
	PM	24.4	C	**74.3**	**E**	**64.0**	**E**	**-15.3**	**-0.020**	**72.4**	**E**	**-0.9**	**0.008**
9. Tenth St. and Hedding St.	AM	21.3	C	36.1	D	35.8	D	-0.3	-0.004	36.9	D	-0.1	0.006
	PM	38.0	D	36.4	D	35.0	D	-2.9	-0.018	38.8	D	-1.4	-0.008
10. Eleventh St. and Hedding St.	AM	28.7	C	24.3	C	24.1	C	0.1	0.003	24.1	C	-0.1	-0.001
	PM	15.2	B	27.4	C	27.4	C	-0.1	-0.010	24.5	C	-3.1	-0.056

Table 3.17-4: Existing Conditions and Year 2030 Intersection Levels of Service													
Intersection	**Peak Hr**	**Existing Conditions**		**Year 2030 No Project**		**Year 2030 Project with Mabury Alternative[1]**				**Year 2030 Project with Berryessa Alternative[1]**			
		Avg. Delay[2]	**LOS**	**Avg. Delay[1]**	**LOS**	**Avg. Delay[1]**	**LOS**	**Incr. in Crit. Delay**	**Incr. in V/C**	**Avg. Delay[1]**	**LOS**	**Incr. in Crit. Delay**	**Incr. in V/C**
11. Oakland Rd./ Thirteenth and Hedding St.	AM	42.5	D	40.2	D	39.7	D	-0.8	-0.011	42.5	D	-5.4	-0.036
	PM	41.4	D	43.3	D	44.0	D	7.8	-0.006	42.7	D	-8.4	-0.083
12. Oakland Rd. and Commercial St.	AM	39.7	D	40.3	D	40.7	D	0.2	0.005	37.7	D	-5.4	-0.081
	PM	51.0	D	**62.3**	**E**	**62.2**	**E**	**-0.4**	**-0.006**	**56.7**	**E**	**-0.8**	**-0.062**
13. Commercial St. and Berryessa Rd.	AM	41.7	D	**146.5**	**F**	**150.3**	**F**	**3.9**	**0.014**	**62.7**	**E**	**-126.8**	**-0.293**
	PM	32.3	C	36.2	D	36.6	D	0.0	0.000	41.6	D	6.9	0.119
14. Sierra Rd. and Berryessa Rd.	AM	20.9	C	32.3	C	32.7	C	0.3	-0.002	33.8	C	3.4	0.031
	PM	13.1	B	29.3	C	29.8	C	0.1	-0.010	25.9	C	-2.8	0.058
15. Flea Market Entrance/Green Street and Berryessa Rd.	AM	8.1	A	29.8	C	33.8	C	4.6	0.037	34.8	C	7.5	0.044
	PM	8.6	A	34.5	C	38.3	D	2.9	0.009	36.2	D	-0.6	-0.033
16. BART Station Way and Berryessa Rd.	AM	0.4	A	12.1	B	11.2	B	-0.8	-0.009	14.0	B	1.0	-0.016
	PM	0.4	A	16.6	B	16.3	B	-0.3	-0.011	21.2	C	3.8	0.021
17. Lundy Ave. and Sierra Rd.	AM	29.7	C	33.1	C	32.0	C	-1.4	-0.005	32.6	C	-0.5	-0.001
	PM	19.9	B	21.1	C	21.6	D	0.8	0.005	19.7	B	-1.9	-0.046
18. Lundy Ave. and Berryessa Rd. * (IOZ)	AM	36.3	D	42.0	D	41.7	D	0.5	0.006	41.2	D	1.2	-0.012
	PM	42.1	D	43.2	D	43.0	D	-0.2	0.005	45.9	D	5.7	0.048
19. Flickinger Ave./Jackson Ave. and Berryessa Rd.	AM	37.5	D	39.1	D	39.1	D	-4.5	0.004	38.4	D	-0.2	-0.013
	PM	40.9	D	43.2	D	42.9	D	-0.3	-0.007	41.4	D	-3.5	-0.066
20. Jackson Ave. and Berryessa Rd.	AM	36.0	D	43.8	D	42.9	D	-1.6	-0.012	41.1	D	-3.9	-0.046
	PM	32.8	C	36.9	C	36.5	D	0.3	-0.009	38.2	D	2.5	0.013

Table 3.17-4: Existing Conditions and Year 2030 Intersection Levels of Service

Intersection	Peak Hr	Existing Conditions		Year 2030 No Project		Year 2030 Project with Mabury Alternative[1]				Year 2030 Project with Berryessa Alternative[1]			
		Avg. Delay[2]	LOS	Avg. Delay[1]	LOS	Avg. Delay[1]	LOS	Incr. in Crit. Delay	Incr. in V/C	Avg. Delay[1]	LOS	Incr. in Crit. Delay	Incr. in V/C
21. King Rd. and Mabury Rd.	AM	32.4	C	44.5	D	40.2	D	-6.1	-0.043	35.5	D	-9.7	-0.094
	PM	31.1	C	34.0	C	34.1	C	0.3	0.003	35.9	D	3.7	0.009
22. Lenfest Rd./BART Station Way and Mabury Rd.	AM	9.1	A	17.3	B	17.3	B	-0.2	-0.002	18.0	B	0.4	-0.010
	PM	7.2	A	21.5	C	21.5	C	0.0	-0.003	20.8	C	-2.2	-0.077
23. Flea Market Entrance/ Sierra Rd. and Mabury Rd.	AM	53.7	D	26.7	C	27.2	C	0.6	0.005	**87.4**	**F**	**100.4**	**0.378**
	PM	11.3	B	22.6	C	22.5	C	-0.2	-0.002	**96.3**	**F**	**128.7**	**0.461**
24. King Rd. and McKee Rd.	AM	40.2	D	42.9	D	42.9	D	-0.1	-0.001	44.4	D	2.0	0.037
	PM	40.9	D	44.2	D	44.1	D	0.4	0.009	45.0	D	2.7	-0.37
25. Berryessa Rd. and Mabury Rd.	AM	18.5	B	23.0	C	22.2	C	-0.9	-0.033	27.4	C	8.9	0.197
	PM	17.1	B	20.7	C	20.5	C	-0.4	-0.012	17.2	B	0.3	0.078
26. Lundy Ave. and Murphy Ave.	AM	38.9	D	46.1	D	45.8	D	-0.9	-0.005	45.9	D	-0.2	-0.001
	PM	42.0	D	46.9	D	46.7	D	-0.6	-0.007	46.5	D	-1.0	0.002

[1] The Year 2030 Project with Mabury Alternative and Berryessa Alternative improvements are mutually exclusive under all study scenarios. Only one interchange alternative will be constructed.

[2] Average delay time is in seconds.

Values in **bold** indicate unacceptable levels of service. Values in **bold and boxed** indicate an intersection deficiency effect.

* Denotes CMP Intersection

IOZ = Intersection located within an infill opportunity zone

Year 2030 Intersection Operation Conditions

The results of the level of service analysis under each of the Year 2030 scenarios are summarized in Table 3.17-4. The results show that the following five study intersections are projected to operate at unacceptable levels of service (LOS E or F) during at least one peak hour under Year 2030 no project conditions, based on the City of San José level of service standards.

- 5. US-101 and Mabury Road (E) during AM and PM peak hours
- 7. Eleventh Street and Taylor Street during AM and PM peak hours
- 8. Tenth Street and Taylor Street during AM and PM peak hours
- 12. Oakland Road and Commercial Street during the PM peak hour
- 13. Commercial Street and Berryessa Road during the AM peak hour

The results also show the following intersections are projected to operate at an unacceptable LOS during at least one peak hour under Year 2030 with Project conditions.

Mabury Interchange Alternative

- 5. US-101 and Mabury Road (E) during AM and PM peak hours
- 7. Eleventh Street and Taylor Street during AM and PM peak hours (**Adverse Effect**: PM peak hour)
- 8. Tenth Street and Taylor Street during AM and PM peak hours
- 12. Oakland Road and Commercial Street during the PM peak hour
- 13. Commercial Street and Berryessa Road during the AM peak hour

Berryessa Interchange Alternative

- 3. Berryessa Road and US-101 (N) during the AM peak hour
- 4. Berryessa Road and US-101 (S) during the PM peak hour
- 7. Eleventh Street and Taylor Street during the AM peak hour
- 8. Tenth Street and Taylor Street during AM and PM peak hours
- 12. Oakland Road and Commercial Street during PM peak hour
- 13. Commercial Street and Berryessa Road during the AM peak hour
- 23. Flea Market Entrance/Sierra Road and Mabury Road during AM and PM peak hours) (**Adverse Effect**: AM and PM peak hours)

At the intersections of Eleventh Street/Taylor Street under the Mabury Interchange Alternative and Flea Market Entrance/Sierra Road and Mabury Road under the Berryessa Interchange Alternative, the added trips as a result of the proposed project would cause the intersection's critical-movement delay to increase by four or more seconds and the demand-to-capacity ratio (V/C) to increase by more than 0.01 during at least one peak hour. Based on City of San José guidelines, this would result in a deficiency to intersection operations.

All other study intersections are projected to meet the City's LOS D standard under Year 2030 conditions. The LOS calculation sheets are included in Appendix I.

Table 3.17-5: Existing Conditions and Year 2040 Intersection Levels of Service													
Intersection	**Peak Hr**	**Existing Conditions**		**Year 2040 No Project**		**Year 2040 Project with Mabury Alternative**				**Year 2040 Project with Berryessa Alternative[1]**			
		Avg. Delay[2]	**LOS**	**Avg. Delay[1]**	**LOS**	**Avg. Delay[1]**	**LOS**	**Incr. in Crit. Delay**	**Incr. in V/C**	**Avg. Delay[1]**	**LOS**	**Incr. in Crit. Delay**	**Incr. in V/C**
1. Oakland Rd. and US-101 (N) *	AM	34.4	C	23.6	C	23.6	C	0.0	-0.001	20.5	C	-11.3	0.120
	PM	22.0	C	23.5	C	22.9	C	0.2	0.018	22.9	C	7.4	0.206
2. Oakland Rd. and US-101 (S) *	AM	27.3	C	29.1	C	29.0	C	-0.1	-0.004	8.4	A	-20.3	-0.008
	PM	24.5	C	25.7	C	25.7	C	-0.1	-0.002	9.8	A	-16.3	-0.320
3. Berryessa Rd. and US-101 (N)	AM	--	--	--	--	--	--	--	--	**87.5**	**F**	--	--
	PM	--	--	--	--	--	--	--	--	33.6	C	--	--
4. Berryessa Rd. and US-101 (S)	AM	--	--	--	--	--	--	--	--	26.4	C	--	--
	PM	--	--	--	--	--	--	--	--	**88.3**	**F**	--	--
5. US-101 and Mabury Rd. (E)	AM	--	--	**124.9**	**F**	**118.1**	**E**	**-8.7**	**-0.015**	--	--	--	--
	PM	--	--	**179.8**	**F**	**181.1**	**F**	**1.0**	**0.002**	--	--	--	--
6. US-101 and Mabury Rd. (W)	AM	--	--	26.7	C	26.1	C	-0.5	-0.013	--	--	--	--
	PM	--	--	38.1	D	37.3	D	-1.1	-0.013	--	--	--	--
7. Eleventh St. and Taylor St.	AM	18.5	B	**73.6**	**E**	**63.3**	**E**	**-11.7**	**-0.032**	**64.0**	**E**	**-15.8**	**-0.035**
	PM	15.8	B	**72.1**	**E**	**77.8**	**E**	**11.1**	**0.021**	**61.5**	**E**	**-14.8**	**0.028**
8. Tenth St. and Taylor St.	AM	11.4	B	**86.5**	**F**	**84.7**	**F**	**-2.1**	**0.003**	**86.8**	**F**	**-0.2**	**-0.016**
	PM	24.4	C	**90.0**	**F**	**71.8**	**E**	**-26.1**	**-0.035**	**88.1**	**F**	**2.1**	**0.013**
9. Tenth St. and Hedding St.	AM	21.3	C	47.8	D	46.2	D	-3.3	-0.013	50.4	D	6.4	0.023
	PM	38.0	D	43.9	D	41.7	D	-5.3	-0.026	51.9	D	7.9	0.030
10. Eleventh St. and Hedding St.	AM	28.7	C	27.5	C	27.2	C	-0.6	-0.010	27.2	C	0.2	0.000
	PM	15.2	B	34.8	C	34.2	C	-1.5	-0.015	28.6	C	-7.7	-0.053

Table 3.17-5: Existing Conditions and Year 2040 Intersection Levels of Service													
Intersection	**Peak Hr**	**Existing Conditions**		**Year 2040 No Project**		**Year 2040 Project with Mabury Alternative**				**Year 2040 Project with Berryessa Alternative[1]**			
		Avg. Delay[2]	**LOS**	**Avg. Delay[1]**	**LOS**	**Avg. Delay[1]**	**LOS**	**Incr. in Crit. Delay**	**Incr. in V/C**	**Avg. Delay[1]**	**LOS**	**Incr. in Crit. Delay**	**Incr. in V/C**
11. Oakland Rd./ Thirteenth and Hedding St.	AM	42.5	D	46.8	D	45.7	D	-2.8	-0.021	46.4	D	-8.7	-0.025
	PM	41.4	D	48.7	D	54.5	D	13.0	0.095	46.7	D	-7.0	-0.068
12. Oakland Rd. and Commercial St.	AM	39.7	D	46.9	D	48.4	D	1.1	0.009	43.3	D	-8.0	-0.083
	PM	51.0	D	**66.9**	**E**	**66.5**	**E**	**2.1**	-0.009	**65.7**	**E**	**5.6**	**0.008**
13. Commercial St. and Berryessa Rd.	AM	41.7	D	**171.7**	**F**	**180.3**	**F**	**10.6**	**0.025**	**85.1**	**F**	**-135.7**	**-0.284**
	PM	32.3	C	42.5	D	43.6	D	0.4	0.003	51.7	D	15.2	0.127
14. Sierra Rd. and Berryessa Rd.	AM	20.9	C	37.4	D	37.2	D	-0.3	-0.005	37.4	D	2.9	0.036
	PM	13.1	B	35.1	D	35.5	D	1.1	-0.018	32.8	C	0.5	-0.039
15. Flea Market Entrance/ Green Street and Berryessa Rd.	AM	8.1	A	44.1	D	51.1	D	8.8	0.067	53.1	D	14.0	0.093
	PM	8.6	A	59.3	E	**70.9**	**E**	**11.6**	**0.019**	**62.1**	**E**	**-1.4**	**-0.022**
16. BART Station Way and Berryessa Rd.	AM	0.4	A	19.0	B	17.7	B	-1.5	-0.017	21.5	C	25.1	0.031
	PM	0.4	A	26.1	C	25.4	C	-0.8	-0.021	33.0	C	6.8	0.043
17. Lundy Ave. and Sierra Rd.	AM	29.7	C	38.7	D	37.1	D	-2.2	-0.008	37.9	D	-0.8	0.001
	PM	19.9	B	28.6	C	29.3	C	1.2	0.007	26.0	C	-5.5	-0.073
18. Lundy Ave. and Berryessa Rd. * (IOZ)	AM	36.3	D	47.1	D	46.7	D	0.6	0.024	45.8	D	-2.0	0.004
	PM	42.1	D	48.9	D	48.1	D	-7.8	0.000	50.7	D	-1.4	0.022
19. Flickinger Ave./Jackson Ave. and Berryessa Rd.	AM	37.5	D	43.3	D	42.9	D	-0.7	-0.007	42.3	D	-0.7	-0.014
	PM	40.9	D	52.5	D	51.1	D	-2.0	-0.012	47.9	D	-8.4	-0.052
20. Jackson Ave. and Berryessa Rd.	AM	36.0	D	**58.5**	**E**	54.7	D	-6.7	-0.023	53.4	D	-8.6	-0.034
	PM	32.8	C	44.7	D	43.2	D	-2.0	-0.015	47.8	D	5.7	0.019

Table 3.17-5: Existing Conditions and Year 2040 Intersection Levels of Service													
Intersection	**Peak Hr**	**Existing Conditions**		**Year 2040 No Project**		**Year 2040 Project with Mabury Alternative**				**Year 2040 Project with Berryessa Alternative[1]**			
		Avg. Delay[2]	**LOS**	**Avg. Delay[1]**	**LOS**	**Avg. Delay[1]**	**LOS**	**Incr. in Crit. Delay**	**Incr. in V/C**	**Avg. Delay[1]**	**LOS**	**Incr. in Crit. Delay**	**Incr. in V/C**
21. King Rd. and Mabury Rd.	AM	32.4	C	**73.6**	**E**	**56.5**	**E**	**-25.4**	**-0.058**	40.7	D	-41.7	-0.136
	PM	31.1	C	38.9	D	39.1	D	0.8	0.006	45.8	D	12.8	0.052
22. Lenfest Rd./BART Station Way and Mabury Rd.	AM	9.1	A	19.6	B	19.6	B	-0.3	-0.003	20.6	C	1.3	0.005
	PM	7.2	A	27.3	C	27.2	C	-0.2	-0.005	26.8	C	-2.1	-0.080
23. Flea Market Entrance/ Sierra Rd. and Mabury Rd.	AM	53.7	D	35.9	D	37.4	D	2.1	0.009	**103.5**	**F**	**119.2**	**0.351**
	PM	11.3	B	27.4	C	26.9	C	-0.5	-0.16	**149.7**	**F**	**167.8**	**0.389**
24. King Rd. and McKee Rd.	AM	40.2	D	47.9	D	47.7	D	-0.3	-0.003	51.6	D	7.9	0.049
	PM	40.9	D	50.5	D	50.4	D	-3.5	0.015	52.1	D	-0.1	-0.005
25. Berryessa Rd. and Mabury Rd.	AM	18.5	B	26.7	C	24.3	C	-2.1	-0.036	29.8	C	9.1	0.162
	PM	17.1	B	24.9	C	24.0	C	-1.9	-0.022	22.1	C	1.9	0.042
26. Lundy Ave. and Murphy Ave.	AM	38.9	D	49.9	D	49.5	D	-1.3	-0.010	49.7	D	-0.5	-0.002
	PM	42.0	D	52.7	D	52.1	D	-1.6	-0.012	53.5	D	-0.1	0.046

[1] The Year 2040 Project with Mabury Alternative and Berryessa Alternative improvements are mutually exclusive under all study scenarios. Only one interchange alternative will be constructed.

[2] Average delay time is in seconds.

Values in **bold** indicate unacceptable levels of service. Values in **bold and boxed** indicate an intersection deficiency.

* Denotes CMP Intersection

IOZ = Intersection located within an infill opportunity zone

Year 2040 Intersection Operation Conditions

The results of the level of service analysis under each of the Year 2040 scenarios are summarized in Table 3.17-5. The results show that the following eight study intersections are projected to operate at unacceptable levels of service (LOS E or F) during at least one peak hour under Year 2040 no project conditions, according to the City of San José level of service standards.

- 5. US-101 and Mabury Road (E) during AM and PM peak hours
- 7. Eleventh Street and Taylor Street during AM and PM peak hours
- 8. Tenth Street and Taylor Street during AM and PM peak hours
- 12. Oakland Road and Commercial Street during the PM peak hour
- 13. Commercial Street and Berryessa Road during the AM peak hour
- 15. Flea Market Entrance/Green Street and Berryessa Road during the PM peak hour
- 20. Jackson Avenue and Mabury Road during the AM peak hour
- 21. King Road and Mabury Road during the AM peak hour

The results also show that the following intersections are projected to operate at an unacceptable level of service during at least one peak hour under Year 2040 with Project conditions.

Mabury Interchange Alternative

- 5. US-101 and Mabury Road (E) during AM and PM peak hours
- 7. Eleventh Street and Taylor Street during AM and PM peak hours (**Adverse Effect**: PM peak hour)
- 8. Tenth Street and Taylor Street during AM and PM peak hours)
- 12. Oakland Road and Commercial Street during the PM peak hour
- 13. Commercial Street and Berryessa Road during the AM peak hour (**Adverse Effect**: AM peak hour)
- 15. Flea Market Entrance/Green Street and Berryessa Road during PM peak hour (**Adverse Effect**: PM peak hour)
- 21. King Road and Mabury Road (AM peak hour)

Berryessa Interchange Alternative

- 3. Berryessa Road and US-101 (N) during the AM peak hour
- 4. Berryessa Road and US-101 (S) during the PM peak hour
- 7. Eleventh Street and Taylor Street during the AM and PM peak hours (**Adverse Effect**: PM peak hour)
- 8. Tenth Street and Taylor Street during AM and PM peak hours
- 12. Oakland Road and Commercial Street during the PM peak hour
- 13. Commercial Street and Berryessa Road during the AM peak hour)
- 15. Flea Market Entrance/Green Street and Berryessa Road during the PM peak hour
- 23. Flea Market Entrance/Sierra Road and Mabury Road during AM and PM peak hours (**Adverse Effect**: AM and PM peak hours)

Intersection Operation Effects and Potential Improvements

Potential improvements to intersections that would experience intersection deficiencies with the addition of project traffic were identified. Some locations were found to have no feasible improvements. As the City redevelops to higher densities, especially near transit nodes such as the Berryessa BART Station, the ability of intersections to achieve a certain level of service becomes less relevant to overall mobility. Therefore, other modes of travel are considered when recommending changes to improve an intersection's motor vehicle LOS.

7. Eleventh Street and Taylor Street
(Year 2030 Intersection Deficiency: Mabury Interchange Alternative; Year 2040 Intersection Deficiency: Mabury Interchange and Berryessa Interchange Alternatives**)**

This intersection would operate at LOS E during the PM peak hour under Years 2030 and 2040 conditions. The added trips as a result of the proposed project with the Mabury interchange alternative under Year 2030 and with both the Mabury and Berryessa Interchange Alternatives under Year 2040 during the PM peak hour would cause the intersections' critical-movement delay to either decrease or increase by more than four seconds and the demand-to-capacity ratio (V/C) to increase by more than 0.01 during the PM peak hour. Based on the City of San José's guidelines, this results in a deficiency to intersection operations.

- Vehicular capacity improvements at the intersection would require narrowing sidewalks and removing bus stops along Taylor Street, in addition to modifying pedestrian bulb-outs at each corner of the intersections. These types of vehicular capacity improvements are not consistent with the City's transportation policies and would inhibit the improvement of multi-modal facilities intended to increase alternative modes of travel (transit, bicycling, and walking) and reduce auto-based travel mode-share in the area.

- Since physical improvements at the intersection are not feasible, the project applicant shall construct or contribute towards offsetting multi-modal improvements that may include those planned at the Seventh Street and Jackson Street intersection as part of the City's application for a quiet zone in the Japantown area.

15. Flea Market Entrance/Green Street and Berryessa Road
(Year 2040 Intersection Deficiency: Mabury Interchange Alternative)

This intersection would operate at LOS E during the PM peak hour under Year 2040 conditions. The added trips as a result of the proposed project with the Mabury interchange alternative under Year 2040 during the PM peak hour would cause the intersections' critical-movement delay to increase by 11.6 seconds and the V/C to increase by 0.019 during the AM peak hour. The addition of project traffic would result in a deficiency on Flea Market Entrance/Green Street and Berryessa Road intersection operations in 2040.

- Required improvements to improve operations at this intersection would include the re-striping of the southbound approach to provide one left-turn lane and one shared through and right-turn lane and changing the north-south signal phasing from split to protected and the addition of a second eastbound left-turn lane. With the implementation of these

improvements, the intersection level of service would improve to LOS D during the PM peak hour under Year 2040 with project and the Mabury interchange Alternative.

However, the addition of a second eastbound left-turn lane will require the widening of Green Street north of Berryessa Road, which is not feasible due to existing buildings and sidewalks on both sides of the street, which is not feasible, and would lengthen the crossing distance for pedestrians and bicyclists at the intersection. The degradation of multi-modal travel through the intersection due to the implementation of roadway widening for the purpose of increasing vehicular capacity is not consistent with the City's goals to improve opportunities for multi-modal travel. As a result, the project applicant shall implement the following condition of approval:

- Since physical improvements at this intersection are not feasible, the project applicant shall construct or contribute towards offsetting improvements that may include those planned at the Berryessa Road and Lundy Ave intersection that are within the adopted BBUV boundary and implementation plan. The multi-modal improvements include the removal of pork-chop islands at the northeast and northwest corners of the intersection which will enhance safety by removing pedestrian-bicycle conflicts with vehicles. These improvements would occur within the existing right-of-way and, therefore, would not result in significant environmental impacts (e.g., such as removal of substantial number of trees, bicycle lane, sidewalk, etc.). A signal modification will also be required for the intersection improvements (including APS, video detection, etc.).

23. Flea Market Entrance/Sierra Road and Mabury Road
(Year 2030 and 2040 Intersection Deficiency: Berryessa Interchange Alternative)

The Flea Market Entrance/Sierra Road and Mabury Road intersection would operate at LOS D or better during both the AM and PM peak hours under Year 2030 and 2040 conditions. The added trips as a result of the proposed project with the Berryessa Interchange Alternative would cause the levels of service to degrade to LOS F during both the AM and PM peak hours. The addition of project traffic would result in a deficiency to this intersection's operations.

Required improvements to improve the level of service this intersection include the widening of Mabury Road to four lanes. With the implementation of this improvement, the intersection level of service would improve to LOS D or better during both the AM and PM peak hours under Years 2030 and 2040 with project and the Berryessa interchange alternative.

However, the widening of Mabury Road to meet the projected vehicular demand will not be consistent with the goals and policies of the BBUV Plan and its planned roadway network.

- Since physical improvements at the intersection are not feasible, the project shall construct or contribute towards offsetting improvements that may include those planned at the King Road and Mabury Avenue intersection that are within the adopted BBUV boundary and implementation plan. The multi-modal improvements include the removal of pork-chop islands at the northeast and southwest corners of the intersection which will enhance safety by removing pedestrian-bicycle conflicts with vehicles. These improvements would occur within the existing right-of-way and, therefore, would not result in significant environmental

impacts (e.g., such as removal of substantial number of trees, bicycle lane, sidewalk, etc.). A signal modification will also be required for the intersection improvements (including APS, video detection, etc.)

Freeway Segment Evaluation

The City is required to conform to the requirements of the VTA, which establishes a uniform program for evaluating the transportation impacts of land use decisions on the designated CMP roadway system. The CMP defines an acceptable level of service for freeway segments as LOS E or better.

Freeway segments included in the Transportation Analysis were selected based on their proximity to the project site and include 58 segments along SR 87, US-101, I-280, I-680, and I-880. Vehicle density inputs and calculations are included in Appendix H.

Under Year 2040 conditions, the following freeway segments are projected to operate at an unacceptable LOS F.

- All of the directional mixed-flow segments and none of the high-occupancy vehicle (HOV) segments on SR 87 are projected to operate at an unacceptable LOS F during at least one peak hour under both interchange alternatives.
- Six of eight mixed-flow segments and none of the HOV segments on I-280 are projected to operate at an unacceptable LOS F during at least one peak hour under both interchange alternatives.
- At most, 11 of the 16 directional mixed-flow segments and none of the HOV segments on I-680 are projected to operate at an unacceptable LOS F during at least one peak hour for both interchange alternatives. Both interchange alternatives would have one less or 10 directional mixed-flow segments projecting to operate at an unacceptable LOS F during at least one peak hour.
- At most, nine of the 10 directional mixed-flow segments and two of the HOV segments on I-880 are projected to operate at an unacceptable LOS F during at least one peak hour under for both interchange alternatives. Both interchange alternatives would have only one directional HOV segment projecting to operate at an unacceptable LOS F during at least one peak hour.

- At most, 17 of the 18 directional mixed-flow segments and seven of the HOV segments on US-101 are projected to operate at an unacceptable LOS F during at least one peak hour for both interchange alternatives. Both interchange alternatives would have one less or 16 directional mixed-flow segments under both interchange alternatives and one less or six HOV segments under the Berryessa Road interchange alternative projecting to operate at an unacceptable LOS F during at least one peak hour.

In summary, of the 58 freeway segments analyzed in Appendix H, at most, 49 directional mixed-flow freeway segments and nine directional HOV segments would operate at an unacceptable level of service with development of the proposed project, based on the CMP's level of service standards. Improvements that would increase the capacity of the freeway would help to address the deficiency in freeway operations. However, it is not feasible for an individual development project to bear

responsibility for implementing such extensive transportation system improvements due to constraints in the acquisition and cost of right-of-way. No comprehensive project to widen these freeway segments has been developed by Caltrans or VTA for individual projects to contribute to. Therefore, the project would not be required to contribute toward improvements of freeway segments.

3.18 TRIBAL CULTURAL RESOURCES

As shown in Table 1.2-1, Notice of Preparation (NOP) comments on the subject of tribal cultural resources were received from the Native American Heritage Commission. The comments recommended consultation with California Native American tribes. Refer to discussion under checklist question a) below. In addition, tribal notification letters and request for consultation documentation (prepared in July and August 2021) are included in Appendix I.

3.18.1 Environmental Setting

3.18.1.1 *Regulatory Framework*

State

Assembly Bill 52

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

Under AB 52, TCRs are defined as follows:

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

Envision San José 2040 General Plan

Various policies in the Envision San José 2040 General Plan have been adopted for the purpose of reducing or avoiding impacts related to cultural resources, as listed below.

General Plan Policies – Tribal Cultural Resources	
Archaeology and Paleontology	
Policy ER-9.2	Recognizing that Native American human remains may be encountered at unexpected locations, impose a requirement on all development permits and tentative subdivision maps that upon their discovery during construction, development activity will cease until professional archaeological examination confirms whether the burial is human. If the remains are determined to be Native American, applicable state laws shall be enforced.

General Plan Policies – Tribal Cultural Resources	
Archaeology and Paleontology	
Policy ER-10.1	For proposed development sites that have been identified as archaeologically or paleontologically sensitive, require investigation during the planning process in order to determine whether potentially significant archeological or paleontological information may be affected by the project and then require, if needed, that appropriate mitigation measures be incorporated into the project design.
Policy ER-10.3	Ensure that City, State, and Federal historic preservation laws, regulations, and codes are enforced, including laws related to archaeological and paleontological resources, to ensure the adequate protection of historic and pre-historic resources.

3.18.1.2 *Existing Conditions*

The project site is located approximately 150 feet north Upper Penitencia Creek and 2,000 feet east of Coyote Creek. This area is considered sensitive for prehistoric and archaeological deposits, including tribal cultural objects. Two tribes known to have traditional lands and cultural places within the City of San José requested notification of projects in the City of San José, the Indian Canyon Mutsun Band of Costanoan, and Tamien Nation. On July 16, 2021, the City submitted a notification letter and the NOP to the tribal representatives, in accordance with AB 52. On August 19, 2021, the City received a response to the City's Early Notice Request for AB52 Consultation from Tamien Nation. The project was discussed at the Tamien Nation and City of San José's virtual bi-weekly meeting on January 13, 2022, and Tamien Nation's representative indicated the area around the site is culturally sensitive with known tribal cultural resources in the area and requested review of the mitigation measures. Tamien Nation provided comments back on February 1, 2022, and the recommendations are noted in Section 3.5 Cultural Resources.

3.18.2 <u>Impact Discussion</u>

For the purpose of determining the significance of the project's impact on tribal cultural resources, would the project cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code Section 21074 as either a site, feature, place, cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American tribe, and that is:

a) Listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code Section 5020.1(k)?
b) A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code Section 5024.1? In applying the criteria set forth in subdivision (c) of Public Resources Code Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe.

3.18.2.1 *Project Impacts*

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

Due to the project site's proximity to Upper Penitencia Creek and Coyote Creek, the site has moderate to high potential for prehistoric and archaeological deposits, including tribal cultural objects and artifacts, as discussed in Section 3.5 Cultural Resources.

Assembly Bill 52 requires lead agencies to complete formal consultations with California Native American tribes during the CEQA process to identify tribal cultural resources that may be subject to significant impacts by a project. Where a project may have a significant impact on a tribal cultural resource, the lead agency's environmental document must discuss the impact and whether feasible alternatives or mitigation measures could avoid or substantially lessen the impact. This consultation requirement applies only if the tribes have sent written requests for notification of projects to the Lead Agency.

Based on the City's consultation with Tamien Nation on February 1, 2022, completed in accordance with AB 52, mitigation measures MM CUL-1.1 through MM CUL-1.3 shall be implemented to reduce the project's impact on tribal cultural resources.

Any subsurface artifacts found on-site would be addressed in accordance with the standard measures identified in the City's General Plan. Standard permit conditions and mitigation measures MM CUL-1.1 through MM CUL-1.3, listed in Section 3.5 Cultural Resources, would be implemented. **(Less than Significant Impact with Mitigation Incorporated)**

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

As discussed under question a) above, the area surrounding the project site is known to contain culturally sensitive materials. If any subsurface tribal cultural resources are encountered during project construction, the project would implement MM CUL-1.1 through MM CUL-1.3, as described in Section 4.5 Cultural Resources. Additionally, the project would implement standard permit condition as noted in Section 3.5.2. Therefore, the project would not cause a substantial adverse change in the significance of a tribal cultural resources. **(Less than Significant Impact with Mitigation Incorporated)**

3.18.2.2 *Cumulative Impacts*

Would the project result in a cumulatively considerable contribution to a significant cumulative tribal cultural resources impact?

The geographic area for cumulative tribal cultural resources impacts is the project site and adjacent parcels. The area surrounding the project site is known to contain culturally sensitive materials. Thus, cumulative impacts to tribal cultural resources could occur as a result of ground-disturbing activities from construction of the proposed project. With the proposed project's implementation of the standard permit conditions and mitigation measures listed in Section 3.5 Cultural Resources, which any other development project proposed within a sensitive area would be required to implement, the project would result in a less than significant cumulative impact to tribal cultural resources. **(Less than Significant Cumulative Impact with Mitigation Incorporated)**

3.19 UTILITIES AND SERVICE SYSTEMS

This discussion is based in part upon a Water Supply Assessment completed by San José Water Company in January 2022. A copy of this assessment is included in Appendix J of this EIR.

3.19.1 Environmental Setting

3.19.1.1 *Regulatory Framework*

State

State Water Code

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

Assembly Bill 939

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

Assembly Bill 341

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

Senate Bill 1383

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

California Green Building Standards Code

In January 2010, the State of California adopted the California Green Building Standards Code, establishing mandatory green building standards for all buildings in California. The code covers five

categories: planning and design, energy efficiency, water efficiency and conservation, material conservation and resources efficiency, and indoor environmental quality. These standards include the following mandatory set of measures, as well as more rigorous voluntary guidelines, for new construction projects to achieve specific green building performance levels:

- Reducing indoor water use by 20 percent;
- Reducing wastewater by 20 percent;
- Recycling and/or salvaging 50 percent of nonhazardous construction and demolition debris; and

Providing readily accessible areas for recycling by occupants.

Regional and Local

Countywide Integrated Waste Management Plan

Pursuant to AB 939, solid waste facility compliance requires that each county prepare and adopt a Countywide Integrated Waste Management Plan. The Santa Clara County Integrated Waste Management Plan (CIWMP) was approved in 1996 and contains goals, policies, and objectives aimed to ensure an effective and efficient integrated waste management system. Public Resources Code Sections 41770 and 41822, and Title 24, California Code of Regulations Section 18788 require that each countywide or regional agency integrated waste management plan (CIWMP/RAIWMP), and elements thereof, be reviewed, revised (if necessary), and submitted to the CalRecycle every five years. The last such review was completed in 2016 and concluded that despite population growth, solid waste diversion has increased, Santa Clara County has adequate disposal capacity (i.e., greater than 15 years), and no revisions to the CIWMP are warranted.[97]

Envision San José 2040 General Plan

The Envision San José 2040 General Plan includes the following policies for the purpose of reducing or avoiding impacts associated with utilities and service systems.

General Plan Policies - Utilities & Service Systems	
Water Conservation and Quality Policies	
Policy MS-3.1	Require water-efficient landscaping, which conforms to the State's Model Water Efficient Landscape Ordinance, for all new commercial, institutional, industrial, and developer-installed residential development unless for recreation needs or other area functions.
Policy MS-3.2	Promote use of green building technology or techniques that can help reduce the depletion of the City's potable water supply as building codes permit. For example, promote the use of captured rainwater, graywater, or recycled water as the preferred

[97] California Department of Resources Recycling and Recovery. *Five-Year CIWMP/RAIWMP Review Report Template.* November 8, 2016. Accessed September 27, 2021. https://www2.calrecycle.ca.gov/PublicNotices/Details/1940

General Plan Policies - Utilities & Service Systems	
	source for non-potable water needs such as irrigation and building cooling, consistent with Building Codes or other regulations.
Policy MS-3.3	Promote the use of drought tolerant plants and landscaping materials for non-residential and residential uses.
Water Conservation Policies	
Policy MS-18.5	Reduce per capita water consumption by 25 percent by 2040 from a baseline established using the 2010 Urban Water Management Plans of water retailers in San José.
Policy MS-18.6	Achieve by 2040, 50 million gallons per day of water conservation savings in San José, by reducing water use and increasing water use efficiency.
Water Recycling Policies	
Policy MS-19.1	Require new development to contribute to the cost-effective expansion of the recycled water system in proportion to the extent that it receives benefit from the development of a fiscally and environmentally sustainable local water supply.
Policy MS-19.4	Require the use of recycled water wherever feasible and cost-effective to serve existing and new development.
Water Resources	
Policy ER-9.3	Utilize water resources in a manner that does not deplete the supply of surface or groundwater or cause overdrafting of the underground water basin.
Policy ER-9.5	Protect groundwater recharge areas, particularly creeks and riparian corridors.
General Provision of Infrastructure Policies	
Policy IN-1.5	Require new development to provide adequate facilities or pay its fair share of the cost for facilities needed to provide services to accommodate growth without adversely impacting current service levels.
Water Supply, Sanitary Sewer, and Storm Drainage Policies	
Policy IN-3.3	Meet the water supply, sanitary sewer, and storm drainage level of service objectives through an orderly process of ensuring that, before development occurs, there is adequate capacity. Coordinate with water and sewer providers to prioritize service needs for approved affordable housing projects.
Wastewater Treatment and Water Reclamation Policies	
Policy IN-4.1	Monitor and regulate growth so that the cumulative wastewater treatment demand of all development can be accommodated by San José's share of the treatment capacity at the San José/Santa Clara Regional Wastewater Facility.
Policy IN-4.2	Maintain adequate operational capacity for wastewater treatment and water reclamation facilities to accommodate the City's economic and population growth.
Solid Waste – Materials Recovery/Landfill Policies	
Policy IN-5.3	Use solid waste reduction techniques, including source reduction, reuse, recycling, source separation, composting, energy recovery and transformation of solid wastes

General Plan Policies - Utilities & Service Systems	
	to extend the life span of existing landfills and to reduce the need for future landfill facilities and to achieve the City's Zero Waste goals.

Berryessa BART Urban Village Plan

The following policies within the BBUV Plan pertain to the purposes of reducing or avoiding impacts related to utilities and service systems.

Urban Village Plan Policies – Utilities and Service Systems	
Sustainability and Resiliency	
Policy SU-8.1	Strive to divert and reuse 10% more than the requirements listed in the Construction & Demolition Diversion (CDD) Program of construction debris from all new development and retrofits from landfills.
Policy SU-8.2	Encourage deconstruction of existing buildings over demolition and reuse of the salvaged material.
Policy SU-8.3	Encourage the use of recycled building materials during construction for all new and retrofitted development, with the maximum recycled content threshold established in the appropriate green building rating system.
Policy SU-9.1	All public and private rights-of-way shall have dedicated areas for waste collection and clear signage to sort waste appropriately.
Policy SU-9.2	All plant and tree waste shall be separated from the other waste and 100% of the plant and tree waste shall be composted.
Policy SU-9.3	Development projects should install full trash capture devices (e.g., hydrodynamic separators) to prevent trash originating from the Urban Village from passing through the storm sewer system to local waterways.
Policy SU-11.1	Manage stormwater runoff in compliance with Provision C.3 of the Municipal Regional Stormwater Permit and the City's Post-Construction Urban Runoff (6-29) and Hydromodification Management (8-14) Policies.
Policy SU-11.2	All private development shall strive to capture, treat, or reuse 100% of stormwater runoff on-site using Low Impact Development (LID) principles and Green Stormwater Infrastructure (GSI).
Policy SU-11.4	In-lieu of achieving 100% on-site stormwater management, stormwater should be treated at the nearest centralized/regional stormwater facility outside the boundaries of the Urban Village, if feasible and permitted by applicable regulatory resource agencies.

In addition to the above-listed General Plan and BBUV policies, new development in San José is also required to comply with programs (outlined below) that mandate the use of water-conserving features and appliances and the CIWMP to minimize solid waste.

City of San José Municipal Code

The City's Municipal Code includes regulations associated with energy efficiency and energy use. City regulations include an Energy and Water Building Performance Ordinance (Chapter 17.85) to minimize the use and waste of energy, water and other resources in commercial and multi-family residential buildings, Water Efficient Landscape Standards for New and Rehabilitated Landscaping (Chapter 15.10), requirements for Transportation Demand Programs for employers with more than 100 employees (Chapter 11.105), and a Construction & Demolition Diversion (CDD) Program that requires recycling of construction and demolition materials (Chapter 9.10).

San José Zero Waste Strategic Plan/Climate Smart San José

The Climate Smart San José provides a comprehensive approach to achieving sustainability through new technology and innovation. The Zero Waste Strategic Plan outlines policies to help the City of San José foster a healthier community and achieve its Climate Smart San José goals, including 75 percent waste diversion by 2013 and zero waste by 2022. The Climate Smart San José also includes ambitious goals for economic growth, environmental sustainability, and enhanced quality of life for San José residents and businesses.

San José Reach Code

In 2019, the San José City Council approved Ordinance No. 30311 and adopted Reach Code Ordinance (Reach Code) to reduce energy related GHG emissions consistent with the goals of Climate Smart San José. In December 2020, the City Council updated the Reach Code to prohibit all natural gas infrastructure in new construction. The Reach Code also requires EV charging infrastructure for all building types (above current CALGreen requirements), and solar readiness for non-residential buildings.

Private Sector Green Building Policy [City Council Policy 6-32]

City Council Policy 6-32 encourages building owners, architects, developers, and contractors to incorporate meaningful sustainable building goals early in the design process. This policy establishes baseline green building standards for private sector construction and provides a framework for the implementation of these standards. It is also intended to enhance the public health, safety, and welfare of San José residents, workers, and visitors by fostering practices in the design, construction, and maintenance of buildings that will minimize the use and waste of energy, water, and other resources.

Construction and Demolition Diversion Deposit Program

The Construction and Demolition Diversion Deposit Program (CDDD) requires projects to divert at least 50 percent of total projected project waste in order to have their deposit refunded. Permit holders pay this fully refundable deposit upon application for the construction permit with the City if the project is a demolition, alteration, renovation, or a certain type of tenant improvement. The minimum project valuation for a deposit is $2,000 for an alteration-renovation residential project and $5,000 for a non-residential project. There is no minimum valuation for a demolition project and no square footage limit for the deposit applicability. The deposit is fully refundable if construction and demolition materials were reused, donated, or recycled at a City-certified processing facility. Reuse

and donation require acceptable documentation, such as photos, estimated weight quantities, and receipts from donations centers stating materials and quantities.

Though not a requirement, the permit holder may want to consider conducting an inventory of the existing building(s), determining the material types and quantities to recover, and salvaging materials during deconstruction.

3.19.1.2 *Existing Conditions*

The project site and surrounding area is a developed urban environment and is currently served by existing utility and service systems.

Existing Water Supply System

Water service to the project site is provided by San José Water Company (SJWC). Existing water mains in the project area include a 17-inch line in Berryessa Road. Recycled water in San José is provided by South Bay Water Recycling. A recycled water supply connection is located less than one mile west of the project site in Berryessa Road, approximately 400 feet east of US-101.[98]

Groundwater

SJWC draws water from the Santa Clara Valley Subbasin in the north part of Santa Clara County. The basin is 22 miles long and 15 miles wide with an operational storage capacity estimated to be 350,000 acre-feet. Groundwater is a substantial source of water for SJW. Groundwater accounts for approximately 40 percent of SJW's total potable supply.[99]

Surface Water

SJWC has "pre-1914 surface water rights" to raw water in Los Gatos Creek and local watersheds in the Santa Cruz Mountains. Prior to 1872, appropriative water rights could be acquired by simply taking and beneficially using water. In 1914, the Water Code was adopted, grandfathering in all existing water entitlements to license holders. SJWC filed for a license in 1947, and in 1976 was granted a license allowing it to draw 6,240 acre-feet per year (AFY) from Los Gatos Creek. SJWC has since upgraded the collection and treatment system that draws water from this watershed, which has increased the capacity of this entitlement to approximately 11,200 AFY for an average rain year.[100]

Recycled Water

South Bay Water Recycling (SBWR) has been serving Silicon Valley communities since 1993. In 1997, SJWC entered into a Wholesaler-Retailer Agreement with the City of San José to provide recycled water to SJWC's existing and new customers near SBWR recycling water distribution

[98] City of San José. Recycled Water. Accessed September 13, 2021. https://www.sanjoseca.gov/your-government/environment/water-utilities/recycled-water.
[99] San José Water. Water Supply FAQs. Accessed September 13, 2021. https://www.sjwater.com/customer-care/help-information/water-supply-faqs.
[100] SJW. 2018 Corporate Sustainability Report. Accessed September 13, 2021. https://www.sjwater.com/sites/default/files/2019-02/SJWGroup_2018CSR_FINAL_WEB.pdf.

facilities. In accordance with the terms of this agreement, SJWC allowed SBWR to construct recycled water pipelines in its service area; SJWC would only own the recycled water meters while SBWR would own, operate, and maintain the recycled water distribution system.

In 2010, the Wholesaler-Retailer Agreement was amended to allow SJWC to construct recycled water infrastructure that would be owned, operated, and maintained by SJWC. In 2012, the agreement was again amended to allow SJWC to construct additional recycled water infrastructure.

Wastewater/Sanitary Sewer System

The City's sanitary sewer/wastewater treatment system has two distinct components: 1) a network of sewer mains/pipes that conveys effluent from its source to the treatment plant; and 2) the water pollution control plant that treats the effluent, including a system of mains/pipes that transports a portion of the treated wastewater for non-potable uses (e.g., irrigation of landscaping, agricultural irrigation, dust suppression during construction, etc.).

Sanitary sewer lines in the project area are owned and maintained by the City of San José. Wastewater generated on the project site flows west through existing eight-inch sewer mains on Mercado Way and De Rome Drive.[101] Wastewater treatment service for the project area is provided by the City of San José through the San José-Santa Clara Regional Wastewater Facility (RWF). The RWF is located in Alviso and serves over 1,500,000 people in San José, Santa Clara, Milpitas, Campbell, Cupertino, Los Gatos, Saratoga, and Monte Sereno. The RWF treats approximately 110 million gallons per day (mgd) of sewage during dry weather flow and has a capacity of 167 mgd.[102] The City of San José generates approximately 69.8 mgd of dry weather average flow.[103] Fresh water flow (i.e., occurring from rain) from the RWF is discharged to the South San Francisco Bay or delivered to the South Bay Water Recycling Project for distribution.

Existing Solid Waste Disposal System

The CIWMP was approved by the California Integrated Waste Management Board in 1996 and was reviewed in 2004, 2007, 2011, and 2016. Each jurisdiction in the county has a diversion requirement of 50 percent for 2000 and each year thereafter. Each jurisdiction in the County has a landfill diversion requirement of 50 percent per year. According to the IWMP, the County has adequate disposal capacity beyond 2030.[104] Solid waste generated within the County is landfilled at Guadalupe Mines, Kirby Canyon, Newby Island, and Zanker Road landfills.

Existing Storm Drainage System

The project site is served by underground storm drainage systems with outfalls that discharge to the detention basin between Coyote Creek and Mercado Way.

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[101] City of San José. Utility Viewer. Accessed September 22, 2021. https://www.arcgis.com/apps/webappviewer/index.html?id=0d463f017c8a48a7b73b2d35bd7381f1
[102] City of San José. "San José/Santa Clara Regional Wastewater Facility." Accessed April 29, 2020. https://www.sanjoseca.gov/your-government/environment/water-utilities/regional-wastewater-facility.
[103] City of San José. *Envision San José 2040 General Plan FEIR.* September 2011. Page 648.
[104] Santa Clara County. *Five-Year CIWMP/RAIWMP Review Report.* June 2016.

Electricity and Natural Gas

Electricity in San José is sourced from SJCE and transported to businesses and residences via PG&E's existing utility infrastructure. PG&E distributes electric power primarily through underground systems extending from various high voltage transmission lines in the area. PG&E also sources and delivers natural gas to the project area through a series of gas distribution lines located within streets right-of-way.

3.19.2 Impact Discussion

For the purpose of determining the significance of the project's impact on utilities and service systems, would the project:

a) Require or result in the relocation or construction of new or expanded water, wastewater treatment or stormwater drainage, electric power, natural gas, or telecommunications facilities, the construction or relocation of which could cause significant environmental effects?
b) Have insufficient water supplies available to serve the project and reasonably foreseeable future development during normal, dry and multiple dry years?
c) Result in a determination by the wastewater treatment provider which serves or may serve the project that it does not have adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?
d) Generate solid waste in excess of state or local standards, or in excess of the capacity of local infrastructure, or otherwise impair the attainment of solid waste reduction goals?
e) Be noncompliant with federal, state, or local management and reduction statutes and regulations related to solid waste?

3.19.2.1 *Project Impacts*

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

Water Facilities

The water demands of the project would be met by SJWC, as is discussed under checklist question b) below. The project would connect to the existing water lines in Berryessa Road, Mercado Way, and Shore Drive. The project would not require the construction or expansion of water delivery systems or the expansion of the boundaries of the SJWC service area. In order to connect to the existing water mains, the project would install on-site water lines during grading of the site, which would result in minimal impacts. In the event that excavation would potentially reach groundwater levels, standard permit condition would be implemented to determine whether groundwater pumping or dewatering would be needed. In the event that excavation of the site unearths potentially cultural materials, mitigation measures MM CUL-1.1 through MM CUL-1.3 would be implemented. Therefore, the

project would not result in significant environmental effects related to the relocation or construction of new or expanded water facilities.

Wastewater Treatment Facilities

The project would be served by the City's existing sanitary sewer system and connect to the existing sanitary sewer lines in Berryessa Road, De Rome Drive, Mercado Way, and Shore Drive. In order to connect to the existing sanitary sewer system, the project would install sanitary sewer laterals during grading of the site, which would result in minimal impacts. It is estimated that the project, which would have a water demand of 453,900 gallons per day (gpd) (refer to checklist question b), would generate approximately 275,450 gpd of wastewater.[105] The City has confirmed there is sufficient capacity in the existing sewer lines serving the site and downstream to accommodate project wastewater flows.[106] Therefore, the project would not require the construction of any additional sewer mains or sewer lines that could cause significant environmental effects. Refer to checklist question c) for a discussion of the availability of treatment capacity at the RWF for the project.

Stormwater Drainage Facilities

As discussed in Section 3.10 Hydrology and Water Quality, the project would result in a net increase of impervious surface at the project site. However, the project would install new storm drains that would connect to existing storm drains on Mercado Way and De Rome Drive. The project would increase the amount of impervious surfaces by 32 percent. Although the project would increase the amount of impervious surfaces at the site, the project would comply with the MRP and City of San José Policy 6-29, which would remove pollutants and reduce the rate and volume of runoff from the project site. Installation of storm drains would occur during grading of the site and would result in minimal impacts. Therefore, the project would not require the construction of additional storm drainage facilities that could cause significant environmental effects.

Electric Power, Natural Gas, and Telecommunication Facilities

Existing utility lines would be utilized by the project for electric power, natural gas, and telecommunications services. Connecting to the City's energy and communications grid would require trenching on the site, which would not require substantial excavation and would result in minimal impacts. The project would be required to detail the exact locations for all utility connections and utility plans would be subject to review by the City. The project applicant would coordinate with the appropriate electric power, natural gas, and telecommunication providers, including SJCE, PG&E, on providing service to the site. Therefore, the proposed project would not result in significant impacts from construction or relocation of new or expanded electric power, natural gas, or telecommunications utilities. **(Less than Significant Impact)**

[105] Based upon the California Emissions Estimator Model (CalEEMod) standard wastewater generation rate of 85 percent of total water usage. 192,411 gallons water per day x 0.85 = 163,550 gallons wastewater per day
[106] City of San José, Department of Public Works. ADIS/EIR – PW Comments Memorandum. March 23, 2022.

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

Based on the January 2022 Water Supply Assessment (WSA) prepared for the proposed project, the project would have a water demand of approximately 215,250 gpd. The residential component water demand is estimated be 165,200 gpd, the office component is estimated to have demand of 46,500 gpd, and retail component is estimated to have a demand of 3,750 gpd (totaling 215,250 gpd).[107] Accounting for the existing water demand of approximately 842 gpd, the resulting net water demand for the project would be approximately 214,400 gpd.

Based on the WSA completed for the project, the SJWC determined that the projected increase in water demand would be consistent with the growth projections and future water demand assumed in the Valley Water's 2020 UWMP. The 2020 UWMP concluded that sufficient water supplies are available to meet the project's demand during normal, dry, and multiple dry years. Based on the project's WSA, SJWC determined the project's water demand is within normal growth projections and sufficient water available to serve the project. **(Less than Significant Impact)**

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

The proposed project is estimated to generate a maximum of approximately 182,962 gpd of wastewater sewage, with a net wastewater generation of approximately 182,246 gpd.[108] Since the RWF can accommodate an additional 38.8 mgd of wastewater, the wastewater demands of the proposed project would not result in an exceedance of wastewater treatment capacity at the RWF. Further, increased demand at the RWF created by planned development under the General Plan is expected and accounted for in long-term infrastructural planning by the City of San José and its partner agencies. The proposed project is consistent with planned development analyzed in the General Plan EIR (refer to Section 3.11 Land Use and Planning); therefore, the proposed project would not result in an unanticipated increase in wastewater treatment requirements at the RWF. **(Less than Significant Impact)**

[107] Residential units assume a demand factor of 60 gallons per capita per day, with 3.2 people per residential unit. This estimated persons per household is conservative compared to the 3.14 person per household assumed for the proposed project throughout the EIR.
Office space assumes a water demand factor of 0.1 gpd per SF
Commercial/retail space assumes a water demand factor of 0.25 gpd per SF
[108] Assumes wastewater generation is equal to 85 percent of water demand.

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

Solid waste generation was calculated using standard solid waste rates from the California Emissions Estimator Model (CalEEMod). The proposed project would generate approximately 5,600 tons per year of solid waste.[109]

The proposed project would be required to conform to City plans and policies to reduce solid waste generation and increase waste diversion, such as the Zero Waste Strategic Plan and General Plan Policies IN-1.5, IN-5.1, IN-5.3, IN-5.4, and IP-3.8. The project would be required to meet the City's current diversion goal of 75 percent waste reduction and zero waste goal post-2022 by complying with the policies and strategies mandated in the City's Zero Waste Strategic Plan. In addition, the project would include provide organic waste collection containers within waste collection areas as required by AB 1826. Given the City's annual disposal allocation at Newby Island Sanitary Landfill (395,000 tons per year), the landfill's remaining capacity (12.7 million tons), and the project's net increase in solid waste generation (5,585 tons), there is sufficient capacity at Newby Island Sanitary Landfill to serve the project. In addition, according to the CIWMP, the County has adequate disposal capacity beyond 2030.[110] The General Plan EIR determined that the increase in waste generated by build out of the General Plan (which includes the development of the project) would not result in an exceedance of capacity at existing landfills or otherwise impair the attainment of solid waste reduction goals.[111] **(Less than Significant Impact)**

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

The proposed project would support the goals of the Zero Waste Strategic Plan by complying with the City's CDDD Program (which ensures that at least 75 percent of this construction waste is recovered and diverted from landfills), providing readily accessible areas for recycling that serve all of the buildings on-site, and provide organic waste collection containers within waste collection areas. By adhering to the requirements of the Zero Waste Strategic Plan and General Plan policies, the project would not conflict with applicable statutes and regulations related to solid waste, including CALGreen, AB 939, AB 341, and local waste diversion requirements.
(Less than Significant Impact)

[109] Illingworth & Rodkin, Inc. 1655 Berryessa Road Air Quality Report. Attachment 2: CalEEMod Input Assumptions and Outputs.
[110] Santa Clara County. *Five-Year CIWMP/RAIWMP Review Report.* June 2016.
[111] City of San José. *Envision San José 2040 General Plan Integrated Final Program Environmental Impact Report.* SCH: 2009072096. September 2011. Page 685.

3.19.2.2 *Cumulative Impacts*

Would the project result in a cumulatively considerable contribution to a significant cumulative utilities and service systems impact?

The geographic area for cumulative utility and service systems is the City boundaries, or the service area for the SJWC.

The geographic study area for cumulative impacts to utilities and service systems is citywide or within the applicable utility's service area, as noted below. On its own, the project would not require the relocation or construction of new or expanded water, wastewater treatment or stormwater drainage, electric power, natural gas, or telecommunications facilities. The General Plan EIR found that buildout of the General Plan would not result in impacts related to water supply, wastewater treatment and storm drainage facilities, or solid waste infrastructure. Accordingly, since the cumulative projects identified in Table 2.4-1 are consistent with the buildout anticipated in the General Plan EIR, none of these projects are anticipated to require the relocation or construction of new or existing facilities. Any proposed new or expanded facilities necessitated by future cumulative development would be subject to environmental review and is not anticipated to result in significant environmental effects. Therefore, the project would not result in cumulatively significant effects on the environment related to the relocation or construction of new or expanded facilities.

Water Supply

The geographic area for cumulative water supply is the service area of the SJWC. The project would be within normal growth projections for the SJWC system. As described above, SJWC has determined that there is sufficient capacity to serve future development within the SJWC service area and the project. For these reasons, there is no significant cumulative water supply impact.

Wastewater

The geographic area for cumulative wastewater treatment is the service area of the RWF. As discussed under checklist question c), there is sufficient treatment capacity at the RWF for the buildout of the General Plan and the project. As such, the project would not result in a cumulatively significant impact on wastewater treatment facilities.

Solid Waste

The geographic area for cumulative landfill capacity is the County. As discussed under checklist question d), the General Plan FEIR determined that the increase in waste generated by build out of the General Plan (which includes the project and future cumulative projects) would not result in an exceedance of capacity at existing landfills or otherwise impair the attainment of solid waste reduction goals. Cumulative projects in the City would be required to conform to City plans and policies to reduce solid waste generation and increase waste diversion, such as the Zero Waste Strategic Plan and General Plan Policies IN-1.5, IN-5.1, IN-5.3, IN-5.4, and IP-3.8. As such, the project would not result in a cumulatively significant solid waste impact.

All cumulative projects are required to adhere to the requirements of the Zero Waste Strategic Plan and General Plan policies, thereby complying with applicable statutes and regulations related to solid

waste, including CALGreen, AB 939, AB 341, and local waste diversion requirements. Therefore, the project would not result in a cumulatively significant impact due to noncompliance with federal, state, or local management and reduction statues and regulations related to solid waste. **(Less than Significant Cumulative Impact)**

3.20 WILDFIRE

3.20.1 Environmental Setting

3.20.1.1 *Regulatory Framework*

State

The California Department of Forestry and Fire Protection (CAL FIRE) is required by law to map areas of significant fire hazards based on fuels, terrain, weather, and other relevant factors. Referred to as Fire Hazard Severity Zones (FHSZ), these maps influence how people construct buildings and protect property to reduce risk associated with wildland fires.

3.20.1.2 *Existing Conditions*

The project site is surrounded by residential and commercial land uses and is not located in a FHSZ.[112]

3.20.2 Impact Discussion

For the purpose of determining the significance of the project's impact on wildfire, if located in or near state responsibility areas or lands classified as very high fire hazard severity zones, would the project:

a) Substantially impair an adopted emergency response plan or emergency evacuation plan?
b) Due to slope, prevailing winds, and other factors, exacerbate wildfire risks, and thereby expose project occupants to pollutant concentrations from a wildfire or the uncontrolled spread of a wildfire?
c) Require the installation or maintenance of associated infrastructure (such as roads, fuel breaks, emergency water sources, power lines, or other utilities) that may exacerbate fire risk or that may result in temporary or ongoing impacts to the environment?
d) Expose people or structures to significant risks, including downslope or downstream flooding or landslides, as a result of runoff, post-fire slope instability, or drainage changes?

3.20.2.1 *Project Impacts*

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

3.20.2.2 *Cumulative Impacts*

The project site is not located in or near state responsibility areas or lands classified as very high fire hazard severity zones; therefore, Would the project result in cumulative wildfire impacts. **(No Cumulative Impact)**

[112] California Board of Forestry and Fire Protection. *Fire Hazard Severity Zone Viewer*. Accessed February 1, 2021. https://gis.data.ca.gov/datasets/789d5286736248f69c4515c04f58f414.

Would the project foster or stimulate significant economic or population growth in the surrounding environment?

The California Environmental Quality Act (CEQA) Guidelines require that an EIR identify the likelihood that a proposed project could "foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment (Section 15126.2[d]). This section of the Draft EIR is intended to evaluate the impacts of such growth in the surrounding environment. Examples of projects likely to have significant growth-inducing impacts include removing obstacles to population growth, for example by extending or expanding infrastructure beyond what is needed to serve the project. Other examples of growth inducement include, increases in population that may tax existing community service facilities, requiring construction of new facilities that could cause significant environmental effects.

The proposed project is considered "infill," meaning that the project site is within the City's existing urban boundaries and is already served by existing infrastructure and roads. The project proposes development on underutilized parcels that are surrounded by both existing and planned development. Most of the project site is designated as Urban Village (UV) in the Envision San José 2040 General Plan, and the creek corridors are designated Open Space, Parklands, and Habitat. The project site is zoned Light Industrial and Agriculture, and the project would require a PD rezoning.

Although the project would require a PD rezoning, the project would not induce substantial growth in the City as it is consistent with residential density and commercial growth envisioned for the site in the General Plan and BBUV Plan. The project would fulfill the City's goal of providing high density mixed-use commercial and residential developments in areas that are near transit facilities. The project would be compatible with the neighboring land uses and would not pressure adjacent properties to redevelop with new or different land uses, in a manner inconsistent with the General Plan. The project includes commercial space which would provide employment consistent with the forecasted jobs envisioned in the General Plan and with the BBUV Plan goals. For this reason, the project would not foster or stimulate substantial economic or population growth in the surrounding environment. Due to the project site's proximity to the Berryessa BART Station, the project would encourage transit-oriented development and growth that would occur near the transit station. As discussed in Section 3.15, Public Services and Section 3.19, Utilities and Service Systems, the project would not require fire and police protection services, schools, park and recreational facilities, libraries, and utility service systems beyond what was evaluated in the General Plan EIR.

Based on the above discussion, the project would not result in unplanned economic and population growth.

SECTION 5.0 SIGNIFICANT AND IRREVERSIBLE ENVIRONMENTAL CHANGES

This section was prepared pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15126.2(c), which requires a discussion of the significant irreversible changes that would result from the implementation of a proposed project. Significant irreversible changes include the use of nonrenewable resources, the commitment of future generations to similar use, irreversible damage resulting from environmental accidents associated with the project, and irreversible commitments of resources. Applicable environmental changes are described in detail below.

5.1 USE OF NONRENEWABLE RESOURCES

During construction and operation, the project would require the use and consumption of nonrenewable resources. Unlike renewable resources, nonrenewable resources cannot be regenerated over time. Nonrenewable resources include fossil fuels and metals. Renewable resources, such as lumber and other wood byproducts, would also be used.

Energy, as discussed in more detail in Section 3.6, would be consumed during both the construction and operational phases of the project. The construction phase would require the use of nonrenewable construction materials such as concrete, metals, plastics, and glass. Nonrenewable resources and energy would also be consumed during the manufacturing and transportation of building materials, preparation of the site, and construction of the buildings. The operational phase would consume energy for multiple purposes including building heating and cooling, lighting, appliances, and electronics. Energy, in the form of fossil fuels, would be used to fuel vehicles traveling to and from the project site.

The project would result in an increase in demand for nonrenewable resources. The project, however, is subject to the standard California Code of Regulations Title 24 Part 6 and California Green Building Standards Code (CALGreen) energy efficiency requirements and would attain a LEED silver certification. As discussed in Section 3.6 Energy, the project would not wastefully use energy resources. As discussed in Section 3.8 Greenhouse Gas Emissions, the project would emit GHGs at levels that comply with state GHG reduction goals for 2030 under Senate Bill (SB) 32. Lastly, the project would provide an increase in jobs and housing in proximity to existing transportation networks, which would reduce VMT compared to the baseline conditions. The proposed project would, therefore, facilitate a more efficient use of resources over the lifetime of the project.

5.2 COMMITMENT OF FUTURE GENERATIONS TO SIMILAR USE

The project proposes construction of residential and commercial uses. Development of the proposed project would commit a substantial amount of resources to prepare the site, construct the site improvements including roadways, parks, and buildings, and operate them. The buildings are expected to have an economic life extending into the next century, thereby committing future generations to similar uses for the foreseeable future.

5.3 IRREVERSABLE DAMAGE RESULTING FROM ENVIRONMENTAL ACCIDENTS ASSOCIATED WITH THE PROJECT

The project does not propose any new or uniquely hazardous uses, and its operation would not be expected to cause environmental accidents that would impact other areas. As discussed in Section 3.9 Hazards and Hazardous Materials, there would be no significant immitigable on- or off-site sources of contamination (such as soil or groundwater contamination) that would substantially affect the proposed residential and commercial development.

The project site is located within a seismically active region. There would be no significant geology and soils impacts from implementation of the project. Conformance with the standard engineering practices in the California Building Standards Code (CBC) would not result in significant geological impacts (refer to Section 3.7 Geology and Soils).

The project, with the implementation of the identified mitigation measures to reduce hazards and hazardous materials impacts and standard measures to reduce geology and soils impacts, would not result in irreversible damage that may result from environmental accidents.

SECTION 6.0 SIGNIFICANT AND UNAVOIDABLE IMPACTS

A significant unavoidable impact is an impact that cannot be mitigated to a less-than-significant level if the project is implemented as proposed. All significant impacts identified Section 3.3, Air Quality, Section 3.4, Biological Resources, Section 3.5, Cultural Resources, Section 3.9, Hazards and Hazardous Materials, Section 3.13, Noise and Vibration, and Section 3.18, Tribal Cultural Resources would be reduced to less than significant. Therefore, the project would not result in any significant unavoidable impacts.

SECTION 7.0 ALTERNATIVES

The California Environmental Quality Act (CEQA) requires that an Environmental Impact Report (EIR) identify and evaluate alternatives to a project as it is proposed. Two key provisions from the CEQA Guidelines pertaining to the discussion of alternatives are provided below:

> **Section 15126.6(a).** Consideration and Discussion of Alternatives to the Proposed Project. An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project and evaluate the comparative merits of the alternatives. An EIR need not consider every conceivable alternative to a project. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decision making and public participation. An EIR is not required to consider alternatives which are infeasible. The lead agency is responsible for selecting a range of project alternatives for examination and must publicly disclose its reasoning for selecting those alternatives. There is no ironclad rule governing the nature or scope of the alternatives to be discussed other than the rule of reason.
>
> **Section 15126.6(b).** Purpose. Because an EIR must identify ways to mitigate or avoid the significant effects that a project may have on the environment (Public Resources Code Section 21002.1), the discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project, even if those alternatives would impede to some degree the attainment of the project objectives or be more costly.

Other elements of the Guidelines discuss that alternatives should include enough information to allow a meaningful evaluation and comparison with the proposed project. The CEQA Guidelines state that if an alternative would cause one or more additional impacts, compared to the proposed project, the discussion should identify the additional impact, but in less detail than the significant effects of the proposed project. The CEQA Guidelines emphasize a commonsense approach – the alternatives should be reasonable, "foster informed decision making and public participation," and focus on alternatives that avoid or substantially lessen the significant impacts. The range of alternatives necessary to permit a reasoned choice.

The three critical factors to consider in selecting and evaluating alternatives are, therefore: 1) the significant impacts from the proposed project which could be reduced or avoided by an alternative, 2) the project's objectives, and 3) the feasibility of the alternatives available. Each of these factors is discussed below.

7.1 SIGNIFICANT IMPACTS OF THE PROJECT

As mentioned above, the CEQA Guidelines advise that the alternatives analysis in an EIR should be limited to alternatives that would avoid or substantially lessen any of the significant impacts of the project and would achieve most of the project objectives. The project would not result in any significant unavoidable impacts. The project has significant impacts related to the following resource topics:

- **Air Quality**: The air quality impacts are related to construction and operational ROG emissions and construction TAC impacts on sensitive receptors.

- **Biological Resources**: The biological resources impacts are related to impacts to nesting birds during construction.

- **Cultural Resources**: The cultural resources impacts are related to impacts to archaeological resources and tribal cultural resources that may be inadvertently encountered during construction.

- **Hazards and Hazardous Materials**: The hazards and hazardous materials impacts are related to project impacts to soil and groundwater quality.

- **Noise**: The noise impacts are related to project construction noise and vibration.

Mitigation measures would reduce the above impacts to less than significant levels consistent with City goals and policies for those resource areas. The alternatives discussion does not focus on project impacts that are less than significant, i.e., that would not require mitigation.

7.2 PROJECT OBJECTIVES

Pursuant to CEQA Guidelines Section 15124, the EIR must include a statement of the objectives sought by the proposed project.

The project applicant's objectives for the project are:

1. Construct residential development with connections to public transit, open space and creeks, and existing neighborhoods;
2. Use the area adjacent to the Berryessa BART Station for Transit Oriented Development;
3. Provide housing with accessibility to alternative forms of transportation including public transit, walking, and cycling;
4. Enhance pedestrian-oriented design by providing residential uses proximate to commercial development;
5. Achieve sustainability policies, goals, and standards of the Berryessa BART Urban Village Plan by achieving the residential density and commercial development intensity envisioned by the BBUV Plan;
6. Increase access to local and regional trail systems by improving sidewalks.

7. Provide opportunities for job creation via additional commercial development consistent with the Berryessa BART Urban Village Plan requirements.

7.3 FEASIBILITY OF ALTERNATIVES

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

7.4 SELECTION OF ALTERNATIVES

7.4.1 Alternatives Considered but Rejected

7.4.1.1 *Alternative Location*

CEQA encourages consideration of an alternative site when the significant effects of the project might be avoided or substantially reduced. Some of the project's significant impacts (e.g., air quality) result because of the large size of the project and would not be reduced by locating the project at another site. Other significant impacts (e.g., biological resources, cultural resources, noise, and hazards and hazardous materials) are related to conditions specific to the project site and the sensitive uses that are near the site.

The project is intended to provide high-density commercial office and multi-family residential uses on a currently underdeveloped site near mass public transit.

The project proposes a development of approximately 13 acres and, accordingly, an alternative site would need to be at least of comparable size, within an area of San José and have adequate transit access, roadway access, and utility capacity to serve the development proposed. To avoid the project's impacts, the alternative site would not have sensitive habitat or waters of the U.S./state, a high sensitivity for archaeological resources, or be located on a site included on a site with hazardous materials contamination.

In order to identify an alternative site that might be reasonably considered to "feasibly accomplish most of the basic purposes" of the project, and would also reduce significant impacts, it was assumed that such a site would ideally have the following characteristics:

- Approximately 13 acres in size;
- Located near transit and a mix of land uses that would encourage use of non-automobile modes of travel;
- Served by available infrastructure;
- Available for development;

Any project of this size and intensity within San José would be expected to have similar operational impacts as well as impacts associated with project construction. An alternative site would be required to be near high-quality transit (e.g., Diridon Station). The location alternative would require the

proposed project to be constructed at an alternative location owned or otherwise controlled by the project proponent. The project proponent is not a public agency capable of invoking eminent domain, therefore, any alternative location(s) would need to be sites which the applicant was capable of acquiring and which allow for the transit-oriented mixed-use development. The feasibility of the project proponent acquiring or controlling a similar property suitable for meeting the project objectives identified for the proposed project is unknown. Further, CEQA Guideline Section 15126.6(a) indicates an EIR shall "describe a range of reasonable alternatives to the project, or to the location," which case law has confirmed means an EIR need not always include a location alternative, which as noted above, is more meaningful for a public agency able to acquire an alternative site through eminent domain, if needed, while a private project applicant is limited to a site(s) they can feasibly acquire or control. Therefore, discussion of an alternative location for the proposed project is not required or useful and this alternative is rejected from further consideration.

7.4.1.2 *On-site Man-Made Pond Retention Design Alternative*

The project proposes to fill the on-site man-made pond which is considered sensitive habitat and could be considered waters of the state/U.S. The project requires compliance with the Habitat Plan's conditions to pay Habitat Plan fees which would contribute to the creation and restoration of wetland, pond, and riparian habitats elsewhere within the Habitat Plan area, but off-site. The On-site Man-Made Pond Retention Alternative would retain the existing pond on-site. To retain the existing man-made pond, the multi-family development on Parcels F and G would either need to be setback 40 feet to the south (which could remove the internal drive aisle connection from De Rome Drive to Lane B) or reduce the number of units at the western portion of Parcel F (refer to Figure 7.4-1). The pond would partially block Lanes A and B. Setting back the multi-family building by 40 feet was not considered in this alternative, given that blocking access on De Rome Drive could have significant effect on emergency vehicle access. The pond could not be retained as a feature of the proposed park given it would be located approximately 50 feet south of the park (across Mercado Way). If the proposed park was redesigned to be located 50 feet south of its currently proposed location, this would block access via Mercado Way. The 0.34-acre pond would occupy a significant portion of the 0.9-acre park, leaving the park practically unusable as the pond itself does not provide any recreational value. and reduce the usable area of the park. Therefore, discussion of an alternative location for the proposed project is not required or useful and this alternative is rejected from further consideration.

7.4.2 <u>Analyzed Alternatives</u>

In addition to a "No Project" alternative, the CEQA Guidelines advise that the range of alternatives discussed in the EIR should be limited to those that "would avoid or substantially lessen any of the significant effects of the project" (Section 15126.6[f]). The discussion below addresses alternatives which could reduce project impacts and are feasible from a physical land use and infrastructure perspective. This EIR does not evaluate the financial or economic feasibility of the alternatives presented.

The following evaluation of possible alternatives to the project as it is proposed includes:

- No Project – No Development Alternative as required by CEQA (Section 15126.6[e])
- No Project – Existing Plans and Policies Alternative
- Reduced Parking Alternative

The components of these alternatives are described below, followed by a discussion of their impacts and how they would differ from those of the proposed project. A summary of the environmental impacts of the proposed project and the analyzed project alternatives is provided at the end of this section in Table 7.4-1.

7.4.2.1 *No Project – No Development Alternative*

The CEQA Guidelines specifically require consideration of a "No Project" alternative. The purpose of including the No Project Alternative is to allow decision makers to compare the impacts of approving the project with the impacts of not approving the project. The CEQA Guidelines specifically advise that the No Project Alternative is "what would reasonably be expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services." The CEQA Guidelines emphasize that an EIR should take a practical approach, and not "…create and analyze a set of artificial assumptions that would be required to preserve the existing physical environment" (Section 15126.6[e][3][B]).

The No Project – No Development Alternative assumes that the project site would remain as it is today with predominantly impervious surfaces (surface parking lots) and would continue to operate as an industrial use.

Comparison of Environmental Impacts for the No Project – No Development Alternative

The No Project – No Development Alternative would avoid all of the project's environmental impacts, including the impacts related to air quality (construction TACs and operational emissions of ROG), biological resources (on-site man-made pond and nesting birds), cultural resources (archaeological resources and tribal cultural resources), hazardous materials (soil and groundwater quality), and noise (construction noise and vibration).

Relationship to Project Objectives for the No Project Alternative

The No Project – No Development Alternative would not meet any of the project's objectives. The No Project Alternative would not construct a residential and commercial development with connections to public transit, open space and creeks, and existing neighborhoods (objective 1). The project applicant's and City's objective to utilize the area adjacent to the Berryessa BART Station for Transit Oriented Development would not be met by this alternative (objective 2). The No Project Alternative would not enhance pedestrian-oriented design by providing residential uses proximate to commercial development or provide housing with accessibility to alternative forms of transportation (objectives 3 and 4). This alternative would not meet the applicant's objectives and would not achieve the City's goals of the BBUV Plan (objective 5). The No Project Alternative would not increase access to local or regional trails (such as placing new residences near Penitencia Creek trail)

or provide opportunities for additional commercial development consistent with the BBUV Plan requirements (objectives 6 and 7).

Conclusion

Because the No Project – No Development Alternative would not result in any new development on the site, this alternative would avoid all environmental impacts of the project. This alternative would not, however, meet any of the applicant's or City's project objectives.

7.4.2.2 *No Project – Existing Plans and Policies Alternative*

A No Project – Existing Plans and Policies Alternative would allow for the redevelopment of the site consistent with the existing capacity and density permitted by BBUV Plan. Under the BBUV Plan, the eight acres of the site is designated Urban Residential (allows 75 to 250 residential units per acre), 2.1 acres of the site is designated Transit Employment Center (allows 288,000 to 480,000 square feet of commercial space), 2.0 acres of the site is designated Mixed-Use Neighborhood (allows up to 30 units per acre), and 0.9 acres of the site is proposed to be Open Space, Parkland, and Habitat (which has no BBUV Plan density requirements). The remaining four acres of the site is designated for internal roadways. The Existing Plans and Policies Alternative would; therefore, allow for development of up to 1,000 multi-family units, 60 units of townhouses and/or single-family houses, and 480,000 of commercial space at the project site. Given the site is currently zoned Light Industrial and Agricultural, to be consistent with the BBUV Plan, like the proposed project, this alternative would also require a Planned Development Rezoning and a Planned Development Permit.

Comparison of Environmental Impacts for the No Project - Existing Plans and Policies Alternative

The No Project – Existing Plans and Policies Alternative and proposed project are both consistent with the BBUV Plan and policies. However, the BBUV Plan allows for a greater residential density than what is proposed by the project. The project would consist of 803 multi-family residential units under the Urban Residential designation, which would equate to approximately 200 units per acre (given four acres of the site is designated for Urban Residential uses). The Existing Plans and Policies Alternative would allow up to 250 units per acre resulting in approximately 1,000 multi-family units. This alternative would also allow up approximately 60 units of townhouses and/or single-family houses (within the Mixed-Use Neighborhood designation), compared to the proposed project, which proposes 24 single family units and 23 townhouse units. The VMT per capita per resident for the proposed project would be 8.02, which is below the 10.12 VMT per resident threshold. Given the alternative would have the same proximity to transit and the increase in residential density, the project alternative would result in approximately the same VMT per capita when compared to the proposed project. Given this alternative would be slightly larger in size when compared to the proposed project, the alternative would have a slightly longer construction duration, resulting in slightly longer exposure of the adjacent residences to construction emissions and noise. However, the alternative would implement the same standard permit conditions and mitigation measures MM AIR-1.1 through MM AIR-1.4, MM NOI-1.1 and MM NOI-2.1 to reduce construction emissions and construction noise/vibration impacts to less than significant.

The project alternative would increase the number of trips generated from 14,239 net new trips to approximately 16,375 net new trips. The alternative could result in an increase in operational emissions. Similar to the proposed project, operational criteria pollutant (ROG) emissions would be reduced to a less than significant impact through compliance with the TDM measures set forth by the BBUV Parking and TDM Plan, which would reduce vehicle trips and emissions by 30 percent.

Similar to the proposed project, the No Project – Existing Plans and Policies Alternative would entail similar development activity and disturbance across the project site. Therefore, this alternative would have impacts similar to the proposed project related to biological resources, cultural resources, geology and soils, hazards and hazardous materials, hydrology and water quality, and tribal cultural resources.

Relationship to Project Objectives for the No Project - Existing Plans and Policies Alternative

The No Project – Existing Plans and Policies Alternative could achieve all of the project objectives including meeting the sustainability policies, goals, and standards of the Berryessa BART Urban Village Plan by achieving the residential density and commercial development intensity envisioned by the BBUV Plan and including housing with accessibility to alternative forms of transportation including public transit, walking, and cycling.

Conclusion

The No Project – Existing Plans and Policies Alternative would meet the project's objectives, but would not be environmentally superior, as it would slightly increase operational emissions (with increased vehicle trips).

7.4.2.3 *Reduced Parking Alternative*

The project proposes to develop up to 850 residential units (including 803 multi-family units, 23 townhouse units, and 24 single-family units) and 480,000 square feet of commercial space. The multi-family residential buildings would have up to two levels of underground parking (providing 905 parking spaces) and the commercial building would have up to three levels of underground parking and two levels of above ground parking (providing 1,200 parking spaces). The parking design alternative would include one less underground parking level (approximately 240 parking spaces) at the proposed commercial building, with the intent of reducing some of the project's construction impacts, given the need to dewater and excavate and off-haul soil for the below-grade garage leads to many of the environmental impacts from construction and the ample supply of parking contributes to many of the operational impacts such as operational criteria pollutant emissions, as discussed below.

Comparison of Environmental Impacts for the Reduced Parking Alternative

The Reduced Parking Alternative would reduce operational vehicle ROG emissions. This alternative would include the removal of one commercial parking level, which would reduce the number of cars parked on-site by approximately 12 percent resulting in a reduction in operational vehicle emissions by approximately 12 percent, assuming site commercial occupants and visitors/clients/customers would travel to the site via alternate modes of travel due to reduced parking. This project alternative

would be required to implement BBUV Parking and TDM measures, as this is required for all developments in the BBUV, which would reduce the operational ROG emissions by 30 percent (resulting in a less than significant impact). Removal of one of the three commercial parking levels would result in an approximate additional 12 percent reduction in emissions. This project alternative, however, would not substantially lessen the project's impacts to biological resources, cultural resources (archaeological resources), or hazardous materials (soil and groundwater quality). This project alternative would implement mitigation measures to reduce these above impacts to less than significant. This project alternative would reduce construction emissions, as the amount of soil required for excavation would be reduced by 35 percent (to 100,000 cubic yards of soil), resulting in fewer truck trips and less emissions; however, mitigation measures to reduce emissions would still be required.

Relationship to Project Objectives for the Reduced Parking Alternative

The Reduced Parking Alternative would meet all of the project objectives as it would include residential development with connections to public transit and other alternative forms of transportation (objectives 1 through 3) as well as commercial development (objectives 4 and 7). The project alternative would help achieve the mode share goal of 65 percent carpool/share mobility/transit/walk and 35 percent of single occupancy vehicles by reducing the parking on-site (objectives 5 and 6). Like the proposed project, this project alternative would meet all the project objectives given the location, proposed uses, and density would be the same as the proposed project.

Conclusion

The Reduced Parking Alternative would remove one underground parking level (240 spaces) from the commercial building which would incrementally reduce operational and construction ROG emissions. This project alternative, however, would not substantially reduce any impacts to avoid the need for similar mitigation measures as required for the project related to air quality, biological resources, cultural resources, hazards and hazardous materials, and noise.

With the goal to reduce VMT in the BBUV Plan area, the City's parking targets to reduce VMT by 20 percent for developments in the Plan area are to provide less than one space per dwelling unit for residences and 1.5 spaces per 1,000 square feet for commercial space. The proposed project's residential parking ratio is 1.06 spaces per dwelling unit (905 spaces/850 units) and the commercial parking ratio is 2.5 spaces per 1,000 square feet. Reducing the number of parking spaces by 240 spaces in the commercial parking garage would reduce the parking ratio to two (2) spaces per 1,000 square feet. Although this alternative would not achieve the 20 percent VMT per capita reduction parking goal, the alternative would result in a lower VMT per capita than the proposed project (given that less parking spaces would result in less trips). This project alternative would support all of the project objectives.

7.4.3 Environmentally Superior Alternative

The CEQA Guidelines state that an EIR shall identify an environmentally superior alternative. Based on the above discussion, the environmentally superior alternative to the proposed project is the No Project- No Development Alternative because all of the project's significant environmental impacts would be avoided. However, Section 15126(e)(2) states that "if the environmentally superior

alternative is the No Project Alternative, the EIR shall also identify an environmentally superior alternative among the other alternatives. In addition to the No Project – No Development Alternative, the Reduced Parking Alternative would incrementally reduce operational and construction ROG emissions and operational VMT throughout the life of the project. This alternative would meet all of the proposed project's objectives.

Table 7.4-1: Summary of Project and Project Alternative Impacts

Impacts	Proposed Project	No Project – No Development Alternative	No Project – Existing Plans and Policies	Reduced Parking Alternative
Aesthetics	NI	**NI**	NI	NI
Agricultural and Forestry Resources	NI	**NI**	NI	NI
Air Quality	SM	**NI**	SM	SM
Biological Resources	SM	**NI**	SM	SM
Cultural Resources	SM	**NI**	SM	SM
Energy	LTS	**NI**	LTS	LTS
Geology and Soils	LTS	**NI**	LTS	LTS
Greenhouse Gas Emissions	LTS	**NI**	LTS	LTS
Hazards and Hazardous Materials	SM	**NI**	SM	SM
Hydrology and Water Use	LTS	**NI**	LTS	LTS
Land Use	LTS	**NI**	LTS	LTS
Mineral Resources	NI	**NI**	NI	NI
Noise and Vibration	SM	**NI**	SM	SM
Population and Housing	LTS	**NI**	LTS	LTS
Public Services	LTS	**NI**	LTS	LTS
Recreation	LTS	**NI**	LTS	LTS
Transportation	LTS	**NI**	LTS	LTS
Tribal Cultural Resources	SM	**NI**	SM	SM
Utilities and Service Systems	LTS	**NI**	LTS	LTS
Wildfire	NI	**NI**	NI	NI
Meets Project Objectives?	Yes	No	Yes	Yes

Notes

SU = Significant unavoidable impact; SM = Significant impact but can be mitigated to a less than significant level; LTS = Less than significant impact; and NI = No impact.

Bold text indicates being environmentally superior to the proposed project but would not meet project objectives.

SECTION 8.0 REFERENCES

The analysis in this Environmental Impact Report is based on the professional judgement and expertise of the environmental specialists preparing this document, based upon review of the site, surrounding conditions, site plans, and the following references:

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SECTION 9.0 LEAD AGENCY AND CONSULTANTS

9.1 LEAD AGENCY

City of San José
Department of Planning, Building and Code Enforcement
- Chris Burton, Director of Planning, Building and Code Enforcement
- Cassandra van der Zweep, Supervising Planner
- Tina Garg, Planner III

9.2 CONSULTANTS

David J. Powers & Associates, Inc.
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- Akoni Danielsen, Principal Project Manager
- Amber Sharpe, Project Manager
- Maria Kisyova, Associate Project Manager
- Connor Tutino, Assistant Project Manager
- Adam Garcia, Assistant Project Manager

Illingworth & Rodkin, Inc.
Air Quality and Noise Consultants
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- Michael Thill, Principal
- Casey Divine, Senior Air Quality Consultant
- Carrie Janello, Senior Noise Consultant
- Steve Deines, Staff Noise Consultant

H.T. Harvey & Associates
Ecological Consultants
- Stephen Rottenborn, Ph.D., Principal In-Charge, Senior Wildlife Ecologist
- Kelly Hardwicke, Ph.D., Senior Plant Ecologist
- Robin Carle, M.S., Senior Wildlife Ecologist
- David Gallagher, M.S., Plant Ecologist
- Stephen Peterson, M.S., Wildlife Ecologist
- Matt Pollock, ASCA Registered Consulting Arborist and ISA-Certified Arborist

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- Ron Helm, C.E.G., Senior Principal Geologist
- Stason Foster, P.E., Senior Project Engineer

Hexagon Transportation Consultants, Inc.
Transportation Consultants
Robert Del Rio, T.E., Vice President and Principal

SECTION 10.0 ACRONYMS AND ABBREVIATIONS

AB	Assembly Bill
ABAG	Association of Bay Area Governments
ACM	Asbestos containing material
ActivateSJ	Activate San José Strategic Plan
ADT	Average Daily Traffic
AFY	Acre-feet per year
AIA	Airport Influence Area
ALUC	Airport Land Use Commission
APN	Assessor's Parcel Number
BAAQMD	Bay Area Air Quality Management District
BART	Bay Area Rapid Transit
Basin Plan	Water Quality Control Plan for the San Francisco Bay Basin
BMP	Best management practice
BTU	British thermal unit
BUSD	Berryessa Union School District
CalARP	California Accidental Release Prevention
CalEEMod	California Emissions Estimator Model
CalEPA	California Environmental Protection Agency
CAL FIRE	California Department of Forestry and Fire Protection
CALGreen	California Green Building Standards Code
Cal/OSHA	California Department of Industrial Relations, Division of Occupational Safety and Health
CalRecycle	California Department of Resources Recycling and Recovery
Caltrans	California Department of Transportation
CAP	Clean Air Plan
CARB	California Air Resources Board
CARE	Community Air Risk Evaluation
CBC	California Building Standards Code
CCR	California Code of Regulations
CDFW	California Department of Fish and Wildlife

CEQA	California Environmental Quality Act
CFC	Chlorofluorocarbon
CFR	Code of Federal Regulations
CGS	California Geological Survey
CH_4	Methane
CLUP	Comprehensive Land Use Plan
CMP	Congestion Management Program
CNDDB	California Natural Diversity Database
CNEL	Community Noise Equivalent Level
CNPS	California Native Plant Society
CO	Carbon monoxide
CO_2	Carbon dioxide
CO_2e	Carbon dioxide equivalent
CRHR	California Register of Historical Resources
CUPA	Certified Unified Program Agency
CWA	Clean Water Act
dB	Decibel
dBA	A-weighted decibel
DEIR	Draft Environmental Impact Report
DNL	Day-Night Level
DPM	Diesel particulate matter
DTSC	Department of Toxic Substances Control
EIR	Environmental Impact Report
EMFAC	Emissions Factors
EO	Executive Order
EPA	Environmental Protection Agency
ESA	Environmental Site Assessment
ESL	Environmental Screening Level
ESUHSD	East Side Union High School District
EV	Electric vehicle
FAA	Federal Aviation Administration
FAR	Federal Aviation Regulations
FAR	Floor area ratio

FEMA	Federal Emergency Management Agency
FHSZ	Fire Hazard Severity Zones
FIRM	Flood Insurance Rate Map
FIS	Flood Insurance Study
FMMP	Farmland Mapping and Monitoring Program
FTA	Federal Transit Administration
GHG	Greenhouse gas
GHGRS	Greenhouse Gas Reduction Strategy
gpd	Gallons per day
GWh	Gigawatt hour
GWP	Global Warming Potential
Habitat Plan	Santa Clara Valley Habitat Plan/Natural Community Conservation Plan
HFC	Hydrofluorocarbon
HI	Hazard Index
HMP	Hydromodification Management Plan
HOV	High-occupancy vehicle
HRI	Historic Resources Inventory
HSP	Health and safety plan
I	Interstate
IWMP	Integrated Waste Management Plan
kW	Kilowatt
kWh	Kilowatt-hour
L_{eq}	Continuous noise level
LID	Low Impact Development
L_{max}	Maximum noise level
LOS	Level of service
LRT	Light rail transit
LSAA	Lake and Streambed Alteration Agreement
LUST	Leaking underground storage tank
MBTA	Migratory Bird Treaty Act
MEI	Maximally exposed individual
mgd	Million gallons per day
MLD	Most Likely Descendant

MMT	Million metric ton
mpg	Miles per gallon
mph	Miles per hour
MRP	Municipal Regional Permit
msl	mean sea level
MT	Metric ton
MTC	Metropolitan Transportation Commission
MTIP	Multi-Modal Transportation Improvement Plan
N_2O	Nitrous oxide
NAHC	Native American Heritage Commission
NESHAP	National Emission Standards for Air Pollution
NFIP	National Flood Insurance Program
NHPA	National Historic Preservation Act
NO_2	Nitrogen dioxide
NOD	Notice of Determination
NOI	Notice of Intent
NOP	Notice of Preparation
NO_x	Nitrogen oxide
NPDES	National Pollutant Discharge Elimination System
NRHP	National Register of Historic Places
O_3	Ozone
OCP	Organochlorine pesticide
OHWM	Ordinary high-water mark
OITC	Outdoor-Indoor Transmission Class
OPR	Governor’s Office of Planning and Research
PCB	Polychlorinated biphenyl
PD	Planned Development
PDA	Priority Development Area
PDO	Parkland Dedication Ordinance
PFC	Perfluorocarbon
PG&E	Pacific Gas and Electric Company
PIO	Park Impact Ordinance
PM	Particulate matter

$PM_{2.5}$	Fine particulate matter
PM_{10}	Coarse particulate matter
ppm	Parts per million
PPV	Peak Particle Velocity
PRNS	City of San José Parks, Recreation, and Neighborhood Service Department
RAP	Removal Action Plan
RCRA	Resource Conservation and Recovery Act
RHNA	Regional Housing Need Allocation
ROG	Reactive organic gas
RWF	San José-Santa Clara Regional Wastewater Facility
RWQCB	Regional Water Quality Control Board
SB	Senate Bill
SBWR	South Bay Water Recycling
SCCDEH	Santa Clara County Department of Environmental Health
SCS	Sustainable Communities Strategy
SEIR	Supplemental Environmental Impact Report
SF_6	Sulfur hexafluoride
SFHA	Special Flood Hazard Area
SHMA	Seismic Hazards Mapping Act
SJC	Norman Y. Mineta San José International Airport
SJCE	San José Clean Energy
SJFD	San José Fire Department
SJPD	San José Police Department
SJW	San José Water Company
SMARA	Surface Mining and Reclamation Act
SMGB	State Mining and Geology Board
SMP	Site Management Plan
SO_x	Sulfur oxide
SR	State Route
STC	Sound Transmission Class
Superfund	Comprehensive Environmental Response, Compensation, and Liability Act
SWPPP	Stormwater Pollution Prevention Plan
SWRCB	State Water Resources Control Board

TAC	Toxic air contaminant
TCM	Treatment Control Measure
TCR	Tribal Cultural Resource
TDF	Transportation Demand Forecasting
TDM	Transportation Demand Management
TDP	Transportation Development Policy
TOD	Transit Oriented Development
TPHd	Total petroleum hydrocarbons as diesel
TPHo	Total petroleum hydrocarbons as oil
TPP	Tree Protection Plan
TPZ	Tree Protection Zone
$\mu g/m^3$	Micrograms per cubic meter
UPRR	Union Pacific Railroad
USACE	United States Army Corps of Engineers
USFWS	United States Fish and Wildlife Service
USGS	United States Geological Survey
UST	Underground storage tank
UV	Urban Village
UWMP	Urban Water Management Plan
Valley Water	Santa Clara Valley Water District
V/C	Volume-to-capacity ratio
VdB	Vibration decibel
VMT	Vehicle miles traveled
VOC	Volatile organic compound
VTA	Santa Clara Valley Transportation Authority
WSA	Water Supply Assessment
ZNE	Zero Net Carbon Emissions