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DRAFT
Environmental Impact Report
211-281 River Oaks Parkway Residential Project
City of San José, Santa Clara County, California

State Clearinghouse Number 2024110255

File Nos. T23-038, H23-041, & ER23-253

Prepared for:
City of San José
200 East Santa Clara Street
San José, CA 95113
408.535.3500

Contact: Kara Hawkins, Planner III

Prepared by:
FirstCarbon Solutions
2999 Oak Road, Suite 250
Walnut Creek, CA 94597
925.357.2562

Contact: Mary Bean, Project Director
Alison Rondone, Senior Project Manager

Date: May 1, 2025

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ACRONYMS AND ABBREVIATIONS

°C	degrees Celsius (Centigrade)
°F	degrees Fahrenheit
µg/m^3	micrograms per cubic meter
AAQS	Ambient Air Quality Standards
AB	Assembly Bill
ABAG	Association of Bay Area Governments
ACC II	Advance Clean Cars II
ACE	Altamont Commuter Express
ACHP	Advisory Council on Historic Preservation
ACM	asbestos-containing material
ACP	Alternative Compliance Plan
ADA	Americans with Disabilities Act
ADT	Average Daily Traffic
AFY	acre-feet/year
AIA	Airport Influence Area
AIC	Archaeological Information Center
AICUZ	Air Installation Compatibility Use Zone
AIRFA	American Indian Religious Freedom Act
ALUC	Airport Land Use Commission
ALUCP	Airport Land Use Compatibility Plan
AMSL	above mean sea level
APCD	Air Pollution Control District
APE	Area of Potential Effect
APN	Assessor's Parcel Number
AQMD	Air Quality Management District
ARPA	Archaeological Resources Protection Act
AST	aboveground storage tank
ATCM	Airborne Toxic Control Measures
BART	Bay Area Rapid Transit
BAU	business-as-usual
BCF	billion cubic feet
BCF/year	billion cubic feet per year
BERD	California Built Environment Resource Directory
BMP	Best Management Practice
BP	Before Present

BVOC	biogenic volatile organic compound
C^2ES	Center for Climate and Energy Solution
CAAQS	California Ambient Air Quality Standards
CAFE	Corporate Average Fuel Economy
CAL FIRE	California Department of Forestry and Fire Protection
Cal/EPA	California Environmental Protection Agency
Cal/OSHA	California Occupational Health and Safety Administration
CalEEMod	California Emissions Estimator Model
CALGreen	California Green Building Standards Code
CalRecycle	California Department of Resources Recycling and Recovery
Caltrans	California Department of Transportation
CAP	Climate Action Plan
CAPCOA	California Air Pollution Control Officers Association
CARB	California Air Resources Board
CBC	California Building Standards Code
CCCC	California Climate Change Center
CCR	California Code of Regulations
CCTA	Contra Costa Transportation Authority
CCTS	Central California Taxonomic System
CDFW	California Department of Fish and Wildlife
CEC	California Energy Commission
CEQA	California Environmental Quality Act
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
CESA	California Endangered Species Act
CFC	chlorofluorocarbon
CFR	Code of Federal Regulations
CGS	California Geological Survey
CH_4	methane
CHL	California Historical Landmarks
CHRIS	California Historical Resources Information System
CMP	Congestion Management Plan
CNDDB	California Natural Diversity Database
CNEL	Community Noise Equivalent Level
CNPS	California Native Plant Society
CNPSEI	California Native Plant Society's Electronic Inventory
CNRA	California Natural Resources Agency
CO	carbon monoxide
CO_2	carbon dioxide

CO_2e	carbon dioxide equivalent
CPHI	California Points of Historical Interest
CPUC	California Public Utilities Code
CRA	Cultural Resources Assessment
CRHR	California Register of Historical Resources
CUPA	Certified Unified Program Agency
CWA	Clean Water Act
dB	decibel
dBA	A-weighted decibel
DBH	diameter at breast height
DMA	drainage management area
DPM	diesel particulate matter
DPR	California Department of Parks and Recreation
DPS	District Population Segment
DTSC	California Department of Toxic Substances Control
du	dwelling unit
du/acre	dwelling unit per acre
DWR	California Department of Water Resources
EDFZ	Electricity Demand Forecast Zone
EIR	Environmental Impact Report
EISA	Energy Independence and Security Act of 2007
EMFAC	Emission Factors mobile source emissions model
EOP	Emergency Operations Plan
EPA	United States Environmental Protection Agency
ESL	Environmental Screening Level
EV	electric vehicle
EVCS	Electric Vehicle Charging Station
FAA	Federal Aviation Administration
FAR	floor area ratio
FCS	FirstCarbon Solutions
FEMA	Federal Emergency Management Agency
FHSZ	Fire Hazard Severity Zone
FHWA	Federal Highway Administration
FIRM	Flood Insurance Rate Map
FMMP	Farmland Mapping and Monitoring Program
GHG	greenhouse gas
GHGRS	Greenhouse Gas Reduction Strategy
GIS	Geographical Information System

gpm	gallons per minute
GPS	Global Positioning System
GWh	gigawatt-hours
GWh/y	gigawatt-hours per year
GWP	global warming potential
HAP	Hazardous Air Pollutants
HCM	Highway Capacity Manual
HCP	Habitat Conservation Plan
HFC	hydrofluorocarbon
HOV/HOT	High Occupancy Vehicle/High Occupancy Toll
hp	horsepower
HRA	Health Risk Assessment
HRI	California Historic Resources Inventory
HSC	California Health and Safety Code
HVAC	heating, ventilation, and air conditioning
HWCL	Hazardous Waste Control Law
IHO	Inclusionary Housing Ordinance
IP	Industrial Park
IPCC	United Nations Intergovernmental Panel on Climate Change
ISTEA	Intermodal Surface Transportation Efficiency Act
ITE	Institute of Transportation Engineers
kW	kilowatts
kWh	kilowatt hour
LAFCo	Santa Clara Local Agency Formation Commission
LCFS	Low Carbon Fuel Standard
L_{dn}	day/night average sound level
LED	light-emitting diode
L_{eq}	equivalent sound level
LEV	low-emission vehicle
LID	Low Impact Development
LOS	Level of Service
LRA	Local Responsibility Area
LRT	Light Rail Transit
LSE	load-serving entities
LTA	Local Transportation Analysis
LUST	Leaking Underground Storage Tank
MBTA	Migratory Bird Treaty Act
mgd	million gallons per day

MLD	Most Likely Descendent
MM	Mitigation Measure
MMRP	Mitigation Monitoring and Reporting Program
MMT	million metric tons
mph	miles per hour
MPO	Metropolitan Planning Organization
MTC	Metropolitan Transportation Commission
MTS	Metropolitan Transportation System
Muni Water	San José Municipal Water
MW	megawatt
MWD	Metropolitan Water District of Southern California
MWh	megawatt-hour
MXD	mixed-use development
N_2O	nitrous oxide
NAAQS	National Ambient Air Quality Standards
NAGPRA	Native American Graves Protection and Repatriation Act
NAHC	Native American Heritage Commission
NEHRP	National Earthquake Hazards Reduction Program
NEPA	National Environmental Policy Act
NESHAP	National Emissions Standards for Hazardous Air Pollutants
NFIP	National Flood Insurance Program
NFPA	National Fire Protection Association
NHM	Natural History Museum of Los Angeles County
NHPA	National Historic Preservation Act
NHTSA	National Highway Traffic Safety Administration
NO_2	nitrogen dioxide
NOAA Fisheries	National Marine Fisheries Service
NOC	Notice of Completion
NOP	Notice of Preparation
NO_x	nitrogen oxides
NPDES	National Pollutant Discharge Elimination System
NRCS	Natural Resources Conservation Service
NRHP	National Register of Historic Places
NWIC	Northwest Information Center
O_3	ozone
OAL	Office of Administrative Law
OCP	organochlorine pesticide
OEHHA	California Office of Environmental Health Hazard Assessment

OHWM	ordinary high water mark
ONAC	Federal Office of Noise Abatement and Control
OPR	California Governor's Office of Planning and Research
OSHA	Occupational Safety and Health Administration
PBCE	Planning, Building and Code Enforcement
PCB	polychlorinated biphenyl
pCi/L	picocuries per liter
PDO	Parkland Dedication Ordinance
PEA	Preliminary Endangerment Assessment
PEIR	Program Environmental Impact Report
PFC	perfluorocarbon
PG&E	Pacific Gas and Electric Company
Phase I CRA	Phase I Cultural Resources Assessment
Phase I ESA	Phase I Environmental Site Assessment
PHEV	plug-in hybrid-electric vehicles
PIO	Parkland Impact Ordinance
PM_{10}	particulate matter less than 10 microns in diameter
$PM_{2.5}$	particulate matter less than 2.5 microns in diameter
PM_x	particulate matter
ppb	parts per billion
ppm	parts per million
PPV	peak particle velocity
PRC	Public Resources Code
PV	photovoltaics
PVC	polyvinyl chloride
RCRA	Resource Conservation and Recovery Act
Recology	Integrated Resource Recovery Company
RecycleSmart	Central Contra Costa County Solid Waste Authority
REL	Reference Exposure Level
RHNA	Regional Housing Needs Allocation
RMP	Risk Management Plan
rms	root mean square
ROG	reactive organic gases
RPS	Renewables Portfolio Standard
RWQCB	Regional Water Quality Control Board
SARA	Superfund Amendments and Reauthorization Act
SB	Senate Bill
SBWR	South Bay Water Recycling

SCR	Selective Catalytic Reduction
SCS	Sustainable Communities Strategy
SCVHP	Santa Clara Valley Habitat Plan
SEIR	Supplemental Environmental Impact Report
SF_6	sulfur hexafluoride
SFPUC	San Francisco Public Utilities Commission
SJCE	San José Community Energy
SJDOT	City of San José Department of Transportation
SJFD	San José Fire Department
SLF	Sacred Lands File
SO_2	sulfur dioxide
South Coast AQMD	South Coast Air Quality Management District
SPC	Standard Permit Condition
SR	State Route
SRA	State Responsibility Area
State Water Board	California State Water Resources Control Board
SWPPP	Storm Water Pollution Prevention Plan
TAC	toxic air contaminant
TCM	transportation control measures
TCR	Tribal Cultural Resource
TDM	Transportation Demand Management
TDS	total dissolved solids
TDV	Time Dependent Valuation
TERO	Transit Employment Residential Overlay
Tg	teragram
therms/y	therms per year
TMA	Transportation Management Association
TMDL	Total Maximum Daily Load
TOD	Transit Oriented Development
TPH	total petroleum hydrocarbons
TSCA	Toxic Substances Control Act
UBC	Uniform Building Code
UCMP	University of California Museum of Paleontology
UGB	Urban Growth Boundary
US-101	U.S. Highway 101
USACE	United States Army Corps of Engineers
USC	United States Code
USDA	United States Department of Agriculture

USDOT	United States Department of Transportation
USFWS	United States Fish and Wildlife Service
USGS	United States Geological Survey
UST	underground storage tank
UWMP	Urban Water Management Plan
V/C	volume to capacity ratio
Valley Air District	San Joaquin Valley Air Pollution Control District
Valley Water	Santa Clara Valley Water District
VDECS	Verified Diesel Emission Control Strategies
VHFHSZ	Very High Fire Hazard Severity Zone
VMT	Vehicle Miles Traveled
VOC	volatile organic compounds
VTA	Santa Clara Valley Transportation Authority
WDR	Waste Discharge Requirements
WEAP	Worker Environmental Awareness Program
WQMP	Water Quality Management Plan
WSA	Water Supply Assessment
WUI	Wildland-Urban Interface
WWTP	Wastewater Treatment Plant
ZEV	Zero-Emission Vehicle

EXECUTIVE SUMMARY

Purpose

This Draft Environmental Impact Report (Draft EIR) is prepared in accordance with the California Environmental Quality Act (CEQA) to evaluate the potential environmental impacts associated with the implementation of the 211-281 River Oaks Parkway Residential Project (State Clearinghouse No. 2024110255). This document is prepared in conformance with CEQA (Public Resources Code [PRC] §§ 21000, *et seq*.) and the CEQA Guidelines (California Code of Regulations [CCR], Title 14, §§ 15000, *et seq*.).

The purpose of this Draft EIR is to inform decision makers, representatives of affected and responsible agencies, the public, and other interested parties of the potential environmental effects that may result from implementation of the proposed project. This Draft EIR describes potential impacts relating to a wide variety of environmental issues and methods by which these impacts can be mitigated or avoided.

Project Summary

Project Location

The project is located at 211, 251, and 281 River Oaks Parkway in San José, California, covering a collective 9.82 Acres. The Assessor Parcel Numbers (APNs) are 097-33-034, for 211 River Oaks Parkway, and 097-33-033, for both 251 and 281 River Oaks Parkway. The project site is bounded to the North by Anza Road and Levee Road; to the West by Iron Point Drive; to the South by River Oaks Parkway; and to the East by Cisco Way.

Project Description

The proposed project would include demolition of three existing buildings totaling approximately 164,606 square feet, as well as removal of all surface parking and on-site trees. River Oaks Housing Partners, LLC, proposes a comprehensive development plan that includes 100 market-rate townhome units and two apartment buildings providing a combined 637 units, for a total of 737 units. One of the two proposed apartment buildings would be 100 percent affordable and would include 130 affordable units and two market-rate manager units; the second proposed apartment building would contain 505 market-rate units. The project density would be 76.2 du/acre across the entire project site.

Affordable housing units would range in size from 360 to 1,037 square feet; market-rate units from 536 to 1,290 square feet; and townhomes from 1,230 to 1,790 square feet. Affordable and market-rate housing would include a mix of studio, 1-bedroom, 2-bedroom, and 3-bedroom units, while townhomes would be a composition of 2- and 3-bedroom units. Approval of a Vesting Tentative Map will be sought to allow the subdivision of two lots into 31 lots (16 residential lots, 10 open space lots, and five private streets).

Both apartment buildings would have a lobby and leasing office. The affordable apartment building would have a 615-square-foot main lobby, a 335-square-foot move-in lobby, and a 410-square-foot property management office. The market-rate building would have a 2,570-square-foot main lobby, a 1,540-square-foot secondary lobby, and two move-in lobbies. The leasing office would occupy 1,200 square feet.

The proposed project would include removal of 187 on-site trees (117 ordinance-size, 70 non-ordinance-size), as well as 51 trees located within the frontage streets right-of-way. Nine redwood trees in the right-of-way (redwood Nos. 2–5, 13–15, 109, and 113) would be preserved. Prior to removing trees greater than 38-inch circumference, a Tree Removal Permit would be required. Any street tree removal would be permitted separately by the Department of Transportation. Tree replacement would occur at a ratio of 1.1 to 5.1, depending on the size of the tree to be removed, and replacement trees would be a minimum of 15 gallons in size. The proposed project would require 651, 15-gallon replacement trees or 325 24-inch box trees and 1 15-gallon replacement tree on-site. The proposed project would replace 148 24-inch box trees on-site, which is the equivalent of 296 15-gallon trees. The proposed project would pay an in-lieu fee for 355 trees that would not be replaced.

The proposed project would include improvements to existing sidewalks along Cisco Drive and Iron Point Drive. The existing standard crosswalk at the Cisco Way/River Oaks Parkway intersection would be improved from white striping to high-visibility yellow ladder striping.

The proposed project would include rezoning to Planned Development and would be consistent with the zoning requirements of the TERO.

Project Objectives

The underlying purpose of the proposed project is to revitalize vacant or underutilized properties in the City with a significant amount of needed new high-quality housing opportunities that accommodate a range of income needs, promote walkability and serve the community by realizing the objectives and policies of applicable land use plans. The objectives of the proposed project are to:

- Deliver a mix of affordable and market-rate high-quality housing in an existing residential neighborhood.
- Construct housing with sufficient density (that satisfies the City of San José density requirements) to be marketable and produce a reasonable return on investment for the project applicant and its investors such that it is able to attract investment capital and construction financing.
- Assist the City of San José to satisfy its regional housing needs allocation for market-rate and below-market-rate housing units while delivering a greater percentage—17.6 percent—of affordable units than the City's required 15 percent per Inclusionary Housing Ordinance (IHO) (Chapter 5.08 of the Municipal Code).

- Revitalize and redevelop a vacant and underutilized commercial site in the heart of a residential neighborhood.
- Create a lively and walkable tree-lined neighborhood environment with improved sidewalks and open space.
- Provide pedestrian links to the existing surrounding single-family neighborhood, River Oaks Park, local schools, and transit.
- Enhance the architectural and visual character of the neighborhood with buildings designed to harmonize with the residential setting while preserving some of the existing redwood trees that line River Oaks Parkway.

Significant Unavoidable Adverse Impacts

The proposed project would not result in any significant and unavoidable impacts. All potentially significant impacts can be mitigated to less than significant and include:

- **Air Quality:** The proposed project could expose sensitive receptors to substantial pollutant concentrations during construction. Implementing Mitigation Measure (MM) AIR-1 and the City's Standard Permit Condition (SPC) for Air Quality would reduce this impact to a less than significant level.
- **Biological Resources:** Construction activities associated with the proposed project could result in removal of nesting and roosting habitat for special-status species. Implementing MM BIO-1, MM BIO-2, SPC BIO-1, and SPC BIO-2 would reduce this impact to a less than significant level.
- **Cultural Resources:** Project ground-disturbing activities could result in a substantial adverse change in the significance of an archaeological resource. Implementing MM CUL-2a, and MM CUL-2b, and SPC CUL-1a would reduce this impact to a less than significant level.
- **Noise:** The proposed project would result in a substantial noise increase due to construction lasting longer than 12 months, and as a result the construction no longer meets the City's definition of a temporary impact. Implementing MM NOI-1 would ensure that the proposed project construction activities would not result in substantial increases at the off-site sensitive receptors above standards established in the General Plan, and construction noise impacts on sensitive receptors in the project vicinity would be reduced to a less than significant level.
- **Tribal Cultural Resources:** Project ground-disturbing activities could result in a substantial adverse change in the significance of tribal cultural resource. Implementing MM CUL-2a, MM CUL-2b, MM CUL-1 and SPC CUL-1a and SPC CUL-1b would reduce this impact to a less than significant level.

All of these impacts would be mitigated to less than significant with the implementation of the identified mitigation measures and Standard Permit Conditions. Therefore, the proposed project would not have any significant and unavoidable environmental impacts.

Summary of Project Alternatives

Below is a summary of the alternatives to the proposed project considered in Chapter 5, Alternatives to the proposed project.

No Project–No Development Alternative

An alternative where the project is not constructed. The current zoning is maintained, no construction or demolition occurs, and the vacant commercial buildings are rented out as office space.

The No Project Alternative would retain the existing land use on-site as is, three vacant commercial office buildings and associated parking area. If the project site was to remain developed as is, the significant impacts resulting during construction of the proposed project would not occur. This alternative would maintain the baseline conditions described throughout this EIR; however, this alternative would not meet any of the project objectives.

No Project–Develop with Base General Plan and Zoning

The No Project–Develop with Base General Plan and Zoning Development Alternative would not construct the proposed project as designed and would instead allow for the future construction of another commercial or residential development consistent with the General Plan designation of Industrial Park and TERO overlay for the project site which allows housing with a density of between 75 and 250 dwelling units per acre. These would include replacement of the existing vacant commercial buildings with similar or larger commercial building or development of a high-density residential project, which could include residential density greater than proposed by the project. Both commercial and residential options would result in similar or greater site disturbance and would construct buildings of similar or larger scale than the proposed project adjacent to the same sensitive receptors. This would create construction impacts and require excavation comparable to the proposed project, which would result in similar impacts. There is also the possibility that a future project that includes subterranean parking would yield greater construction impacts and excavation compared to the proposed project.

Development under the base General Plan and Zoning could result in far greater traffic impacts if residential development is proposed at greater density, as residential uses are the highest generators of vehicle trips. Similarly, if a project is proposed that contains substantial square footage of commercial/office uses, impacts to all resource topics could be greater. Therefore, this alternative would not reduce or avoid any of the impacts identified for the proposed project, including potentially significant impacts to Air Quality, Biological Resources, Cultural and Tribal Cultural Resources, Land Use, Noise, and Transportation, and could result in greater impacts than the proposed project. This alternative would likely not achieve many of the project objectives, including helping the City meet its RHNA, particularly if the development proposed is commercial use rather than residential.

Areas of Controversy

Pursuant to CEQA Guidelines Section 15123(b), a summary section must address areas of controversy known to the lead agency, including issues raised by agencies and the public, and it must also address issues to be resolved, including the choice among alternatives and whether or how to mitigate the significant effects.

This Draft EIR addresses the potential environmental effects of the proposed project. The City issued a Notice of Preparation (NOP) for the proposed project, which circulated between Thursday, November 7, 2024, and Tuesday, December 10, 2024, for the statutory 30-day public review period. A public scoping meeting was held virtually on Thursday, November 14, 2024. The scope of this Draft EIR includes the potential environmental impacts identified in the NOP and issues raised by agencies and the public in response to the NOP. The NOP is contained in Appendix A of this Draft EIR.

Public comments at the scoping meeting pertained to:

- Deficiency in parks in the City and lack of other recreational facilities such as tennis and basketball courts (Chapter 4, Effects Found not to be Significant),.
- Lack of retail in the proposed project to make it a walkable community (Section 3.6, Land Use and Planning).
- No amenities in the area (Section 3.6, Land Use and Planning).
- No on-site recreation areas (Chapter 4, Effects Found not to be Significant).
- Save as many trees as possible (Section 3.2, Biological Resources).
- Concern over construction traffic and routes to and from the site—will there be a traffic control plan? (Section 3.8, Transportation and Traffic).
- Good density—above inclusionary housing standards (Section 3.6, Land Use and Planning).
- Good housing mix and integration for affordable home ownership (Section 3.6, Land Use and Planning).

The project received seven letters commenting on the NOP. These comment letters can be found in Appendix A following the NOP. Below is a table summarizing the points of the letters:

Table ES-1: Summary of EIR Scoping Comments

Agency/Organization	Author	Date	Comment Summary	Coverage in the Draft EIR
Public Agencies				
California Department of Toxic Substances Control (DTSC)	Tamara Purvis, Associate Environmental Planner	11.05.2024	DTSC recommends the City of San José enter into a voluntary agreement to address contamination at brownfields and other types of properties or receive oversight from a self-	Section 3.5 Hazards and Hazardous Materials

Agency/Organization	Author	Date	Comment Summary	Coverage in the Draft EIR
			certified local agency, DTSC, or Regional Water Quality Control Board (RWQCB) (non-CEQA comment). (Section 3.5, Hazards and Hazardous Materials) DTSC recommends that all imported soil and fill material should be tested to assess any contaminants of concern meet screening levels as outlined in DTSC's Preliminary Endangerment Assessment (PEA) Guidance Manual. Additionally, DTSC advises referencing the DTSC Information Advisory Clean Imported Fill Material Fact Sheet if importing fill is necessary. (Section 3.5, Hazards and Hazardous Materials)	
Valley Water	Andrew Quan, Assistant Engineer II	12.04.2024	Reviewed the NOP and provided the following comments: 1. Water Supply Assessment is required under State law to evaluate the proposal's consistency with San José Water Company's Urban Water Management Plan and determine if adequate water supplies are available to serve the development. 2. Records show that groundwater can have and any underground structures should have waterproof foundations. 3. Federal Emergency Management Agency Flood Insurance Rate Map (FIRM) 06085C0068J shows the entire site is located within Zone X (areas of 0.2 percent annual chance flood hazard). 4. Portions of the project site are within the Leroy Anderson Dam failure inundation zone. 5. According to Valley Water's records, there are no wells within the property boundary.	Chapter 4, Effects Found not to be Significant

Agency/Organization	Author	Date	Comment Summary	Coverage in the Draft EIR
Tamien Nation	Tracie Carrasco, Admin Assistant	11.19.2024	Contains the Assembly Bill (AB) 52 Notification Response For 211 River Oaks Parkway. Highlights the process that the Tamien Nation wants to be consulted on including; Alternatives to the proposed project, recommended mitigation measures, significant effects of the proposed project, type of environmental review necessary, significance of Tribal Cultural Resources, including any regulations, policies standards used by your Lead Agency to determine significance of Tribal Cultural Resources, and significance of the proposed project's impacts on Tribal Cultural Resources. Finishes with reminders for resource databases to access throughout the project and CEQA Guidelines on Native American topics	Section 3.3, Cultural Resources; Section 3.9, Tribal Cultural Resources
Roads and Airport Department, County of Santa Clara	Dr. Ayeh Khajouei, AICP, PTP	11.22.2024	Reviewed the NOP and provided the following comments: • Recommend that the Local Transportation Analysis (LTA) include all County of Santa Clara signalized intersections within a 2-mile radius of the proposed project, specifically all Montague Expressway signals between Mission College and Great Mall. • Include the Montague Expressway and Research Place intersection, considering a right-in/right-out configuration. • Suggest evaluating all Congestion Management Plan (CMP) intersections using the Highway Capacity Manual (HCM) 7th Edition methodology in PTV Vistro analysis software, aligning with Santa Clara Valley Transportation Authority's	Section 3.8, Transportation and Traffic

Agency/Organization	Author	Date	Comment Summary	Coverage in the Draft EIR
			(VTA's) planned adoption of Vistro as the standard for traffic Level of Service (LOS) analysis in the forthcoming Traffic Impact Analysis (TIA) Guidelines Update.	
Pacific Gas and Electric Company	Paul Takemoto, Land Management	11.08.2024	The proposed project is within same vicinity of existing Pacific Gas and Electric Company (PG&E) facilities. Contact the Building Renovation Center for a Facilities Maps Request as well as contact the PG&E's Service Planning Department for any modification or relocation requests.	Chapter 4, Effects Found not to be Significant,
Pacific Gas and Electric Company	Plan review Team	11.08.2024	Attached information and requirements in regard to gas facilities (Attachment 1) and electric facilities (Attachment 2). These attachments go over min/max distance requirements, safety standards, construction guidelines, legal understandings, and other construction/operation guidelines.	Chapter 4, Effects Found not to be Significant
Amah Mutsun Tribal Band of Mission San Juan Bautista	Shelby Brown	11.08.2024	Attached the Most Likely Descendant (MLD) recommendations as well as general recommendations to help prepare for the possible findings that may come along during the progression of the proposed project. The attachments explain how to train workers, the different discovery protocols, and communication needs with regards to the treatment of ancestral remains and any and all associated grave regalia and subsurface features discovered at this location.	Section 3.3, Cultural Resources; Section 3.9 Tribal Cultural Resources

Disagreement Among Experts

This Draft EIR contains substantial evidence to support all the conclusions presented herein. It is possible that there will be disagreement among various parties regarding these conclusions, although the City of San José is not aware of any disputed conclusions at the time of this writing. Both the CEQA Guidelines and case law clearly provide the standards for treating disagreement among experts. Where evidence and opinions conflict on an issue concerning the environment, and the lead agency knows of these controversies in advance, the EIR must acknowledge the controversies, summarize the conflicting opinions of the experts, and include sufficient information to allow the public and decision makers to make an informed judgment about the environmental consequences of the proposed project.

Potentially Controversial Issues

Below is a list of potentially controversial issues that may be raised during the public review and hearing process of this Draft EIR:

- Construction Traffic
- Building Height
- Deficiency in parks in the City and lack of other recreational facilities
- Lack of Retail
- Lack of Amenities in Area
- No On-Site Recreation
- Tribal Cultural Resources

It is also possible that evidence will be presented during the 45-day, statutory Draft EIR public review period that may create disagreement. Decision-makers would consider this evidence during the public hearing process.

In rendering a decision on a project where there is disagreement among experts, the decision makers are not obligated to select the most environmentally preferable viewpoint. Decision makers are vested with the ability to choose whatever viewpoint is preferable and need not resolve a dispute among experts. In their proceedings, decision makers must consider comments received concerning the adequacy of the Draft EIR and address any objections raised in these comments. However, decision makers are not obligated to follow any directives, recommendations, or suggestions presented in comments on the Draft EIR and can certify the Final EIR without needing to resolve disagreements among experts.

Public Review of the Draft EIR

Upon completion of the Draft EIR, the City of San José filed a Notice of Completion (NOC) with the State Office of Planning and Research to begin the public review period (PRC § 21161). Concurrent with the NOC, this Draft EIR has been distributed to responsible and trustee agencies, other affected agencies, surrounding cities, and interested parties, as well as all parties requesting a copy of the Draft EIR in accordance with Public Resources Code 21092(b)(3).

During the public review period, the Draft EIR, including the technical appendices, is available for review at the Planning, Building and Code Enforcement Department, 200 E. Santa Clara Street, San

José, CA 95113, the D. Martin Luther King Jr. Library, and the Alviso Branch Library. The address for each location is provided below:

Dr. Martin Luther King Jr. Library
150 East San Fernando Street
San José, CA 95112

Alviso Branch Library
5050 North First Street
San José, CA 95002

The Draft EIR is also available for review at the following website: https://www.sanjoseca.gov/your-government/departments-offices/planning-building-code-enforcement/planning-division/environmental-review/environmental-review-documents/211-281-river-oajks-parkway-residential-project.

Agencies, organizations, and interested parties have the opportunity to comment on the Draft EIR during the 45-day public review period. Written comments on this Draft EIR should be addressed to:

Kara Hawkins, Planner III
City of San José
200 East Santa Clara Street
San José, CA 95113
Phone: 408.535.3500
Email: kara.hawkins@sanjoseca.gov

Submittal of electronic comments in Microsoft Word or Adobe PDF format is encouraged. Upon completion of the public review period, written responses to all significant environmental issues raised will be prepared and made available for review by the commenting agencies at least 10 days prior to the public hearing before the City of San José on the project, at which the certification of the Final EIR will be considered. Comments received and the responses to comments will be included as part of the record for consideration by decision-makers for the project.

Executive Summary Matrix

Table ES-2 below summarizes the impacts, mitigation measures, and resulting level of significance after mitigation for the relevant environmental issue areas evaluated for the proposed project. The table is intended to provide an overview; narrative discussions for the issue areas are included in the corresponding section of this EIR. Table ES-2 is included in the EIR as required by CEQA Guidelines Section 15123(b)(1).

Table ES-2: Executive Summary Matrix

Impacts	Mitigation Measures	Level of Significance After Mitigation
Section 3.1—Air Quality		
Impact AIR-1: The proposed project would not conflict with or obstruct implementation of the applicable air quality plan.	None.	Less than significant.
Impact AIR-2: The proposed project would not result in a cumulatively considerable net increase of any criteria pollutant for which the project region is nonattainment under an applicable federal or state ambient air quality standard.	None. SPC AQ-1 would apply.	Less than significant.
Impact AIR-3: The proposed project could expose sensitive receptors to substantial pollutant concentrations.	**MM AIR-1:** All off-road equipment equal to or greater than 50 horsepower shall meet either United States Environmental Protection Agency (EPA) or California Air Resources Board (CARB) Tier 4 Interim off-road emission standards during all construction activities, as feasible. If use of Tier 4 equipment is not available or feasible, the contractor shall alternatively use equipment that meets EPA emission standards for Tier 3 engines and include particulate matter emissions control equivalent to CARB Level 3 verifiable diesel emission control devices. The project applicant shall submit verification documentation to the Director of Planning, Building and Code Enforcement, or the Director's designee, for review and approval prior to issuance of any grading and building permits. The verification documentation shall demonstrate that the off-road equipment used on-site to construct the project would comply with Tier 4 Interim off-road emission standards. Off-road equipment descriptions and information included in the construction management plan may include but are not limited to equipment type, equipment manufacturer, equipment identification number, engine model year, engine certification (Tier rating), horsepower, and engine serial number. The verification documentation shall be reviewed and approved by the Director of Planning, Building and Code Enforcement, or the	Less than significant.

Impacts	Mitigation Measures	Level of Significance After Mitigation
	Director's designee, prior to the issuance of any demolition, grading, or building permits (whichever occurs earliest).	
Impact AIR-4: The proposed project would not result in other emissions (such as those leading to odors) adversely affecting a substantial number of people.	None.	Less than significant.
Cumulative Impact	MM AIR-1 would apply.	Less than significant.
Section 3.2—Biological Resources		
Impact BIO-1: The proposed project would not 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 or United States Fish and Wildlife Service.	**MM BIO-1: Impacts to Nesting Birds** • **Avoidance:** 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 1 through August 31 (inclusive), as amended. • **Nesting Bird Surveys:** If it is not possible to schedule demolition and construction between September 1 and January 31 (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 breading season (February 1 through April 30 inclusive) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May 1 through August 31 inclusive). During the survey, the Ornithologist shall inspect all trees and other possible nesting habitats immediately adjacent to the construction areas for nests. • **Buffer Zones:** If an active nest is found sufficiently close to the work areas to be disturbed by construction, the Ornithologist, in consultation with the California Department of Fish and Wildlife (CDFW), shall determine the extent of a construction-free buffer zone to be established around the nest, typically 250 feet for raptors and 100 feet for other birds, to ensure that raptor or migratory bird nests shall not be disturbed during project	Less than significant.

Impacts	Mitigation Measures	Level of Significance After Mitigation
	construction. The no-disturbance buffer shall remain in place until the Ornithologist determines the nest is no longer active or the nesting season ends. If construction ceases for two days or more then resumes again during the nesting season, an additional survey shall be necessary to avoid impacts to active bird nests that may be present. • **Reporting:** If the start of construction activities is scheduled to occur between February 1 and August 31 (inclusive) and pre-construction survey are required, prior to any tree removal and construction activities or issuance of any demolition, grading or building permits (whichever occurs first), the project applicant shall submit the qualified Ornithologist's report indicating the results of the survey and any designated buffer zones to the satisfaction of the Director of Planning, Building, and Code Enforcement (PBCE) or the Director's designee. **MM BIO-2: Roosting Bat Pre-Construction Survey and Avoidance** • Prior to issuance of a demolition, grading or building permit (whichever occurs first), a qualified Biologist with relevant roosting bat experience shall conduct a survey for special-status bats during the dusk and dawn to maximize detectability to determine whether bat species are roosting near the work area no less than 7 days and no more than 14 days prior to any ground disturbance, demolition, and/or construction. Survey methodology may include visual surveys of bats (e.g., observation of bats during the foraging period), inspection for suitable habitat, bat sign (e.g., guano), or use of ultrasonic detectors (Anabat, etc.). • If the Biologist determines or presumes bats are present, the Biologist shall exclude the bats from suitable spaces by installing one-way exclusion devices. After the bats vacate the space, the Biologist shall close off the space to prevent recolonization. Grading shall only commence after the Biologists verifies 7 to 10 days later that the exclusion methods have successfully prevented bats from returning. To avoid impacts on non-volant (i.e., nonflying) bats, the Biologist shall only conduct bat exclusion and	

Impacts	Mitigation Measures	Level of Significance After Mitigation
	eviction from October 1 through April 30 (inclusive). Exclusion efforts may be restricted during periods of sensitive activity (e.g., during hibernation or while females in maternity colonies are nursing young). • A final report of bats, including survey methods and any protection measures, shall be submitted to the Director of Planning, Building and Code Enforcement (PBCE) or Director's designee prior to issuance of any demolition, grading, or building permits.	
Impact BIO-2: The proposed project would not have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, and regulations or by the California Department of Fish and Wildlife or United States Fish and Wildlife Service.	None.	No impact.
Impact BIO-3: The proposed project would not 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.	None.	No impact.
Impact BIO-4: The proposed project would not 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 wildlife nursery sites.	MM BIO-1 and MM BIO-2 would apply.	Less than significant.
Impact BIO-5: The proposed project would not conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance.	MM BIO-1 and MM BIO-2, SPC BIO-1 would apply.	Less than significant.
Impact BIO-6: The proposed project would not conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or State Habitat Conservation Plan.	None. SPC BIO-2 would apply.	Less than significant.
Cumulative Impact	None.	Less than significant.

Impacts	Mitigation Measures	Level of Significance After Mitigation
Section 3.3—Cultural Resources		
Impact CUL-1: The proposed project would not cause a substantial adverse change in the significance of a historical resource pursuant to Section 15064.5.	None.	Less than significant.
Impact CUL-2: The proposed project could cause a substantial adverse change in the significance of an archaeological resource pursuant to Section 15064.5.	**MM CUL-2a**: **Cultural Sensitivity Training**. Prior to issuance of any Grading or Building Permit, the project shall be required to conduct a Cultural Awareness Training for construction personnel. The training shall be facilitated by a qualified Archaeologist in collaboration with a Native American representative registered with the Native American Heritage Commissions for the City of San José, and that is traditionally and culturally affiliated with the geographic area, as described in Public Resources Code Section 21080.3. The training should include visual aids, a discussion of applicable laws and statutes relating to archaeological resources, types of resources that may found within the project site, and procedures to be followed in the event such resources are encountered. Documentation verifying that Cultural Awareness Training has been conducted shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee prior to issuance of Grading or Building Permits. **Treatment Plan**. A qualified Archaeologist in collaboration with a Native American monitor, registered with the Native American Heritage Commission for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3, shall prepare a treatment plan that reflects permit-level detail pertaining to depths and locations of excavation activities, in case of finds. The treatment plan shall be prepared and submitted to the Director of Planning, Building, and Code Enforcement or Director's designee prior to the issuance of any grading permits. 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.	Less than significant.

Impacts	Mitigation Measures	Level of Significance After Mitigation
	• Description of the environmental setting (past and present) and the historic/prehistoric background of the parcel (potential range of what might be found). • Monitoring schedules and individuals. • 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. • Security approaches or protocols for finds. • Appendices: all site records, correspondence, and consultation with Native Americans, etc. The treatment plan shall utilize data recovery methods to reduce impacts on subsurface resources. **MM CUL-2b**: **Subsurface Monitoring.** A qualified Archaeologist, in collaboration with a Native American monitor, registered with the Native American Heritage Commission for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3, shall also be present during applicable earthmoving activities including, but not limited to, trenching, initial or full grading, lifting of foundation, boring on-site, or major landscaping. Prior to issuance of any tree removal, grading, demolition, and/or building permit or activities, the applicant shall notify the Director of Planning, Building, and Code Enforcement, or Director's designee, of grading and construction dates and activities that a qualified archeologist and Native American monitor would be present on the project site during construction.	

Impacts	Mitigation Measures	Level of Significance After Mitigation
Impact CUL-3: The proposed project could disturb human remains, including those interred outside of formal cemeteries.	SPC CUL-b would apply.	Less than significant.
Cumulative Impact	None.	Less than significant.
Section 3.4—Greenhouse Gas Emissions		
GHG-1: The proposed project would not generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment.	None.	Less than significant.
GHG-2: The proposed project would not conflict with any applicable plan, policy or regulation of an agency adopted for the purpose of reducing the emissions of greenhouse gases.	None.	Less than significant.
Cumulative Impact	None.	Less than significant.
Section 3.5—Hazards and Hazardous Materials		
Impact HAZ-1: The proposed project would not create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials.	None.	Less than significant.
Impact HAZ-2: The proposed project would not create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the likely release of hazardous materials into the environment.	None.	Less than significant.
Impact HAZ-3: The proposed project would not emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school.	None.	Less than significant.
Impact HAZ-4: The proposed project would not 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 not create a significant hazard to the public or the environment.	None.	No impact.

Impacts	Mitigation Measures	Level of Significance After Mitigation
Impact HAZ-5: 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, the proposed project would not result in a safety hazard or excessive noise for people residing or working the project area.	None.	No impact.
Impact HAZ-6: The proposed project would not impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan.	None.	Less than significant.
Impact HAZ-7: The proposed project would not expose people or structures, either directly or indirectly to a significant risk of loss, injury or death involving wildland fires.	None.	Less than significant.
Cumulative Impact	None.	Less than significant.
Section 3.6—Land Use and Planning		
LAND-1: The proposed project would not physically divide an established community.	None.	No impact.
LAND-2: The proposed project would not 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.	None.	Less than significant.
Cumulative Impact	None.	Less than significant.
Section 3.7—Noise		
Impact NOI-1: The proposed project would not generate 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.	**MM NOI-1: Construction Noise Logistics Plan** Prior to the issuance of any grading or demolition permits, a qualified acoustical consultant shall prepare a Construction Noise Logistics Plan. Prior to the issuance of any grading or demolition permits, a qualified acoustical consultant shall prepare a Construction Noise Logistics Plan. The Construction Noise Logistics Plan shall include, at a minimum, the following requirements: • Pile Driving is prohibited.	Less than significant.

Impacts	Mitigation Measures	Level of Significance After Mitigation
	• Limit construction to the hours of 7:00 a.m. to 7:00 p.m. 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 use. • Construct solid plywood fences around ground level construction sites adjacent to operational businesses, residences, or other noise-sensitive land uses. • Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment. • Prohibit unnecessary idling of internal combustion engines. • Locate stationary noise-generating equipment such as air compressors or portable power generators as far as possible from sensitive receptors. Construct temporary noise barriers to screen stationary noise-generating equipment when located near adjoining sensitive land uses. • Utilize "quiet" air compressors and other stationary noise sources where technology exists. • Control noise from construction workers' radios to a point where they are not audible at existing residences bordering the project site. • Notify all adjacent business, residences, and other noise-sensitive land uses of the construction schedule, in writing, and provide a written schedule of "noisy" construction activities to the adjacent land uses and nearby residences. • If complaints are received or excessive noise levels cannot be reduced using the measures above, erect a temporary noise control blanket barrier along surrounding building façades that face the construction sites. • Designate a "disturbance coordinator" who shall be responsible for responding to any complaints about construction noise. The	

Impacts	Mitigation Measures	Level of Significance After Mitigation
	disturbance coordinator shall determine the cause of the noise complaint (e.g., bad muffler, etc.) and shall require that reasonable measures be implemented to correct the problem. Conspicuously post a telephone number for the disturbance coordinator at the construction site and include it in the notice sent to neighbors regarding the construction schedule. Prior to issuance of any demolition or grading permits, the project applicant shall submit a copy of the Construction Noise Logistics Plan to the Director of Planning, Building and Code Enforcement or the Director's designee, and the project applicant shall implement the requirements of the Construction Noise Logistics Plan during project construction. SPC NOI-1 would apply.	
Impact NOI-2: The proposed project would not result in generation of excessive groundborne vibration or groundborne noise levels.	None.	Less than significant.
Impact NOI-3: The proposed project would not expose people residing or working in the project area to excessive noise levels 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.	None.	No impact.
Cumulative Impact	None.	Less than significant.
Section 3.8—Transportation and Traffic		
Impact TRANS-1: The proposed project would not conflict with a program plan, ordinance or policy of the circulation system, including transit, roadway, bicycle and pedestrian facilities.	None.	Less than significant.
Impact TRANS-2: The proposed project would not conflict or be inconsistent with CEQA Guidelines Section 15064.3, subdivision (b).	None.	Less than significant.

Impacts	Mitigation Measures	Level of Significance After Mitigation
Impact TRANS-3: The proposed project would not substantially increase hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment).	None.	Less than significant.
Impact TRANS-4: The proposed project would not result in inadequate emergency access.	None.	Less than significant.
Cumulative Impact	None.	Less than significant.
Section 3.9—Tribal Cultural Resources		
Impact TCR-1: The proposed project could 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).	MM CUL-2a and MM CUL-2b, SPC CUL-a and SPC CUL-b) would apply	Less than significant.
Impact TCR-2: The proposed project could cause a substantial adverse change in the significance of a Tribal Cultural 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	MM CUL-2a and MM CUL-2b, SPC CUL-a and SPC CUL-b) would apply	Less than significant.
Cumulative Impact	None.	Less than significant.

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CHAPTER 1: INTRODUCTION

1.1 - Overview of the CEQA Process

This Draft Environmental Impact Report (Draft EIR) is prepared in accordance with the California Environmental Quality Act (CEQA) to evaluate the potential environmental impacts associated with the implementation of the 211-281 River Oaks Parkway Residential Project (the proposed project) (State Clearinghouse No. 2024110255). This document is prepared in conformance with CEQA (California Public Resources Code [PRC], §§ 21000, *et seq*.) and the CEQA Guidelines (California Code of Regulations [CCR], Title 14, §§ 15000, *et seq*.). This Draft EIR is intended to serve as an informational document for the public agency decision-makers and the public regarding the proposed project, as discussed in Chapter 2.

1.1.1 - Overview

The proposed project would include demolition of three existing buildings totaling approximately 164,606 square feet, as well as removal of all surface parking and 183 on-site trees and 55 trees in the right-of-way.

River Oaks Housing Partners, LLC, proposes a comprehensive development plan that includes 100 market-rate townhome units and two apartment buildings providing a combined 637 units, for a total of 737 units. One of the two proposed apartment buildings would include 130 affordable units and two market-rate manager units; the second proposed apartment building would contain 505 market-rate units. The project density would be 76.2 dwelling units per acre (du/acre) across the entire project site. Chapter 2, Project Description, provides a complete description of the proposed project.

1.1.2 - Purpose and Authority

This Draft EIR provides a project-level analysis of the environmental effects of the proposed project to the degree of specificity appropriate, in accordance with CEQA Guidelines Section 15146. This document addresses the potentially significant adverse environmental impacts that may be associated with the planning, construction, or operation of the proposed project. It also identifies feasible mitigation measures and alternatives that may be adopted to significantly reduce or avoid these impacts.

CEQA requires that an EIR contain, at a minimum, certain specific elements. These elements are contained in this Draft EIR, including, but not limited to, the following:

- Table of Contents
- Introduction
- Executive Summary
- Project Description
- Environmental Setting, Significant Environmental Impacts, and Mitigation Measures
- Cumulative Impacts
- Effects Found not to be Significant

- Significant Unavoidable Adverse Impacts
- Growth-inducing Impacts
- Irreversible Environmental Changes
- Alternatives to the Proposed Project
- Persons and Organizations Consulted/List of Preparers

1.1.3 - Lead Agency Determination

The City of San José (City) is designated as the Lead Agency for the proposed project. CEQA Guidelines Section 15367 defines the lead agency as ". . . the public agency, which has the principal responsibility for carrying out or approving a project." Other public agencies may use this Draft EIR in the decision-making or permit process and consider the information in this Draft EIR along with other information that may be presented during the CEQA process.

This Focused Draft EIR reflects the independent judgment and analysis of the City of San José as required by CEQA. Lists of organizations and persons consulted and the report preparation personnel is provided in Chapter 7 of this Draft EIR.

1.2 - Scope of the Draft EIR

This Draft EIR addresses the potential environmental effects of the proposed project. The City issued a Notice of Preparation (NOP) for the proposed project, which circulated between Thursday, November 7, 2024, and Tuesday, December 10, 2024, for the statutory 30-day public review period. A public scoping meeting was held virtually on Thursday, November 14, 2024. The scope of this Draft EIR includes the potential environmental impacts identified in the NOP and issues raised by agencies and the public in response to the NOP. The NOP is contained in Appendix A of this Draft EIR.

Public comments at the scoping meeting pertained to:

- Deficiency in parks in the City and lack of other recreational facilities such as tennis and basketball courts (Chapter 4, Effects Found not to be Significant),.
- Lack of retail in the proposed project to make it a walkable community (Section 3.6, Land Use and Planning).
- No amenities in the area (Section 3.6, Land Use and Planning).
- No on-site recreation areas (Chapter 4, Effects Found not to be Significant
- Save as many trees as possible (Section 3.2, Biological Resources).
- Concern over construction traffic and routes to and from the site—will there be a traffic control plan? (Section 3.8, Transportation and Traffic).
- Good density—above inclusionary housing standards (Section 3.6, Land Use and Planning).
- Good housing mix and integration for affordable home ownership (Section 3.6, Land Use and Planning).

The project received seven letters commenting on the NOP. These comment letters can be found in Appendix A following the NOP.

1.2.1 - Environmental Issues Determined not to be Significant

The NOP identified topical areas that were determined not to be significant. An explanation of why each area is determined not to be significant is provided in Chapter 4, Effects Found not to be Significant. These topical areas are as follows:

- Aesthetics
- Agricultural and Forestry Resources
- Energy
- Geology and Soils
- Hydrology and Water Quality
- Mineral Resources
- Population and Housing
- Public Services
- Recreation
- Utilities and Service Systems
- Wildfire

An explanation of why each issue is determined not to be significant is provided in Chapter 4, Effects Found not to be Significant.

1.2.2 - Potentially Significant Environmental Issues

The NOP found that the following topical areas may contain potentially significant environmental issues that will require further analysis in the EIR. These sections are as follows:

- Air Quality
- Biological Resources
- Cultural Resources
- Greenhouse Gas Emissions
- Hazards and Hazardous Materials
- Land Use Planning
- Noise
- Transportation
- Tribal Cultural Resources

1.3 - Organization of the Draft EIR

This Draft EIR is organized into the following main sections:

- **Chapter ES: Executive Summary.** This chapter includes a summary of the proposed project and alternatives to be addressed in the Draft EIR. A brief description of the areas of controversy and issues to be resolved and overview of the Mitigation Monitoring and Reporting Program (MMRP), in addition to a table that summarizes the impacts, mitigation measures, and levels of significance after mitigation, are also included in this section.

- **Chapter 1: Introduction.** This chapter provides an introduction and overview describing the purpose of this Draft EIR, its scope and components, and its review and certification process.
- **Chapter 2: Project Description.** This chapter includes a detailed description of the proposed project, including its location, site, and project characteristics. A discussion of the project objectives, intended uses of the Draft EIR, responsible agencies, and approvals needed for the proposed project are also provided.
- **Chapter 3: Environmental Impact Analysis.** This chapter analyzes the environmental impacts of the proposed project. Impacts are organized into major topic areas. Each topic area includes a description of the environmental setting, methodology, significance criteria, impacts, mitigation measures, and significance after mitigation. The specific environmental topics that are addressed within Chapter 3 are as follows:
  - **Section 3.1—Air Quality:** Addresses potential air quality impacts associated with project implementation and emissions of criteria pollutants. In addition, the section also evaluates project emissions of toxic air contaminants.
  - **Section 3.2—Biological Resources:** Addresses potential project impacts associated with implementation on the project site and the surrounding area pertaining to the habitat requirements of special-status species potentially occurring on or near the site and Federal Register listings, protocols, and species data provided by the United States Fish and Wildlife Service (USFWS) and California Department of Fish and Wildlife (CDFW).
  - **Section 3.3—Cultural Resources:** Addresses potential impacts on historical resources and archaeological resources.
  - **Section 3.4—Greenhouse Gas Emissions:** Addresses potential project emissions of greenhouse gases.
  - **Section 3.5—Hazards and Hazardous Materials:** Addresses potential for presence of hazardous materials or conditions on the project site and in the project area that may have the potential to impact human health.
  - **Section 3.6—Land Use and Planning:** Addresses the potential land use impacts associated with division of an established community and consistency with the General Plan.
  - **Section 3.7—Noise:** Addresses potential noise impacts during construction and at project buildout from mobile and stationary sources. The section also addresses the impact of noise generation on neighboring uses.
  - **Section 3.8—Transportation and Traffic:** Addresses potential impacts related to the local and regional roadway system and public transportation, bicycle, and pedestrian access.
  - **Section 3.9—Tribal Cultural Resources**: Addresses potential impacts related to Tribal Cultural Resources, including burial sites.
- **Chapter 4: Effects Found not to be Significant.** This chapter contains analysis of the topical sections not addressed in Chapter 3.
- **Chapter 5: Other CEQA Considerations.** This chapter provides a summary of significant environmental impacts, including unavoidable and growth-inducing impacts. This chapter discusses the cumulative impacts associated with the proposed project, including the impacts of past, present, and probable future projects. In addition, the proposed project's energy demand is discussed.

- **Chapter 6: Alternatives to the Proposed Project.** This chapter compares the impacts of the proposed project with two land-use project alternatives: the No Project—No Development Alternative and the No Project—Develop with Base General Plan and Zoning Alternative. An environmentally superior alternative is identified. In addition, alternatives initially considered but rejected from further consideration are discussed.
- **Chapter 7: Persons and Organizations Consulted/List of Preparers.** This chapter also contains a full list of persons and organizations that were consulted during the preparation of this Draft EIR. This chapter also contains a full list of the authors who assisted in the preparation of the Draft EIR, by name and affiliation.

1.4 - Documents Incorporated by Reference

As permitted by CEQA Guidelines Section 15150, this Draft EIR has referenced several technical studies, analyses, and previously certified environmental documents. Information from the documents, which have been incorporated by reference, has been briefly summarized in the appropriate section(s). The relationship between the incorporated part of the referenced document and the Draft EIR has also been described. The documents and other sources that have been used in the preparation of this Draft EIR include:

- Envision San José 2040 General Plan
- General Plan EIR
- Housing Element
- Housing Element SEIR

In accordance with CEQA Guidelines Section 15150(b), the General Plan, the referenced documents, and other sources used in the preparation of the Draft EIR are available for review at the Department of Planning, Building and Code Enforcement (PBCE) at the address shown in Section 1.6 below.

1.5 - Documents Prepared for the Proposed Project

The following technical studies and analyses were prepared for the proposed project:

- Air Quality, Greenhouse Gas Emissions, and Energy Analysis Report
- Preliminary Arborist Report
- Biological Resources Assessment
- 211-251-281 River Oaks Parkway Residential Development: Draft Local Transportation Analysis
- Modified Phase I Environmental Site Assessment
- Soil Gas Sampling Report
- Stormwater Evaluation Form
- Preliminary Geotechnical Investigation
- Noise Impact Analysis Report
- Phase I Cultural Resources Assessment

1.6 - Review of the Draft EIR

Upon completion of the Draft EIR, the City of San José filed a Notice of Completion (NOC) with the State Office of Planning and Research to begin the public review period on May 1, 2025 (PRC § 21161). Concurrent with the NOC, this Draft EIR has been distributed to responsible and trustee agencies, other affected agencies, surrounding cities, and interested parties, as well as all parties requesting a copy of the Draft EIR in accordance with Public Resources Code 21092(b)(3). During the public review period, the Draft EIR, including the technical appendices, is available for review at the Department of Planning, Building and Code Enforcement, 200 E. Santa Clara Street, San José, CA 95113, the D. Martin Luther King Jr. Library, and the Alviso Branch Library. The address for each location is provided below:

Dr. Martin Luther King Jr. Library
150 East San Fernando Street
San José, CA 95112

Alviso Branch Library
5050 North First Street
San José, CA 95002

The Draft EIR is also available for review at the following website: https://www.sanjoseca.gov/your-government/departments-offices/planning-building-code-enforcement/planning-division/environmental-review/environmental-review-documents/211-281-river-oajks-parkway-residential-project.

Agencies, organizations, and interested parties have the opportunity to provide written comments on the Draft EIR during the 45-day public review period. Written comments on this Draft EIR should be addressed to:

Kara Hawkins, Planner III City of San José
Department of Planning, Building and Code Enforcement
200 East Santa Clara Street
San José, CA 95113
408.535.7852 or
kara.hawkins@sanjoseca.gov

Upon completion of the public review period, written responses to all significant environmental issues raised will be prepared. Responses to commenting agencies will be made available to those agencies for review at least 10 days prior to the proposed project's consideration at Director's Hearing, at which the certification of the Final EIR will be considered. Comments received and the responses to comments will be included as part of the record for consideration by decision-makers for the proposed project.

CHAPTER 2: PROJECT DESCRIPTION

2.1 - Project Objectives

The proposed project intends to provide a diverse mix of residential product types to allow more housing options. The following are the objectives of the proposed project:

- Deliver a mix of affordable and market-rate high-quality housing in an existing residential neighborhood.
- Construct housing with sufficient density (that satisfies the City of San José density requirements) to be marketable and produce a reasonable return on investment for the project applicant and its investors such that it is able to attract investment capital and construction financing.
- Assist the City of San José to satisfy its regional housing needs allocation for market-rate and below-market-rate housing units while delivering a greater percentage—17.6 percent—of affordable units than the City's required 15 percent per Inclusionary Housing Ordinance (IHO) (Chapter 5.08 of the Municipal Code).
- Revitalize and redevelop a vacant and underutilized commercial site in the heart of a residential neighborhood.
- Create a lively and walkable tree-lined neighborhood environment with improved sidewalks and open space.
- Provide pedestrian links to the existing surrounding single-family neighborhood, River Oaks Park, local schools, and transit.
- Enhance the architectural and visual character of the neighborhood with buildings designed to harmonize with the residential setting while preserving some of the existing redwood trees that line River Oaks Parkway.

2.2 - Development Summary

The proposed project would include demolition of three existing buildings totaling approximately 164,606 square feet, as well as removal of all surface parking and on-site trees. River Oaks Housing Partners, LLC, proposes a comprehensive development plan that includes 100 market-rate townhome units and two apartment buildings providing a combined 637 units, for a total of 737 units. One of the two proposed apartment buildings would be 100 percent affordable and would include 130 affordable units and two market-rate manager units; the second proposed apartment building would contain 505 market-rate units. The project density would be 76.2 du/acre across the entire project site.

Affordable housing units would range in size from 360 to 1,037 square feet; market-rate units from 536 to 1,290 square feet; and townhomes from 1,230 to 1,790 square feet. Affordable and market-rate housing would include a mix of studio, 1-bedroom, 2-bedroom, and 3-bedroom units, while

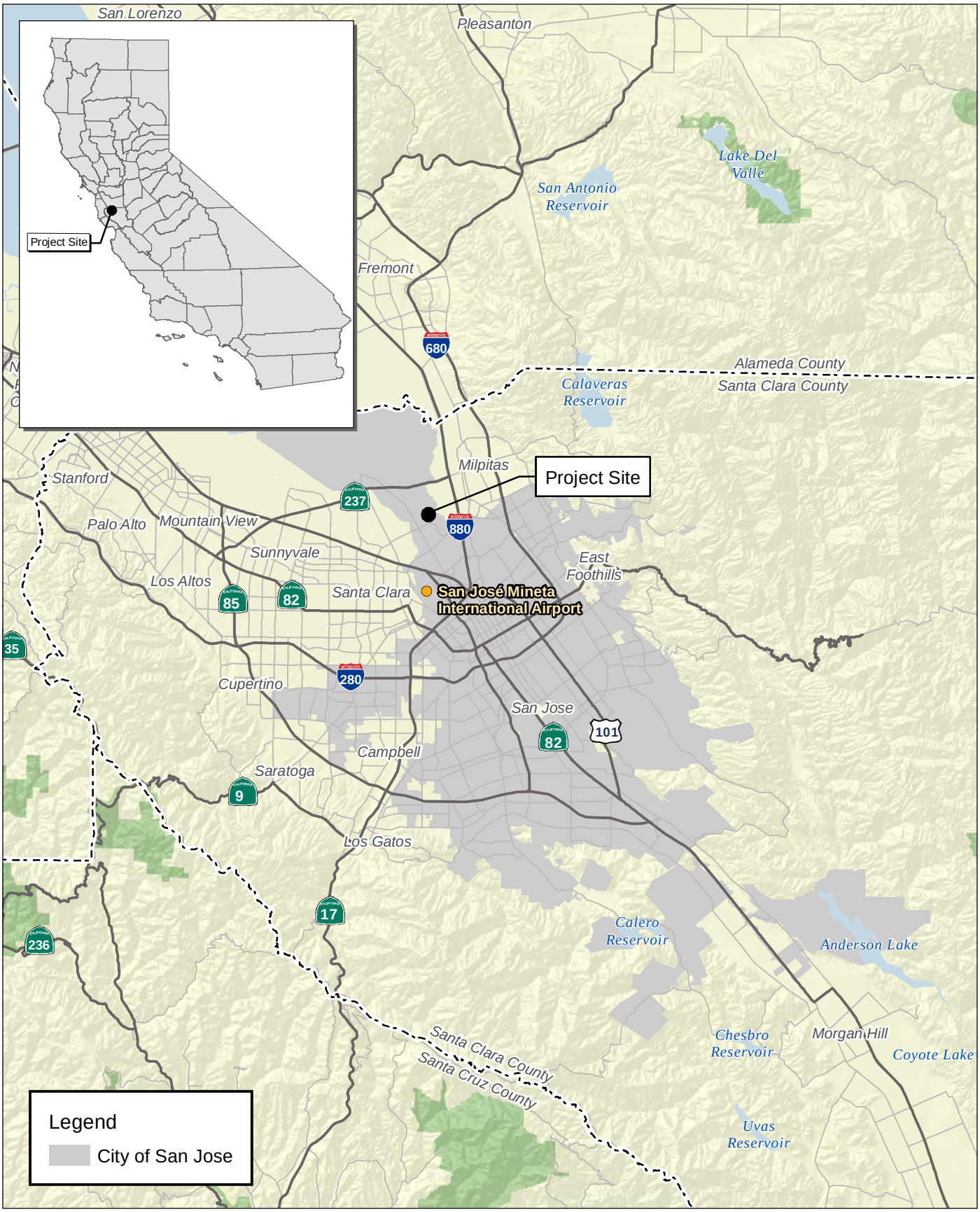
townhomes would be a composition of 2- and 3-bedroom units. Approval of a Vesting Tentative Map will be sought to allow the subdivision of two lots into 31 lots (16 residential lots, 10 open space lots, and five private streets).

Both apartment buildings would have a lobby and leasing office. The affordable apartment building would have a 615-square-foot main lobby, a 335-square-foot move-in lobby, and a 410-square-foot property management office. The market-rate building would have a 2,570-square-foot main lobby, a 1,540-square-foot secondary lobby, and two move-in lobbies. The leasing office would occupy 1,200 square feet.

The proposed project would include removal of 187 on-site trees (117 ordinance-size, 70 non-ordinance-size), as well as 51 trees located within the frontage streets right-of-way. Nine redwood trees in the right-of-way (redwood Nos. 2–5, 13–15, 109, and 113) would be preserved. Prior to removing trees greater than 38-inch circumference, a Tree Removal Permit would be required. Any street tree removal would be permitted separately by the Department of Transportation. Tree replacement would occur at a ratio of 1.1 to 5.1, depending on the size of the tree to be removed, and replacement trees would be a minimum of 15 gallons in size. The proposed project would require 651, 15-gallon replacement trees or 325 24-inch box trees and 1 15-gallon replacement tree on-site. The proposed project would replace 148 24-inch box trees on-site, which is the equivalent of 296 15-gallon trees. The proposed project would pay an in-lieu fee for 355 trees that would not be replaced.

The proposed project would include improvements to existing sidewalks along Cisco Drive and Iron Point Drive. The existing standard crosswalk at the Cisco Way/River Oaks Parkway intersection would be improved from white striping to high-visibility yellow ladder striping.

Figure 2-1 illustrates the site location in the City. Figure 2-2 shows the site context and surrounding land uses, Figure 2-3 summarizes the General Plan land use designations, and Figure 2-4 illustrates zoning designations. Figure 2-5 is the conceptual site plan.



Source: Census 2000 Data, The California Spatial Information Library (CaSIL).

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5 2.5 0 5 Miles

Figure 2-1
Regional Location Map

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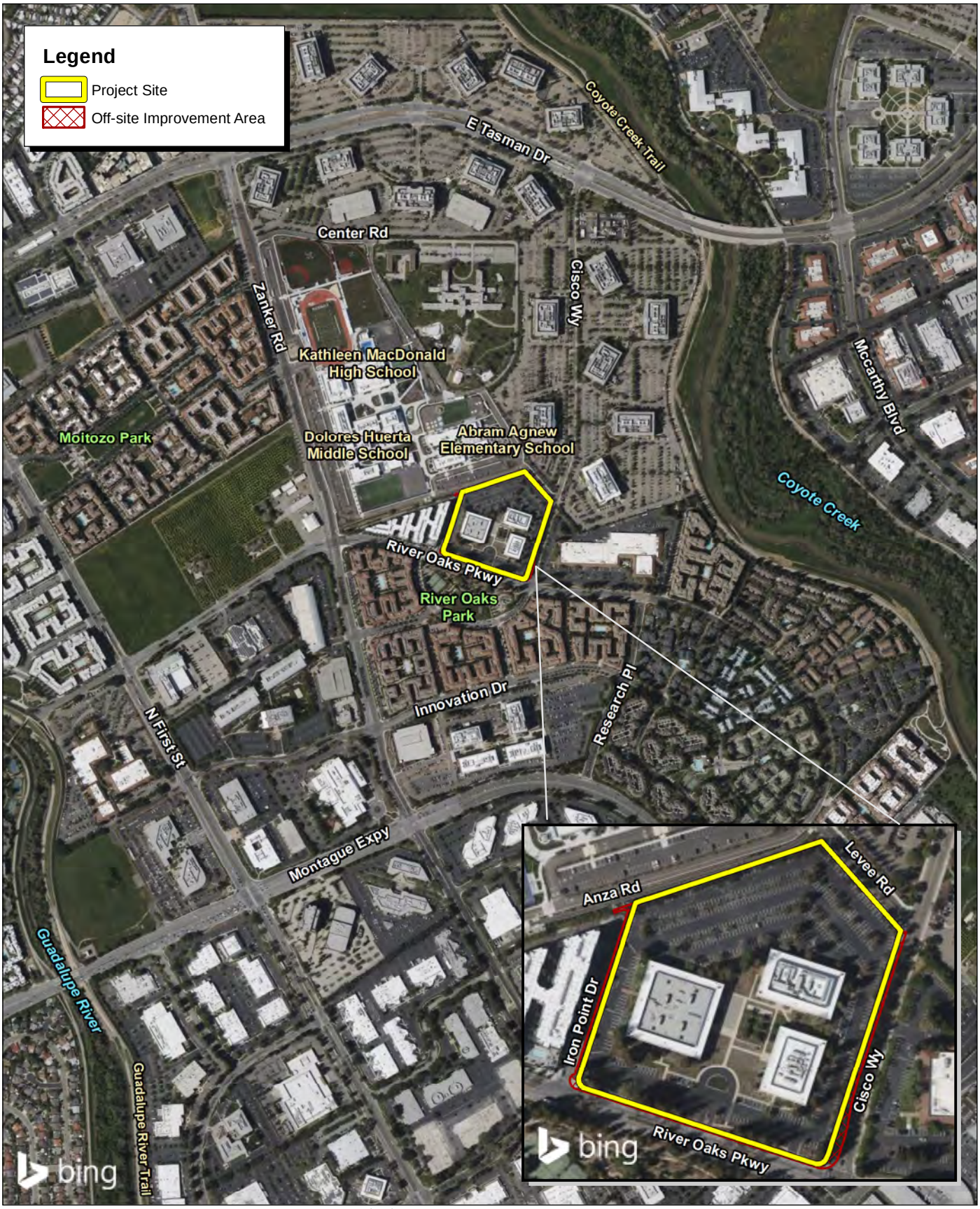

Source: Bing Aerial Imagery. Civil Engineering Associates, 05/17/2024.

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1,000 500 0 1,000 Feet

Figure 2-2
Local Vicinity Map

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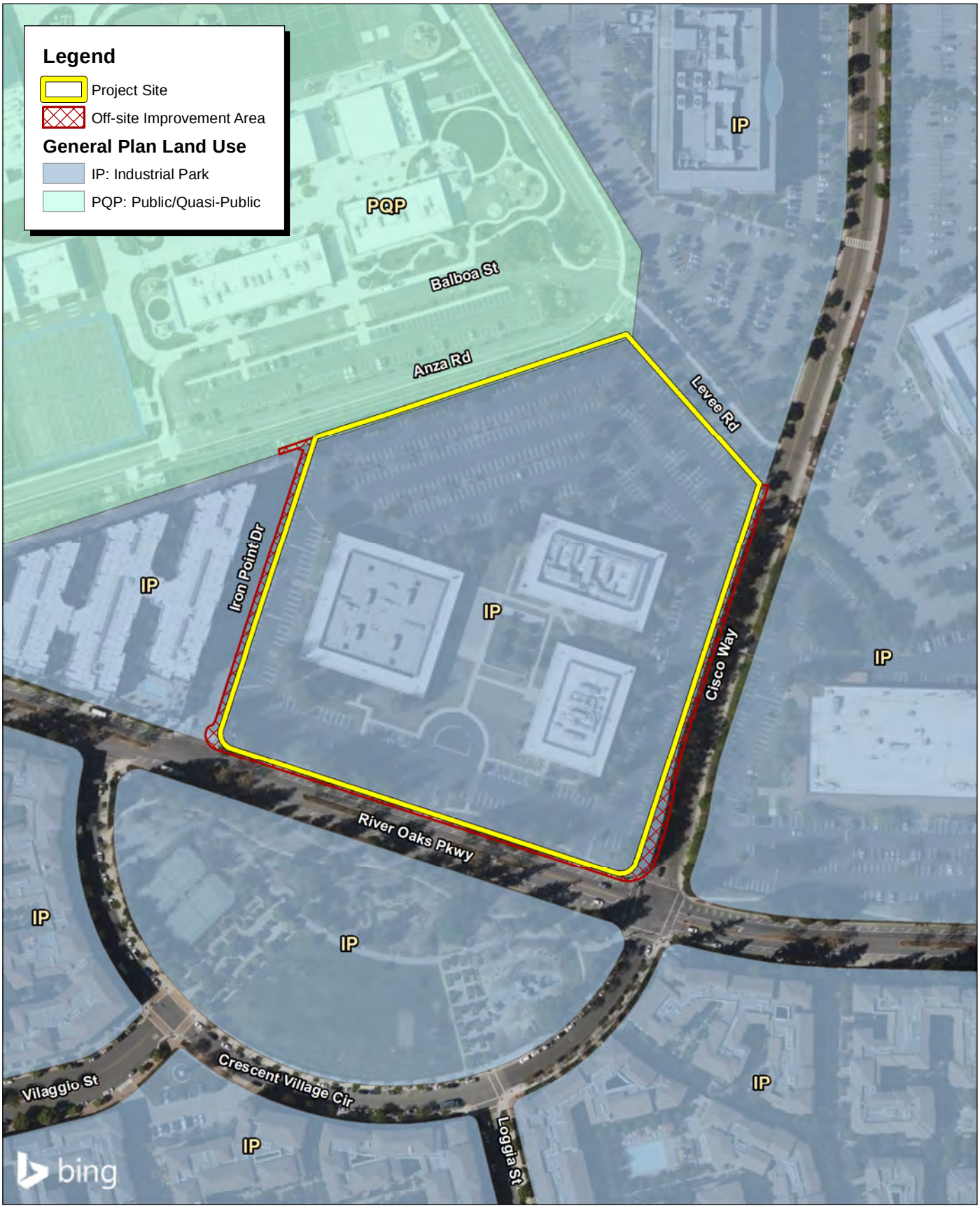

Source: Bing Aerial Imagery. Civil Engineering Associates, 05/17/2024. City of San Jose.

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Figure 2-3
General Plan Land Use Designations

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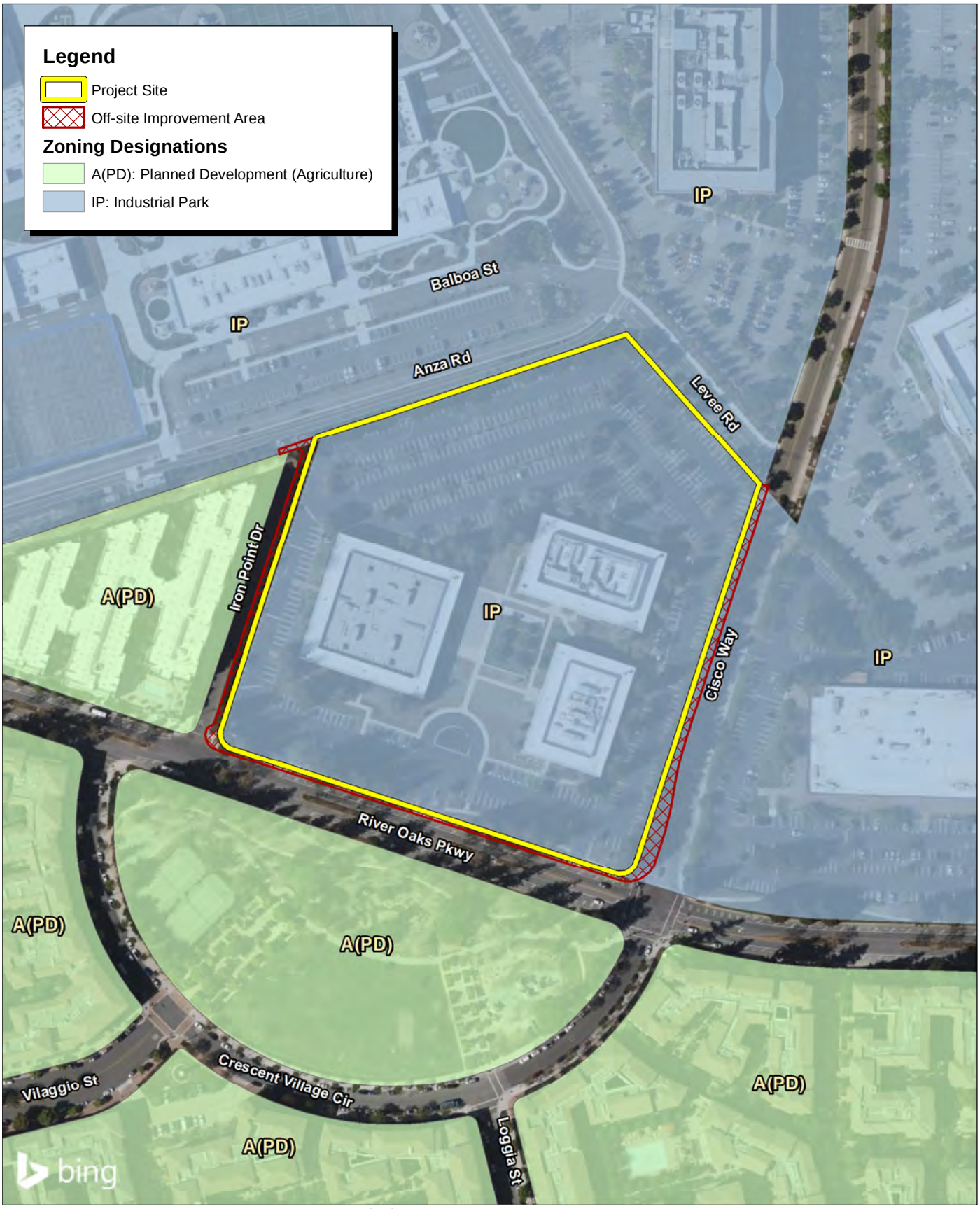

Source: Bing Aerial Imagery. Civil Engineering Associates, 05/17/2024. City of San Jose.

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200 100 0 200
Feet

Figure 2-4
Zoning Designations

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Source: STUDIO T SQUARE, 05/20/2024.

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Figure 2-5
Conceptual Site Plan

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Table 2-1 summarizes the proposed development area characteristics, while Table 2-2 summarizes the proposed development, and Table 2-3 show square feet allocations per building level by type.

Table 2-1: Project Development Area Characteristics

Component	Square Footage	Acreage
Development Area	421,069 sf	9.67 acres
Off-site Improvements (Iron Point Drive Widening)	6,628 sf	0.15 acre
Total Project Area	427,697 sf	9.82 acres

Notes:
sf = square feet
Source: Studio T Square. 2024

Table 2-2: Development Summary

Unit Summary	Studio	1 BR	2 BR	3 BR	Total
Affordable	28	32	33	35	130
Market-rate	54	325	101	25	505
Townhomes	–	–	50	50	100
Total	82	357	184	110	735

Notes:
BR = bedroom
[1] Excludes two 2-bedroom market-rate manager units (total number of units in affordable building = 132)
[2] Includes mix of junior, shallow, corner, and standard 1-bedroom units
Source: Studio T Square. 2024.

Table 2-3: Square Footage Allocations

Level	Affordable Apartments	Market-Rate Apartments	Townhomes
1	6,282 sf	22,560 sf	–
2	29,576 sf	41,760 sf	–
3	29,897 sf	97,718 sf	–
4	29,897 sf	96,670 sf	–
5	29,897 sf	97,823 sf	–
6	–	96,797 sf	–
7	–	91,479 sf	–
Townhomes	–	–	157,349 sf
Total	125,549 sf	544,807 sf	157,349 sf

Notes:
sf = square feet
Source: Studio T Square. 2024.

2.2.1 - Zoning Summary

The proposed project would include rezoning to Planned Development and would be consistent with the zoning requirements of the TERO. Table 2-4 illustrates the zoning requirements required by the TERO and the proposed setbacks.

Table 2-4: Zoning Summary

Development Standard	Required (TERO)	Proposed
Front Setback	10 feet maximum	2 feet, 6 inches to 5 feet (from landscape easement to building) 27 feet, 3 inches to 29 feet (from property line to building)
Rear Yard Setback	10 feet minimum	13 feet, 6 inches
Density	75–250 du/acre	76.2 du/acre
Building Height	270 feet maximum	Affordable apartment: Up to 65 feet from lowest grade to the top of highest roof element Market-rate apartment: Up to 93 feet to the top of highest roof element Townhomes: Up to 42 feet to top of roof-deck stair penthouse
Notes: du/acre = dwelling units per acre TERO = Transit Employment Residential Overlay Source: City of San José. 2024.		

2.2.2 - Employment

The affordable apartment building would employ 4–6 full-time employees, while the market-rate apartment building would employ 7–10 full-time employees, with an estimated maximum of 16 employees on-site.

2.2.3 - Design

The architectural design of the apartments and townhomes is intended to create a modern aesthetic that harmonizes with the residential setting. The 100 percent affordable apartment building would stand at five stories, the market-rate apartment building at seven stories, and the townhomes at three stories.

Figures 2-6 through 2-8 illustrate conceptual elevations, cross-sections, and representative floor plans of the project buildings.

MATERIAL LEGEND

- A1 EXTERIOR PLASTER
- A2 EXTERIOR PLASTER
- B1 FIBER CEMENT PANEL
- B2 FIBER CEMENT PANEL
- B3 FIBER CEMENT PANEL
- C1 GUARDRAIL
- C2 TRELLIS
- C3 WOOD FENCE
- C4 METAL CANOPY
- D1 VINYL WINDOW
- D2 STOREFRONT

Source: STUDIO T SQUARE, 11/01/2023.

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Figure 2-6a
Representative Townhome Elevations

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Source: STUDIO T SQUARE, 11/01/2023.

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Figure 2-6b
Representative Affordable Apartment Elevations

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MATERIAL LEGEND

- A1 EXTERIOR PLASTER
- A2 EXTERIOR PLASTER
- B1 FIBER CEMENT PANEL
- B2 FIBER CEMENT PANEL
- B3 FIBER CEMENT PANEL
- C1 BRICK VENEER
- D1 GUARDRAIL
- D2 METAL CANOPY
- E1 VINYL WINDOW
- E2 STOREFRONT
- F1 DIAGONAL SLATS
- F2 VERTICAL SLATS
- F3 PERFORATED METAL GARAGE SCREEN

Source: STUDIO T SQUARE, 11/01/2023.

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Figure 2-6c
Representative Market-Rate Apartment Elevations

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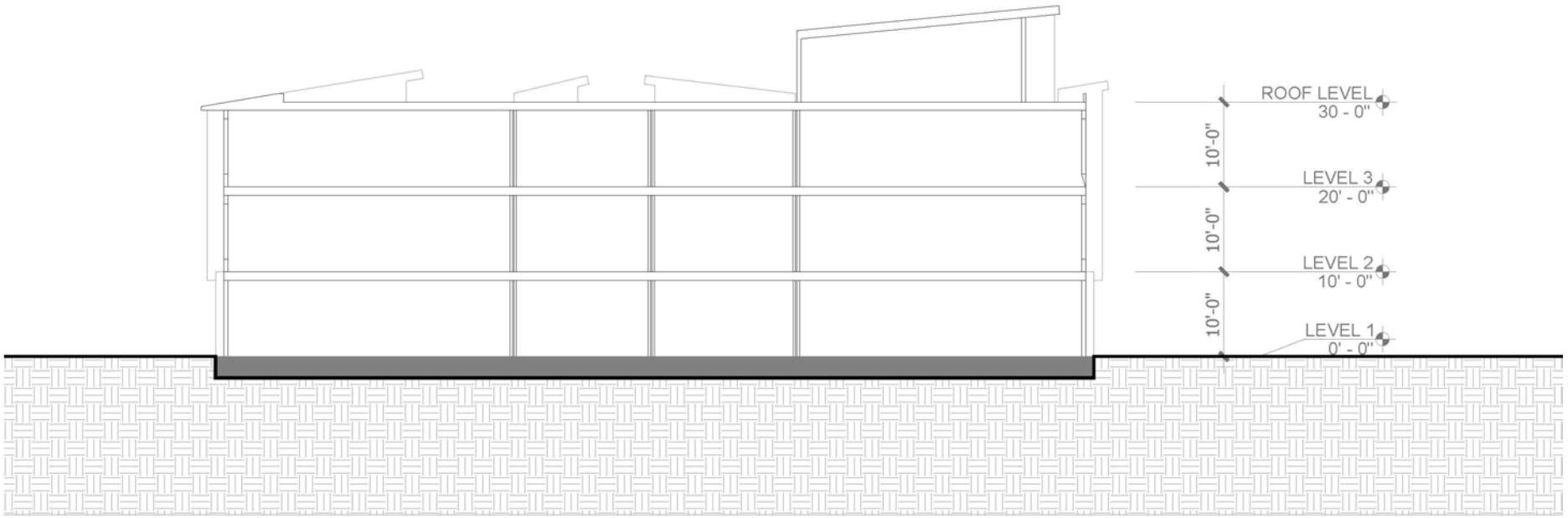

Source: STUDIO T SQUARE, 11/01/2023.

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Figure 2-7a
Representative Townhome Cross-Section

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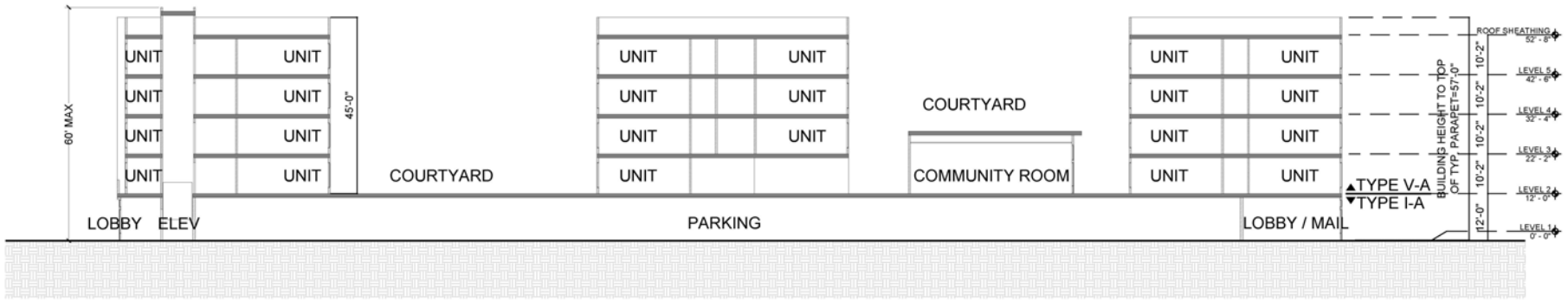

Source: STUDIO T SQUARE, 11/01/2023.

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Figure 2-7b
Representative Affordable Apartment Cross-Sections

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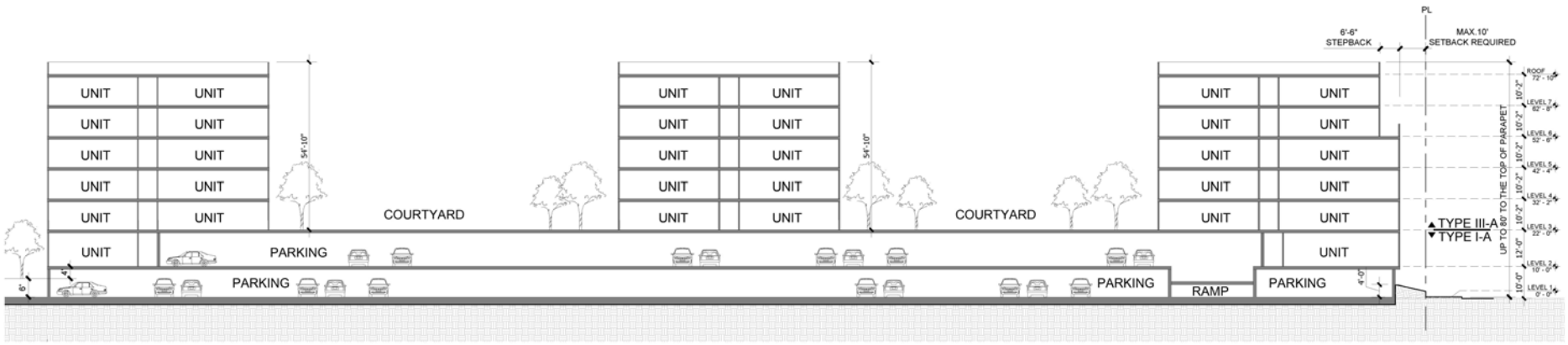

Source: STUDIO T SQUARE, 11/01/2023.

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Figure 2-7c
Representative Market-Rate Apartment Cross-Sections

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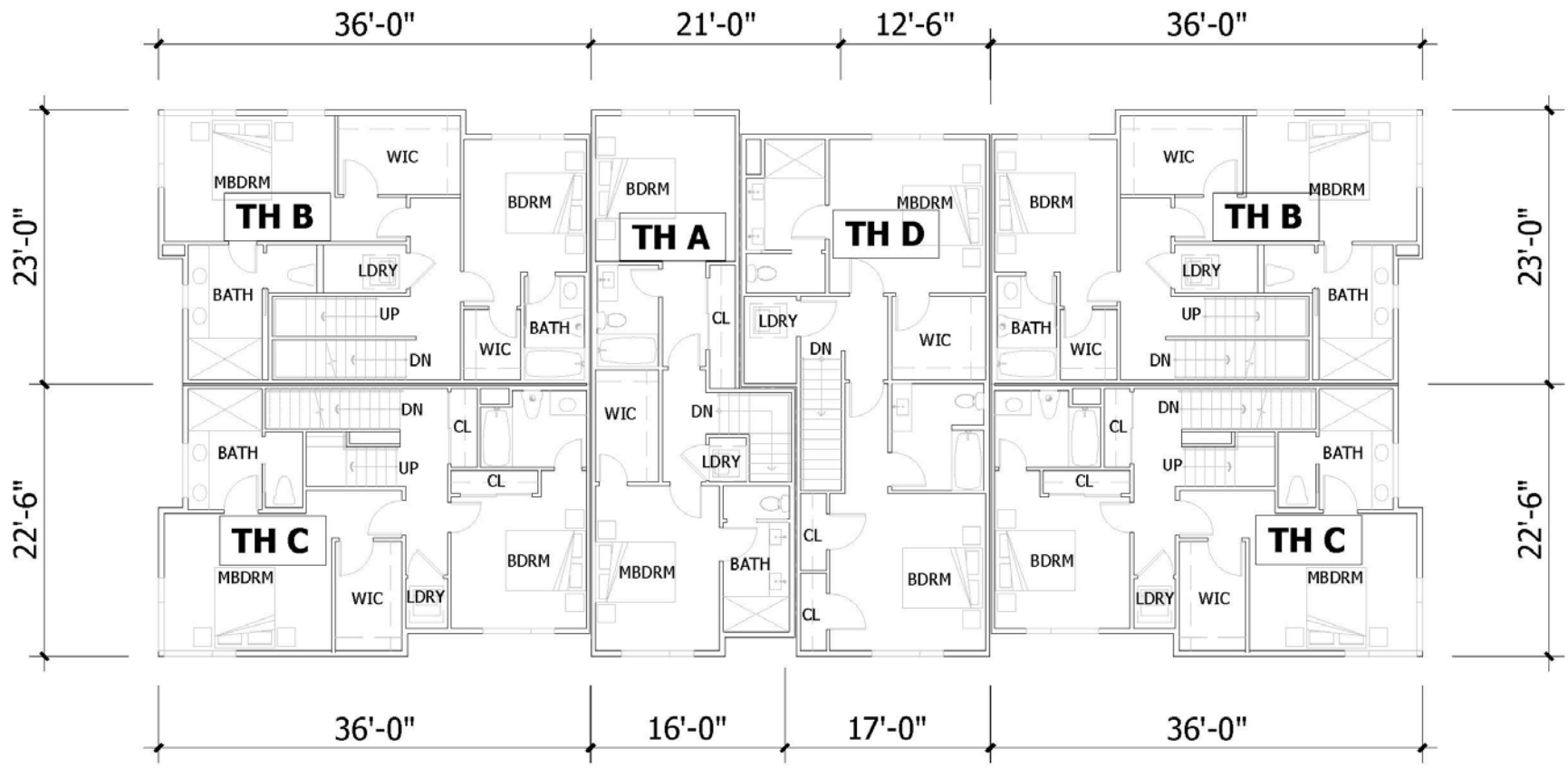

Source: STUDIO T SQUARE, 11/01/2023.

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Figure 2-8a
Representative Townhome Floor Plans

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Source: STUDIO T SQUARE, 11/01/2023.

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Figure 2-8b
Representative Affordable Apartment Floor Plans

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Source: STUDIO T SQUARE, 11/01/2023.

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Figure 2-8c
Representative Market-Rate Apartment Floor Plans

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2.2.4 - Landscaping, Open Space, and Lighting

The proposed project would include a green belt between the two apartment buildings, linking the townhomes to River Oaks Parkway. The green belt would feature a combination of enhanced paving, terraced planters, and direct access to each apartment building. The presence of the entrance plaza on the southern side of the green belt would establish a visual relationship to River Oaks Park, which is located directly across River Oaks Parkway. Because of the proposed project's proximity to River Oaks Park, project applicant is seeking an exemption from the common open space requirements under Section 20.55.102 of the City's Municipal Code. The proposed project would provide approximately 74,127 square feet of landscape area within the 103,671 square feet of common open space provided on-site, leaving 29,544 square feet of usable open space. Figure 2-9 shows the conceptual landscape plan, and Figure 2-10 illustrates the proposed open space plan.

Site lighting would be both functional and accent. Lighting would meet or exceed the minimum foot-candle levels required by the City and fixture style would complement the planned architectural character of the buildings. Interior roadway and walkway lighting would consist of cut-off-style pole lights located around the interior roads. Building entries would be lit by architecturally mounted area downlights. The proposed paseo lighting would utilize sconce lights for building entries and bollards for walkways. Accent lights such as tree uplighting and trellis downlights are also proposed. All lighting would conform to the requirements of Council Policy 4-3, Outdoor Lighting on Private Developments.

2.2.5 - Hardscape

Approximately 80 percent of the total site area would be composed of impervious surfaces such as sidewalks and roadways. Existing impervious area on-site is 7.15 acres, and the proposed project would result in an incremental increase in impervious area to 7.71 acres, representing an increase of 5.8 percent impervious area as a result of the proposed project.

2.2.6 - Circulation

Cisco Way serves as the primary vehicular access to the site. In addition, River Oaks Parkway and Iron Point Drive would provide primary vehicular access to the parking structures. Class II bicycle lanes already exist along River Oaks Parkway. Alongside Cisco Way, Class II bicycle lanes would be integrated to promote alternative transportation methods by connecting to already existing bicycle facilities that provide adequate connectivity to surrounding area. Additionally, the proposed project would connect to pedestrian facilities along Iron Point Drive, River Oaks Parkway, and Cisco Way.

The City's standard minimum width for two-way drive aisles is 24 feet wide where 90-degree parking is provided to allow sufficient room for vehicles to back out of the parking stalls. According to the site plan, all two-way drive aisles would be at least 24 feet wide.

2.2.7 - Parking

Parking for the townhomes would be provided in two-car garages (either side-by-side or tandem design) for each unit, with a total of 200 assigned garage stalls. Additionally, there would be approximately 12 unassigned outdoor guest stalls. Bicycle parking facilities would also be provided, with a total of 120 Class I and Class II bike stalls along with four designated motorcycle parking spots.

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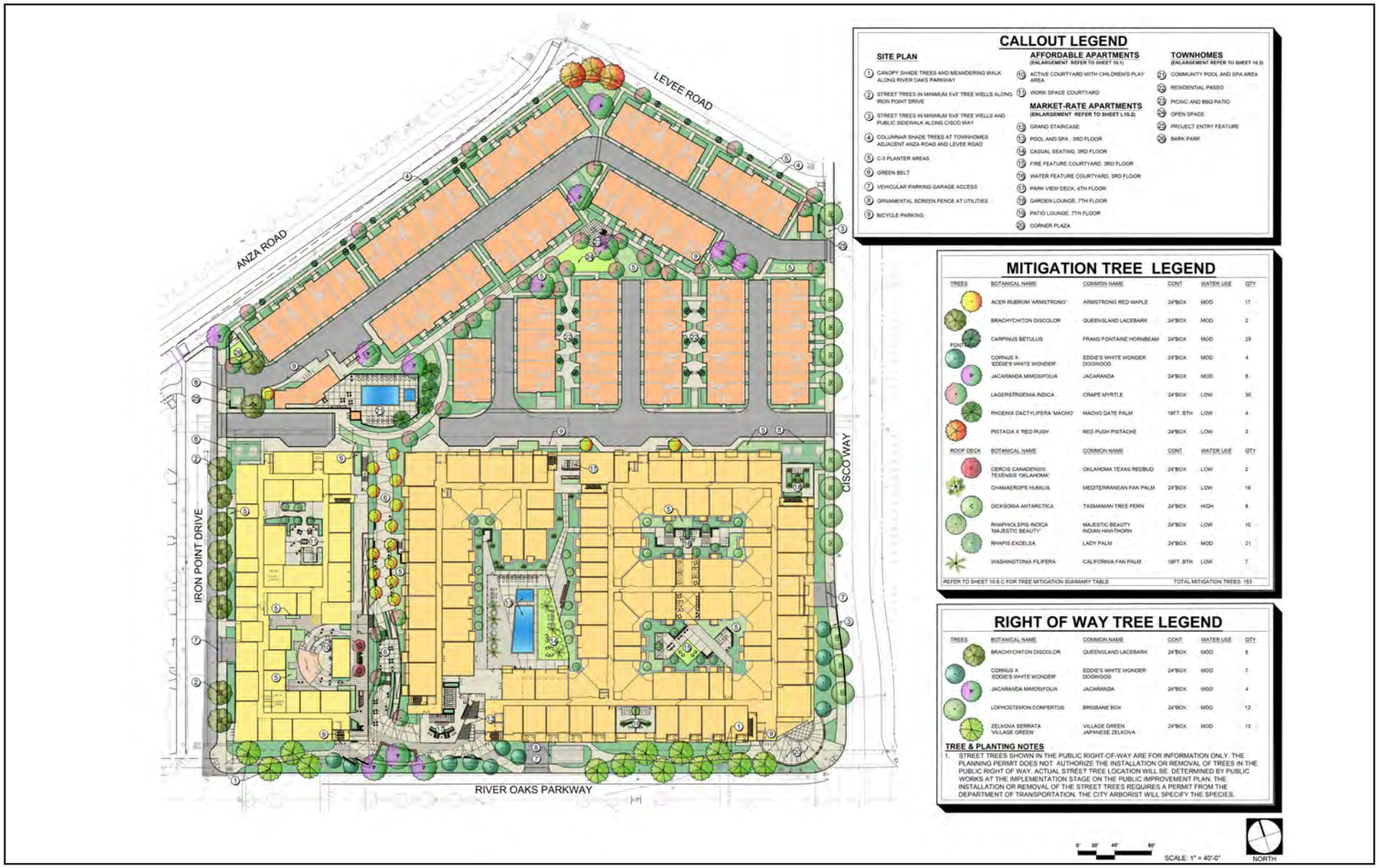

Source: STUDIO T SQUARE, 05/20/2024.

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Figure 2-9
Conceptual Landscape Plan

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COMMON OPEN SPACE		
COMMON OPEN SPACE REQUIRED	PROJECT WITH 0.25 MILE WALKING DISTANCE TO AN EXISTING PUBLIC OPEN SPACE -NO REQUIREMENT	
COMMON OPEN SPACE PROVIDED	GROUND LEVEL OPEN SPACE	45,424 SF
	PODIUM COURTYARD	39,845 SF
	GREEN BELT	13,512 SF
	ROOF DECKS	4,890 SF
	TOTAL PROVIDED	**103,671 SF**
PRIVATE OPEN SPACE - MARKET-RATE APARTMENT		
PRIVATE OPEN SPACE REQUIRED	379 MARKET-RATE UNITS (STUDIOS/1BR) X 40 SF	15,160 SF
	126 MARKET-RATE UNITS (2BR OR MORE) X 60 SF	7,560 SF
	TOTAL REQUIRED	**22,720 SF**
PRIVATE OPEN SPACE PROVIDED	345 MARKET-RATE UNITS X AVG. 71 SF DECKS	24,533 SF
	TOTAL PROVIDED	**24,533 SF**
PRIVATE OPEN SPACE - AFFORDABLE APARTMENT		
PRIVATE OPEN SPACE REQUIRED	60 AFFORDABLE UNITS (STUDIOS/1BR) X 40 SF	2,400 SF
	72 AFFORDABLE UNITS (2BR OR MORE) X 60 SF	4,320 SF
	TOTAL REQUIRED	**6,720 SF**
PRIVATE OPEN SPACE PROVIDED	NO PRIVATE OPEN SPACE PROVIDED	0 SF
	TOTAL PROVIDED	**0 SF**
PRIVATE OPEN SPACE - TOWNHOMES		
PRIVATE OPEN SPACE REQUIRED	100 TOWNHOMES (2BR OR MORE) X 60 SF	6,000 SF
	TOTAL REQUIRED	**6,000 SF**
PRIVATE OPEN SPACE PROVIDED	51 TOWNHOMES X AVG. 106 SF PATIOS ON LEVEL 1	5,406 SF
	100 TOWNHOMES X AVG. 184 SF DECKS	18,359 SF
	TOTAL PROVIDED	**23,765 SF**
PROJECT PRIVATE OPEN SPACE SUMMARY		
TOTAL REQUIRED 50% OF REQUIRED PRIVATE OPEN SPACE TO BE FULFILLED BY COMMON OPEN SPACE PROVIDED		**17,720 SF**
TOTAL PROVIDED		**48,298 SF**
445 UNITS OUT OF 737 UNITS PROVIDED PRIVATE OPEN SPACE = 60% OF UNITS PROVIDED PRIVATE OPEN SPACE.		

Source: STUDIO T SQUARE, 05/20/2024.

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Figure 2-10
Conceptual Open Space Plan

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The affordable apartments would include a total of 104 assigned residential parking under the concrete podium of the building. These stalls would be distributed across various types, including standard, standard Americans with Disabilities Act (ADA), and Electric Vehicle Charging Station (EVCS) (ADA, Van ADA, EVCS Standard ADA, EVCS Van ADA, EV-capable, EV-ready, and EVCS). Ten percent of the assigned stalls would be EV and 20 percent EV-ready, with 70 percent of the market-rate parking stalls EV-capable. Unassigned guest stalls would comprise the same ratio of EV-capable, EV, and EV-ready. Additionally, the affordable apartments would exceed the minimum requirements for bicycle parking by providing 48 Class 1 and Class 2 bike parking stalls, and accommodating three motorcycle parking stalls. No guest parking would be provided for the affordable apartment units.

For the market-rate apartments, a total of 587 parking stalls would be provided under the concrete podium for the building, comprising 557 residential and 30 guest stalls. Similar to the affordable apartments, these stalls would encompass a mix of standard, standard ADA, Van ADA, EVCS Standard ADA, EVCS Van ADA, EV-capable, EV-ready, and EVCS. Ten percent of the assigned stalls would be EV and 20 percent EV-ready, with 70 percent of the market-rate parking stalls EV-capable. Unassigned guest stalls would comprise the same ratio of EV-capable, EV, and EV-ready. Furthermore, the market-rate component includes up to 177 Class 1 and Class 2 bike parking stalls, surpassing the required minimum, and would include 15 motorcycle parking spots for residents' needs.

2.2.8 - Sustainability Features

Sustainability measures for the proposed project would include, but are not limited to, all-electric buildings with on-site solar photovoltaic (PV) arrays on the rooftops that meet California Green Building Standards Code (CALGreen) and City of San José Reach Code minimums, EV charging stations, on-site bicycle storage facilities, water-efficient plumbing fixtures, use of native/adapted species to reduce irrigation needs, and high-quality construction materials with longer lifespan and durability to reduce construction waste and increase performance.

2.2.9 - Utilities

Water and Wastewater

The proposed project would be served by San José Municipal Water System (Muni Water) via an 18-inch diameter water line located in Cisco Way, a 12-inch line in Iron Point Drive, and a 12-inch line in River Oaks Parkway. The diameter of the water lines under the proposed internal streets will be determined at a future date by Muni Water.

Storm Drainage

Stormwater management at the project site would include a network of features, including multiple bioretention facilities and planters designed to collect stormwater, along with a landscaped self-retaining area situated at the southern portion of the site adjacent to River Oaks Parkway that has a 21,633-square-foot drainage area.[1] Stormwater would be directed toward a 15-inch storm drainage pipe located beneath Iron Point Drive, 18-inch pipe in Cisso Way and 48-inch pipe in River Oaks Parkway. Runoff would be collected and directed into storm drainage lines via grates positioned around proposed internal streets, parking areas, and loading spaces. Runoff from rooftops, parking

[1] Planning Submittal #4 (SB330). Valley Oaks Partners, Inc. Treatment Control Measure Summary Table. September 30, 2024.

areas, sidewalks, and landscaped regions would be directed into these drain lines and to the treatment facilities of Muni Water at the San José-Santa Clara Regional Wastewater Facility, one of the largest advanced wastewater treatment facilities in the western United States.[2] Along the project frontages, runoff would be directed over landscaping toward the public right-of-way, where it would undergo self-treatment processes. The self-treatment process is done via a underground Silva Cell® or approved equivalent. Silva Cells® are a type of suspended pavement which prevents compacting soil around tree roots, allowing them to grow unimpeded without buckling sidewalks.

The storm drainage lines, with diameters ranging from 12 to 48 inches, would connect to existing public infrastructure in Cisco Way, River Oaks Parkway, and Iron Point Drive. These public storm drain lines would be integrated into the City of San José's stormwater collection system, which ultimately drains into the Guadalupe River.

Electricity and Telecommunications

Electricity services for the proposed project would be provided by Pacific Gas and Electric Company (PG&E), and the project is proposed to be 100 percent electric. Spectrum would provide telecommunications services to the project site.

2.2.10 - Phasing and Construction

The site would be developed over three distinct phases over a period of approximately 48 months (4 years) starting in the fourth quarter of 2026 and ending in late 2030. The phasing would be anticipated to occur as described below. Table 2.3.1 below shows the proposed project's phasing and construction schedule.

- The townhomes are anticipated to begin construction in the fourth quarter of 2026 and would take approximately 18 months to complete.
- The 100 percent affordable apartments are anticipated to begin construction in the third quarter of 2027 and would take approximately 20 months to complete.
- The market-rate apartment building is anticipated to begin construction in the third quarter of 2028 and would take approximately 26 months to complete.

There is anticipated to be some overlap in construction activities for the three phases. All demolition of the existing buildings and parking lots would be done in the first phase of construction. Site grading and prep would be done independently for each phase. Building foundation types have not yet been determined pending completion of further geotechnical design-level investigation, including recommendations appropriate for site soils, but would likely consist of mat foundation rather than building piles. For purposes of the air quality analysis, it was assumed that a standard 12-inch foundation was excavated, resulting in 9,390 cubic yards of soil export. The preliminary geotechnical report does not rule out either of the foundation types and defers judgment to final design-level report.[3] Analysis in this document, and supporting technical reports, assumes that no pile driving would be used.

[2] City of San José. 2024. San José-Santa Clara Regional Wastewater Facility. Website: https://www.sanjoseca.gov/your-government/departments-offices/environmental-services/water-utilities/regional-wastewater-facility. Accessed February 4, 2025.
[3] Cornerstone Earth group. 2023. Preliminary Geotechnical Investigation. June 19,2023.

Table 2-5: Proposed Project Phasing and Construction Schedule

Phase	Project	Construction Start	Anticipated Construction Time	Approximate Construction End
1	Town Homes	4th Quarter, 2026	18 months	2nd Quarter, 2028
2	100% Affordable Apartments	3rd Quarter, 2027	20 months	2nd Quarter, 2029
3	Market Rate Apartments	3rd Quarter, 2028	26 months	4th Quarter, 2030

2.3 - Habitat Plan Designation

The project site is within the Santa Clara Valley Habitat Plan (SCVHP) area and is designated as follows:

- Land Cover Designation: Urban Area
- Land Cover Fee Zone D: Urban Area

According to the City of San José Geographical Information System (GIS) map, the parcel located at 211–281 River Oaks Parkway falls within the designated Habitat Conservation Plan (HCP) Zone: D, which, per the HCP guidelines, is exempt from Permanent Impact Fees.

2.4 - Required Actions and Discretionary Approvals

The proposed project requires the following discretionary approvals from the City of San José:

- EIR certification
- Site Development Permit
- Vesting Tentative Map
- Demolition/Grading Permits

Ministerial Building Clearances such as building and occupancy permits would also be required.

In addition, the following waivers are being sought in connection with the proposed project. Please note these are subject to change and other waivers may be added during the entitlement process.

- Density Bonus Waiver (Municipal Code Section 20.65.040)
- Lot Area and Width Waiver (Municipal Code Section 19.36.170)
- Minimal Lot Area Waiver (Municipal Code Section 19.36.180)
- Maximum Lot Depth Waiver (Municipal Code Section 19.36.230)
- Waiver of Citywide Design Standards and Guidelines Section 2.3.8—Landscaping and Stormwater Management Standard 1 and Standard 6
- Waiver of Citywide Design Standards and Guidelines Section 3.2.2–Vehicular Entrances and Driveways, Standard 3

In addition to the City, several other agencies will serve as Responsible and Trustee Agencies, pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15381 and Section 15386, respectively. This Draft EIR provides environmental information that may be required to grant approvals or to support coordination with other agencies as part of project implementation. These agencies may include but are not limited to the following:

- California Department of Fish and Wildlife (CDFW)
- California Department of Transportation (Caltrans)
- California Public Utilities Commission (CPUC)
- San Francisco Bay Regional Water Quality Control Board (San Francisco Bay RWQCB)
- County of Santa Clara
- Santa Clara County Airport Land Use Commission (ALUC)

Actions by other agencies that are necessary to implement the proposed project:

- Coverage under General Construction Stormwater Permit (California State Water Resources Control Board [State Water Board]/San Francisco Bay RWQCB)
- Approval of Indirect Source Review (Bay Area Air Quality Management District [BAAQMD])

2.5 - Intended Uses of This Draft EIR

This Draft EIR has been prepared by the City to assess potential environmental impacts that may arise in connection with actions related to implementation of the proposed project. Pursuant to CEQA Guidelines Section 15367, the City is the Lead Agency and has discretionary authority over the proposed project and project approvals. The Draft EIR is intended to address proposed public infrastructure improvements and future development that are within the parameters of the proposed project. This document will also serve as a basis for soliciting comments and input from members of the public and public agencies regarding the proposed project. The Draft EIR will be circulated for a minimum of 45 days, during which period comments concerning analysis contained in the Draft EIR should be sent to:

Kara Hawkins, Planner III
City of San José, Department of Planning, Building,
and Code Enforcement
200 East Santa Clara Street
San José, CA 95113
kara.hawkins@sanjoseca.gov

CHAPTER 3: ENVIRONMENTAL IMPACT ANALYSIS

Organization of Issue Areas

This Draft Focused Environmental Impact Report (Draft EIR) provides analysis of impacts for those environmental topics where it was determined in the Notice of Preparation (NOP), or through subsequent analysis, that the proposed project would result in "potentially significant impacts." Sections 3.1 through 3.9 discuss the environmental impacts that may result with approval and implementation of the 211-281 River Oaks Parkway Residential Project (proposed project).

Issues Addressed in this Draft EIR

The following environmental issues are addressed in Chapter 3:

- Air Quality
- Biological Resources
- Cultural Resources
- Greenhouse Gas Emissions
- Hazards and Hazardous Materials
- Land Use and Planning
- Noise
- Transportation and Traffic
- Tribal Cultural Resources

Level of Significance

Determining the severity of project impacts is fundamental to achieving the objectives of the California Environmental Quality Act (CEQA). CEQA Guidelines Section 15091 requires that decision-makers mitigate, as completely as is feasible, the significant impacts identified in an EIR. If the EIR identifies any significant unmitigated impacts, CEQA Guidelines Section 15093 requires decision-makers, in approving a project, to adopt a statement of overriding considerations that explains why the benefits of the project outweigh the adverse environmental consequences identified in the EIR.

The level of significance for each impact examined in this Draft EIR was determined by considering the predicted magnitude of the impact against the applicable threshold. Thresholds were developed using criteria from the CEQA Guidelines and checklist; State, federal, and local regulatory schemes; local/regional plans and ordinances; accepted practice; consultation with recognized experts; and other professional opinions.

Impact Analysis and Mitigation Measure Format

The format adopted in this Draft EIR to present the evaluation of impacts is described and illustrated below.

Summary Heading of Impact

Impact AIR-1: **An impact summary heading appears immediately preceding the impact description (Summary Heading of Impact in this example). The impact number identifies the section of the report (AIR for Air Quality in this example) and the sequential order of the impact (1 in this example) within that section. To the right of the impact number is the impact statement, which identifies the potential impact.**

Impact Analysis

A narrative analysis follows the impact statement. In some cases, the impact discussion will reference State and federal regulations and agency policies that would fully or partially reduce the impact. In addition, policies and programs from applicable local land use plans that partially or fully address impacts may be cited, and the proposed project would be evaluated in the context of these requirements.

Level of Significance Before Mitigation

This section identifies the level of significance of the impact before any mitigation is proposed.

Mitigation Measures

Project-specific mitigation measures, beyond requirements contained in other documents or applicable by law, are set off with a summary heading and described using the format presented below:

MM AIR-1 Project-specific mitigation is identified that would reduce the impact to the lowest degree feasible. The mitigation number links the particular mitigation to the impact it is associated with (**AIR-1** in this example); mitigation measures are numbered sequentially.

Level of Significance After Mitigation

This section identifies the resulting level of significance of the impact following mitigation.

Abbreviations used in the mitigation measure numbering are:

Code	Environmental Issue
AIR	Air Quality
BIO	Biological Resources
CUL	Cultural Resources
GHG	Greenhouse Gas Emissions
HAZ	Hazards and Hazardous Materials
LAND	Land Use
NOI	Noise
TRANS	Transportation and Traffic

Cumulative Impacts

"Cumulative impacts" refers to two or more individual impacts that, when considered together, are considerable, or that compound or increase other environmental impacts (CEQA Guidelines § 15355). Cumulative impacts can result from individually minor but collectively significant impacts taking place over time (40 Code of Federal Regulations [CFR] § 1508.7). Pertinent guidance for cumulative impact analysis is provided in CEQA Guidelines Section 15130:

- An EIR shall discuss cumulative impacts of a project when the project's incremental effect is "cumulatively considerable."
- An EIR should not discuss impacts that do not result in part from the project evaluated in the EIR.
- A project's contribution would be less than cumulatively considerable, and thus not significant, if the project is required to implement or fund its fair share of a mitigation measure or measures designed to alleviate the cumulative impact.
- The discussion of impact severity and likelihood of occurrence need not be as detailed as for effects attributable to the project alone.
- The focus of analysis should be on the cumulative impact to which the identified other projects contribute, rather than on attributes of the other projects that do not contribute to the cumulative impact.

The discussion of cumulative impacts in this subsection analyzes whether an individual project's contribution to a significant cumulative impact is *considerable*, when taken together with other past, present, and reasonably foreseeable future projects.

Two approaches to a cumulative impact are articulated in CEQA Guidelines Section 15130(b)(1): (1) The analysis can be based on a list of past, present, and reasonably foreseeable probable future projects producing closely related impacts that could combine with those of a project; or (2) a summary of projections contained in a general plan or related planning document can be used to determine cumulative impacts. The CEQA Guidelines also allow the use of a combined approach if appropriate for a particular resource topic.

If the cumulative analysis utilizes the list approach, the applicable cumulative projects must be identified. If the projections approach is used, the cumulative analysis would include a summary of projections contained in an adopted local, regional or Statewide plan, or related planning document, that describes or evaluates conditions contributing to the cumulative effect. Such plans may include: a general plan, regional transportation plan, or plans for the reduction of greenhouse gas emissions. A summary of projections may also be contained in an adopted or certified prior environmental document for such a plan. Such projections may be supplemented with additional information such as a regional modeling program. Any such document shall be referenced and made available to the public at a location specified by the lead agency. The City of San José's (City's) growth projections are contained in Envision San José 2040 (General Plan), as well as in the 2021–2028 Housing Element, both of which are available at the City's Planning, Building and Code Enforcement (PBCE)

Department, 200 East Santa Clara Street, San José, CA 95113, or on the web at chrome-extension: https://www.sanjoseca.gov/home/showpublisheddocument/22359/638654674149512635 (General Plan) and https://www.sanjoseca.gov/home/showpublisheddocument/16031/636681585193070000 (Housing Element).

The geographic context of the cumulative impact analysis will vary from topic to topic.

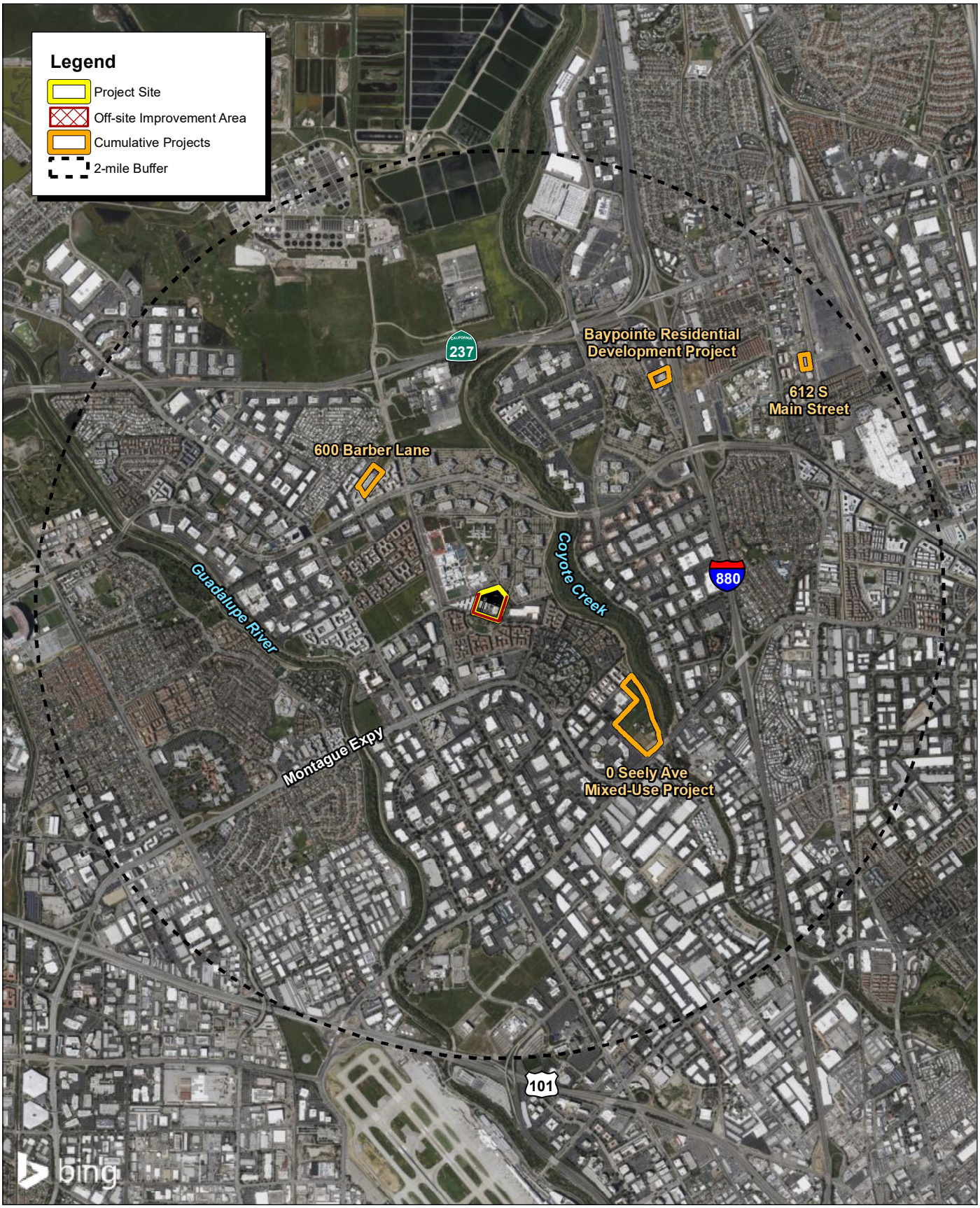
Four approved development projects are located within 2 miles of the project site, located in the City of San José and the City of Milpitas (Exhibit 3-1).

The cumulative impact analysis for each individual resource topic is presented in each resource section of this Chapter under the individual impact threshold discussions. The cumulative projects list is predominantly used throughout the analysis, with use of the projections approach where appropriate.

Table 3-1: Cumulative Projects List

Project Name	Project Type	Units (approx.)	Location	Approximate Distance from Project Site (miles)	Status
City of San José Jurisdiction [1]					
0 Seely Avenue Mixed-use Project	Mixed-use	1,472 Residential Units	0 Seely Avenue	0.82-mile southeast	Planning Permit Approved
Baypointe Residential Development Project	Residential	42 Townhomes and one 292-unit apartment building	210 Baypointe Parkway	0.78-mile northwest	Planning Permit Approved
City of Milpitas Jurisdiction [2]					
600 Barber Lane	Multi-family Residential	372 Residential Units	600 Barber Lane, Milpitas	1.23 miles northeast	Planning Permit Approved
612 South Main Street	Multi-family Residential	57 Residential Units	612 South Main Street	1.76 miles	Planning Permit Approved

Source:
[1] City of San José. 2025. Public Information Search. Website: https://permits.sanjoseca.gov/search/. Accessed February 5, 2025.
[2] City of Milpitas. 2025. Milpitas Planning. Website: https://milpitas-gis-milpitas.hub.arcgis.com/apps/24fe9a09abcc4639913968f21309e510/explore. Accessed February 5, 2025.



Source: Bing Aerial Imagery. Civil Engineering Associates, 05/17/2024, updated 11/01/2024. County of Santa Clara.

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Exhibit 3-1
Cumulative Projects within a 2-mile Radius

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3.1 - Air Quality

3.1.1 - Introduction

This section describes existing air quality conditions regionally and locally as well as the relevant regulatory framework. This section also evaluates the possible impacts related to air quality that could result from implementation of the proposed project. Information included in this section is based, in part, on project-specific air quality modeling results utilizing California Emissions Estimator Model (CalEEMod) Version 2022.1.1.24, the American Meteorological Society/United States Environmental Protection Agency (EPA) AERMOD air dispersion model (Version 23132), and the California Air Resources Board (CARB) Hot Spots Analysis and Reporting Program Version 2 (HARP2, dated 22118). Complete modeling output is provided in Appendix B.

No public comments were received during the Environmental Impact Report (EIR) Notice of Preparation (NOP) scoping period related to air quality.

3.1.2 - Environmental Setting

The proposed project site is located within the San Francisco Bay Area Air Basin (SFBAAB), which comprises all of Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, and Santa Clara counties, the southern portion of Sonoma, and the southwestern portion of Solano County. Air quality in this area is determined by such natural factors as meteorology, terrain, and temperature, in addition to the presence of existing air pollution sources and ambient conditions. These factors, along with applicable regulations aimed at reducing air pollution, are discussed below.

Santa Clara Valley Climatological Subregion

All urbanized areas of the SFBAAB are included in one of 11 climatological subregions. These subregions experience varying climatological and topographic conditions, as well as major types of air pollutant sources, resulting in variations in air pollution.

The proposed project is located at the western edge of the Santa Clara Valley climatological subregion. Temperatures are warm on summer days and cool on summer nights, and winter temperatures are fairly mild. Further inland, where the moderating effect of the Bay is not as strong, temperature extremes are greater.

Winds in the valley are greatly influenced by terrain, resulting in a prevailing flow that roughly parallels the valley's northwest-southeast axis. Wind speeds are greatest in the spring and summer and weakest in the fall and winter. Nighttime and early morning hours frequently have calm winds in all seasons, while summer afternoons and evenings are quite breezy. Strong winds are rare, associated mostly with the occasional winter storm.

The air pollution potential of the Santa Clara Valley is high. High summer temperatures, stable air and mountains surrounding the valley combine to promote ozone formation. In addition to the many local sources of air pollution, ozone precursors from San Francisco, San Mateo, and Alameda counties are carried by prevailing winds to the Santa Clara Valley. The valley tends to channel

pollutants to the southeast. In addition, on summer days with low level inversions, ozone can be recirculated by southerly drainage flows in the late evening and early morning and by the prevailing northwesterlies in the afternoon. A similar recirculation pattern occurs in the winter, affecting levels of carbon monoxide and particulate matter. This movement of the air up and down the valley increases the impact of the pollutants significantly.

Air Pollutant Emissions

Although air pollution potential is strongly influenced by climate and topography, the air pollution that occurs in a location also depends on the amount of air pollutant emissions in the surrounding area or transported from more distant places. Air pollutant emissions generally are highest in areas that have high population densities, high motor vehicle use, and/or industrialization. These contaminants, created by photochemical processes in the atmosphere, such as ozone, may result in high concentrations many miles downwind from the sources of their precursor chemicals.

Pollution sources are plentiful and complex in the Santa Clara Valley, where the proposed project is located, and has a high concentration of industry at the northern end in the Silicon Valley. Some of these industries are sources of air toxics as well as criteria air pollutants. In addition, Santa Clara Valley's large population and many work-site destinations generate some of the highest mobile source emissions of any subregion in the SFBAAB.

Air Quality Conditions and Air Pollution Formation

The SFBAAB is characterized by complex terrain, consisting of coastal mountain ranges, inland valleys, and bays, which distort normal wind flow patterns and induce significant variations of air flow, mixing, and temperatures among subregions. These natural conditions strongly influence the formation of air pollution. Air quality is a function of both the rate and location of pollutant emissions under the influence of meteorological conditions and topographic features. Atmospheric conditions such as wind speed, wind direction, and air temperature inversions interact with the physical features of the landscape to determine the movement and dispersal of air pollutant emissions and, consequently, their effect on air quality.

Criteria Air Pollutants

As required by the federal Clean Air Act (CAA) passed in 1970, the EPA has identified six "criteria air pollutants" that are pervasive in urban environments, and for which State and national health-based ambient air quality standards have been established. The CARB and the EPA currently focus on the following six air pollutants as indicators of ambient air quality: ozone, particulate matter, nitrogen dioxide (NO_2), carbon monoxide (CO), sulfur dioxide (SO_2), and lead. The attainment status of the SFBAAB for criteria air pollutants, and sources and health effects, are summarized in Table 3.1-1.

Ozone

Ozone, or smog, is not emitted directly into the environment, but is formed in the atmosphere by complex chemical reactions between reactive organic gas (ROG) and NO_X in the presence of sunlight. Ozone formation is greatest on warm, windless, sunny days. The main sources of NO_X and ROG, often referred to as ozone precursors, are combustion processes (including motor vehicle engines) the evaporation of solvents, paints, and fuels, and biogenic sources. Automobiles are the single largest

source of ozone precursors in the SFBAAB. Ozone levels usually build up during the day and peak in the afternoon hours.

Particulate Matter

Particulate matter refers to a wide range of solid or liquid particles in the atmosphere, including smoke, dust, aerosols, and metallic oxides. Respirable particulate matter with an aerodynamic diameter of 10 micrometers or less is referred to as PM_{10}. $PM_{2.5}$ includes a subgroup of finer particles that have an aerodynamic diameter of 2.5 micrometers or less. Some particulate matter, such as pollen, is naturally occurring. In the SFBAAB most particulate matter is caused by combustion, factories, construction, grading, demolition, agricultural activities, and motor vehicles. Extended exposure to particulate matter can increase the risk of chronic respiratory disease.

Nitrogen Dioxide

NO_2 is a reddish-brown gas that is a by-product of combustion processes. Automobiles and industrial operations are the main sources of NO_2. Aside from its contribution to ozone formation, nitrogen dioxide can increase the risk of acute and chronic respiratory disease and reduce visibility. NO_2 may be visible as a coloring component of a brown cloud on high pollution days, especially in conjunction with high ozone levels.

Carbon Monoxide

CO is an odorless, colorless gas. It is formed by the incomplete combustion of fuels. The single largest source of CO in the SFBAAB is motor vehicles. Emissions are highest during cold starts, hard acceleration, stop-and-go driving, and when a vehicle is moving at low speeds. New findings indicate that CO emissions per mile are lowest at about 45 mph for the average light-duty motor vehicle and begin to increase again at higher speeds.

Sulfur Dioxide

SO_2 is a colorless acid gas with a pungent odor. It has potential to damage materials and it can have health effects at high concentrations. It is produced by the combustion of sulfur-containing fuels, such as oil, coal, and diesel. SO_2 can irritate lung tissue and increase the risk of acute and chronic respiratory disease.

Lead

Lead is a metal found naturally in the environment as well as in manufactured products. The major sources of lead emissions have historically been mobile and industrial sources. As a result of the phase-out of leaded gasoline, metal processing is currently the primary source of lead emissions. The highest levels of lead in air are generally found near lead smelters. Other stationary sources are waste incinerators, utilities, and lead-acid battery manufacturers.

Table 3.1-1 shows a summary of ambient air quality standards, their sources and health effects. The table outlines the pollutants regulated by the federal and State governments under the National Ambient Air Quality Standards (NAAQS) and California Ambient Air Quality Standards (CAAQS). The averaging time refers to the maximum amount of a pollutant averaged over a specified time that can be present in outdoor air without harming public health.

Table 3.1-1: Ambient Air Quality Standards and Health Effects

Air Pollutant	Averaging Time	California Standard	Federal Standard	Most Relevant Effects from Pollutant Exposure
Ozone	1 Hour	0.09 ppm	—	• Respiratory symptoms • Worsening of lung disease leading to premature death • Damage to lung tissue
	8 Hours	0.070 ppm	0.070 ppm	
CO (carbon monoxide)	1 Hour	20 ppm	35 ppm	• Ranges depend on exposure: slight headaches; nausea; chest pain and other aspects of coronary heart disease impairment of central nervous system functions; possible increased risk to fetuses; death.
	8 Hours	9.0 ppm	9 ppm	
NO_2 (nitrogen dioxide)	1 Hour	0.18 ppm	0.100 ppm	• Lung irritation. • Intensified allergic responses.
	Annual	0.030 ppm	0.053 ppm	
SO_2 (sulfur dioxide)	1 Hour	0.25 ppm	0.075 ppm	• Worsening of asthma: increased symptoms, increased medication, impaired mental functioning in children, and emergency room visits.
	3 Hours	—	0.5 ppm	
	24 Hours	0.04 ppm	0.14 (for certain areas)	
	Annual	—	0.030 ppm (for certain areas)	
Particulate matter (PM_{10})	24 hours	50 µg/m^3	150 µg /m^3	• Premature death. • Hospitalization for worsening of cardiovascular disease. • Hospitalization for respiratory disease. • Asthma-related emergency room visits. • Increased symptoms, increased inhaler usage. • Premature death and hospitalization, primarily for worsening of respiratory disease. • Reduced visibility and material soiling.
	Mean	20 µg/m^3	—	
Particulate matter ($PM_{2.5}$)	24 Hours	—	35 µg/m^3	
	Annual	12 µg/m^3	9 µg/m^3	
Visibility-reducing particles	8 Hours	—		
Sulfates	24 Hours	25 µg/m^3	—	• Hospitalization for respiratory disease. • Asthma-related emergency room visits. • Increased symptoms, increased inhaler usage.
Lead	30 days	1.5 µg/m^3	—	• Impaired mental functioning in children.
	Quarter	—	1.5 µg/m^3	

Air Pollutant	Averaging Time	California Standard	Federal Standard	Most Relevant Effects from Pollutant Exposure
	Rolling 3-month average	—	0.15 µg/m^3	• Learning disabilities in children. • Brain and kidney damage.
Vinyl chloride	24 Hours	0.01 ppm	—	• Central nervous system effects, such as dizziness, drowsiness and headaches. • Long-term exposure: liver damage and liver cancer.
Hydrogen sulfide	1 Hour	0.03 ppm	—	• Nuisance odor (rotten egg smell). • At high concentrations: headache and breathing difficulties.
Notes: µg/m^3 = micrograms per cubic meter ppm = parts per million				

Toxic Air Contaminants

In addition to criteria air pollutants list above, another group of pollutants commonly referred to as toxic air contaminants (TACs) or Hazardous Air Pollutants (HAPs), are pollutants that result in an increase in mortality, a serious illness, or pose a present or potential hazard to human health. Health effects of TACs may include cancer, birth defects, immune system damage and neurological damage. In addition, many TACs can be toxic at very low concentrations. For some chemicals such as carcinogens, there are no thresholds below which exposure can be considered risk-free. CARB identifies over 200 compounds as TACs (also termed as HAPs by the EPA).

Toxic Air Contaminants: Sources and Health Effects

Industrial facilities and mobile sources such as cars, trucks, trains, and ships are significant sources of TACs. Other sources of TACs include gasoline stations and backup generators (commonly required in many commercial and residential buildings). More recently, diesel particulate matter (DPM) was identified as a TAC by the CARB. DPM differs from other TACs in that it is not a single substance but rather a complex mixture of hundreds of substances. According to the Bay Area Air District, mobile source emissions of DPM, benzene, and 1,3-butadiene represent a substantial portion of the ambient background risk from TACs in the SFBAAB.

Several studies indicate that DPM poses the greatest health risk among the TACs. A 10-year research program demonstrated that DPM from diesel-fueled engines is a human carcinogen and that chronic (long-term) inhalation exposure to DPM poses a chronic health risk. In addition to increasing the risk of lung cancer, exposure to diesel exhaust can have other health effects. Diesel exhaust can irritate the eyes, nose, throat, and lungs, and it can cause coughs, headaches, lightheadedness, and nausea. Diesel exhaust is a major source of fine particulate pollution as well, and studies have linked elevated particle levels in the air to increased hospital admissions, emergency room visits, asthma attacks, and premature deaths among those suffering from respiratory problems.

Sensitive Receptors

Some groups of people are more affected by air pollution than others. The 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. Sensitive receptors in the vicinity include Abram Agnew Elementary School approximately 0.04-mile northwest, Delores Huerto Middle School approximately 0.11 mile northwest, Kathleen MacDonald High School approximately 0.20 mile north, multi-family residences approximately 0.03 miles south, and off-site workers approximately 0.03 mile east.

Odors and Dust

Other air quality issues of concern in the SFBAAB include nuisance impacts of odors and dust. Objectionable odors may be associated with a variety of pollutants. Common sources of odors include wastewater treatment plants, landfills, composting facilities, refineries, and chemical plants. Similarly, nuisance dust may be generated by a variety of sources, including quarries, agriculture, grading, construction, and roads. Odors rarely have direct health effects among the public. Each year the Bay Area Air District receives thousands of citizen complaints about objectionable odors. Dust emissions can contribute to increased ambient concentrations of PM_{10} and can also contribute to reduced visibility and soiling of exposed surfaces.

Existing Ambient Air Quality

Monitoring Data

The Bay Area Air District operates a regional air quality monitoring network that regularly measures the concentrations of the five major criteria air pollutants throughout the SFBAAB.[1] The air monitoring data define the nature and severity of pollution in the SFBAAB, determine attainment status with NAAQS and CAAQs, identify pollution trends, and validate air quality models and emission inventories.

The local air quality can be evaluated by reviewing relevant air pollution concentrations near the project area. Table 3.1-2 summarizes published monitoring data from 2021 through 2023. The table displays data from the monitor stations near San José-Jackson Street. The data show that during the past few years, the proposed project area has exceeded the standards for ozone (State and national), and PM_{10} (State), and $PM_{2.5}$ (federal). The data in the table reflect the concentration of the pollutants in the air, measured using air monitoring equipment. No recent monitoring data for the area were available for CO or SO_2. Generally, no monitoring is conducted for pollutants that are no longer likely to exceed ambient air quality standards.

[1] California Air Resources Board (CARB). 2024. Air Quality Data Statistics. Website: https://www.arb.ca.gov/adam/. Accessed September 30, 2024.

Table 3.1-2: Air Quality Monitoring Summary

Air Pollutant	Averaging Time	Item	2021	2022	2023
Ozone	1 Hour	Max 1 Hour (ppm)	0.098	0.090	0.087
		Days > State Standard (0.09 ppm)	3	0	0
	8 Hour	Max 8 Hour (ppm)	0.084	0.074	0.068
		Days > Standard (0.070 ppm)	4	1	0
		Days > National Standard (0.075 ppm)	2	0	0
Nitrogen dioxide (NO_2)[2]	Annual	Annual Average (ppm)	0.008	0.009	0.009
	1 Hour	Max 1 Hour (ppm)	0.048	0.047	0.059
		Days > State Standard (0.18 ppm)	0	0	0
Inhalable coarse particles (PM_{10})	Annual	National Annual Average (µg/m^3)	19.6	20.5	*
	24 Hour	Highest State 24 Hour (µg/m^3)	45.1	44.5	*
		Days > State Standard (50 µg/m^3)	0	0	*
		Days > National Standard (150 µg/m^3)	0	0	*
Fine particulate matter ($PM_{2.5}$)	Annual	State Annual Average (12 µg/m^3)	8.9	10.1	**8.2**
	24 Hour	Highest Daily 24 Hour (µg/m^3)	38.1	36.2	49.0
		Days > National Standard (35 µg/m^3)	1	2	1

Notes:
> = exceed ppm = parts per million µg/m^3 = micrograms per cubic meter
ND = no data max = maximum Bold = exceedance
State Standard = California Ambient Air Quality Standard National Standard = National Ambient Air Quality Standard
Data is extracted from station at 158B Jackson Street, San José.
* Insufficient data available to determine the value.
Sources: California Air Resources Board (CARB). 2022. Trends Summary. Website: https://www.arb.ca.gov/adam/trends/trends1.php. Accessed February 19, 2025.
California Air Resources Board (CARB). 2022. Top Four Summary. Website: https://www.arb.ca.gov/adam/topfour/topfour1.php. Accessed February 19, 2025.

Emissions Inventory

The Bay Area Air District estimates emissions of criteria air pollutants from approximately 900 source categories.[2] The estimates are based on Bay Area Air District permit information for stationary sources (e.g., manufacturing industries, refineries, dry-cleaning operations), plus more generalized estimates for area sources (e.g., space heating, landscaping activities, use of consumer products), and mobile sources (e.g., trains, ships and planes, as well as on-road and off-road motor vehicles). The emission inventories are used to account for emissions over time and provide direction for air quality planning and policy formulation to attain clean air goals.

[2] California Air Resources Board (CARB). 2024. Criteria Pollutant Emission Inventory Data. Website: https://ww2.arb.ca.gov/criteria-pollutant-emission-inventory-data. Accessed September 24, 2024.

SFBAAB Attainment Status

The EPA and the CARB designate air basins where ambient air quality standards are exceeded, based on the aforementioned monitoring data, as "nonattainment" areas. If standards are met, the area is designated as an "attainment" area. If there is inadequate or inconclusive data to make a definitive attainment designation, they are considered "unclassified." National nonattainment areas are further designated as marginal, moderate, serious, severe, or extreme as a function of deviation from standards.

The current attainment designations for the Air Basin are shown in Table 3.1-3. Currently in the SFBAAB, 8-hour average ozone (both State and national), 1-hour average ozone (State), annual arithmetic mean PM_{10} (State), 24-hour average PM_{10} (State), annual arithmetic mean $PM_{2.5}$ (State), and 24-hour average $PM_{2.5}$ (national) are still in nonattainment status.

Table 3.1-3: San Francisco Bay Area Air Basin Attainment Status

Pollutant	State Status	National Status
Ozone	Nonattainment	Nonattainment
CO	Attainment	Attainment
NO_2	Attainment	Attainment
SO_2	Attainment	Attainment
PM_{10}	Nonattainment	Unclassified
$PM_{2.5}$	Nonattainment	Unclassified/Attainment
Sulfates	Attainment	N/A
Hydrogen Sulfates	Unclassified	N/A
Visibility-reducing Particles	Unclassified	N/A
Lead	N/A	Attainment

Notes:
CO = carbon monoxide
NO_2 = nitrogen dioxide
PM_{10} = particulate matter less than 10 microns in diameter
$PM_{2.5}$ = particulate matter less than 2.5 microns in diameter
SO_2 = sulfur dioxide

Source: Bay Area Air District, 2017. Air Quality Standards and Attainment Status. January. Website: https://www.baaqmd.gov/about-air-quality/research-and-data/air-quality-standards-and-attainment-status#:~:text=%E2%80%9CAttainment%E2%80%9D%20status%20for%20a%20pollutant%20means%20that%20the,ensures%20that%20these%20standards%20are%20met%20and%20maintained. Accessed July 8, 2024.

Regulatory Framework

Air quality with respect to criteria air pollutants and TACs within the SFBAAB is regulated by such agencies as Bay Area Air District, CARB, and EPA, along with local government agencies. Each of these agencies develops rules, regulations, policies, and/or goals to attain the goals or directives

imposed through legislation. Although the EPA regulations may not be superseded, both State and local regulations may be more stringent.

Federal

Federal Clean Air Act and National Ambient Air Quality Standards

The EPA is the governing body responsible for regulating air pollution in the United States and setting nationwide air quality and emissions standards. EPA's air quality mandates are drawn primarily from the federal CAA, which was enacted in 1963 and amended in 1970, 1977, and 1990.

The CAA required the EPA to establish primary and secondary NAAQS, which are available at https://www.epa.gov/criteria-air-pollutants/naaqs-table. The CAA also requires each state to prepare an air quality control plan referred to as a State Implementation Plan (SIP). The Clean Air Act Amendments of 1990 requires states with nonattainment areas to revise their SIPs to incorporate additional control measures to reduce air pollution. The SIP is periodically modified to reflect the latest emissions inventories, planning documents, and rules and regulations of the air basins as reported by their jurisdictional agencies. The EPA has responsibility to review all state SIPs to determine conformation to the mandates of the CAA and determine whether implementation will achieve air quality goals. If the EPA determines a SIP to be inadequate, a Federal Implementation Plan (FIP) may be prepared for the nonattainment area that imposes additional control measures. Failure to submit an approvable SIP or to implement the plan within the mandated timeframe may result in sanctions being applied to transportation funding and stationary air pollution sources in the air basin.

In addition, the EPA issues federal emissions standards for new motor vehicles and nonroad engines, national emissions standards for categories of new industrial equipment (e.g., power plants, industrial boilers, cement manufacturing, secondary lead smelting), and technical and policy guidance for state implementation plans. In 2014, the EPA issued standards commonly known as Tier 3, which consider the vehicle and its fuel as an integrated system, setting new vehicle emissions standards and a new gasoline sulfur standard beginning in 2017. The vehicle emissions standards will reduce both tailpipe and evaporative emissions from passenger cars, light-duty trucks, medium-duty passenger vehicles, and some heavy-duty vehicles. The gasoline sulfur standard will enable more stringent vehicle emissions standards and will make emissions control systems more effective. The standards will reduce atmospheric levels of ozone, fine particles, nitrogen dioxide, and toxic pollution.[3]

It is important to understand that TACs are not considered criteria air pollutants and thus are not specifically addressed through the setting of ambient air quality standards. Instead, the EPA regulates TACs (known by the EPA as HAPs) through statutes and regulations that generally require the use of Maximum Available Control Technology (MACT) or Best Available Control Technology (BACT) to limit emissions from large industrial facilities. Every 8 years after setting the MACT

[3] United States Environmental Protection Agency. (EPA). 2024. Regulatory and Guidance Information by Topic: Air. Website: https://www.epa.gov/regulatory-information-topic/regulatory-and-guidance-information-topic-air. Accessed June 11, 2024.

standards, the CAA also requires EPA to review and revise the standards, if necessary, to account for improvements in air pollution controls and/or prevention.

State

California Clean Air Act and Ambient Air Quality Standards

The CARB is the Statewide governing body which focuses on California's unique air quality challenges by setting the State's own, stricter, air pollutant emissions standards for a range of Statewide pollution sources, including vehicles, fuels, on- and off-road equipment, and consumer products. The CARB implements the California Clean Air Act (CCAA), which was adopted in 1988 and developed to address air quality concerns not adequately addressed by the CAA. The CCAA requires that all air districts in the State endeavor to achieve and maintain the California Ambient Air Quality Standards (CAAQS) by the earliest practicable date. The CCAA specifies that air districts should focus particular attention on reducing the emissions from transportation and area-wide emission sources and provides air districts with authority to regulate indirect sources. The CAAQS set standards for 10 air pollutants; the six federal criteria air pollutants listed above as well as visibility-reducing particulates, hydrogen sulfide, sulfates, and vinyl chloride.

The CARB is responsible for Statewide pollution sources and produces a major part of the SIP, including addressing transport of pollutants. Local air districts are still relied upon to provide additional strategies for sources under their jurisdiction. The CARB combines this data and submits the completed SIP to EPA. Other CARB duties include monitoring air quality (in conjunction with air monitoring networks maintained by air pollution control and air quality management districts) and updating area designations and maps.

The CARB is responsible for rulemakings to adopt and amend specific regulations to reduce emissions from mobile sources such as cars, trucks, buses, on- and off-road equipment, fuels, harbor craft, locomotives, ocean-going vessels at berth, and motorcycles, as well as consumer products and select stationary sources, including gas stations. These wide-ranging air quality regulations address all major sources of smog-forming air pollution (and other forms of air pollution). As a result, cars today are 99 percent cleaner than in the 1970s, resulting in less pollution overall, shorter hospital stays, and fewer days missed from school and work due to respiratory and cardiopulmonary diseases.[4]

Toxic Air Contaminants

In addition to regulating pollutants defined in the CAAQs, California has a comprehensive and effective air toxics program to control TAC emissions and exposure. Several pieces of legislation form the basis for CARB to identify and control air toxics from a multitude of sources, inform the public of significant toxic exposures, and provide ways to reduce risks from these exposures. The key programs outlined by legislative mandates include the Toxic Air Contaminant Identification and Control Program (Assembly Bill [AB] 1807), the Air Toxics Hot Spots Information and Assessment Act (AB 2588), the Children's Environmental Health Protection Act, and the Community Air Protection Program. The CARB has identified more than 200 toxic air pollutants and has adopted and

[4] California Air Resources Board (CARB). 2024. The California Air Resources Board. About. Website: https://ww2.arb.ca.gov/about. Accessed June 11, 2024.

implemented 25 Airborne Toxic Control Measures (ATCMs). Some of the air toxics that have been identified and controlled include benzene in gasoline, hexavalent chromium from chrome platers, perchloroethylene from dry cleaners, and diesel exhaust from cars and trucks. The Community Air Protection Program (AB 617) was signed into law to reduce exposure in communities experiencing high cumulative exposure to air pollution including air toxic chemicals, many of which occur in disadvantaged communities.[5]

On- and Off-Road Diesel Emissions

The CARB has adopted diesel exhaust control measures and more stringent emission standards for various on-road mobile sources including transit buses and off-road diesel equipment (e.g., tractors, generators). These standards are encompassed in the ATCMs aimed at reducing TACs from mobile sources (including on-road and off-road vehicles) and stationary sources. ATCMs that are relevant and applicable to the proposed project are listed below:[6]

- Diesel PM Control Measure for On-Road Heavy-Duty Diesel-Fueled Residential and Commercial Solid Waste Collection Vehicles (13 California Code of Regulations [CCR] §§ 2020, 2021)
- ATCM for Diesel PM from Portable Engines Rated at 50 Horsepower and Greater (17 CCR § 93116)
- ATCM to Limit Diesel-Fueled Commercial Motor Vehicle Idling (13 CCR § 2485)
- Asbestos ATCM for Construction, Grading, Quarrying and Surfacing Mining Operations; (17 CCR § 93105)
- ATCM to Reduce Particulate Emissions from Diesel-Fueled Engines – Standards for Nonvehicular Diesel Fuel (17 CCR § 93114)

As a result of these actions, mobile source emissions of TACs (benzene, 1,3-butadiene, DPM) and stationary sources of TACs have been reduced significantly since 1990, leading to a reduction of ambient cancer risk in California of about 80–85 percent.

California Energy Commission Energy Efficiency Program Title 24

Title 24—Advanced Clean Cars Program

The Advanced Clean Cars Program is a set of regulations implemented by CARB to reduce vehicle emissions and promote sustainable transportation. These regulations rapidly scale down emissions of light-duty passenger cars, pickup trucks and SUVs and require an increased number of zero-emission vehicles to meet air quality and climate change emissions goals. It combines the control of smog-causing pollutants and greenhouse gas emissions into a single coordinated package of regulations. The program consists of two parts: the Low-Emission Vehicle (LEV) Program and the

[5] California Air Resources Board (CARB). 2024. Air Toxics Program. Website: https://ww2.arb.ca.gov/our-work/programs/air-toxics-program. Accessed June 12, 2024.

[6] California Air Resources Board (CARB). 2024. Airborne Toxic Control Measures. Website: https://ww2.arb.ca.gov/resources/documents/airborne-toxic-control-measures. Accessed July 15, 2024.

Zero-Emission Vehicle (ZEV) Program, which focus on reducing emissions from light-duty passenger cars, pick up trucks and SUVs.

Regional

Bay Area Air Quality Management District

The Bay Area Air District is one of 35 local air pollution control districts created by the California Legislature with authority to regulate air pollutant emissions from businesses and stationary facilities, ranging from oil refineries to auto body shops and dry cleaners. The Bay Area Air District is the primary agency responsible for ensuring that the Clean Air Act and CAAQS are attained and maintained in the SFBAAB. The air quality strategy employed by the Bay Area Air District includes a comprehensive program of planning, regulation, enforcement, technical innovation, and promotion of the understanding of air quality issues. The Bay Area Air District also inspects stationary sources of air pollution and responds to citizen complaints, monitors ambient air quality and meteorological conditions, and implements programs and regulations required by the CAA and CCAA.

The Bay Area Air District Board of Directors adopted the California Environmental Quality Act (CEQA) Thresholds for Evaluating the Significance of Climate Impacts from Land Use Projects and Plans (Bay Area Air District CEQA Thresholds) in 2022. The Bay Area Air District CEQA Thresholds (and associated guidance) are intended to assist lead agencies in evaluating air quality and climate impacts from proposed land use projects in the SFBAAB during the environmental review process.

The Bay Area Air District has regulated TACs since the 1980s. At the local level, air pollution control or management districts may adopt and enforce CARB's control measures. Under Bay Area Air District Regulation 2-1 (General Permit Requirements), Regulation 2-2 (New Source Review), and Regulation 2-5 (New Source Review), all nonexempt sources that possess the potential to emit TACs are required to obtain permits from the Bay Area Air District. Permits may be granted to these operations if they are constructed and operated in accordance with applicable regulations, including new source review standards and ATCM. The Bay Area Air District limits emissions and public exposure to TACs through a number of programs. The Bay Area Air District prioritizes TAC-emitting stationary sources based on the quantity and toxicity of the TAC emissions and the proximity of the facilities to sensitive receptors. In addition, the Bay Area Air District has adopted Regulation 11 Rules 2 and 14, which address asbestos demolition, renovation, manufacturing, and standards for asbestos-containing serpentine.

The Bay Area Air District adopted Regulation 11, Rule 18 (Reduction of Risk from Air Toxic Emissions at Existing Facilities) in 2017, which requires any facility with health risks above risk action thresholds to make reasonable reductions in those health risks.

AB 617 required all air districts around the State to identify and select communities that suffer a high cumulative exposure burden from air pollution. In the Bay Area, these communities include all the Community Air Risk Evaluation (CARE) Areas, as well as areas with large sources of air pollution, areas that have been identified via Statewide screening tools as having pollution and/or health burden vulnerability, and areas that have low life expectancy. The proposed project is not located within a CARE or AB 617-identified community.

2017 Clean Air Plan (Bay Area Air District)

The 2017 Plan provides a regional strategy to protect public health and protect the climate. To protect public health, the plan describes how the Air District will continue to progress toward attaining all 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 plan defines a vision for transitioning the region to a post-carbon economy needed to achieve ambitious greenhouse gas reduction targets for 2030 and 2050 and provides a regional climate protection strategy that will put the Bay Area on a pathway to achieve those greenhouse gas (GHG) emission reduction targets.

The 2017 Plan includes a wide range of control measures designed to decrease emissions of the air pollutants that are most harmful to Bay Area residents, such as particulate matter, ozone, and toxic air contaminants; 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.

Local

The City's General Plan includes policies to avoid or mitigate impacts resulting from development projects with the City. The following policies are specific to air quality and apply to the proposed project.

Envision San José 2040 General Plan

Policy MS-10.1 Assess projected air emissions from new development in conformance with the Bay Area Air District (sic) CEQA Guidelines and relative to State and federal standards. Identify and implement air emissions reduction measures.

Policy MS-10.2 Consider the cumulative air quality impacts from proposed developments for proposed land use designation changes and new development, consistent with the region's Clean Air Plan and State law.

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.

Policy MS-11.2 For projects that emit toxic air contaminants, require project proponents to prepare health risk assessments in accordance with Bay Area Air District-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.

Policy MS-11.3 Review projects generating significant heavy-duty truck traffic to designate truck routes that minimize exposure of sensitive receptors to TACs and particulate matter.

Policy MS-11.4 Encourage the installation of air filtration, to be installed at existing schools, residences, and other sensitive receptor uses adversely affected by pollution sources.

Policy MS-11.5 Encourage the use of pollution absorbing trees and vegetation in buffer areas between substantial sources of TACs and sensitive land uses.

Policy MS-12.2 Require new residential development projects and projects categorized as sensitive receptors to be located an adequate distance from facilities that are existing and potential sources of odor. An adequate separate distance will be determined based upon the type, size and operations of the facility.

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 Bay Area Air District CEQA Guidelines for the relevant project size and type.

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 (CARB) Air Toxic Control Measures (ATCMs) for Construction, Grading, Quarrying, and Surface Mining Operations.

City of San José Standard Permit Conditions

The City of San José has the following Standard Permit Conditions which would apply to the proposed project. Unless otherwise discussed in this analysis, the proposed project is assumed to incorporate the following Standard Permit Condition:

AQ No. 1 The following measures shall be implemented during all phases of construction to control dust and exhaust at the project site:

- Water all exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) two times per day.
- Cover trucks hauling soil, sand, and other loose materials off-site.
- Remove all visible mud or dirt trackout onto adjacent public roads using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- Limit all vehicle speeds on unpaved roads to 15 mph.
- 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.
- Suspend all excavation, grading and/or demolition activities when average wind speeds exceed 20 mph.
- Wash off all trucks and equipment, including their tires, prior to leaving the site.
- Treat unpaved roads providing access to sites located 100 feet or further from a paved road with a 6- to 12-inch layer of compacted wood chips, mulch, or gravel.
- Minimize idling times either by shutting off equipment when not in use or reducing the maximum idling time to no more than 2 minutes (A 5-minute limit is required by State Airborne Toxics Control Measures [Title 13, Sections 2449(d)(3) and 2485 of the California Code of Regulations]). Provide clear signage for construction workers at all access points.
- Maintain and property 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 name and phone number of an on-site construction coordinator to contact regarding dust complaints. The on-site construction coordinator shall respond and take corrective action within 48 hours. The sign shall also provide the City's Code Enforcement Complaints email and number and the Bay Area Air Quality Management District's General Air Pollution Complaints number to ensure compliance with applicable regulations.

3.1.3 - Methodology

The California Emission Estimator Model (CalEEMod) is used to calculate and assess criteria air pollutant (including ozone precursors) and TAC emissions which are comprised of on-site and off-site construction and operational emissions generated from all facets of the proposed project. CalEEMod provides an uniform platform for government agencies, land use planners, and environmental professionals to estimate emissions from land use development and linear projects in California. It utilizes widely accepted methodologies for estimating emissions combined with default data that can be used when site-specific information is not available. Sources of these methodologies and default data include the US EPA's AP-42 emission factors, CARB's vehicle emission models (such as the mobile source emissions model [EMFAC]), and studies commissioned by California agencies such as the California Energy Commission (CEC). In addition, some local air districts provided customized information to support defaults and calculations for projects located in their jurisdictions.

Construction and operational emissions reported in this analysis were modeled using CalEEMod Version 2022.1.

Criteria Pollutants Assessed

Based on the attainment status of the SFBAAB and the Bay Area Air District CEQA Guidelines, the following air pollutants are assessed in this analysis:

- ROG
- NO_X

- CO
- PM_{10}
- $PM_{2.5}$

Note that the proposed project would emit ozone precursors ROG and NO_X. However, the proposed project would not directly emit ozone since it is formed in the atmosphere during the photochemical reaction of ozone precursors.

Toxic Air Contaminants Assessed

The following TACs are assessed in this analysis:

- DPM
- PM2.5

Default Data and Assumptions

The recommendations contained within the Bay Area Air District 2022 CEQA Guidelines were used as a reference in preparation of the air quality analysis.

CalEEMod provides default values for estimating construction and operational emissions from Bay Area specific projects. Although users may apply the default values, Bay Area Air District strongly recommends that default values be modified whenever project-specific information is available to obtain more accurate emissions quantification. When site-specific information is unavailable, Bay Area Air District recommends that the most conservative estimates be used for the type of construction equipment and number of pieces of equipment to be used, the hours of operation, and the distance to the nearest sensitive receptors.

When changing any default parameters, users must include notes and references in the Justification for Changes box, which will facilitate reviews by lead agencies and other stakeholders. These Justifications for Changes were documented when site-specific information was used instead of defaults. The CalEEMod Report in Appendix B includes a listing of these changes and the notes include references to additional calculations and documentation which are also included in Appendix B following the CalEEMod Report.

Summary of changes to the defaults in the CalEEMod Report:

Land Use: Per site plans, and applicant-provided information for on-site and off-site improvements.

Construction Phases

- Demolition based on a single phase for a 5-10 acre site = 20 days.
- Other phase lengths constructed by adding CalEEMod default phase lengths for individual project phases:
  - Townhomes (4.41 acres to 5 acres)
  - Market Rate Apartments (3.84 acres to 3 acres)
  - Affordable Apartments (1.42 acres to 2 acres)

- Total construction period matches the applicant's timeline.

Operations

Energy Use: Adjusted for all-electric.

- Calculation method is from Measure E-15 of the CAPCOA Handbook for Analyzing Greenhouse Gas Emission Reductions, Assessing Climate Vulnerabilities, and Advancing Health and Equity.

Construction

Trips and VMT

- Adjustment for site preparation tree removal haul
- Adjustment for asphalt paving trips

Operations

- **Hearths:** Project is all-electric. No woodstoves. No fireplaces

Operations

Vehicle Data: Adjusted per traffic study for weekdays and using ITE 11th Edition Saturday and Sunday Rates

- Total Net Project Daily Weekday Trips = 2889

Construction

- Dust from Material Movement: Watering twice per day

Model Inputs

Quantifying air pollutant emissions associated with land development projects involves identifying all sources of relevant air pollutant emissions that could occur as a result of implementation of the proposed project and calculating criteria air pollutants by activity level and emission factor. Emission factors represent the emission rate of a pollutant over a given time or activity, for example, grams of NO_X per vehicle mile traveled or grams of NO_X per horsepower hour of equipment operation. The activity factor is a measure of how active a piece of equipment or device is and can be represented as the amount of material processed, elapsed time that a piece of equipment is in operation, horsepower of a piece of equipment used, the fuel consumption rate, or Vehicle Miles Traveled (VMT) per day. The CARB has published emission factors for on-road mobile vehicles/trucks in the EMFAC mobile source emissions model and emission factors for off-road equipment and vehicles in the OFF-ROAD emissions model. An air emissions model (or calculator) combines the emission factors and the levels of activity and outputs the emissions for the various pieces of equipment.

Criteria Air Pollutant Methodology

Construction

Construction emissions can vary substantially from day to day, depending on the level of activity, the specific type of operation, and prevailing weather conditions. Construction emissions result from on-site and off-site activities. On-site emissions principally consist of exhaust emissions from the activity of light and heavy-duty construction equipment, motor vehicle operation, and fugitive dust (PM_{10} and $PM_{2.5}$) from disturbed soil. Additionally, paving operations and application of architectural coatings would release volatile organic compound (VOC) emissions. Off-site emissions are caused by motor vehicle exhaust from delivery vehicles, worker traffic, and road dust (PM_{10} and $PM_{2.5}$).

Schedule

Based on applicant-provided information, the construction was estimated to begin in late 2026 and would last for approximately 4 years. Because fuels and equipment fleets become cleaner over time, construction-related emissions decrease over time as well. Therefore, if construction begins in later years, construction-related emissions will be lower than when modeled to occur in earlier years. While applicant-provided information indicates that construction would begin in 2026, the modeling represents a conservative, worst-case scenario because emissions are assumed to occur in earlier years. Construction activities would consist of demolition, site preparation, grading, building construction, paving, and architectural coating of the inside and outside of the buildings. The modeled construction schedule, worker commute trips, vendor and haul truck trips, and construction equipment, along with hours of operation per day, horsepower, and load factor are available in Appendix B.

Construction Equipment Tiers and Emission Factors

A summary of the on-site, off-road construction equipment usage assumptions used to estimate emissions is presented in Appendix B. This analysis uses the CalEEMod default horsepower and load factors for off-road equipment. Off-road equipment is modeled using the "Average" option which uses Statewide average fleetwide emission factors from CARB's ORION model for the project construction year (for the unmitigated scenario). Emissions were modeled assuming Tier 4 equipment using the Carl Moyer Controlled Off-Road Diesel Emission Factors for the mitigated scenario.

Demolition

Fugitive dust is generated during demolition of buildings based on the tons of debris material. Quantities of demolition materials may be entered directly in tons or calculated using methods internal to CalEEMod based on the square footage of the building. Because the demolition quantities assume a building structure and demolition would involve both a building and substantial quantities of pavement removal, the amount of material quantity for each was determined outside of CalEEMod (off-model), accounting for the nature of each type of demolition and material density. It was then converted to tons and entered into CalEEMod this way. Details of these additional calculations are included along with the CalEEMod Report in Appendix B.

Site Preparation and Grading

During site preparation and grading/excavation activities, fugitive dust can be generated from the movement of soil on the project site. CalEEMod estimates dust from earth movement, from graders or other construction equipment leveling the land and from loading or unloading soil into haul trucks. Each activity is calculated differently in CalEEMod, based on the number of acres traversed by the grading equipment.

All projects are required to comply with the requirements of Bay Area Air District Best Management Practices (BMPs) to reduce emissions of fugitive dust (also required as Standard Permit Conditions [SPCs] for air quality by the City). The model accounts for the implementation of these dust control measures during these phases as part of the unmitigated scenario assuming watering of exposed area at a minimum frequency of two times per day, resulting a 61 percent control efficiency for both PM_{10} and $PM_{2.5}$ dust.

Hauling would be required to export material to/from the project site; 9,389 cubic yards of soil is assumed to be exported (based on applicant-provided information), which will result in an addition 12 daily haul trips during the site preparation phase.

Building Construction

During building construction activities, on-site emissions are primarily generated from the off-road construction equipment and are calculated using the equipment specified along with the CARB Off-Road Emission and Load Factors, the number of construction days and hours of operation per day.

Architectural Coating and Paving

ROG emissions are calculated using CalEEMod defaults based on Bay Area Air District Regulation 8 Rule 3 paint VOC regulations assuming 100 g/L VOC for Interior Coating (Residential and Nonresidential), 150 g/L VOC for exterior coatings (Residential and Nonresidential) and 100 g/L for parking lot paint used for striping and other markings. The surface area to be coated is based on CalEEMod correlations for interior and exterior walls with the interior walls representing 75 percent of the Coating Emissions and the exterior walls representing 25 percent.

ROG emissions for paving are calculated only for areas specified as asphalt paving. The proposed project was assumed to have 2.91 acres of paved area, subtracting out building footprints. VOC emissions are based on the AP-42 emission factor of 2.62 lb. VOC/acre.

Off-Site Construction Vehicles

A summary of the construction-related vehicle trips is shown in Appendix B. Note that the total number of construction vehicle trips would not necessarily occur on the same day because construction activities would vary each day during the construction period.

Off-road emissions for demolition, site preparation, and grading phases are based on construction worker and haul trips both calculated internally in CalEEMod based on the number of pieces of off-road construction equipment for workers and the amount of demolition materials for hauling, assuming a 16 cubic yard capacity truck. Vendor trips may be optionally added for each phase as appropriate to the project and were added to the site preparation phase to account for the off haul

of soil export and in the paving phase to account for delivery of asphalt and any aggregate base material needed for paving. Default hauling trips are 20 miles; vendor trips are 8.4 miles and worker commute trip lengths are 11.7 miles based on the site location.

Trips for building construction and architectural coating activities are based on the square footage of the buildings and the number of dwelling units for residential land uses. Architectural coating workers are assumed to be 20 percent of the number of construction workers.

Mitigation Measures

Emissions modeling was performed for both an unmitigated and mitigated scenario for this project to mitigate emissions of diesel PM exhaust. CalEEMod Measure C-5 (Use Advanced Engine Tiers) was used to model MM AIR-1 which specifies Tier 4 equipment for engines greater than 50 hp.

Operation

The major sources of operational emissions that would occur over the long-term operation of the proposed project are summarized below. CalEEMod contains calculations to estimate both direct emissions of criteria air pollutants and greenhouse gas (GHG) emissions at the project site and indirect GHG emissions. Indirect emissions that result when the location of consumption or activity is different from where actual emissions are generated. For example, electricity would be consumed at the proposed project site; however, emissions associated with producing that electricity are generated off-site at a power plant.

Motor Vehicles

Motor vehicle emissions refer to exhaust and road dust emissions from the motor vehicles that would travel to and from and within the project site. The regional emissions from the proposed project's mobile sources were assessed according to the trip generation rates from the Transportation Impact Study by Hexagon dated May 2024. The Santa Clara County average fleet mix for the first operational year (2026) was used to model the vehicle mix of trips generated. This includes a mixture of passenger vehicles, motorcycles, and motor homes, as well as small percentages of medium and heavy-duty vehicles and buses, in the relative proportions present on the roadways.

Energy (Electricity and Natural Gas Use)

Within CalEEMod, building electricity and natural gas use is divided into two categories: (1) end uses subject to Title 24 standards, and (2) end uses not subject to Title 24 standards. The distinction is required to enable accurate calculation of several energy sector reduction measures.

- **Electricity–**Subject to Title 24: space heating, cooling, ventilation, water heating, outdoor lighting, and the majority of indoor lighting.
- **Electricity–**Not Subject to Title 24: all other end uses, including cooking appliances, clothes washers, electric dryers, refrigeration, office electronics, electric pool/spa heating, well pumping, fans, miscellaneous plug-in uses, and the remainder of indoor lighting.
- **Natural Gas–**Subject to Title 24: space heating and water heating.

- **Natural Gas–**Not subject to Title 24: all other end uses, including range/oven, dryer, pool/spa heating, and other miscellaneous uses.

CalEEMod generates default natural gas and electricity use consumption based on the land use and Electricity Demand Forecast Zone (EDFZ) climate zone as classified by the CEC. The EDFZ influences default calculations for building energy consumption and the effectiveness of emission reduction measures in the energy sector.

Default electricity and natural gas consumption is based on 2019 consumption estimates using the CEC's 2018–2030 Uncalibrated Commercial Sector Forecast and 2019 Residential Appliance Saturation Survey.

Energy–Natural Gas

Emissions from this sector are principally from use of space and water heating. Pursuant to the City's Reach Code, the proposed project will be all-electric; accordingly, energy emissions for natural gas are zero.

The electricity consumption to electrify the zeroed out natural gas end uses are calculated using methods outlined in[7] Measure E-15 using the primary natural gas end uses that are commonly electrified, including space heating, water heating, and range/oven for the EDFZ zone and land use for the project. For regions where the data is missing for the EDFZ or end use, Statewide averages are used to calculate the electricity which replaces natural gas (NG) energy. Values for the electricity consumption by land use and EDFZ were taken from Appendix Table E-15.1 for residential land uses and Table E-15.2 for commercial land uses[8].

Area Sources

In addition to typical mobile source emissions, long-term operational emissions also include area source emissions. Area source emissions include occasional architectural coating activities for repainting of buildings associated with the proposed project. CalEEMod assumes that repainting occurs at a rate of 10 percent of the buildings per year. Therefore, on average, it is assumed that the buildings would be fully repainted every 10 years.

Other area source emissions include consumer products that involve solvents that emit VOCs during use. CalEEMod includes default consumer product use rates based on building square footage. Lastly, CalEEMod default emission factors for landscape maintenance equipment were used in this analysis.

Stationary Sources

Emergency diesel generators, boilers and emergency fire pumps represent common sources of operational stationary sources. Default emission factors for emergency generators correspond to regulatory Tier 3 standards (as emergency generators are not amenable to stable long-term

[7] California Air Pollution Control Officers Association (CAPCOA). 2021. Handbook for Analyzing Greenhouse Gas Emission Reductions, Assessing Climate Vulnerabilities, and Advancing Health and Equity. Website: https://www.airquality.org/ClimateChange/Documents/Final%20Handbook_AB434.pdf. Accessed December 2, 2024.

[8] California Air Pollution Control Officers Association (CAPCOA). 2021. Appendix B: Emission Factors and Data Tables from Handbook for Analyzing Greenhouse Gas Emission Reductions, Assessing Climate Vulnerabilities, and Advancing Health and Equity. Website: https://www.caleemod.com/documents/handbook/appendices/appendix_c.pdf. Accessed December 2, 2024.

operating ideal for the operation of Selective Catalytic Reduction (SCR) used to achieve emission reductions in Tier 4 off-road engines). The proposed project is a multi-level residential development, and it was assumed that diesel generators may be needed as backup power for elevator use. Therefore, diesel generator emissions were included in the analysis.

Risk and Hazards Analysis and Methodology

The Bay Area Air District has identified a distance of 1,000 feet from the project source to the closest sensitive receptor locations within which community health risk thresholds would be applicable to gauge the significance of health risk-related impacts. Impacts are quantified for the maximally impacted sensitive receptors. The analysis is referred to as "Risks and Hazards" because it evaluates the cancer risk, as well as the acute and chronic health hazards associated with exposure to TACs and/or $PM_{2.5}$.

The methods for assessing the potential health impacts from directly emitted TAC and $PM_{2.5}$ emissions associated with the proposed project follow Bay Area Air District and California Office of Environmental Health Hazard Assessment (OEHHA) guidance. The methods focus on directly emitted TAC and $PM_{2.5}$ and not those formed through secondary reactions in the atmosphere. TAC and $PM_{2.5}$ emissions can occur during construction and/or operation of a project. To assess the potential health impacts from construction, a Health Risk Assessment (HRA) was prepared. The HRA follows the recommendations contained within the Bay Area Air District CEQA Guidelines which are based on OEHHA guidance. The HRA was conducted utilizing the CARB's Hot Spots Analysis and Reporting Program Version 2 (HARP2) to automatically calculate risks for the proposed project using OEHHA promulgated cancer potency and reference exposure levels. HARP2 is the recommended model for calculating and presenting HRA results because it follows the Bay Area Air District risk assessment guidance methodology and is consistent with Bay Area Air District Regulation 2-5: New Source Review of Toxic Air Contaminants and Regulation 11-18: Reduction of Risk from Air Toxic Emissions at Existing Facilities. Emissions utilized in the HRA were modeled using CalEEMod Version 2022.1.1. Air dispersion modeling was conducted using AERMOD.

The evaluation of risks and hazards requires two different analyses. First, an individual project-level analysis, which evaluates the impact of the construction and operation of the proposed project by itself, and 2) a cumulative analysis which combines the project impact with existing health impacts from other sources such as industrial stationary sources, nearby gas stations and generators, and mobile sources including roadways, rail and marine vessels.

Project-level Analysis

This analysis focuses on the potential impact of the proposed project on identified receptors within 1,000 feet. Receptors include sensitive receptors, off-site workers, and schools within a radius of 1,000 feet of the project boundary.

The analysis consists of three steps:

- identify and quantify TAC and $PM_{2.5}$ emission sources,

- use a dispersion model to translate these emissions to concentrations of the TACs and $PM_{2.5}$ at specific off-site locations (called receptors), and
- perform an HRA based on these exposure concentrations.

The results of the HRA are compared to health specific thresholds of significance as defined by Bay Area Air District. These are defined by cancer risk and non-cancer hazard indices for each TAC. The risks and hazards are modeled for a baseline or unmitigated scenario, including all project design features and commitments. If risks from these baseline conditions are above health-based criterion, then mitigation measures are proposed, emissions are recalculated and the procedure is repeated to evaluate a mitigated risk scenario.

Construction

Construction sources of TAC emissions include DPM exhaust from on-site construction equipment exhaust, and from off-site roadway emissions of diesel-fueled vendor and haul trucks. The off-site emissions from trucks are only included for the emissions on roadways within 1,000 feet of the site. As per Bay Area Air District, the risks and hazards evaluation also include the evaluation of $PM_{2.5}$ which is emitted from fugitive dust sources during site disturbance activities (demolition, site preparation and grading) as well as roadway dust sources. Emissions of the DPM and $PM_{2.5}$ are obtained from the CalEEMod construction modeling.

Not all sources of TAC emissions represent significant sources of risks and hazards, and quantitative approaches can be used to address these risks in certain situations. Indicators such as a limited duration of construction, the use of Clean Construction Equipment (that minimizes DPM emissions) or a considerable distance between the construction site and the nearest sensitive receptor may be used to establish that risk levels are acceptable, without a quantitative HRA.

Operation

Operational emission sources include significant sources of TAC emissions during project operations. This could include DPM from the operation of a large number of diesel trucks or associated transport refrigeration generator units. These sources would be most typical at warehouses or large grocery stores. On-site emergency generators also represent an ongoing source of TAC emissions, however, the emissions from these stationary sources are limited by district and state requirements that limit their operation to ensure acceptable risk levels.

Not all sources of TAC emissions represent a significant source; qualitative indicators such as separation distances from separate receptor or permitting requirements ensure that the resulting risk will be less than significant without performing a quantitative risk assessment.

While construction and operational HRAs are conducted separately, the project is defined as the sum of its parts: construction, followed by operations.

Cumulative Analysis Methodology

This analysis focuses on the impact of the proposed project on identified receptors within 1,000 feet, as identified in the project-level analysis. For assessing cumulative impacts, Bay Area Air District

guidance recommends that the analysis combines the risks and hazards from existing sources within 1,000 feet of the proposed project.9 The analysis involves combining the Risk and Hazard values determined for the project with risks and hazards from existing sources in this 1,000-foot radius.

Cancer risks and chronic hazards, as well as $PM_{2.5}$ contributions from Bay Area Air District-permitted stationary sources, roadways and rail were determined using the Bay Area Air District provided GIS-based Stationary Source Screening Map. Cancer risks, chronic hazards and $PM_{2.5}$ concentrations from nearby road and rail sources were obtained from the raster data sets of Roadway Screening Data Layers, and Rail and Railyard Screening Data Layers.

3.1.4 - Thresholds of Significance

Appendix G to the CEQA Guidelines is a sample Initial Study Checklist that includes questions for determining whether impacts to air quality are significant. These questions reflect the input of planning and environmental professionals at the California Governor's Office of Planning and Research (OPR) and the California Natural Resources Agency, based on input from stakeholder groups and experts in various other governmental agencies, nonprofits, and leading environmental consulting firms.

Additional guidance on the significance of air quality impacts is found in CEQA Guidelines Section 15065 (a)(4), which provides that a lead agency shall find that a project may have a significant effect on the environment if "the environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly." According to the California Supreme Court, this "mandatory finding of significance" applies to potential effects on public health from environmental impacts such as those associated with air pollutant emissions from projects. (*California Business Industry Association v. Bay Area Air Quality Management District* (2015) 62 Cal.4th 369, 386-392.)

Additionally, where available, significance criteria established by the applicable air quality management or air pollution control district may be relied upon to assist in making significance determinations. As explained earlier, Bay Area Air District's 2022 CEQA Air Quality Guidelines were prepared to assist in evaluating air quality impacts of projects and plans proposed within the Bay Area. The Bay Area Air District CEQA Guidelines provide recommended procedures for evaluating potential air quality impacts during the environmental review process, consistent with CEQA requirements, and include recommended thresholds of significance, mitigation measures, and background air quality information. They also include recommended assessment methodologies for air toxics, odors, and GHGs. While the final determination of whether a project is significant is within the purview of the lead agency pursuant to Section 15064(b) of the CEQA Guidelines, the Bay Area Air District recommends that its quantitative air pollution thresholds be used to determine the significance of project emissions. If a lead agency finds that a project has the potential to exceed these air pollution thresholds, the proposed project should be considered to have significant air quality impacts.

Many lead agencies derive their significance criteria from the questions posed in Appendix G and recommendations from the air district. The City of San José has elected to do so for this project.

9 Bay Area Air District. 2022. California Environmental Quality Act Air Quality Guidelines, Appendix D. April 20.

Accordingly, the proposed project would have a potentially significant impact if the proposed project would:

a) Conflict with or obstruct implementation of the applicable air quality plan.

b) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is nonattainment under an applicable federal or State Ambient Air Quality Standard.

c) Expose sensitive receptors to substantial pollutant concentrations.

d) Result in other emissions (such as those leading to odors) adversely affecting a substantial number of people.

To evaluate each of the questions posed in Appendix G related to air quality, the applicable Bay Area Air District thresholds and methodologies are contained under each impact statement below.

3.1.5 - Project Impacts and Mitigation Measures

This section discusses potential impacts associated with the development of the proposed project and provides mitigation measures where appropriate.

Consistency with Air Quality Management Plan

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

Impact Analysis

The Bay Area Air District has adopted several air quality policies and plans to address regional air quality standards, the most recent of which is the 2017 Clean Air Plan. The 2017 Clean Air Plan was adopted in April of 2017 and serves as the regional Air Quality Plan (AQP) for the Air Basin for attaining NAAQS. The primary goals of the 2017 Clean Air Plan are to protect public health and protect the climate. The 2017 Clean Air Plan acknowledges that the Bay Area Air District's two stated goals of protection are closely related. As such, the 2017 Clean Air Plan identifies a wide range of control measures intended to decrease both criteria pollutants and GHG. The 2017 Clean Air Plan also accounts for projections of population growth provided by the Association of Bay Area Governments (ABAG) and VMT provided by the Metropolitan Transportation Commission (MTC) and identifies strategies to bring regional emissions into compliance with federal and State air quality standards. A project would be judged to conflict with or obstruct implementation of the 2017 Clean Air Plan if it would result in substantial new regional emissions not foreseen in the air quality planning process.

The Bay Area Air District does not provide a numerical threshold of significance for project-level consistency analysis with AQPs. Therefore, the following criteria will be used for determining a project's consistency with the AQP.

- **Criterion 1:** Does the project support the primary goals of the AQP?
- **Criterion 2:** Does the project include applicable control measures from the AQP?

- **Criterion 3:** Does the project disrupt or hinder the implementation of any AQP control measures?

Criterion 1

The primary goals of the 2017 Clean Air Plan, the current AQP to date, are to:

- Attain air quality standards;
- Reduce population exposure to unhealthy air and protect public health in the Bay Area; and
- Reduce GHG emissions and protect the climate.

A measure for determining whether the proposed project supports the primary goals of the AQP is if the project would not result in an increase in the frequency or severity of existing air quality violations, cause or contribute to new violations, or delay timely attainment of air quality standards or the interim emission reductions specified in the AQPs. This measure is determined by comparing project emissions to the significance thresholds identified by the Bay Area Air District for construction- and operation-related pollutants. Additionally, these emissions are evaluated in detail in Impact AIR-2, below. As discussed under Impact AIR-2 and Impact AIR-3, the proposed project would not significantly contribute to cumulative nonattainment pollutant violations or expose sensitive receptors to substantial pollutant concentrations after incorporating identified mitigation. Fugitive dust control measures would be required to be implemented during the construction of the proposed project to reduce localized dust impacts. Impacts related to fugitive dust from the proposed project's construction would be potentially significant without the inclusion of sufficient dust control measures. The City's Standard Permit Condition for air quality requires the inclusion of construction-related air quality measures to reduce potential impacts related to fugitive dust emissions from use of construction equipment. In addition, construction exhaust emissions would result in potentially significant health risk impacts and would require the implementation of Mitigation Measure (MM) AIR-1, which would require the use of Tier 4 Interim engines or their equivalent for construction equipment equal to or greater than 50 horsepower. With the implementation of the City's Standard Permit Condition for Air Quality and MM AIR-1, the proposed project would be consistent with Criterion 1.

Criterion 2

Another measure for determining whether a project is consistent with the AQP is to determine whether the project is inconsistent with the growth assumptions incorporated into the AQP and, thus, whether it would interfere with the region's ability to comply with federal and California air quality standards. The Bay Area Air District completes the regional emissions inventory for the SFBAAB. In part, the regional population, housing, and employment projections developed by ABAG are based on city and county general plan land use designations. These projections form the foundation for the emissions inventory of the 2017 Clean Air Plan. These demographic trends are incorporated into Plan Bay Area 2050, compiled by ABAG and the MTC, to determine priority transportation projects and VMT in the Bay Area. Projects consistent with the local general plan are considered consistent with the regional AQP. Large projects that exceed regional employment, population, and housing planning projections have the potential to be inconsistent with the regional inventory compiled as part of the 2017 Clean Air Plan.

The proposed project would build 100 market-rate townhome units and two apartment buildings providing a combined 637 units, for a total of 737 units. As described in the Project Description, the proposed project site is designated within the TERO, which identifies sites within the North San José Employment Center that may be appropriate for residential development and supports residential development as an alternate use at a minimum net density of 75 dwelling units per acre. The proposed project anticipates 76.2 dwelling units per acre and would comply with the TERO height and development standards.

The proposed project is therefore consistent with the underlying general plan land use designation and would not have the potential to substantially affect housing, employment, and population projections in the region that are the basis of the 2017 Clean Air Plan projections.

The 2017 Clean Air Plan sets forth control measures to reduce emissions for a wide range of stationary and mobile sources. The AQPs also assume that all mandatory regulations to reduce air pollution would be adhered to. Therefore, to conform to the assumptions in the AQP, a project must be consistent with all applicable measures contained in the applicable AQP. The Clean Air Plan contains 85 control measures to reduce air pollutants and GHGs at the local, regional, and global levels. Along with the traditional stationary, area, mobile source, and transportation control measures, the Clean Air Plan contains several control measures designed to protect the climate and to promote mixed-use and compact development to reduce vehicle emissions and exposure to pollutants from stationary and mobile sources. The Clean Air Plan also includes an account of the implementation status of control measures identified in the 2010 Clean Air Plan.

To establish compliance with the Clean Air Plan, the proposed project would be required to comply with applicable Clean Air Plan control measures, listed below:

- BL1: Green Buildings;
- BL4: Urban Heat Island Migration;
- EN1: Decarbonize Electricity Generation;
- EN2: Decrease Electricity Demand;
- NW2: Urban Tree Planting;
- WA3: Green Waste Diversion;
- WA4: Recycling and Waste Reduction;
- SS36: Particulate Matter from Trackout;
- SS37: Particulate Matter from Asphalt Operations; and
- TR9: Bicycle and Pedestrian Access and Facilities.

The proposed project would comply with the above control measures as specified below:

- For consistency with Clean Air Plan Measures BL1, EN1, and EN2, the proposed project would comply with the latest energy efficiency standards, such as the 2022 California Title 24 Energy Code, including Title 24, Part 6, Subchapter 8, which would require the proposed project to incorporate rooftop solar. In addition, the proposed project would incorporate applicable energy efficiency features designed to reduce project energy consumption.

- For consistency with Clean Air Plan Measures BL4 and NW2, the proposed project would also incorporate 1.7 acres of landscaping, including the provision of groundcover and new trees.
- For consistency with Clean Air Plan Measures WA3 and WA4, the proposed project would utilize a waste service provider compliant with AB 341, SB 939, and SB 1374 requirements.
- For consistency with Clean Air Plan Measure SS36, the proposed project would comply with fugitive dust emissions minimization requirements established in Municipal Code Section 20-30.090, Performance Standards for All Development and Land Uses. In addition, the proposed project would incorporate Bay Area Air District's "Basic Construction Mitigation Measures."
- For consistency with Clean Air Plan Measure SS37, the proposed project would utilize asphalts subject to Bay Area Air District Regulation 8, Rule 15-Emulsified and Liquid Asphalts. The use of asphalts under this regulation would limit the ROG content in the asphalt.
- For consistency with Clean Air Plan Measure TR9, the proposed project would include 177 bicycle parking spots along with bicycle circulation along Cisco Way and River Oaks Parkway which will provide bicycle and/or pedestrian access. The site design also includes pedestrian thoroughfares and is connected to existing public transit.

In summary, the proposed project would not conflict with any applicable measures under the 2017 Clean Air Plan after implementing Standard Permit Condition for Air Quality, nor is the proposed project inconsistent with the growth assumptions incorporated into the AQP; therefore, the proposed project would be consistent with Criterion 2.

Criterion 3

The proposed project would not preclude extension of a transit line or bike path, propose excessive parking beyond parking requirements, or otherwise create an impediment or disruption to implementation of any AQP control measures. As discussed above, the proposed project would incorporate several AQP control measures such as complying with energy efficiency standards contained in the 2022 California Building Code, creating pedestrian and bicycle connections and thoroughfares, connecting with an existing public transit line, delivering a mix of affordable and market-rate high-quality housing in an existing residential neighborhood, and installing landscaping across the proposed project site. The proposed project would be required to provide a fair share monetary contribution toward the future Class IV protected bikeway that is planned along the River Oaks Parkway and Cisco Way project frontages as identified in the San José Better Bike Plan 2025. Considering this information, the proposed project would not disrupt or hinder the implementation of any AQP control measures. The proposed project is therefore consistent with Criterion 3.

Summary

As addressed above, the proposed project would comply with all applicable federal, State, and local regulations. The proposed project would not conflict with the 2017 Clean Air Plan and, with implementation of meets all three criteria set forth by Bay Area Air District for demonstrating consistency. Therefore, impacts associated with conflicting with or obstructing the 2017 Clean Air Plan's implementation would be less than significant.

Level of Significance

Less than significant impact.

Standard Permit Conditions for Air Quality

SPC AQ-1 Construction-related Air Quality

The following measures shall be implemented during all phases of construction to control dust and exhaust at the project site:

The following measures shall be implemented during all phases of construction to control dust and exhaust at the project site:

- Water all exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) two times per day.
- Cover trucks hauling soil, sand, and other loose materials off-site.
- Remove all visible mud or dirt trackout onto adjacent public roads using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- Limit all vehicle speeds on unpaved roads to 15 mph.
- 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.
- Suspend all excavation, grading and/or demolition activities when average wind speeds exceed 20 mph.
- Wash off all trucks and equipment, including their tires, prior to leaving the site.
- Treat unpaved roads providing access to sites located 100 feet or further from a paved road with a 6- to 12-inch layer of compacted wood chips, mulch, or gravel.
- Minimize idling times either by shutting off equipment when not in use or reducing the maximum idling time to no more than 2 minutes (A 5-minute limit is required by State Airborne Toxics Control Measures [Title 13, Sections 2449(d)(3) and 2485 of the California Code of Regulations]). Provide clear signage for construction workers at all access points.
- Maintain and property 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 name and phone number of an on-site construction coordinator to contact regarding dust complaints. The on-site construction coordinator shall respond and take corrective action within 48 hours. The sign shall also provide the City's Code Enforcement Complaints email and number and the Bay Area Air Quality Management District's General Air Pollution Complaints number to ensure compliance with applicable regulations.

Cumulative Analysis

The geographic area of this cumulative analysis is the SFBAAB. The cumulative analysis focuses on whether a specific project would result in cumulatively considerable contribution to emissions. According to Section 15064(h)(4) of the CEQA Guidelines, the existence of significant cumulative impacts caused by other projects alone does not constitute substantial evidence that the project's incremental effects would be cumulatively considerable. Rather, the determination of cumulative air quality impacts on regional air quality is based on whether the proposed project would conflict with or obstruct implementation of the applicable AQP. Therefore, the proposed project would not be considered to result in a cumulatively considerable contribution to these regional air quality impacts if it does not conflict with or obstruct implementation of the applicable AQP. The proposed project does not conflict with or obstruct implementation of the applicable AQP; therefore, a less than significant cumulative impact would occur.

Level of Cumulative Significance Before Mitigation

Less than significant impact.

Mitigation Measures

None required.

Level of Cumulative Significance After Mitigation

Less than significant impact.

Cumulative Criteria Pollutant Emissions Impacts

Impact AIR-2:	**The proposed project would not result in a cumulatively considerable net increase of any criteria pollutant for which the project region is nonattainment under an applicable federal or State ambient air quality standard.**

Impact Analysis

This impact is related to the cumulative effect of a project's regional criteria pollutant emissions. By its nature, air pollution is largely a cumulative impact resulting from emissions generated over a large geographic region. The nonattainment status of regional pollutants results from past and present development within the SFBAAB, and this regional impact is a cumulative impact. Therefore, new development projects (such as the proposed project) within the SFBAAB would contribute to this impact only on a cumulative basis. No single project would be sufficient in size, by itself, to result in nonattainment of regional air quality standards. Instead, a project's emissions may be individually limited, but cumulatively considerable when evaluated in combination with past, present, and future development projects.

Potential localized and regional impacts would result in exceedances of State or federal standards for NO_X, ROG, particulate matter (PM_{10} and $PM_{2.5}$), or CO. NO_X emissions are of concern because of potential health impacts from exposure to NO_X and ROG emissions during both construction and operation and as a precursor in the formation of airborne ozone. PM_{10} and $PM_{2.5}$ are of concern during construction because of the potential to emit exhaust emissions from the operation of off-road construction equipment and fugitive dust during earth-disturbing activities (construction

fugitive dust). CO emissions are of concern during project operation because operational CO hotspots are related to increases in on-road vehicle congestion and potential health effects.

The cumulative analysis focuses on whether a specific project would result in cumulatively considerable emissions. According to Section 15064(h)(4) of the CEQA Guidelines, the existence of significant cumulative impacts caused by other projects alone does not constitute substantial evidence that the proposed project's incremental effects would be cumulatively considerable. Rather, the determination of cumulative air quality impacts for construction and operational emissions is based on whether the proposed project would result in regional emissions that exceed the Bay Area Air District regional thresholds of significance for construction and operations on a project level. The significance thresholds represent the allowable quantity of emissions each project can generate without generating a cumulatively considerable contribution to regional air quality impacts. Therefore, a project that would not exceed the Bay Area Air District thresholds of significance on the project level also would not be considered to result in a cumulatively considerable contribution to these regional air quality impacts. Construction, operational and cumulative emissions are discussed separately below.

Construction

During construction, fugitive dust would be generated from demolition, site grading and other earthmoving activities. The majority of fugitive dust would remain localized and deposited near the project site; however, potential fugitive dust impacts exist unless control measures are implemented to reduce this source's emissions. Exhaust emissions would also be generated from the operation of the off-road construction equipment and on-road construction vehicles.

Construction Fugitive Dust

For a project to have a less than significant criteria air pollutant impact related to construction-related fugitive dust emissions, it must implement all of the Air District's basic BMPs listed in the Guidelines.[10] The proposed project would be required to include all construction BMPs as part of compliance with standard construction permits and would implement dust control measures as Standard Permit Conditions for Air Quality. Therefore, impacts related to fugitive dust would be less than significant.

Construction Emissions: ROG, NO_X, PM_{10}, and $PM_{2.5}$

Construction emissions were quantified and estimated using CalEEMod Version 2022.1.1 for a typical construction scenario for a land use project of this size. Estimated construction emissions are compared with the applicable thresholds of significance established by the Bay Area Air District to assess ROG, NOX, exhaust PM_{10}, and exhaust $PM_{2.5}$ construction emissions to determine significance for this impact. The following project characteristics and assumptions were utilized in the analysis:

- Construction would begin in August 2025 and occur over approximately 3 years (based on applicant-provided information). If the construction moves to later years, construction emissions would likely decrease due to improvements in technology and more stringent regulatory requirements.

[10] Bay Area Air District. 2022. Project-Level Air Quality Impacts, Table 5-2, California Environmental Quality Act Air Quality Guidelines.

- Demolition of the existing building (164,606 square feet) and asphalt (311,500 square feet) equaling 19,302 tons of construction debris.
- Site grading and preparation, including the removal of 238 trees (adding an additional 12 one-way vendor truck trips) and 9,389 cubic yards of soil export.
- Construction of 737 dwelling units in a townhouse and apartment building configuration, along with associated landscaping and site-wide hardscape circulation.
- Construction of off-site improvements including sidewalk installation.
- 14 daily vendor trips during the paving phase of construction.
- 241 one-way daily haul trips during the demolition phase of construction.

Additional details on the assumptions and inputs are included in the CalEEMod output reports (Appendix B).

Table 3.1-4 presents the proposed project total emissions and the average daily emissions from construction. The average daily emissions for criteria pollutants were estimated as: 23.03 pounds per day (lb/day) ROG, 14.17 lb/day NO_X and 0.011 and 0.012 lb/day $PM_{2.5}$ and PM_{10} exhaust. All estimated emissions are all well below the established thresholds of significance for construction of 54 lb/day for ROG, NO_X and $PM_{2.5}$ exhaust and 82 lb/day for PM_{10} exhaust. In addition, the proposed project would implement BMPs as Standard Permit Conditions to ensure a less than significant impact for PM_{10}/$PM_{2.5}$ dust emissions.

Table 3.1-4: Construction Emissions by Construction Year–Unmitigated

Construction Activity	Criteria Pollutant Emissions (tons)			
	ROG	NO_X	PM_{10} (Exhaust)	$PM_{2.5}$ (Exhaust)
Demolition (2025)	0.028	0.445	0.012	0.011
Site Preparation (2025)	0.018	0.216	0.008	0.007
Grading (2025)	0.029	0.268	0.011	0.010
Building Construction (2025)	0.086	0.442	0.014	0.013
Building Construction (2026)	0.338	1.803	0.053	0.049
Building Construction (2027)	0.325	1.724	0.048	0.044
Building Construction (2028)	0.083	0.428	0.011	0.010
Paving (2028)	0.017	0.138	0.005	0.005
Architectural Coating (2028)	7.988	0.020	0.000	0.000
Total Emissions (tons)	8.91	5.48	0.16	0.15
Total Emissions (lbs)	17824.9	10966.4	324.7	297.2
Average Daily Emissions (lbs/day)	**23.03**	**14.17**	**0.42**	**0.38**
Bay Area Air District Significance Thresholds	54	54	82	54

Construction Activity	Criteria Pollutant Emissions (tons)			
	ROG	NO_X	PM_{10} (Exhaust)	$PM_{2.5}$ (Exhaust)
Significant Impact?	No	No	No	No

Notes:
Bay Area Air District = Bay Area Air Quality Management District
NO_X = nitrogen oxides
PM_{10} = particulate matter less than 10 microns in diameter
$PM_{2.5}$ = particulate matter less than 2.5 microns in diameter
ROG = reactive organic gases

This analysis relies on a 774-day construction schedule, consistent with the construction schedule and modeling results contained in Appendix B. Some construction activities may overlap. The analysis includes dust-reduction measures. Tree removal is included in the site preparation phase.

The average daily emissions are calculated using 774 construction working days for the proposed project.
Source: Appendix B.

As shown above in Table 3.1-4, the proposed project's unmitigated construction emissions would not exceed any of the applicable significance thresholds. However, the proposed project is in proximity to sensitive receptors (including residences, workers, and schools) and the potential health risks from unmitigated construction emissions, analyzed in AIR-3 below, were found to be significant without the implementation of MM AIR-1. MM AIR-1 will require the use of Tier 4 Interim engines on all equipment greater than 50 horsepower. Implementation of MM AIR-1 will further reduce less than significant construction-related criteria air pollutant emissions, as shown in Table 3.1-5.

Table 3.1-5: Construction Emissions by Construction Year–Mitigated

Construction Activity	Criteria Pollutant Emissions (tons)			
	ROG	NO_X	PM_{10} (Exhaust)	$PM_{2.5}$ (Exhaust)
Demolition (2025)	0.008	0.343	0.005	0.004
Site Preparation (2025)	0.004	0.131	0.001	0.001
Grading (2025)	0.008	0.175	0.002	0.002
Building Construction (2025)	0.065	0.414	0.004	0.004
Building Construction (2026)	0.252	1.760	0.019	0.018
Building Construction (2027)	0.245	1.742	0.019	0.018
Building Construction (2028)	0.063	0.449	0.005	0.004
Paving (2028)	0.009	0.149	0.002	0.002
Architectural Coating (2028)	7.987	0.025	0.001	0.001
Total Emissions (tons)	8.640	5.188	0.058	0.054
Total Emissions (lbs)	17280.8	10375.9	116.9	108.7
Average Daily Emissions (lbs/day)	**22.33**	**13.41**	**0.15**	**0.14**

Construction Activity	Criteria Pollutant Emissions (tons)			
	ROG	NO_X	PM_{10} (Exhaust)	$PM_{2.5}$ (Exhaust)
Bay Area Air District Significance Thresholds	54	54	82	54
Significant Impact?	No	No	No	No

Notes:
NO_X = nitrogen oxides
PM_{10} = particulate matter less than 10 microns in diameter
$PM_{2.5}$ = particulate matter less than 2.5 microns in diameter
ROG = reactive organic gases

This analysis relies on a 774-day construction schedule, consistent with the construction schedule and modeling results contained in Appendix B. The total working days are 774 days, and some construction activities may overlap. The analysis includes dust-reduction measures. Tree demolition is included in the site preparation phase.

The average daily emissions are calculated using 774 construction working days for the proposed project.
Source: Appendix B.

As discussed above, the proposed project's construction emissions would not exceed any of the applicable significance thresholds (with and without implementation of MM AIR-1). Therefore, the proposed project would have a less than significant impact related to air quality during project construction.

Operational Emissions

Operational Air Pollutant Emissions: ROG, NO_X, PM_{10}, and $PM_{2.5}$

Following project construction, long-term operational emissions would be generated from daily operations. Operational emissions would include area, stationary and mobile sources. Area sources would include emissions from architectural coatings, consumer products, and landscape equipment. The proposed project would be all-electric and therefore would not include emissions from the combustion of natural gas for water heaters and other heat sources. Mobile sources include exhaust and road dust emissions from the automobiles that would travel to and from the proposed project site. Stationary sources include emissions from stationary source equipment, such as backup generators, which would require a permit issued by the Bay Area Air District. Because of the building height and presence of elevators, it was conservatively assumed that backup generators would be necessary and are therefore included in the modeling. Pollutants of concern include ROG, NO_X, PM_{10}, and $PM_{2.5}$.

Proposed project operations were analyzed at full buildout assuming completion of construction as early as 2026 and are compared against the Bay Area Air District quantitative threshold in Table 3.1-6. The proposed project will be all-electric in design, and therefore natural gas emissions (energy) are not applicable.

Table 3.1-6: Operational Regional Pollutants (Mitigated)

Emissions Source	ROG	NO_X	PM_{10} Total	$PM_{2.5}$ Total
Mobile	1.63	1.28	2.81	0.72
Area	5.55	0.04	0.00	0.00
Energy	—	—	—	—
Stationary	0.02	0.07	0.00	0.00
Off-Road	—	—	—	—
Total (tons/year)	7.211	1.382	2.812	0.730
Total (lbs/year)	14,421	2,674	5,624	1,459
Average Daily (lbs/day)	39.51	7.57	15.41	4.00
Significance Threshold (tons/year)	54	54	82	54
Exceeds Significance Threshold?	**No**	**No**	**No**	**No**

Notes:
lbs = pounds
NO_X = nitrogen oxides
PM_{10} = particulate matterless than 10 microns in diameter
$PM_{2.5}$ = particulate matterless than 10 microns in diameter
ROG = reactive organic gases
[1] The average daily emissions are calculated using 365 operational days in 2026.
Source: Appendix B.

As shown in Table 3.1-5, the proposed project's regional daily operational emissions would not exceed any of the Bay Area Air District thresholds of significance. Therefore, the proposed project would not result in a considerable net increase of any criteria pollutant for which the project region is nonattainment during operation or construction.

Operational Carbon Monoxide Hotspot

The CO emissions from traffic generated by the proposed project are a concern at the local level because congested intersections can result in high, localized concentrations of CO (referred to as a CO hotspot).

The Bay Area Air District screening criteria were used to determine whether implementing the proposed project could result in local CO emissions that exceed the thresholds of significance. If all the following screening criteria are met, operation of the proposed project would result in a less than significant impact related to CO:

- The project is consistent with an applicable congestion management program established by the county congestion management agency for designated roads or highways, the regional transportation plan, and local congestion management agency plans.
- Project-generated traffic would not increase traffic volumes at affected intersections to more than 44,000 vehicles per hour.

- Project-generated traffic would not increase traffic volumes at affected intersections to more than 24,000 vehicles per hour where vertical and/or horizontal mixing is substantially limited (e.g., tunnel, parking garage, bridge underpass, natural or urban street canyon, below-grade roadway).

In accordance with SB 743, transportation analysis in accordance with CEQA no longer uses delay-based metrics such as congestion to analyze project impacts. The proposed project is consistent with the land use designation defined in the City's General Plan, which is therefore consistent with the applicable congestion management program, and the proposed project is consistent with the first criterion.

The nearest intersection with recorded daily traffic volumes is Montague Expressway and Interstate 880 (I-880) according to the Caltrans Traffic Census Program[11] which provides traffic volume data for the State highway system. According to the Traffic Census Program, the sections of I-880 near the project site (at Montague Expressway) receive a peak-hour traffic volume of 13,900 vehicles, respectively. According to the traffic study prepared by Hexagon, the proposed project is anticipated to generate 2,889 daily trips. Therefore, even with the addition of daily trips generated by the proposed project, no nearby intersections impacted by the proposed project would experience traffic volumes of 44,000 vehicles per hour. Thus, the proposed project would not result in any nearby intersection having peak-hour traffic volumes exceeding 44,000 vehicles per hour.

Therefore, based on the above criteria, the proposed project would not exceed the CO screening criteria and would have a less than significant impact related to CO.

Level of Significance

Less than significant impact.

Standard Permit Conditions

SPC AQ-1 would apply to the proposed project. The City of San José has the following Standard Permit Conditions which would apply to the proposed project.

Mitigation Measures

None required.

Cumulative Analysis

As noted previously, the geographic area of this cumulative analysis is the SFBAAB. The cumulative analysis focuses on whether a specific project would result in cumulatively considerable emissions that would result in emissions that exceed the Bay Area Air District thresholds of significance for construction and operation on a project level. As discussed above, a project that would not exceed the Bay Area Air District thresholds of significance on the project level also would not be considered to result in a cumulatively considerable contribution to these regional air quality impacts. The

[11] California Department of Transportation (Caltrans). Traffic Census Program. Website: https://dot.ca.gov/programs/traffic-operations/census. Accessed June 2, 2024.

proposed project does not exceed Bay Area Air District project-level thresholds of significance for construction and operational-related emissions of criteria air pollutants. Therefore, a less than significant cumulative impact would occur.

Level of Cumulative Significance Before Mitigation

Less than significant impact.

Mitigation Measures

None required.

Level of Cumulative Significance After Mitigation

Less than significant impact.

Sensitive Receptors Exposure to Pollutant Concentrations

Impact AIR-3:	**The proposed project could expose sensitive receptors to substantial pollutant concentrations.**

Impact Analysis

The proposed project could expose sensitive receptors to substantial pollutant concentrations and adverse health effects if it causes or contributes significantly to elevated pollutant concentration levels. The proposed project is within 1,000 feet of existing receptors including multi-family residences, three schools, and off-site workers. Unlike regional emissions, localized emissions are typically evaluated in terms of air concentration rather than mass so they can be more readily correlated to potential health effects. As the proposed project would constitute the development of approximately 737 multi-family dwelling units—which are not associated with ongoing emissions of elevated pollutant concentrations—a HRA for construction only was prepared for the proposed project. The results of the HRA are summarized below and additional details including assumptions and model inputs and results are contained within Appendix B.

The Bay Area Air District has defined health risk significance thresholds for use in evaluating a project and its potential impact to nearby sensitive receptors. These thresholds are represented as a cancer risk to the public and a non-cancer hazard from exposures to TACs. Cancer risk represents the probability (in terms of risk per million individuals) that an individual would contract cancer resulting from exposure to potential carcinogens over a specified exposure duration. The cancer risk attributed to a chemical is calculated by multiplying the chemical intake or dose at the human exchange boundaries (e.g., lungs) by the chemical-specific cancer potency factor (CPF). A risk level of 10 in a million implies a likelihood (or risk) that up to 10 persons out of 1 million equally exposed people would contract cancer if exposed continuously (24 hours per day) to the levels of TACs over a specified duration of time. This risk would be an excess cancer risk that is in addition to any environmental cancer risk borne by a person not exposed to these air toxins.

Construction

Diesel Particulate Matter and Cancer Risks

As previously discussed in the Methodology section, the HRA follows Bay Area Air District and OEHHA guidance and recommended methodologies for conducting health risk assessments. The methods focus on directly emitted TACs and $PM_{2.5}$ and not those formed through secondary reactions in the atmosphere. The proposed project would accommodate the construction of 737 multi-family dwelling units. During construction, the proposed project would result in emissions of several TACs as well as $PM_{2.5}$ emissions that could potentially impact nearby sensitive receptors.

The principal TAC emission analyzed in this assessment was DPM from operation of off-road equipment and diesel fuel delivery and worker vehicles during construction and operation. DPM has been identified by the CARB as a carcinogenic substance. For purposes of this analysis, DPM is represented as exhaust emissions of PM_{10}. $PM_{2.5}$ emissions from re-entrained road dust and brake and tire wear are also included in the assessment.

The following project characteristics and assumptions utilized in the HRA include:

- Construction emissions were modeled to include on-site emissions from construction equipment as well as vendor and truck haul trips traversing routes within 1,000 feet of the project site;
- Construction was assumed to begin in August 2025 and was modeled for 774 workdays (6,192 total working hours). Because fuels and equipment fleets become cleaner over time, construction-related emissions decrease over time as well. Therefore, if construction begins in later years, construction-related emissions will be lower than when modeled to occur in earlier years;
- The construction emissions were modeled in both unmitigated and mitigated scenarios (assuming the use of Tier 4 Interim construction equipment);
- The HRA identified a Maximally Exposed Individual Resident (MEIR), a Maximally Exposed Individual Worker (MEIW), and student receptors at three nearby schools (within 1,000 feet of the proposed project); estimated health risks and PM2.5 concentrations at the MEIR, MEIW and schools were compared to Bay Area Air District thresholds; and
- The schools within 1,000 feet of the proposed project site include the Abram Agnew Elementary School, the Delores Huerto Middle School, and the Kathleen MacDonald High School.

Residential Cancer Risk–Cancer risk for individual resident receptors exposed to “Diesel Particulate Exhaust” (DPM) were calculated utilizing the “Risk Management Policy” option for inhalation, specifying that residents spend 100 percent time at home for ages less than 16 years old. Consistent with OEHHA guidance, the start of residential exposure was assumed to occur in the third trimester (-0.25 years) to accommodate the increased susceptibility of exposures in early life. Because the construction is anticipated to occur for approximately 3 years, the residential exposure starts with the unborn child at the third trimester (when construction begins) and continues until the child is

2.75 years of age. Because there are no significant sources of TAC emissions during operations, the exposure assessment is limited to the duration of the proposed project construction or 3 years.

Non-cancer Chronic Health Risks–Chronic Reference Exposure Levels (RELs) are used to assess not only residential health impacts, but also worker and student health impacts.

Potential chronic non-cancer health impacts use the long-term annual average concentration regardless of the emitting facility's schedule. As per OEHHA guidance, no adjustment factors were used to adjust this concentration for workers or students.

Worker Cancer Risk–Cancer risk and the chronic hazard index was calculated for the maximum impacted off-site worker based on the maximum DPM concentration at identified off-site receptors. Eight-hour breathing rates for moderate intensity activities of 230 L/kg-8 hours (applicable to 16 through 70-year-old adults) were used to calculate the daily dose via the inhalation route to the worker. The analysis assumes a start age of 16 years and an exposure duration equivalent to the construction duration of 3 years.

Because the construction emissions were modeled as non-continuous source, the worker adjustment factor was used to adjust for the proper exposure concentration. When modeling a non-continuously emitting source (e.g., operating for 8 hours per day and 5 days per week), the modeled long-term average concentrations are based on 24 hours per day and 7 days per week for the period of the meteorological data set. Even though the emitting source is modeled using a non-continuous emissions schedule, the long-term concentration is still based on 24 hours a day and 7 days per week. Thus, this concentration includes the zero hours when the source was not operating.

The worker adjustment factor (WAF) is used to determine the long-term concentration the worker is breathing during their work shift. Therefore, the long-term concentration is adjusted so it is based on only the hours when the worker is present. For this project, assuming the emitting source and worker's schedules are the same, the adjustment factor is 4.2 = (24 hours per day / 8 hours per shift) x (7 days in a week / 5 days in a work week).

HARP2 provides for the specification of the WAF for worker cancer risk assessments, and this was entered as 4.2 to make this adjustment.

Student Cancer Risk–Student cancer risk and chronic hazards were determined for Abram Agnew Elementary School, Dolores Huerto Middle School and Kathleen MacDonald High School (all located on adjacent campuses within 1,000 feet of the project site). Cancer risks utilized the 95th percentile 8-hour breathing rates for moderate activity specific to the age ranges specified for students as described below. These breathing rates are documented in the OEHHA 2015 guidance document.

The student risk calculations for Abram Agnew Elementary School utilized a starting exposure age of zero because the school has an infant program beginning at 6 weeks, as well as a preschool starting at age 3. The project-specific exposure duration was assumed to be 3 years. This reflects the most conservative modeling scenario, as infants have the highest age sensitivity factor.

The middle school and high school student risk calculations utilized a starting exposure age appropriate to these grade spans (11 and 14 years, respectively) and a project-specific exposure duration of 3 years. For students ages 9 years and older, HARP2 uses the breathing rate of 520 (L/kg-hour) applicable to ages two to 16, consistent with Bay Area Air District-recommended exposure values.

Similar to the worker scenario, student exposures occur only when the non-continuous construction sources are emitting and thus students similarly inhale air with concentrations that are higher than AERMOD-predicted long-term average concentrations. Therefore, the Worker (or Student) Adjustment Factor of 4.2 is also applied to the AERMOD-predicted annual concentrations for the evaluation of student cancer risk.

Non-cancer Chronic Health Risks–Chronic RELs are used to assess not only residential health impacts, but also worker and student health impacts.

Potential chronic non-cancer health impacts use the long-term annual average concentration regardless of the emitting facility's schedule. As per OEHHA guidance, no adjustment factors were used to adjust this concentration for workers or students.

HARP2 Inputs and Result–HARP2 model runs are included in Appendix B to document the HRA exposure parameters and risk results for cancer and non-cancer chronic health effects included for the MEIR, MEIW, Abram Agnew Elementary School, Dolores Huerto Middle School, Kathleen MacDonald High School, all residential receptors and all nonresidential receptors.

The estimated health and hazard impacts at the residential MEIR, MEIW, and Students are provided in Table 3.1-7.

Table 3.1-7: Summary of Health Risks (Unmitigated Construction)

Impact Scenario	Cancer Risk (risk per million) [1]	Chronic Non-Cancer Hazard Index	$PM_{2.5}$ Concentration (mg/m^3)
Residential Maximally Exposed Individual Resident (MEIR)			
Unmitigated Project Construction	11.63	0.01	0.084
Thresholds of Significance	10	1	0.3
Exceeds Individual Source Threshold	**Yes**	**No**	**No**
Worker Maximally Exposed Individual Worker (MEIW)			
Unmitigated Project Construction	1.63	0.01	0.118
Thresholds of Significance	10	1	0.3
Exceeds Individual Source Threshold	**No**	**No**	**No**
Abram Agnew Elementary School			
Unmitigated Project Construction	14.69	<0.005	0.03
Thresholds of Significance	10	1	0.3
Exceeds Individual Source Threshold	**Yes**	**No**	**No**

Impact Scenario	Cancer Risk (risk per million) [1]	Chronic Non-Cancer Hazard Index	$PM_{2.5}$ Concentration (mg/m^3)
Dolores Huerta Middle School			
Unmitigated Project Construction	1.42	<0.005	0.02
Thresholds of Significance	10	1	0.3
Exceeds Individual Source Threshold	**No**	**No**	**No**
Kathleen MacDonald High School			
Unmitigated Project Construction	0.34	<0.005	0.005
Thresholds of Significance	10	1	0.3
Exceeds Individual Source Threshold	**No**	**No**	**No**
Thresholds of Significance	10	1	0.3
Exceeds Individual Source Threshold?	**No**	**No**	**No**

Notes:
$PM_{2.5}$ = particulate matter 2.5 micrometers or less in diameter
mg/m^3 = micrograms per cubic meter
[1] Cancer risk is identified by multiplying the risk sum from HARP2 by 1,000,000.
Source of Thresholds: Bay Area Air District. 2022. California Environmental Quality Act Air Quality Guidelines.
Sources of Project-specific Data: Appendix B.

As identified in the HRA and shown in Table 3.1-7, the proposed project's construction DPM emissions would result in exceedance of the cancer risk thresholds at the residential MEIR and at Abram Agnew Elementary School and would require the implementation of MM AIR-1 to ensure impacts are less than significant. MM AIR-1 would ensure that emissions of DPM are reduced by requiring the use of Tier 4 Interim engines or the equivalent for all construction equipment equal to or greater than 50 horsepower. As shown in Table 3.1-8 below, implementation of MM AIR-1 would ensure that construction DPM emissions generated by the proposed project would not result in exceedance of Bay Area Air District cancer risk and chronic non-cancer HI thresholds. The MEIW and the Middle School and High School the student receptors do not exceed the significance thresholds in the unmitigated scenario; therefore, only the residential MEIR and the Abram Agnew Elementary School are shown in the table below.

Table 3.1-8: Summary of Health Risks at the MEIR (Mitigated Construction)

Impact Scenario	Cancer Risk (risk per million) [1]	Chronic Non-cancer Hazard Index	$PM_{2.5}$ Concentration (mg/m^3)
Maximally Exposed Individual Resident (MEIR)			
Mitigated Project Construction	3.60	0.006	0.05
Thresholds of Significance	10	1	0.3
Exceeds Individual Source Threshold	**No**	**No**	**No**
Abram Agnew Elementary School			
Mitigated Project Construction	**4.52**	**<0.005**	**.03**

Impact Scenario	Cancer Risk (risk per million) [1]	Chronic Non-cancer Hazard Index	$PM_{2.5}$ Concentration (mg/m^3)
Thresholds of Significance	10	1	0.3
Exceeds Individual Source Threshold	**No**	**No**	**No**

Notes:
$PM_{2.5}$ = particulate matter 2.5 micrometers or less in diameter
mg/m^3 = micrograms per cubic meter
[1] Cancer risk is identified by multiplying the risk sum from HARP2 by 1,000,000.
Source of Thresholds: Bay Area Air District. 2022. California Environmental Quality Act Air Quality Guidelines.
Sources of Project-specific Data: Appendix B.

Cumulative Health Risk Assessment

The Bay Area Air District recommends assessing the potential cumulative impacts from sources of TACs within 1,000 feet of a project. As a result, a cumulative HRA was performed that examined the cumulative impacts of the proposed project's construction emissions and existing sources of TAC emissions within 1,000 feet of the proposed project.

For a project-level analysis, Bay Area Air District provides several tools for use in screening potential sources of TACs. This includes the Stationary Source Screening Map[12] which provides all the stationary sources permitted by the Air District with risk and hazard estimates; Roadway Screening Data Layers providing estimated cancer risks, hazards, and $PM_{2.5}$ concentrations for all Bay Area highways and surface streets;[13] and Rail and Railyard Screening Data Layers,[14] providing estimated cancer risks, hazards, and $PM_{2.5}$ concentrations from diesel locomotives and select railyards.

The cumulative health risk results during project construction, including health risks from the existing stationary sources, roadway, and rail data from the Bay Area Air District sources above, are summarized in Table 3.1-9. Outputs from the Bay Area Air District screening tools are documented in Appendix B.

Table 3.1-9: Summary of the Cumulative Health Impacts at the MEIR during Construction

Source	Cancer Risk (per million)	Chronic Hazard index	$PM_{2.5}$ Concentration ($\mu g/m^3$)
Risks at the Maximally Exposed Individual Residence (MEIR)			
Mitigated Construction	3.60	0.006	0.05
Bay Area Air District-Permitted Stationary Source: Generator (Facility ID: 200384)	3.93	0.00	0.01
Air Basin Roadways at the Proposed Project	9.57	0.04	0.29
Air Basin Railways at the Proposed Project	0.00	0.00	0.00

[12] Bay Area Air District. 2023. Stationary Source Screening Map. Website: https://baaqmd.maps.arcgis.com/apps/webappviewer/index.html?id=845658c19eae4594b9f4b805fb9d89a3. Accessed June 1, 2024.
[13] Bay Area Air District. 2022. CEQA Roadway Layers. Accessed October 2024.
[14] Bay Area Air District. 2024. CEQA Rail and Railyard Layers. Accessed October 2024.

Source	Cancer Risk (per million)	Chronic Hazard index	$PM_{2.5}$ Concentration (⍰g/m^3)
Cumulative Health Risks	17.10	0.04	0.35
Bay Area Air District's Cumulative Thresholds of Significance	100	10	0.8
Threshold Exceeded?	**No**	**No**	**No**

Notes:
$PM_{2.5}$ = particulate matter, including dust, 2.5 micrometers or less in diameter
mg/m^3 = micrograms per cubic meter.
The MEIR represents the maximally exposed receptor and health risks at the MEIW and School receptors are lower than the MEIR. Therefore, only values for the MEIR are shown.

As noted in Table 3.1-8 the cumulative health impacts from mitigated project construction and existing sources of TACs would be less than the Bay Area Air District cumulative thresholds of significance for cancer risk, non-cancer chronic hazards and annual $PM_{2.5}$ concentrations. The proposed project, along with cumulative sources of nearby TAC emissions, would be below the Bay Area Air District's cumulative thresholds of significance. Accordingly, the proposed project would not have a cumulatively considerable impact.

Non-CEQA Impacts - Project as a Receptor

Pursuant to the City's General Plan policy MS-11.1, new residential projects categorized as sensitive receptors should incorporate effective mitigation into project designs or be located an adequate distance from sources of TACs to avoid significant risks to health and safety.

To determine the necessity of measures beyond those already required for the proposed project through compliance with regulations, the Bay Area Air District screening analysis was applied at the project site to evaluate whether existing TACs could adversely affect individuals living within the proposed project. The Bay Area Air District tools for screening potential sources of TACs were used for this purpose.

Table 3.1-10 summarizes the cumulative health impacts at the proposed project site at project buildout.

Table 3.1-10: Summary of the Cumulative Health Impacts at the Project Site

Source Name/Type	Cancer Risk (per million)	Chronic Hazard Index	Maximum Annual $PM_{2.5}$ Concentration (µg/m^3)
Bay Area Air District-Permitted Stationary Source: Generator (Facility ID: 200384)	3.93	0.00	0.01
Existing Roadways[1]	19.57	0.09	0.715
Existing Railways	0.00	0.00	0.00

Source Name/Type	Cancer Risk (per million)	Chronic Hazard Index	Maximum Annual $PM_{2.5}$ Concentration ($\mu g/m^3$)
Cumulative Health Risks			
Cumulative Total	23.50	0.09	0.725
Bay Area Air District Cumulative Thresholds of Significance	**100**	**10**	**0.8**
Threshold Exceedance?	**No**	**No**	**No**

Notes:
$\mu g/m^3$ = micrograms per cubic meter
$PM_{2.5}$ = particulate matter less than 2.5 microns in diameter
[1] Greatest value for cancer risk, chronic hazard index and annual $PM_{2.5}$ concentrations on-site was found at coordinates UTM 594592.2 E 4140300 N
Source: Appendix B.

As shown in Table 3.1-9, the cumulative health impacts to the future on-site residents from existing TAC emission sources located within 1,000 feet of the project site are far below Bay Area Air District's cumulative significance thresholds for cancer risk, chronic hazards and annual $PM_{2.5}$ concentrations. As such, the proposed project would result in less than significant cumulative health impacts related to exposing sensitive receptors to substantial concentrations of pollutants. Thus, the cumulative health risk impacts from project construction and operation would be less than significant after incorporation of MM AIR-1.

Level of Significance

Potentially significant impact.

Mitigation Measures

Construction activities associated with the proposed project could expose sensitive receptors near the project site to a maximum estimated cancer risk of 11.63 in a million due to DPM emissions that could exceed the Bay Area Air District threshold for annual cancer risk of 10 per million by 1.63 per million. Standard Permit Conditions for Air Quality and the following mitigation measure would reduce this impact to less than significant.

MM AIR-1 All off-road equipment equal to or greater than 50 horsepower shall meet either United States Environmental Protection Agency (EPA) or California Air Resources Board (CARB) Tier 4 Interim off-road emission standards during all construction activities, as feasible. If use of Tier 4 equipment is not available or feasible, the contractor shall alternatively use equipment that meets EPA emission standards for Tier 3 engines and include particulate matter emissions control equivalent to CARB Level 3 verifiable diesel emission control devices. The project applicant shall submit verification documentation to the Director of Planning, Building and Code Enforcement, or the Director's designee, for review and approval prior to issuance of any grading and building permits.

The verification documentation shall demonstrate that the off-road equipment used on-site to construct the project would comply with Tier 4 Interim off-road emission standards. Off-road equipment descriptions and information included in the construction management plan may include but are not limited to equipment type, equipment manufacturer, equipment identification number, engine model year, engine certification (Tier rating), horsepower, and engine serial number.

The verification documentation shall be reviewed and approved by the Director of Planning, Building and Code Enforcement, or the Director's designee, prior to the issuance of any demolition, grading, or building permits (whichever occurs earliest).

Level of Cumulative Significance After Mitigation

Less than significant with mitigation incorporated.

Cumulative Analysis

The geographic area of this cumulative analysis is a 1,000-foot boundary around the proposed project site, as recommended by the Bay Area Air District. As previously discussed, the Bay Area Air District recommends assessing the potential cumulative impacts from sources of TACs within 1,000 feet of a project. As a result, a cumulative HRA was performed that examined the cumulative impacts of the proposed project's construction emissions and existing sources of TAC emissions within 1,000 feet of the proposed project.

For a project-level analysis, Bay Area Air District provides several tools for use in screening potential sources of TACs. This includes the Stationary Source Screening Map which provides all the stationary sources permitted by the Air District with risk and hazard estimates; Roadway Screening Data Layers providing estimated cancer risks, hazards, and $PM_{2.5}$ concentrations for all Bay Area highways and surface streets; and Rail and Railyard Screening Data Layers, providing estimated cancer risks, hazards, and $PM_{2.5}$ concentrations from diesel locomotives and select railyards.

The cumulative health risk results during project construction, including health risks from the existing stationary sources, roadway, and rail data in combination with the emissions from the proposed project, are summarized in the analysis above and the cumulative health impacts from mitigated project construction and existing sources of TACs would be less than the Bay Area Air District cumulative thresholds of significance for cancer risk, non-cancer chronic hazards and annual $PM_{2.5}$ concentrations. Accordingly, the proposed project would not have a cumulatively considerable impact.

As previously discussed, the project-level analysis concludes that the proposed project will not result in significant health risks to nearby receptors with implementation of MM AIR-1. Accordingly, the proposed project would not have a cumulatively considerable contribution to impacts that would expose the public within the geographic area to substantial cumulative pollutant concentrations. Therefore, no cumulative impact would occur.

Level of Cumulative Significance Before Mitigation

Potentially significant impact.

Mitigation Measures

Implement MM AIR-1.

Level of Cumulative Significance After Mitigation

Less than significant with mitigation incorporated.

Objectionable Odors Exposure

Impact AIR-4: The proposed project would not result in other emissions (such as those leading to odors) adversely affecting a substantial number of people.

Impact Analysis

According to Bay Area Air District 2022 CEQA Guidelines, odor impacts could occur if the proposed project introduces a new odor source near existing receptors. The Bay Area Air District provides a list odor-generating facilities. Multi-family residences are not odor-generating facilities (according to Bay Area Air District).

Potential sources that may emit odors during construction activities include exhaust from diesel construction equipment. However, because of the temporary nature of these emissions, the intermittent nature of construction activities, and the highly diffusive properties of diesel PM exhaust, nearby receptors would not be affected by diesel exhaust odors associated with project construction. Odors from these sources would be localized and generally confined to the immediate area surrounding the proposed project site. The proposed project would utilize typical construction techniques, and the odors would be typical of most construction sites and temporary in nature. Thus, the proposed project would not introduce a new odor source near existing receptors during construction.

The proposed project would involve the development of residences whose operations could lead to odors from associated laundry cleaning, vehicle exhaust, outdoor cooking, and waste disposal. However, such odors generated by project operation would be small in quantity and duration and likely not generate objectionable odors that may affect a substantial number of nearby receptors. Thus, the proposed project would not introduce a new odor source near existing receptors during operation. Accordingly, odor impacts would be less than significant.

Level of Significance

Less than significant impact.

Mitigation Measures

None required.

Cumulative Analysis

The geographic area of this cumulative analysis is a 2-mile radius around the proposed project site, as recommended by Bay Area Air District. A cumulative odor impact would occur if the proposed project itself introduces a new odor source to nearby existing receptors, and/or if the odorous emissions from cumulative development became collectively noticeable to the community. As

previously stated, the Bay Area Air District provides a list of recommended odor-generating facilities, and multi-family residential uses are not considered odor-generating uses. Therefore, the proposed project would not introduce new sources of odors to nearby existing receptors, and therefore would not result in a cumulatively considerable increase in odors.

Level of Cumulative Significance Before Mitigation

Less than significant impact.

Mitigation Measures

None required.

Level of Cumulative Significance After Mitigation

Less than significant impact.

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3.2 - Biological Resources

3.2.1 - Introduction

This section describes the existing biological setting and potential effects from project implementation on the project site and the surrounding area. This section also identifies mitigation measures to reduce these potential effects to less than significant levels. Descriptions and analysis in this section are based in part on a field survey performed by an FCS Biologist on April 29, 2024, and a Biological Memorandum prepared by FCS for the proposed 211-281 River Oaks Parkway Residential project on November 18, 2024 (Appendix C).

The project site is located at 211, 251, and 281 River Oaks Parkway, in the City of San José, California. The project site is located within the *Milpitas, California* United States Geological Survey (USGS) 7.5-minute Topographic Quadrangle Map.

No public comments were received during the Environmental Impact Report (EIR) scoping period related to biological resources.

3.2.2 - Environmental Setting

The project site encompasses 9.82 acres and is located at 211, 251, and 281 River Oaks Parkway in the City of San José California (Exhibit 2-1; Exhibit 2-2). The site is located on Assessor's Parcel Numbers (APN) 097-22-034 and 097-33-033. The project site is currently occupied by three 2-story commercial office buildings, associated surface parking, landscaping with ornamental trees (deciduous and evergreen), ruderal vegetation, parking lot lighting fixtures, and pedestrian pathways. Of the 9.82 acres, 9.67 acres would be allocated for the proposed development, with approximately 0.15 acre reserved for widening Iron Point Drive. The project site has a General Plan Land Use Designation of Industrial Park (IP) and is located within the Transit Employment Residential Overlay (TERO). The TERO identifies sites within the North San José Employment Center that may be appropriate for residential development and supports residential development as an alternative use at a minimum average net density of 75 units per acre. Sites with this overlay may also be developed with uses consistent with the underlying designation.

Records Searches and Pedestrian Survey to Identify Existing Biological Resources

Literature Review

Existing environmental documentation was reviewed for the project site and immediate vicinity. This documentation included literature pertaining to the habitat requirements of special-status species potentially occurring on or near the site, and Federal Register listings, protocols, and species data provided by the United States Fish and Wildlife Service (USFWS) and California Department of Fish and Wildlife (CDFW).

The *Milpitas, California* USGS 7.5-minute Topographic Quadrangle Map and aerial photographs were reviewed as a preliminary analysis of the existing conditions within the project site and immediate vicinity. Information obtained from the review of the topographic maps included elevation range,

general watershed information, and potential drainage feature locations.[1] Aerial photographs provide a perspective of the most current site conditions relative to on-site and off-site land use, plant community locations, and potential locations of wildlife movement corridors. FCS also reviewed United States Department of Agriculture (USDA) soil surveys to determine whether the soil conditions on-site are suitable for any special-status plant species.

A list of threatened, endangered, and otherwise special-status species previously recorded within the project vicinity was compiled. The list was based on a search of the CDFW's California Natural Diversity Database (CNDDB), a special-status species and plant community account database; the California Native Plant Society (CNPS) Electronic Inventory of Rare and Endangered Plants of California (CNPSEI); and a USFWS Information Planning and Conservation Report Search for the *Milpitas*, *California* USGS 7.5-minute Topographic Quadrangle Map.[2,3] The database search results can be found in Appendix C.

Topographic Maps and Hydrology

Information obtained from the topographic maps included elevation, general watershed information, and potential drainage feature locations using Google Earth in conjunction with the United States Environmental Protection Agency (EPA) Watershed Assessment, Tracking, and Environmental Results System (WATERS). Aerial photographs provided a perspective of the current site conditions relative to on-site and off-site land use, vegetation community locations, and potential locations of wildlife movement corridors.

Elevations within the project site range from 20 feet above mean sea level (AMSL) in the southwest portion of the property to approximately 29 feet AMSL in the central portion. No drainages were identified within the project site.

Soils

The USDA National Resources Conservation Service (NRCS) has published soil surveys that describe the soil series (i.e., group of soils with similar profiles) occurring within a particular area. These profiles include major horizons with similar thickness, arrangement, and other important characteristics. These series are further subdivided into soil mapping units that provide specific information regarding soil characteristics. Many special-status plant species have a limited distribution based exclusively on soil type. Therefore, pertinent NRCS soil survey maps were reviewed to determine the existing soil mapping units within the project site and to inform whether the soil conditions on-site are potentially suitable for any special-status plant species. However, NRCS soil maps utilize an approximately 1.4-acre minimum mapping unit, and line placement may not be accurate on a large (i.e., parcel-level) scale.

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1 United States Geological Survey (USGS). 2023. National Geospatial Program. Website: https://www.usgs.gov/core-science-systems/national-geospatial-program/us-topo-maps-america?qt-science_support_page_related_con=4#qt-science_support_page_related_con. Accessed October 30, 2024.

2 California Department of Fish and Wildlife (CDFW). 2023. California Natural Diversity Database (CNDDB) RareFind 5 California Natural Diversity Database Query for Special-Status Species. Website: https://map.dfg.ca.gov/rarefind/view/RareFind.aspx. Accessed October 30, 2024.

3 United States Fish and Wildlife Service (USFWS). 2023. Information for Planning and Consultation (IPaC). Website: https://ecos.fws.gov/ipac/. Accessed October 30, 2024.

Soil survey information for the project site was obtained from the NRCS Web Soil Survey.[4] The NRCS Web Soil Survey (WSS) depicts two soil types within the project site: Urbanland-Campbell Complex, 0-2 percent slope; and Urbanland-Elder Complex, 0-2 percent slope.

Special-status Species Database Search

An FCS Biologist compiled a list of threatened, endangered, and otherwise special-status species previously recorded within the project vicinity based on a search of the USFWS Information for Planning and Consultation (IPaC) database,[5] the CNDDB, and the CNPSEI of Rare and Endangered Vascular Plants of California for the *Milpitas, California* USGS 7.5-minute Topographic Quadrangle Map, and the eight surrounding quadrangles.[6,7] The CNDDB Biogeographic Information and Observation System (BIOS 6) was used to determine the distance between the known occurrences of special-status species and the project site.[8]

Trees

Prior to conducting the reconnaissance-level survey, an FCS Biologist reviewed applicable City and County ordinances pertaining to the tree preservation and protective measures and their tree replacement conditions or permits required.

Jurisdictional Waters and Wetlands

A FCS Biologist reviewed the EPA WATERS and aerial photography to identify potential natural drainage features and water bodies. In general, all surface drainage features identified as blue-line streams on USGS maps and linear water or wetland features that exhibit evidence of concentrated flow are considered potentially subject to State and federal regulatory authority as waters of the United States and/or State. A preliminary assessment in the field was conducted to determine the location of any existing drainages and the limits of project-related grading activities to aid in determining whether a formal delineation of waters of the United States or State is necessary.

Preliminary Arborist Report

Additionally, a Preliminary Arborist Report was prepared by HortScience|Bartlett Consulting in June 2023 and revised in February 2025 (Appendix C). The survey boundaries covered the entirety of the project site and consisted of an assessment of the trees within the project area and on the adjacent sites where necessary. This assessment included species, size, condition, and suitability for preservation. Tree protection specifications, guidelines, and expected impact rating for those affected by the proposed project were also included.

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4 Natural Resources Conservation Service (NRCS). 2023. Web Soil Survey (WSS). United States Department of Agriculture (USDA). Website: https://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx. Accessed October 30, 2024.

5 United States Fish and Wildlife Service (USFWS). 2024. Information for Planning and Consultation (IPaC). Website: https://ecos.fws.gov/ipac/. Accessed December 5, 2024.

6 California Department of Fish and Wildlife (CDFW). 2024. California Natural Diversity Database (CNDDB) RareFind 5 California Natural Diversity Database Query for Special-Status Species. Website: https://map.dfg.ca.gov/rarefind/view/RareFind.aspx. Accessed December 5, 2024.

7 California Native Plant Society (CNPS). 2024. California Native Plant Society Rare and Endangered Plant Inventory. Website: http://www.rareplants.cnps.org/. Accessed December 5, 2024.

8 California Department of Fish and Wildlife (CDFW). 2024. Biogeographic Information and Observation System (BIOS 5). Website: https://map.dfg.ca.gov/bios/. Accessed December 5, 2024.

Field Surveys

The project site was surveyed on April 29, 2024 between the hours of 10:00 a.m. to 11:30 a.m. Weather conditions were varied between 57-67°F (degrees Fahrenheit) with sunny skies and wind speeds averaging 8 mph. The purpose of the survey was to assess general site conditions, identify vegetation and wildlife habitats, and identify any potentially suitable habitat areas for various special-status plant and wildlife species. Special-status species were identified during the literature review, and special attention was paid to sensitive habitats and areas potentially supporting special-status floral and faunal species.

Common plant species observed during the survey were identified by visual characteristics and morphology in the field and recorded in a field notebook. Uncommon and less familiar plants were identified later with the use of taxonomical guides.[9,10,11,12] Taxonomic nomenclature used in analysis follows The Jepson Manual: Vascular Plants of California.[13] Common plant names, when not available from The Jepson Manual, were taken from other regionally specific references.

Wildlife species detected during the field-level survey by sight, calls, tracks, scat, or other signs were recorded in a field notebook. Notations were made regarding suitable habitat for those special-status species determined to have the potential to occur within the project site. Appropriate field guides were used to assist with species identification during surveys.

Physical Habitat/Vegetation

Vegetation communities are assemblies of plant species growing in an area of similar biological and environmental factors. The following section describes the vegetation communities and land cover types present in the project area.

Urban/Developed

Developed land is characterized by permanent or semi-permanent strutures, pavement, or hardscape and landscape areas that often require irrigation. The urban/developed vegetation community includes land that has been developed or otherwise covered with a permanent man-made surface. Areas where no natural land is evident, or because large amounts of debris or other materials have been placed upon it, may also be included. The entire project site is composed of urban/developed land that is currently occupied by three vacant, two story commercial office buildings and associated surface parking. Vegetation in these areas are typically composed of manicured vegetation, including street/shade tees, lawns, and shrubs, and little or no exposed soil substrate. Species observed within the project site during the field survey and the arborist survey consist of Callery pear (Pyrus calleryana), coast redwood (Sequoia sempervirens), sweetgum

[9] Clarke, O.F., D. Svehla, G. Ballmer, and A. Montalvo. 2007. Flora of the Santa Ana River and Environ: With References to World Botany. Berkeley, California: Heyday Books.

[10] Hitchcock, A. 1971. Manual of the Grasses of the United States in Two Volumes, Volume One. Second Edition. New York: Dover Publications, Inc.

[11] McAuley, M. 1996. Wildflowers of the Santa Monica Mountains, Second Edition. Canoga Park, California: Canyon Publishing Company.

[12] Munz, P. 1974. A Flora of Southern California. Berkeley: University of California Press.

[13] Baldwin, B. et al. 2012. The Jepson Manual: Vascular Plants of California. Berkeley: University of California Press. County of San Bernardino (Bernardino). 2007 (amended 2015).

(Liquidambar styraciflua), silver dollar gum (Eucalyptus polyanthemos), European hackberry (Celtis australis), and others.

Wildlife

The vegetation community and land cover types discussed above provide habitat for limited wildlife species. Wildlife activity observed during the general biological survey consisted of avian species, including black phoebe (*Sayornis nigricans*), house sparrow (*Passer domesticus*), American crow (*Corvus brachyrhynchos*), and mourning dove (*Zenaida macroura*).

Sensitive Biological Communities

The CDFW maintains a database of natural communities that classifies vegetation types found within the State of California and Ranks them based on rarity. Communites ranked S1-S3 are considered sensitive natural communities. Wetlands and riparian habitats are also typically considered sensitive natural communities. The project site does not contain any sensitive biological communities such as wetlands, streams, or riparian habitat.

Special-status Species

Special-status species, whether plants, wildlife, or fish, are considered sufficiently rare that they require special consideration and/or protection and have been or should be listed as rare, threatened, or endangered by the federal and/or State governments. Special-status species are defined as meeting one or more of the following criteria:

- Listed or proposed for listing under the California Endangered Species Act (CESA) and the federal Endangered Species Act;
- Protected by the Migratory Bird Treaty Act (MBTA);
- CDFW Fully Protected Species and Species of Special Concern; or
- Plant species on the CNPS List ranked as 1A, 1B, 2A, 2B, 3, and 4.

All plants appearing on the CNPS List ranked 1 or 2 are considered to meet the California Environmental Quality Act (CEQA) Guidelines Section 15380 criteria. Rank 3 and 4 plants do not automatically meet this definition. Rank 4 plants do not clearly meet CEQA standards and thresholds for impact considerations. Nevertheless, some level of CEQA review is justified for California Rare Plant Rank (CRPR) 4 taxa, and under some circumstances, a full impact analysis is warranted. Taxa that can be shown to meet the criteria for endangered, rare, or threatened status under CEQA Section 15380(d) or that can be shown to be regionally rare or unique as defined in CEQA Section 15125(c) must be fully analyzed in a CEQA document. The following discussion focuses on the potential for occurrence of special-status species in the Study Area.

Special-status Plants

The CNDDB and CNPS list 33 special-status or sensitive plant species that have been recorded within the *Milpitas, California,* USGS 7.5-minute Topographic Quadrangle Map and the eight surrounding quadrangles (Appendix C). No rare or special-status plant species were observed during the 2024 general biological survey.

Eight special-status plant species were recorded within a 5-mile radius of the project site which include alkali milkvetch (*Astragalas tener var. tener*), Congdon's tarplant (*Centromadia parryi ssp. congdonii*), Point Reyes salty bird's beak (*Chloropyron maritimum ssp. palustre*), robust spineflower (*Chorizanthe robusta var. robusta*), Hoover's button-celery (*Eryngium aristulatum var. hooveri*), Hall's bushmallow (*Malacothamnus halli*i), hairless popcornflower (*Plagiobothrys glaber*), and saline clover (*Trifolium hydrophilum*). However, these species require specific habitats or conditions to occur, including valley grasslands, cismontane woodlands, chaparral, or swamps and marshes. Given the entire developed nature of the project site, none of these habitat types are present on-site. Therefore, it is reasonable to conclude that no special-status plants are expected to occur on the project site. The developed state of the project site does not provide suitable habitat for any special-status plant species recorded in the CNDDB or CNPS Inventory due to the lack of natural vegetation and the lack of suitable substrate.

Special-status Wildlife

The CNDDB identifies 42 federal and State-listed threatened and/or endangered wildlife species and State Species of Special Concern that have been recorded within the *Milpitas, California,* USGS 7.5-minute Topographic Quadrangle Map and the eight surrounding quadrangles (Appendix B). Of these 42 species, 26 special-status species have been recorded within a 5-mile radius of the project site such as the northwestern pond turtle (*Actinemys marmorata*), tricolored blackbird (*Agelaius tricolor*), California tiger salamander–Central California District Population Segment (DPS) (*Ambystoma californiense* pop. 1), northern California legless lizard *(Anniella pulchra*), pallid bat (*antrozous pallidus*), golden eagle (A*quila chyrsaetos*), burrowing owl (*Athene cunicularia*)) (newly listed "candidate" species under CESA, Crotch's bumble bee (*Bombus crotchii*), and several others.

Based upon the field survey, literature review, and on-site habitat conditions, two special-status wildlife species (the pallid bat and Townsend's big-eared bat (*Corynorhinus townsendii*)), and functional groups (nesting birds and roosting bats) could have the potential to occur within the site as vagrant, dispersing, nesting, or foraging individuals, and are therefore discussed in more detail below. The additional 40 identified species are not expected to occur within the project site due to the absence of suitable habitat such as aquatic or aestivation habitat or micrhoabitats such as beach dunes, chaparral, desert scrub, sandy washes, stream terraces, ponds, marshes or rivers. However, the project site does contain mature trees, which could provide suitable nesting habitat for resident and migratory bird species protected under federal and State regulations. Additionally, the vacant structures on-site offer marginal roosting habitat for special-status bat species.

Protected Nesting Birds

The active nests of most resident and migratory (game and non-game) birds are protected by the MBTA and/or Fish and Game Code and are, therefore, categorized as "special-status" wildlife functional group during this time.

The project site provides nesting opportunities for different taxa of birds. Trees present within the project site could provide nesting habitat for different taxa of bird species, including ground nesters, and common songbirds (passerine birds). Therefore, it is likely that protected bird nests could be

present on the project site during the nesting season (typically considered to last from February 1 to August 31 for most species).

Bats (Including Special-status Bats)

Roosts are used during the daytime to seek refuge; at night between foraging excursions to rest, digest prey, seek refuge from predators or poor weather conditions, or for social purposes; and in winter for hibernation. Adult females and their young use some particularly secure roosts as maternity roosts. The number of bats occupying a given roost can vary from a solitary individual to a large colony, depending on the species. Roosting sites are very sensitive to human disturbance, especially when bats are hibernating or rearing young.

At dusk, bats leave their roosts to forage for insects in nearby ponds or riparian habitats. Bats generally prey on insect species that are locally abundant near water bodies. Ecotone areas (areas of transition between habitats) are also used as foraging areas.

The project site offers marginal but potentially viable roosting habitat for bat species. Bats could potentially use the abandoned buildings on-site to roost and forage over the grassland within the project site. The pallid bat and Townsend's big-eared bat have the potential, albeit low, to roost within the project site.

Wildlife Movement Corridors and Nursery Sites

A wildlife corridor is an area of habitat connecting wildlife populations separated by human activities or structures (such as roads, development, or logging). This allows an exchange of individuals between populations, which may help prevent the negative effects of inbreeding and reduced genetic diversity (via genetic drift) that often occur within isolated populations.

An FCS Biologist evaluated information on wildlife linkages within the project site from the CDFW's BIOS 6 database, which is an advanced tool designed to manage, visualize, and analyze biogeographic data, and concluded that the proposed project does not have the potential to interfere with the movement of native wildlife.[14] The project site is bounded on all sides by dense urban developments; therefore, the site is not connected to habitats suitable for sustained wildlife populations and surrounding land uses are not likely to be utilized by wildlife populations due to significant previous anthropogenic disturbances. Therefore, the site would not interfere with the movement of any native resident or migratory species, or impact established native or migratory wildlife corridors.

Wildlife nursery sites include nesting birds and maternity bat roosts, aquatic breeding habitats, and special-status and non-special-status wildlife breeding or nesting colonies. No signifcant breeding/nesting colonies were observed during the wildlife survey. However, individual nesting birds and roosting bats have the potential of being present on-site and within disturbance distance

[14] California Department of Fish and Wildlife Services (CDFW). 2024. BIOS 6. Website: https://wildlife.ca.gov/Data/BIOS. Accessed February 7, 2025.

seasonally. For exampble, songbirds and raptor species likely nest in on-site trees that occur throughout the site as well as in the surrounding areas.

Regulated Trees

The proposed project would include removal of 183 trees (118 ordinance-size and 70 non-ordinance-size). Trees greater than 38-inch circumference would not be removed unless a Tree Removal Permit or equivalent has been approved for the removal of such tree. Any street tree removal would be permitted separately by the Department of Transportation. Tree replacement would occur at a ratio of 1:1 to 5:1 depending on the size of the tree to be removed, and replacement trees would be a minimum of 15 gallons in size. The project requires 651 15-gallon replacement trees or 325 24-inch box trees on-site and 1 15-gallon tree. The project proposes the replacement of 148 24-inch box trees on-site, which is the equivalent of 296 15-gallon trees. The project would pay an in lieu fee for the 355 trees that would not be replaced.

3.2.3 - Regulatory Framework

Federal

Endangered Species Act

The United States Congress passed the Endangered Species Act in 1973 to protect those species that are endangered or threatened with extinction. The Endangered Species Act is intended to operate in conjunction with the National Environmental Policy Act (NEPA) to help protect the ecosystems upon which endangered and threatened species depend.

The Endangered Species Act prohibits the "take" of endangered or threatened wildlife species. "Take" is defined to include harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting wildlife species or any attempt to engage in such conduct (16 United States Code [USC] § 1531 *et seq*.). "Harm" is further defined to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing behavioral patterns (50 Code of Federal Regulations [CFR] § 17.3). "Harass" is defined as actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns (50 CFR § 17.3). Actions that result in take can result in civil or criminal penalties.

The Endangered Species Act and the Clean Water Act (CWA) Section 404 guidelines prohibit the issuance of wetland permits for projects that jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species. The United States Army Corps of Engineers (USACE) must consult with the USFWS and/or the National Marine Fisheries Service (NOAA Fisheries) when threatened or endangered species under their jurisdiction may be affected by a proposed project. In the context of the proposed project, Endangered Species Act consultation would be initiated if development resulted in take of a threatened or endangered species or if issuance of a Section 404 permit or other federal agency action could result in take of an endangered species or adversely modify critical habitat of such a species.

Migratory Bird Treaty Act

Raptors (birds of prey), migratory birds, and other avian species are protected by a number of State and federal laws. The federal MBTA prohibits the killing, possessing, or trading of migratory birds except in accordance with regulations prescribed by the Secretary of the Interior.

Clean Water Act

The agencies are in receipt of the U.S. Supreme Court's May 25, 2023, decision in the case of *Sackett v. Environmental Protection Agency*. In light of this decision, the agencies will interpret the phrase "waters of the United States" consistent with the Supreme Court's decision in the *Sackett* case. In *Sackett*, the Supreme Court adopted the *Rapanos* plurality's test for adjacent wetlands: only those wetlands with a continuous surface connection to other regulated waters, such that the two are indistinguishable.

The USACE administers Section 404 of the federal CWA, which regulates the discharge of dredge and fill material into waters of the United States. The term "waters of the United States" is defined in USACE regulations at 33 Code of Federal Regulations Part 328.3(a) as:

1. Waters which are:
    a. Currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
    b. The territorial seas; or
    c. Interstate waters;
2. Impoundments of waters otherwise defined as waters of the United States under this definition, other than impoundments of waters identified under paragraph (a)(5) of this section;
3. Tributaries of waters identified in paragraphs (a)(1) or (2) of this section that are relatively permanent, standing or continuously flowing bodies of water;
4. Wetlands adjacent to the following waters:
    a. Waters identified in paragraph (a)(1) of this section; or
    b. Relatively permanent, standing or continuously flowing bodies of water identified in paragraph (a)(2) or (a)(3) of this section and with a continuous surface connection to those waters;
5. Intrastate lakes and ponds not identified in paragraphs (a)(1) through (4) of this section that are relatively permanent, standing or continuously flowing bodies of water with a continuous surface connection to the waters identified in paragraph (a)(1) or (a)(3) of this section.

The following are not "waters of the United States":

1. Waste treatment systems, including treatment ponds or lagoons, designed to meet the requirements of the Clean Water Act;
2. Prior converted cropland designated by the Secretary of Agriculture. The exclusion would cease upon a change of use, which means that the area is no longer available for the

production of agricultural commodities. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with the EPA;

3. Ditches (including roadside ditches) excavated wholly in and draining only dry land and that do not carry a relatively permanent flow of water;
4. Artificially irrigated areas that would revert to dry land if the irrigation ceased;
5. Artificial lakes or ponds created by excavating or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing;
6. Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating or diking dry land to retain water for primarily aesthetic reasons;
7. Waterfilled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States; and
8. Swales and erosional features (e.g., gullies, small washes) characterized by low volume, infrequent, or short duration flow.

Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the CWA, the final authority regarding CWA jurisdiction remains with the EPA and/or USACE.

"Wetland" refers to areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and seasonal wetlands. Wetlands are considered jurisdictional if they fall under one of the categories of waters of the United States defined above. The USACE jurisdiction typically extends up to the ordinary high-water mark (OHWM).

In general, a USACE permit must be obtained before placing fill in wetlands or other waters of the United States. The type of permit depends on the impacted acreage, the purpose of the proposed fill, and other factors.

Section 401

Section 401 of the CWA states that "any applicant for a federal permit for activities that involve a discharge to waters of the State, shall provide the federal permitting agency a certification from the State in which the discharge is proposed that states that the discharge will comply with the applicable provisions under the federal Clean Water Act." Therefore, before the USACE will issue a Section 404 permit, applicants must apply for and receive a Section 401 Water Quality Certification from the Regional Water Quality Control Board (RWQCB).

State

California Endangered Species Act

The State of California enacted the CESA in 1984. CESA pertains to State-listed endangered and threatened species. CESA requires State agencies to consult with the CDFW when preparing CEQA documents. The purpose of CESA is to ensure that the lead agency actions do not jeopardize the continued existence of a listed species or result in the destruction or adverse modification of habitat essential to the continued existence of those species, if there are reasonable and prudent alternatives available (Fish and Game Code [FGC] § 2080). CESA directs agencies to consult with CDFW on projects or actions that could affect listed species, directs CDFW to determine whether jeopardy would occur, and allows CDFW to identify "reasonable and prudent alternatives" to the project consistent with conserving the species. CESA allows CDFW to authorize exceptions to the State's prohibition against take of a listed species if the take is incidental to carrying out an otherwise lawful project that has been approved under CEQA (FGC § 2081).

California Fish and Game Code

Under CESA, the CDFW has the responsibility for maintaining a list of endangered and threatened species (FGC § 2070). Fish and Game Code Sections 2050 through 2098 outline the protection provided to California's rare, endangered, and threatened species. Fish and Game Code Section 2080 prohibits the taking of plants and animals listed under the CESA. Fish and Game Code Section 2081 established an incidental take permit program for State-listed species. The CDFW maintains a list of "candidate species," which it formally notices as being under review for addition to the list of endangered or threatened species.

In addition, the Native Plant Protection Act of 1977 (NPPA) (FGC § 1900, *et seq*.) prohibits the taking, possessing, or sale within the State of any plants with a State designation of rare, threatened, or endangered (as defined by the CDFW). An exception to this prohibition in the NPPA allows landowners to take listed plant species under specified circumstances, provided that the owners first notify the CDFW and give the agency at least 10 days to come and retrieve (and presumably replant) the plants before they are plowed under or otherwise destroyed. Fish and Game Code Section 1913 exempts from "take" prohibition "the removal of endangered or rare native plants from a canal, lateral ditch, building site, or road, or other right-of-way." Project impacts to these species are not considered significant unless the species are known to have a high potential to occur within the area of disturbance associated with construction of the proposed project.

In addition to formal listing under the Endangered Species Act and CESA, some species receive additional consideration by the CDFW and local lead agencies during the CEQA process. Species that may be considered for review are those listed as a "Species of Special Concern." The CDFW maintains lists of "Species of Special Concern" that serve as species "watch lists." Species with this status may have limited distributions or limited populations and/or the extent of their habitats has been reduced substantially, such that their populations may be threatened. Thus, their populations are monitored and they may receive special attention during environmental review. While they do not have statutory protection, they may be considered rare under CEQA and specific protection measures may be warranted. In addition to Species of Special Concern, the CDFW Special Animals

List identifies animals that are tracked by the CNDDB and may be potentially vulnerable but that warrant no federal interest and no legal protection.

Sensitive species are those that would qualify for listing but are not currently listed are afforded protection under CEQA. CEQA Guidelines Section 15065 (Mandatory Findings of Significance) requires that a substantial reduction in numbers of a rare or endangered species be considered a significant effect. CEQA Guidelines Section 15380 (Rare or Endangered Species) provides for the assessment of unlisted species as rare or endangered under CEQA if the species can be shown to meet the criteria for listing. Unlisted plant species on the CNPS List ranked 1A, 1B, and 2 would typically require evaluation under CEQA.

Fish and Game Code Sections 3500 to 5500 outline protection for fully protected species of mammals, birds, reptiles, amphibians, and fish. Species that are fully protected by these sections may not be taken or possessed at any time. The CDFW cannot issue permits or licenses that authorize the take of any fully protected species, except under certain circumstances such as scientific research and live capture and relocation of such species pursuant to a permit for the protection of livestock.

Under Fish and Game Code Section 3503.5, it is unlawful to take, possess, or destroy any birds in the orders of *Falconiformes* or *Strigiformes* (birds of prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by this code or any regulation adopted pursuant thereto. To comply with the requirements of CESA, an agency reviewing a proposed project within its jurisdiction must determine whether any State-listed endangered or threatened species may be present in the project site and determine whether the proposed project would have a potentially significant impact on such species. In addition, the CDFW encourages informal consultation on any proposed project that may impact a candidate species.

Project-related impacts to species on the CESA endangered or threatened list would be considered significant. State-listed species are fully protected under the mandates of CESA. “Take” of protected species incidental to otherwise lawful management activities may be authorized under Fish and Game Code Section 206.591. Authorization from the CDFW would be in the form of an Incidental Take Permit.

Fish and Game Code Section 1602 requires any entity to notify the CDFW before beginning any activity that “may substantially divert or obstruct the natural flow of, or substantially change or use any material from the bed, channel, or bank of any river, stream, or lake” or “deposit debris, waste, or other materials that could pass into any river, stream, or lake.” “River, stream, or lake” includes waters that are episodic and perennial and ephemeral streams, desert washes, and watercourses with a subsurface flow. A Lake or Streambed Alteration Agreement would be required if the CDFW determines that project activities may substantially adversely affect fish or wildlife resources through alterations to a covered body of water. CDFW jurisdiction typically extends to the edge or “drip line” of the riparian habitat or top of bank.

California Department of Fish and Wildlife Species of Concern

In addition to formal listing under the Endangered Species Act and CESA, certain species receive additional consideration by CDFW and local lead agencies during the CEQA process. Species that may be considered for review are included on a list of "Species of Special Concern," developed by the CDFW that tracks species in California whose numbers, reproductive success, or habitats may be threatened. In addition to Species of Special Concern, the CDFW identifies animals that are tracked by the CNDDB but warrant no federal interest and no legal protection. These species are identified as "California Special Animals."

Porter-Cologne Water Quality Control Act

The CDFW is a trustee agency that has jurisdiction under Fish and Game Code Section 1600, *et seq*. Under Fish and Game Code Sections 1602 and 1603, a private party must notify the CDFW if a proposed project would "substantially divert or obstruct the natural flow or substantially change the bed, channel, or bank of any river, stream, or lake designated by the department, or use any material from the streambeds . . . except when the department has been notified pursuant to Section 1601." Additionally, the CDFW may assert jurisdiction over native riparian habitat adjacent to aquatic features, including native trees over 4 inches in diameter at breast height (DBH). If an existing fish or wildlife resource may be substantially adversely affected by the activity, CDFW may propose reasonable measures that will allow protection of those resources. If these measures are agreeable to the parties involved, they may enter into an agreement with CDFW identifying the approved activities and associated mitigation measures.

Section 13260(a) of the Porter-Cologne Water Quality Control Act (contained in the California Water Code) requires any person discharging waste or proposing to discharge waste, other than to a community sewer system, within any region that could affect the quality of the waters of the State (all surface and subsurface waters) to file a report of waste discharge. The discharge of dredged or fill material may constitute a discharge of waste that could affect the quality of waters of the State.

Historically, California relied on its authority under Section 401 of the CWA to regulate discharges of dredged or fill material to California waters, which requires an applicant to obtain "water quality certification" from the California State Water Resources Control Board (State Water Board) through one of its nine RWQCBs to ensure compliance with State water quality standards before certain federal licenses or permits may be issued. The permits subject to Section 401 include permits for the discharge of dredged or fill material (CWA Section 404 permits) issued by the USACE. Waste discharge requirements under the Porter-Cologne Water Quality Control Act were typically waived for projects requiring certification. With the recent changes that limited the jurisdiction of wetlands under the CWA, the State Water Board has needed to rely on the report of the waste discharge process.

California Native Plant Society

CDFW, in collaboration with CNPS and other technical experts, maintains a rank of plant species that are native to California and that have low population numbers, limited distribution, or are otherwise threatened with extinction. This information is published in the Inventory of Rare and Endangered

Vascular Plants of California. The CRPR system includes six rarity and endangerment ranks that are defined as follows:

- **Rank 1A:** Plants presumed extirpated in California and either rare or extinct elsewhere
- **Rank 1B:** Plants rare, threatened, or endangered in California and elsewhere
- **Rank 2A:** Plants presumed extirpated in California but common elsewhere
- **Rank 2B:** Plants rare, threatened, or endangered in California but more common elsewhere
- **Rank 3:** Plants about which more information is needed
- **Rank 4:** Watch List: Plants of limited distribution

Potential impacts to populations of CRPR ranked plants receive consideration under CEQA review. All plants appearing on the CNPS List ranked 1 or 2 are considered to meet the CEQA Guidelines Section 15380 criteria. Rank 3 and 4 plants do not automatically meet this definition. Rank 4 plants do not clearly meet CEQA standards and thresholds for impact considerations. Nevertheless, some level of CEQA review is justified for CRPR 4 taxa, and under some circumstances, a full impact analysis is warranted. Taxa that can be shown to meet the criteria for endangered, rare, or threatened status under CEQA Section 15380(d) or that can be shown to be regionally rare or unique as defined in CEQA Section 15125(c) must be fully analyzed in a CEQA document. Some circumstances, such as local rarity, having occurrences peripheral to the taxon's distribution, or having occurrences on unusual substrates or rare and declining habitats, provide justification for treating some CRPR 4 taxa occurrences as regionally rare or unique. One limitation to fully analyzing impacts on CRPR 4 taxa is the difficulty in obtaining current data on the number and condition of the occurrences.[8]

Local

Santa Clara Valley Habitat Plan

The Santa Clara Valley Habitat Plan (SCVHP) provides a framework for promoting the protection and recovery of natural resources, including endangered species, while streamlining the permitting process for planned development, infrastructure, and maintenance activities. The purpose of the SCVHP is to protect, enhance, and restore natural resources in specific areas of Santa Clara County and contribute to the recovery of endangered species. The SCVHP evaluates natural resource impacts and mitigation requirements comprehensively in a way that is more efficient and effective for at-risk species and their essential habitats. The SCVHP was adopted by the City of San José on January 29, 2013.

City of San José General Plan

Goal ER-4 **Special-status Plants and Animals: Preserve, manage, and restore habitat suitable for special-status species, including threatened and endangered species.**

Policies **Special-status Plants and Animals**

Policy ER-4.1 Preserve and restore, to the greatest extent feasible, 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-4.2 Limit recreational uses in wildlife refuges, nature preserves and wilderness areas in parks to those activities which have minimal impact on sensitive habitat.

Policy ER-4.3 Prohibit planting of invasive non-native plant species in natural habitats that support special-status species.

PolicyER-4.4 Require that development projects incorporate mitigation measures to avoid and minimize impacts to individuals of special-status species.

Action **Special-status Plants and Animals**

Action ER-4.5 Where implementation of the Envision General Plan would result in impacts to burrowing owl habitat occupied by breeding owls in 2008 or later, providing mitigation of equivalent value shall consist of securing, protecting and managing nesting and foraging habitat in perpetuity for burrowing owls within the South Bay area such that there is no reduction in the local burrowing owl population. Mitigation shall be required for the largest number of breeding burrowing owls that have been identified nesting or foraging on a site in burrowing owl surveys since 2008. These measures are required to be implemented by individual projects unless the City develops an independent plan or participates in a regional conservation strategy (such as the Santa Clara Valley HCP) that would maintain or increase South Bay area burrowing owl populations.

Goal ER-5 **Migratory Birds: Protect migratory birds from injury or mortality.**

Policies **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 of 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.

City of San José Municipal Code

Chapters 13.28 and 13.32 of the San José Municipal Code outline the conditions and requirements of the City's tree preservation policy.

Chapter 13.28–Street Tees, Hedges and Shrubs

The City defines a Heritage Tree as, any tree which, because of factors including but not limited to its history, girth, height, species or unique quality, has been found by the City Council to have a special significance to the community shall be designated a Heritage Tree. Such trees shall be placed on a Heritage Tree list which shall be adopted by the City Council by resolution, which resolution may be amended from time to time to add to or delete certain trees therefrom.

Chapter 13.32–Tree Removal Controls

The City defines an ordinance-sized tree as either a single trunk or stem with a circumference of at least 38 inches measured at a height 54 inches above natural grade slope, or multiple trunks where the combined circumferences of each trunk at 54 inches above natural grade slope add up to at least 38 inches.

City of San José Standard Permit Conditions

The City of San José has the following Standard Permit Conditions (SPCs) which would apply to the proposed project. Unless otherwise discussed in this analysis, the proposed project is assumed to incorporate the following SPCs:

SPC BIO-1 **Tree Replacement.** Trees removed for the project shall be replaced at ratios required by the City, as stated in Table 1 below, as amended:

Table 1: Tree Replacement Ratios

Circumference of Tree to be Removed	Replacement Ratios Based on 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 measured at 54 inches above natural grade shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees. For Multi-Family residential, Commercial and Industrial properties, a permit is required for removal of trees of any size.
A 38-inch tree equals 12.1 inches in diameter.
A 24-inch box replacement tree = two 15-gallon replacement trees.
Single-Family and Two-dwelling properties may replace trees at a ratio of 1:1.

- The project would include removal of 187 trees on-site (117 ordinance-size, 70 non-ordinance-size). Trees greater than 38-inch circumference would be removed unless a Tree Removal Permit or equivalent, has been approved for the removal of such tree. Any street tree removal would be permitted separately by the Department of Transportation. Tree replacement would occur at a ratio of 1:1 to 5:1 depending on the size of the tree to be removed, and replacement trees would be a minimum of 15 gallons in size. The project requires 651 15-gallon replacement trees or 325 24-inch box trees on-site and 1 15-gallon tree. The project proposes the replacement of 148 24-inch box trees on-site, which is the equivalent of 296 15-gallon trees. The project would pay an in lieu fee for the 355 trees that would not be replaced.
- Prior to the issuance of building permit(s), the permittee shall pay off-site tree replacement fee(s) to the City for 177 24-inch box and 1 15-gallon off-site replacement trees in accordance with the City Council approved Fee Resolution in effect at the time of payment.

- If there is insufficient area on the project site to accommodate the required replacement trees, one or more of the following measures shall be implemented, to the satisfaction of the Director of Planning, Building and Code Enforcement or Director's designee. Changes to an approved landscape plan requires the issuance of a Permit Adjustment or Permit Amendment.
  - 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.
  - Pay off-site tree replacement fee(s) to the City, prior to the issuance of building permit(s), in accordance with the City Council approved Fee Resolution in effect at the time of payment. The City will use the off-site tree replacement fee(s) to plant trees at alternative sites.

SPC BIO-2 **Santa Clara Valley Habitat Plan.** The project may be subject to applicable SCVHP conditions and fees (including the nitrogen deposition fee) prior to issuance of any grading permits. The project applicant would be required to submit the Santa Clara Valley Habitat Plan Coverage Screening Form 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 SCVHP and supporting materials can be viewed at https://scv-habitatplan.org.

3.2.4 - Methodology

Impacts on biological resources were evaluated based on the likelihood that special-status species, sensitive habitats, wildlife corridors, and protected trees are present on the project site, and the likely effects of project construction or operation on these resources. For the purposes of this EIR, the word "substantial" as used in the significance thresholds above is defined by the following three principal components:

- Magnitude and duration of the impact (e.g., substantial/not substantial),
- Uniqueness of the affected resource (rarity), and
- Susceptibility of the affected resource to disturbance.

The project site is defined as all areas directly affected by project development.

Cumulative Analysis

The geographic scope of the cumulative impacts is defined based on species ranges within the City's cumulative project list. This distance is based on species dispersal distances around additional development projects provided by the City and their direct impact zones.

3.2.5 - Thresholds of Significance

Significance Criteria

The Lead Agency derives its significance the criteria based on the questions in the CEQA Guidelines Appendix G Environmental Checklist. Accordingly, impacts resulting from the implementation of the proposed project would be considered significant if the project would:

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 or United States Fish and Wildlife Service.

b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, and regulations or by the California Department of Fish and Wildlife or United States Fish and Wildlife Service.

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 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.

3.2.6 - Project Impacts and Mitigation Measures

This section discusses potential impacts associated with the development of the project and provides mitigation measures where appropriate.

Special-status Species

Impact BIO-1:	**The proposed project would not 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 or United States Fish and Wildlife Service.**

Special-status Plant Species

The potential for plant species to occur on the project site was evaluated based on the presence of suitable habitats, soil types, and occurrences recorded by the CNPS and CNDDB listings in the general vicinity of the site, as well as a site survey conducted by a qualified Biologist. A summary of the Special-status Plant Species is provoded in Appendix C and includes listing status, habitat requirements, and the potential for occurrence of other sensitive plant species that have been documented within the *Milpitas, California* USGS 7.5-minute Topographic Quadrangle Map and the eight surrounding quadrangles. A total of 33 special-status plant species were evaluated for their potential to occur within the project site. A total of eight species were identified to have been recorded within 5 miles of the project site. However, due to factors discussed below, these species are not anticipated to occur within the project site.

The species evaluated in Appendix C require specific habitat conditions (e.g., vernal pools, riparian woodland, chaparral, serpentine outcrops, or valley and foothill grasslands) that are not present within the project site. Because of previous development within the project site, no special-status plant species have the potential to occur within the site; therefore, no special-status plant species would be impacted by the proposed project.

Special-status Wildlife Species

The potential for special-status animal species to occur on the project site was evaluated based on the presence of suitable habitats, soil types, and occurrences recorded by the CNPS and CNDDB listings in the general vicinity of the site, as well as a site survey conducted by a qualified Biologist. Appendix C provides a summary of the listing status, habitat requirements, and the potential for occurrence of other sensitive animal species that have been documented within the *Milpitas, California* USGS 7.5-minute Topographic Quadrangle Map and the eight surrounding quadrangles. A total of 42 special-status wildlife species were recorded in the regional vicinity of the project site and a total of 26 special-status wildlife species have been recorded within a 5-mile radius of the project site. The vast majority of these species are not expected to occur on the project site due to a lack of general habitat from previous development within the project site and the immediate surrounding area.

Protected Nesting Birds

The active nests of most resident and migratory (game and non-game) birds (including the nests of additional special-status birds on-site) are protected by the MBTA and/or Fish and Game Code; and are therefore categorized as a "special-status" wildlife functional group during this time. Trees present within the project site could provide nesting habitat for different taxa of bird species, including ground nesters, and common songbirds (passerine birds). Therefore, it is likely that protected bird nests could be present on the project site during the nesting season (typically considered to last from February 1 to August 31 for most species).

Construction activities that occur during the avian nesting season could disturb protected nesting sites within the construction footprint and within disturbance distance. Grading, building demolition, and the removal of vegetation during the nesting season could result in direct harm to nesting birds, while noise, light, and other construction-related disturbances may cause nesting birds within or adjacent to the site to abandon their nests.

The project is required to comply with Santa Clara Valley Standard Permit Condition pertaining to protected species. Specifically, SCVHP Habitat Plan Condition A states that the applicant must avoid direct impacts to protected plant and wildlife species, including several protected bird species. Additionally, the project must adhere to General Plan Policy ER-5.1 and ER-5.2, which state that construction activities must avoid the loss of active nests via direct or indirect means and recommend the avoidance of activities that would result in such loss. Avoidance buffers are also required to ensure compliance with the SCVHP's requirement to avoid impacts to nesting migratory birds. Therefore, the project applicant would be required to conduct bird nesting surveys and implement bird nesting buffers for active nests prior to and during construction if construction

commences during the bird nesting season. This would be in compliance with the SCVHP, General Plan Policies, the federal MBTA, and CDFW Code Sections 3503, 3503.5, and 2800.

Mitigation Measure (MM) BIO-1 below recommends avoiding construction during the nesting season, with required pre-construction surveys and Ornithologist reports if construction activities are not able to be performed outside of this season. This mitigation also requires the implementation of buffer zones should active nests be located during pre-construction surveys. With implementation of MM BIO-1, the proposed project would comply with the SCVHP, General Plan Policies, the federal MBTA, and CDFW Code Sections 3503, 3503.5, and 2800 and project impacts on nesting birds would be reduced to a less than significant level.

Roosting Bats (Including All Special-status Bat Species)

Based on the surveys, the project site offers marginal but potentially viable roosting habitat for bat species. Bats could potentially use the trees and vacant structures on-site to roost and forage. The pallid bat and Townsend's big-eared bat have the potential, albeit low, to roost within the project site.

Potential direct and indirect impacts could occur to roosting bats during project construction due to removal of trees and vacant buildings that could provide potential roosting habitat. These activities could potentially subject bats to death or injury, and they are likely to avoid using the area until such construction activities have dissipated or ceased. Relocation, in turn, could cause hunger or stress among individual bats by displacing them into adjacent territories belonging to other individuals.

However, implementation of MM BIO-2 would reduce potential impacts to roosting bats through the use of pre-construction surveys. If roosting bats were to occupy the site during project construction, implementation of this mitigation measure would reduce impacts to a less than significant level.

Level of Significance Before Mitigation

Potentially significant impact.

Mitigation Measures

To reduce the impacts of construction activities on the project site that could result in the disturbance of migratory birds to less than significant level, the following mitigation measure would be implemented:

MM BIO-1 Impacts to Nesting Birds

- **Avoidance:** 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 1 through August 31 (inclusive), as amended.
- **Nesting Bird Surveys:** If it is not possible to schedule demolition and construction between September 1 and January 31 (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 breading season (February 1 through April 30 inclusive) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May 1 through August 31 inclusive). During the survey, the Ornithologist shall inspect all trees and other possible nesting habitats immediately adjacent to the construction areas for nests.

- **Buffer Zones:** If an active nest is found sufficiently close to the work areas to be disturbed by construction, the Ornithologist, in consultation with the California Department of Fish and Wildlife (CDFW), shall determine the extent of a construction-free buffer zone to be established around the nest, typically 250 feet for raptors and 100 feet for other birds, to ensure that raptor or migratory bird nests shall not be disturbed during project construction. The no-disturbance buffer shall remain in place until the Ornithologist determines the nest is no longer active or the nesting season ends. If construction ceases for two days or more then resumes again during the nesting season, an additional survey shall be necessary to avoid impacts to active bird nests that may be present.
  Reporting: If the start of construction activities is scheduled to occur between February 1 and August 31 (inclusive) and pre-construction survey are required, prior to any tree removal and construction activities or issuance of any demolition, grading or building permits (whichever occurs first), the project applicant shall submit the qualified Ornithologist's report indicating the results of the survey and any designated buffer zones to the satisfaction of the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee.

Construction activities on the project site could potentially result in the disturbance of roosting bats. To reduce the impact to less than significant, the following mitigation measure shall be implemented:

MM BIO-2 Roosting Bat Pre-Construction Survey and Avoidance

- Prior to issuance of a demolition, grading or building permit (whichever occurs first), a qualified Biologist with relevant roosting bat experience shall conduct a survey for special-status bats during the dusk and dawn to maximize detectability to determine whether bat species are roosting near the work area no less than 7 days and no more than 14 days prior to any ground disturbance, demolition, and/or construction. Survey methodology may include visual surveys of bats (e.g., observation of bats during the foraging period), inspection for suitable habitat, bat sign (e.g., guano), or use of ultrasonic detectors (Anabat, etc.).
- If the Biologist determines or presumes bats are present, the Biologist shall exclude the bats from suitable spaces by installing one-way exclusion devices. After the bats vacate the space, the Biologist shall close off the space to prevent recolonization. Grading shall only commence after the Biologists verifies 7 to 10 days later that the exclusion methods have successfully prevented bats from returning. To avoid impacts on non-volant (i.e., nonflying) bats, the Biologist shall

only conduct bat exclusion and eviction from October 1 through April 30 (inclusive). Exclusion efforts may be restricted during periods of sensitive activity (e.g., during hibernation or while females in maternity colonies are nursing young).

- A final report of bats, including survey methods and any protection measures, shall be submitted to the Director of Planning, Building and Code Enforcement (PBCE) or Director's designee prior to issuance of any demolition, grading, or building permits.

Level of Significance After Mitigation

Less than significant impact with mitigation incorporated.

Cumulative Analysis

The general geographical scope of the cumulative biological resources analysis is defined by the species ranges within the City's cumulative project list. This distance is based on species dispersal distances around additional development projects provided by the City and their direct impact zones. The cumulative developments would replace existing farmland, restaurants, and commercial developments with residential and mixed-use developments. All cumulative projects currently exist in areas dominated by high levels of urbanization.

Cumulative projects within the geographic context would be required to comply with applicable federal, State, and local laws, regulations, and policies and all applicable permitting requirements of the regulatory and oversight agencies intended to address potential impacts on biological resources. Cumulative projects would be required to adhere to standard pre-construction surveys and, if necessary, avoidance procedures would be required for projects with the potential to impact special-status species such as nesting birds and roosting bats (see, e.g., MM BIO-1 through MM BIO-2). Given the already urbanized nature of the cumulative geographic context and because cumulative development would be required to comply with applicable General Plan and Municipal Code requirements (as described in Section 3.2.3, Regulatory Framework), cumulative biological impacts related to special-status species would be less than significant.

Additionally, the proposed project's contribution to less than significant cumulative impacts would not be cumulatively considerable because the proposed project would require pre-construction surveys, monitoring, and buffers that would prevent adverse impacts to nesting birds and bats. Therefore, the proposed project's contribution would be rendered less than cumulatively considerable.

Level of Cumulative Significance Before Mitigation

Less than significant impact.

Mitigation Measures

None required.

Level of Cumulative Significance After Mitigation

Less than significant impact.

Sensitive Natural Communities or Riparian Habitat

Impact BIO-2:	**The proposed project would not have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, and regulations or by the California Department of Fish and Wildlife or United States Fish and Wildlife Service.**

The CDFW maintains a list of natural communities which attempts to classify vegetation types found within the State of California and rank them based on rarity. Communities ranked S1-S3 are considered sensitive natural communities. Wetlands and riparian habitats are also typically considered sensitive natural communities and are addressed in the environmental review process. No sensitive natural communities were identified within the project site. Coyote Creek is located approximately 0.20 mile from the project site but is separated from the site by commercial development and active roadways. Therefore, the project would not result in indirect or direct impacts to the Creek's aquatic habitat. The proposed project would have no impact on riparian habitats or sensitive natural communities.

Level of Significance Before Mitigation

No impact.

Cumulative Analysis

Where a proposed project is determined to have no impact, it would not have any contribution to a potential cumulative impact. Therefore, the proposed project would have no cumulative impact. Nonetheless, the City notes that cumulative projects within the cumulative geographic context would be required to comply with applicable federal, State, and local laws, regulations, and policies related to riparian habitat or other sensitive natural communities.

Level of Cumulative Significance Before Mitigation

No impact.

Mitigation Measures

None required.

Level of Cumulative Significance After Mitigation

No impact.

Wetlands and Jurisdictional Features

Impact BIO-3: **The proposed project would not 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.**

No wetland features were identified on-site or within areas directly adjacent to the project site. As stated above, the closest aquatic feature to the project site is Coyote Creek, which is located approximately 0.20 mile from the project site and is separated from the site by commercial development and active roadways. Therefore, the proposed project would not impact any State or federally protected wetlands through direct removal, filling, hydrological interruption, or other means.

Level of Significance Before Mitigation

No impact.

Cumulative Analysis

Where a proposed project is determined to have no impact, it would not have any contribution to a potential cumulative impact. Therefore, the proposed project would have no cumulative impact. Nonetheless, the City notes that projects with the potential to impact State or federally protected waters would be required to adhere to applicable laws and regulations. This includes coordination with applicable regulatory agencies that may require jurisdictional delineations to quantify potential impacts to protected waters and implement mitigation accordingly.

Level of Cumulative Significance Before Mitigation

No impact.

Mitigation Measures

None required.

Level of Cumulative Significance After Mitigation

No impact.

Fish and Wildlife Movement Corridors

Impact BIO-4: **The proposed project would not 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 wildlife nursery sites.**

A wildlife corridor is an area of habitat connecting wildlife populations separated by human activities or structures (such as roads, development, or logging). A corridor allows an exchange of individuals between populations, which may help prevent the negative effects of inbreeding and reduced genetic diversity (via genetic drift) that often occurs within isolated populations. The project site is surrounded by urban developement and detached from any suitable habitat connectivity or nursery sites. Additionally, the project site is fully developed and does not contain any habitat suitable for

acting as a wildlife movement corridor. Therefore, the site would not interfere with the movement of any native resident or migratory species, or impact established native or migratory wildlife corridors.

Wildlife nursery sites include nesting birds and maternity bat roosts, aquatic breeding habitats, and special-status and non-special-status wildlife breeding or nesting colonies. Although no signifcant breeding/nesting colonies were observed during the wildlife survey, individual nesting birds and roosting bats have the potential of being present on-site and within disturbance distance of the site. However, with implementaiton of MM BIO-1 and MM BIO-2, any impacts to roosting bats or nesting birds would be reduced to a less than significant level under CEQA. Therefore, the proposed project would have a less than significant impact on wildlife movement corridors and wildlife nursery sites with mitigation.

Level of Significance Before Mitigation

Potentially significant impact.

Mitigation Measures

MM BIO-1 and MM BIO-2 would apply to this impact.

Level of Significance After Mitigation

Less than significant impact with mitigation.

Cumulative Analysis

Cumulative projects are predominantly located in areas that have already been built out or have a limited potential to support wildlife corridors or wildlife nursery sites. Cumulative projects within the cumulative geographic context would be required to comply with applicable General Plan Policies and Municipal Code requirements (as described in Section 3.2.3, Regulatory Framework Section). Additionally, both the proposed project and the cumulative projects would incorporate design features and project-specific mitigations (see, e.g., MM BIO-1 through MM BIO-2) to ensure compliance with the SCVHP, including the payment of applicable fees. This would ensure potential cumulative impacts to protected fish and wildlife movement corridors and wildlife nursery sites would be less than significant. No additional mitigation is necessary to address cumulative impacts.

Additionally, the proposed project's incremental contribution to the less than significant cumulative impact would be mitigated for through MM BIO-1 through MM BIO-2 and would therefore not be cumulatively considerable.

Level of Cumulative Significance Before Mitigation

Less than significant impact.

Mitigation Measures

None required.

Level of Cumulative Significance After Mitigation

Less than significant impact.

Local Policies or Ordinances

Impact BIO-5: The proposed project would not conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance.

Local policies or ordinances applicable to the proposed project include the City of San José 2040 General Plan Goals ER-4 and ER-5, San José's Municipal Code Chapters 13.28 and 13.32, and the City's SPCs. The proposed project would meet the City of San José's General Plan Goal ER-4 through ER-6 through implementation of MM BIO-1 and MM BIO-2, which would protect and preserve sensitive habitats and special-status species with the potential to occur within the project site.

According to the Preliminary Arborist Report, 188 trees are anticipated to be removed on-site. The City of San José contains a Standard Permit Condition for tree replacement, which is listed in SPC BIO-1 below. With implementation of SPC BIO-1, the proposed project would adhere to the City's Standard Permit Conditions and Municipal Code Chapter 13.32 Tree Protection Ordinances.

Therefore, with adherence to the local policies and ordinances outlined in the San José Municipal Code Chapter 13.28 and 13.32, and the San José 2040 General Plan, and with implementation of MM BIO-1, BIO-2, and SPC BIO-1, the proposed project would not conflict with the City of San José's local policies and ordinances. Impacts would be less than significant.

Level of Significance Before Mitigation/Standard Permit Condition

Potentially significant impact.

Mitigation Measures

Implementation of MM BIO-1 and MM BIO-2 would apply to this impact.

Standard Permit Condition

Implementation of SPC BIO-1 would occur for tree replacement at ratios required by the City.

Level of Significance After Mitigation

Less than significant impact with MM BIO-1 and MM BIO-2 and Standard Permit Condition incorporated.

Cumulative Analysis

Cumulative projects may result in the removal of trees that are governed by the City's Street Tree Ordinance. Additionally, cumulative projects may impact special-status species and habitats, though high levels of development within the cumulative geographic context lower the likelihood of this. Impacts to these biological elements would be in direct conflict with local and regional policies and ordinances. However, all projects within the cumulative geographic context of 2 miles would be required to adhere to applicable local and regional policies and ordinances, such as Municipal Code Chapter 13.28 and 13.32, the SCVHP, the City's SPCs, and General Plan Goals 4-5 which would ensure that cumulative impacts would be less than significant. Additionally, with implementation of MM BIO-1, MM BIO-2, and SPC BIO-1, and adherence to all applicable local and regional policies and

ordinances, the proposed project would not have a cumulatively considerable contribution to the less than significant cumulative impact.

Level of Cumulative Significance Before Mitigation

Less than significant impact.

Mitigation Measures

None required.

Level of Cumulative Significance After Mitigation

Less than significant impact.

Local, Regional, or State Habitat Conservation Plan

Impact BIO-6:	**The proposed project would not conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or State Habitat Conservation Plan.**

The project site is located within the area covered by the SCVHP. Prior to obtaining building permits, the applicant would be required to complete a coverage screening form to determine whether the project is covered under the SCVHP.

Additionally, the project site is within the "Urban" land cover as defined by the SCVHP. The project site is not located in any special-status plant or wildlife survey area. The project site is mapped as Urban Areas (No Land Cover Fee). The City of San José contains a Standard Permit Condition for adherence to the SCVHP, which is described in SPC BIO-2 below. With implementation of SPC BIO-2, the proposed project would not conflict with any policies of the SCVHP. The land cover types and the absence of plant and wildlife survey areas have been confirmed on the ground through the general biological survey conducted by a Biologist, as required by the SCVHP. Therefore, with implementation of SPC BIO-2, potential impacts regarding adopted conservation plans would be reduced to a less than significant level.

Level of Significance Before Standard Permit Condition

Potentially significant impact.

Standard Permit Condition

SPC BIO-2 would apply.

Level of Significance After Standard Permit Condition

Less than significant impact with Standard Permit Condition incorporated.

Cumulative Analysis

The cumulative geographic context falls within the boundaries of the SCVHP Permit Area. Therefore, all cumulative projects are responsible for permit applications, permit processing fees, and any applicable technical reports required by the SCVHP. Therefore, with adherence to SCVHP permit

applications, processing fees, and any applicable technical reports, potential cumulative impacts would be less than significant.

The proposed project site does not lie within a SCVHP-defined plant or wildlife survey area and is not within a zone that contains a Land Cover Fee. With implementation of SPC BIO-2, the proposed project would adhere to the SCVHP and would not have a cumulatively considerable contribution on the already less than significant cumulative impact.

Level of Cumulative Significance Before Mitigation

Less than significant impact.

Mitigation Measures

None required.

Level of Cumulative Significance After Mitigation

Less than significant impact.

3.3 - Cultural Resources

3.3.1 - Introduction

This section describes the existing cultural resources setting and potential effects from project implementation on the site and its surrounding area. The descriptions and analysis in this section are based, in part, on a records search conducted at the Northwest Information Center (NWIC); archival research; and a pedestrian survey as presented in the Phase I Cultural Resources Assessment (Phase I CRA) prepared for the proposed project, which is included in the confidential Appendix D. The applicable regulatory framework is also discussed below. In addition, recommendations provided in the Phase I CRA pertaining to feasible mitigation of identified potential significant impacts to cultural resources are also addressed in this section. For an analysis of the potential effects related to Tribal Cultural Resources, refer to Section 03.09, Tribal Cultural Resources. No public comments were received during the Environmental Impact Report (EIR) scoping period related to Cultural Resources.

3.3.2 - Environmental Setting

Overview

The term "cultural resources" encompasses historic resources, archaeological resources, and burial sites, which are generally defined as follows:

- **Historic Resources:** Historic resources are associated with the recent past. In California, historic resources are typically associated with the Spanish, Mexican, and American periods in the State's history and are generally less than 200 years old. Historic resources often take the form of buildings, structures, and other elements of the built environment.
- **Archaeological Resources:** Archaeology is the study of artifacts and material culture with the aim of understanding human activities and cultures in the past. Archaeological resources may be associated with pre-contact indigenous cultures as well as later historic periods.
- **Burial Sites and Cemeteries:** Burial sites are formal or informal locations where human remains, usually associated with indigenous cultures, are interred.

More specifically, cultural resources may be understood as resources that have been formally recognized by a lead agency and/or are listed or determined eligible for listing on the California Register of Historical Resources (CRHR) (Public Resources Code [PRC] § 5024.1, Title 14 California Code of Regulations [CCR] § 4852). However, the fact that a resource is not yet identified as a historical resource or found eligible for the CRHR does not preclude a lead agency from determining that said resource is a historical resource pursuant to Public Resources Code Sections 5020.1(j) or 5024.1. Under the California Environmental Quality Act (CEQA), a substantial adverse change in the significance of a historical resource would constitute a significant effect on the environment.

Overall Cultural Setting

Following is a brief overview of the relevant historic background, providing context in which to understand the background and relevance of sites found in the general project vicinity. This section

is not intended to be a comprehensive review of the current academic resources available; rather, it serves as a general overview. Unless otherwise stated, information contained in this section is drawn directly from the Phase I CRA conducted by FirstCarbon Solutions (FCS). Further details can be found in ethnographic studies, mission records, and major published sources referenced in the River Oaks Parkway Residential Project Phase I CRA.[1]

Regional Historic Background

Spanish Period (1769–1821)

The first European to enter the area was Captain José Francisco de Ortega, who was a scout for the Portola Expedition; however, it was not officially explored until the De Anza Expedition, where Father Junípero Serra consecrated the Mission Santa Clara de Asís. Named after Italian Saint Santa Chiara di Assisi, the mission was founded on January 12, 1777, and was the eighth mission in the chain of 21 Franciscan missions established by Padre Junípero Serra. The mission would eventually be moved or rebuilt five times due to architectural faults or natural disasters. The final location is adjacent to where the current chapel now stands.

The pueblo of San José de Guadalupe was established on November 29, 1777, in an effort by the Spanish government to provide a permanent and secure settlement to the religious and military personnel passing through the area; it was the first town to be established in California. On June 11, 1797, Mission San José was consecrated, making it the fourteenth of the 21 Franciscan Missions. Santa Clara Valley grew and expanded rapidly, chiefly due to fertile land surrounding Mission San José, excellent water supply, large numbers of Native American laborers, and proximity to San Francisco Bay. However, Spanish mission records indicate that local Native American inhabitants were being taken to Mission San José until secularization of the missions in 1833. Many Native Americans were not willing converts; there are numerous accounts of neophytes fleeing the missions, and a series of "Indian Wars" broke out when the Spanish tried to return them to the missions. During this period, Native American populations were declining rapidly from an influx of Euro-American diseases. In 1832, a party of trappers from the Hudson's Bay Company led by John Work, traveled down the Sacramento River unintentionally spreading a malaria epidemic to Native Californians. Four years later, a smallpox epidemic decimated the local population, and it is estimated that up to 75 percent of the Native population died.

The Mexican Period (1821–1848)

With the declaration of Mexican independence in 1821, Spanish control of Alta California ended, although little change occurred. Political change did not take place until mission secularization in 1834, when Native Americans were released from missionary control and the mission lands were granted to private individuals. Shoup and Milliken state that mission secularization removed the social protection and support on which Native Americans had come to rely. It exposed them to further exploitation by outside interests, often forcing them into a marginal existence as laborers for large ranchos. Following mission secularization, the Mexican population grew as the Native population continued to decline. Anglo-American settlers began to arrive in Alta California during this period and often married into Mexican families, becoming Mexican citizens, which made them

[1] FirstCarbon Solutions (FCS). 2024. River Oaks Parkway Residential Project Phase I Cultural Resource Assessment (Phase I CRA). October.

eligible to receive land grants. In 1846, on the eve of the U.S.-Mexican War (1846 to 1848), the estimated population of Alta California was 8,000 non-Natives and 10,000 Natives. However, these estimates have been debated. Cook suggests the Native American population was 100,000 in 1850; the U.S. Census of 1880 reports the Native American population as 20,385 during the Gold Rush and American Expansion. After the upheaval of the Bear Flag Revolt in 1846 and because of the Treaty of Guadalupe Hidalgo in 1848, California became a United States territory.

Euro-American Expansion

In 1848, James W. Marshall discovered gold at Coloma, in modern-day El Dorado County, which started the Gold Rush into the region that forever altered the course of California's history. The arrival of thousands of gold seekers in the territory contributed to the exploration and settlement of the entire State. By late 1848, approximately four out of five men in California were gold miners. The Gold Rush originated along the reaches of the American River and other tributaries to the Sacramento River, and Hangtown, present-day Placerville, became the closest town offering mining supplies and other necessities for the miners in El Dorado County. Gold subsequently was found in the tributaries to the San Joaquin River, which flowed north to join the Sacramento River in the Great Delta east of San Francisco Bay.

By 1864, the California Gold Rush had essentially ended. The rich surface and river placers were largely exhausted and the miners either returned to their homelands or stayed to start new lives in California. After the Gold Rush, people in towns such as Jackson, Placerville, and Sonora turned to other means of commerce, such as ranching, agriculture, and timber production. With the decline of gold mining, agriculture and ranching came to the forefront in the State's economy. California's natural resources and moderate climate proved well suited for cultivation of a variety of fruits, nuts, vegetables, and grains.

Local History

County of Santa Clara

The County of Santa Clara derives its name from Mission Santa Clara de Asís, and it is one of the original counties created at statehood, sharing its name with the City of Santa Clara. The County of Santa Clara was founded on February 18, 1850, originally having been named San José County a month prior; the California legislature decided to change the name after recommendations from General Mariana Guadalupe Vallejo's committee. Santa Clara is made up of 15 cities, with San José serving as the county seat and encompassing 1,312 square miles.

As more and more settlers came to the area, they found the climate and soil in the County of Santa Clara pristine for farming and agricultural use, compounded with the underground aquifers underlying the entire valley, making the land particularly valuable. When gold was discovered in California in 1848, it brought an influx of settlers to the region, prompting several cities and towns to be established in the county, thus expanding its borders. Some of the prominent individuals who helped in the growth of the valley were Martin Murphy Jr., who by 1849 controlled six of the county's largest ranchos, planted the valley's first orchards, and helped institute Santa Clara University; Senator Leland Stanford, who established Leland Stanford Junior University in Palo Alto; and Rafael Soto, who helped layout Palo Alto's original townsite in 1888. The addition of several rail

lines was pivotal in facilitating the growth of the agricultural business. After World War II, the communities in the County of Santa Clara experienced a population boom with thousands of veterans settling in the area seeking suburban living.

Today, the County of Santa Clara is nicknamed Silicon Valley and is home to Apple, Facebook, Google, and Tesla, etc. Its population of nearly 1,885,508 million is one of the largest in the State and the largest of the nine Bay Area Counties. Aside from being a leader in technology, the County of Santa Clara is also home to Stanford University, San José State University, and Santa Clara University, as well as several sports teams, including the San José Sharks. The County of Santa Clara is continuously listed as one of the best places to live in the United States and is celebrated for its high standards of living and natural diversity.

City of San José

The City of San José can trace its roots back to 1777 with the founding of The Pueblo of San José de Guadalupe by the Spanish government. The town, a small farming community founded by 68 colonists, was the first of three established in Alta California to help administer and coordinate the missions and presidios in the province. The original pueblo, established along the Guadalupe River near what is today, Taylor Street, had to be abandoned in 1785 due to severe winter flooding. By 1791, it had been reestablished on higher ground approximately 1 mile to the south, centering on what is today César Chávez Plaza.

In 1821, Mexico won independence from Spain and lands held in common, such as pueblo and mission lands, were granted to private individuals. In 1824, Mexico passed a law that allowed both foreign and Native citizens to petition the governor for ownership of unoccupied tracts of land in an effort to stimulate further colonization. Drawn by opportunities to establish farms and small-scale commercial operations under Mexican rule, Anglo-American settlers increasingly came to San José, and by the 1840s, the Native Californians found themselves in the minority. In 1846, the United States declared war on Mexico and acquired the Mexican province of California in the Treaty of Guadalupe Hidalgo two years later. The discovery of gold in the Sierra foothills precipitated a sudden influx of population to the State, and as a central supply station for prospectors during the Gold Rush, San José underwent a population explosion. This event accelerated California's path to statehood, and in 1850, California became the thirty-first state in the United States with San José serving as the first State Capitol. A railroad line between San Francisco and San José was completed in 1864, followed a few years later by the Central Pacific line connecting San José with the transcontinental railroad in 1869. With the City now linked to national and international markets where the agricultural and manufactured goods of the valley could be sold, San José increasingly became a major center for farming, industrial, and commercial activity and exhibited steady growth over the following two decades.

Prior to World War II, San José, with its 18 canneries and 13 packinghouses, was the world's largest canning and dried-fruit packing center. It also pioneered the manufacture of specialized mechanical farm equipment in California. The war years had a major effect on the region, with the construction of the naval air station at Moffett Field and San Francisco acting as the gateway to the Pacific from 1941 to 1945.

Following World War II, San José shifted its focus away from agriculture in an attempt to attract new industries to the City. IBM had already established its West Coast headquarters in San José in 1943 and opened a new research and development facility in 1952. Both would prove to be forerunners of the City's future economy, as Reynold Johnson and his team would later invent RAMAC, the first commercial computer, as well as the hard disk drive there.

During the 1950s and 1960s, San José entered a period of unprecedented growth, skyrocketing from a city of 95,000 people and 17 square miles in 1950 to the fourth largest city in California with more than 450,000 people and 137 square miles by 1969. This growth can be directly related to the appointment of City Manager A.P. "Dutch" Hamann, who annexed over 1,389 parcels into San José during his 19-year tenure. As orchards were replaced with subdivisions and shopping centers and rural roads widened into freeways lined with restaurants and showrooms, an anti-growth reaction to the effects of rapid development emerged in the 1970s championed by Mayors Norman Mineta and Janet Gray Hayes.

This did not limit the growth of the City's fledgling computer industry. The 1970s saw a series of major innovations as San José electronics companies abandoned traditional vacuum tubes in favor of integrated circuits and silicon chips in the manufacture of computers and small electronics. The boom in production and consequent birth of the personal computer industry led Don C. Hoefler, then editor of Microelectronics News, to begin referring to the Santa Clara Valley as "Silicon Valley" for the first time in 1971. By 1980, over 3,000 electronics firms, including IBM, Intel, and Hewlett-Packard, had taken up residence in the area, and the region became the capital of a lucrative booming technological industry that attracted new residents to San José and neighboring towns by the thousands. The City of San José became synonymous with economic opportunity, jobs, and a high standard of living, attracting top engineers worldwide into the area. Boasting a population of over 1 million people as of 2019, San José is the largest city in Northern California by population and area. It serves as the urban political center of Silicon Valley and attracts both large transnational corporations and small entrepreneurial companies alike to its environs.

3.3.3 - Methodology

Records Searches and Pedestrian Survey to Identify Existing Cultural Resources

The information in this section is based, in part, on the Phase I CRA prepared for the proposed project by FCS in October 2024. The Phase I CRA used the methods below to analyze the potential impacts of project implementation.

Northwest Information Center

On May 30, 2024, a records search for the project area and a 0.5-mile radius beyond the project site boundary was conducted at the NWIC located at Sonoma State University in Rohnert Park, California. The current inventories of the National Register of Historic Places (NRHP), the CRHR, the California Historical Landmarks (CHL) list, the California Points of Historical Interest (CPHI) list, and the California Built Environment Resource Directory (BERD) for the County of Santa Clara were also reviewed to determine the existence of previously documented local historical resources.

The results of the records search indicate that eight cultural resources (three pre-contact and five historic) have been recorded within the 0.5-mile search radius, none of which are located within the project boundaries. Additionally, 12 area-specific survey reports are on file within the 100-foot radius, four of which (S-004442, S-008375, S-008471, and S-008523) partially transect and/or fully encompass the project area, indicating that the project site has been surveyed for cultural resources (Table 3.3-1).

Table 3.3-1: Previous Investigations Within 100-foot Radius of the Project Site

Report No.	Report Title/Project Focus	Author	Date
S-004442	**Archaeological Reconnaissance of Certain Portions of the Rincon de los Esteros Redevelopment Area, San José, California**	**Archaeological Consulting and Research Services, Inc.**	**1977**
S-008375	**Cultural Resources Monitoring in the Rincon de los Esteros Redevelopment Project: Improvement District 153 SJ, San José, California**	**James C. Bard, John M. Findlay, Donna M. Garaventa, Colin I. Busby, and Larry S. Kobori**	**1980**
S-008471	**Cultural Resource Evaluation of the River Oaks/Finnegan Corp. Project on Mauvais Lane in the City of San José, County of Santa Clara**	**Robert Cartier**	**1981**
S-008523	**Cultural Resource Evaluation of a Parcel on River Oaks Parkway in the City of San José, County of Santa Clara**	**Robert Cartier**	**1981**
S-008575	A Cultural Resource Assessment of the Atari, Inc., Campus Site, San José, California	Colin I. Busby, Robert M. Harman, David J. Fee, and Beverly K. Lewis	1981
S-008626	Cultural Resources Investigation, Second Expansion of Rincon de los Esteros Redevelopment Project	Dorothea J. Theodoratus, Clinton M. Blount, Ruth M. Begell, Billy J. Peck, Richard D. Ambro, Lynn L. Marshall, Ann H. Johnson, and Mary Agnes Dougherty	1980
S-013201	A Cultural Resources Assessment of the Parcel on the Southeast Corner of River Oaks Parkway and Zanker Road, City of San José, Santa Clara County, California	Michael R. Fong, Stuart A. Guedon, and Steven J. Rossa	1991
S-018406	Cultural Resource Evaluation of the Cisco System 4 Project, City of San José	Robert Cartier and Lynne Eckert	1996
S-031526	Cultural Resource Evaluation of the Project [at] 3300 Zanker Road in the City of San José	Archaeological Resource Management	2005
S-035002	Cultural Resources Review of the 199 River Oaks Project Area, San José, Santa Clara County, California	Miley Paul Holman	2008
S-046878	A Cultural Resources Study of the Agnews East School Site, San José, Santa Clara County, California	Miley Paul Holman	2010

Report No.	Report Title/Project Focus	Author	Date
S-047217	East Agnews Developmental Center, HABS-Style Documentation, San José, California	Ruth Todd, Christina Dikas, Jonathan Rusch, William Porter, and Mido Lee	2015

Notes: Reports listed in **Bold** are within the project site.
Source: Northwest Information Center (NWIC) Records Search. May 30, 2024

Historic Maps and Aerial Photographs

A review of 19 historic aerials from 1948 to 2022 indicates that from the earliest aerial in 1948 until 1980, the project site was undeveloped and used as an agricultural field. Between 1980 to 1982, development of the business buildings was constructed, in addition to residential and an industrial mixed-use building in the surrounding vicinity of the project area. From 1982 to the present, the project site has remained relatively unchanged.

Cultural Resources Pedestrian Survey

On June 3, 2024, FCS Senior Archaeologist Dr. Dana DePietro surveyed the project site to identify any unrecorded cultural resources within the project boundary. The project site is a decommissioned corporate business campus consisting of three office buildings, parking lots, and landscaping elements. The campus is bordered by River Oaks Parkway and River Oaks Park to the south, Cisco Way and office buildings to the east, Abram Agnew Elementary School to the north, and residential apartment buildings to the west.

The survey began on the southernmost corner of the roughly pentagonal-shaped site and moved north using east–west transects spaced at 10-meter intervals whenever possible. With the exception of limited landscaping elements that likely contain imported fill, visibility of native soils was non-existent across the site. Landscaping soils were primarily composed of brown (Munsell 10 YR 4/4) soil interspersed with small (2 to 5 centimeters) stones composed primarily of schist and chalk.

Survey conditions were documented using digital photographs and field notes. During the survey, Dr. DePietro examined all areas of the exposed ground surface for pre-contact artifacts (e.g., fire-affected rock, milling tools, flaked stone tools, toolmaking debris, ceramics), soil discoloration and depressions that might indicate the presence of a cultural midden, faunal and human osteological remains, and features indicative of the former presence of structures or buildings (e.g., postholes, standing exterior walls, foundations) or historic debris (e.g., glass, metal, ceramics. Particular attention was paid to the office buildings and a central landscaping element which contains a grove of olive trees. Historic aerials firmly date the construction of the corporate campus buildings and landscaping elements to between 1980 and 1982, indicating that the campus is less than 45 years in age and likely ineligible for listing as a potential historic resource at the local, State, or national level.

While no indications of historic or pre-contact archaeological resources were encountered over the course of the pedestrian survey, visibility of native soils was almost non-existent and the developed nature of the project site does not preclude the possibility that subsurface archaeological features may be present.

Buried Site Potential

In addition to the pedestrian survey, the potential for yet identified cultural resources in the vicinity was reviewed against geologic and topographic geographic information system data for the general area and information from other nearby projects. The proposed project was evaluated against a set of criteria identified by a geoarchaeological overview of the Central Valley that was prepared for the California Department of Transportation (Caltrans) Districts 6 and 9. This study mapped the "archaeological sensitivity," or potential to support the presence of buried prehistoric archaeological deposits, throughout the Central Valley based on geology and environmental parameters including distance to water and landform slope. The methodology used in the study is applicable to other parts of California and concluded that sites consisting of flat, Holocene-era deposits in close proximity to water resources had a moderate to high probability of containing subsurface archaeological deposits when compared to earlier Pleistocene deposits situated on slopes or further away from drainages, lakes, and rivers.

The project site is situated on urbanized and developed land. According to the geological map of Dibblee and Minch, the project site rests entirely on Holocene-age alluvial deposits (Qa) deposits. Applying the criteria set forth in Meyer et al., all Holocene-era deposits have the potential to contain archaeological deposits, which increases with the ease of the slope and proximity to water resources. However, the Native American Heritage Commission (NAHC) Sacred Lands File (SLF) search was negative for Tribal Cultural Resources (TCRs) was negative for the project site and no resources were identified by the NWIC during the records search. Additionally, the pedestrian survey failed to identify any cultural resources; this indicates a low potential for unanticipated buried cultural resources to be impacted by project construction.

Summary of Existing Cultural Resources at the Project Site

Historic Architectural Resources

Based on the NWIC record search results, pedestrian survey, and archival research, no known historic architectural resources are located within the project site boundaries; however, four recorded built environment resources are located within the 0.5-mile search radius.

Archaeological Resources

No known archaeological sites or burial sites are located within the project site boundaries. However, three pre-contact and one recorded historic resource are located within 0.5-mile search radius surrounding the project site.

3.3.4 - Regulatory Framework

Federal

National Historic Preservation Act

The National Historic Preservation Act of 1966 (NHPA), as amended, established the NRHP, which contains an inventory of the nation's significant prehistoric and historic properties. Under Title 36 Code of Federal Regulations Part 60, a property is recommended for possible inclusion on the NRHP if it is at least 50 years old, has integrity, and meets one of the following criteria:

- It is associated with significant events in history or broad patterns of events.
- It is associated with significant people in the past.
- It embodies the distinctive characteristics of an architectural type, period, or method of construction; or it is the work of a master or possesses high artistic value; or it represents a significant and distinguishable entity whose components may lack individual distinction.
- It has yielded, or may yield, information important in history or prehistory.

Certain types of properties are usually excluded from consideration for listing in the NRHP, but they can be considered if they meet special requirements in addition to meeting the criteria listed above. Such properties include religious sites, relocated properties, graves and cemeteries, reconstructed properties, commemorative properties, and properties that have achieved significance within the past 50 years.

Archaeological Resources Protection Act

The Archaeological Resources Protection Act (ARPA) amended the Antiquities Act of 1906 (16 United States Code [USC] 431–433) and set a broad policy that archaeological resources are important to the nation and should be protected and required special permits before the excavation or removal of archaeological resources from public or Indian lands. The purpose of ARPA was to secure, for the present and future benefit of the American people, the protection of archaeological resources and sites that are on public lands and Indian lands and to foster increased cooperation and exchange of information between governmental authorities, the professional archaeological community, and private individuals having collections of archaeological resources and data that were obtained before October 31, 1979.

State

CEQA Guidelines Section 15064.5(a)—CEQA Definition of Historical Resources

CEQA Guidelines Section 15064.5(a), in Title 14 of the California Code of Regulations, defines a "historical resource" as:

(1) A resource listed in or determined to be eligible by the State Historical Resources Commission, for listing in the California Register of Historical Resources.

(2) A resource included in a local register of historical resources, as defined in Section 5020.1(k) of the Public Resources Code or identified as significant in a historical resource survey meeting the requirements of Section 5024.1(g) of the Public Resources Code, shall be presumed to be historically or culturally significant. Public agencies must treat any such resource as significant unless the preponderance of evidence demonstrates that it is not historically or culturally significant.

(3) Any object, building, structure, site, area, place, record, or manuscript which a lead agency determines to be historically significant or significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, or cultural annals of California may be considered a historical resource, provided the lead agency's determination is supported by substantial evidence in light of the whole record. Generally, a

resource shall be considered by the lead agency to be "historically significant" if the resource meets the criteria for listing on the California Register of Historical Resources.

(4) The fact that a resource is not listed in, or determined to be eligible for listing in the California Register of Historical Resources, not included in a local register of historical resources (pursuant to Section 5020.1(k) of the Public Resources Code), or identified in a historical resources survey (meeting the criteria in Section 5024.1(g) of the Public Resources Code) does not preclude a lead agency from determining that the resource may be a historical resource as defined in Public Resources Code Sections 5020.1(j) or 5024.1.

Therefore, under CEQA, even if a resource is not included on any local, State, or federal register or identified in a qualifying historical resources survey, a lead agency may still determine that any resource is a historical resource for the purposes of CEQA if there is substantial evidence supporting such a determination. A lead agency must consider a resource to be historically significant if it finds that the resource meets the criteria for listing in the CRHR.

Archaeological and historical sites are protected pursuant to a wide variety of State policies, laws and regulations, as enumerated in the Public Resources Code Section 5024.1. Cultural resources are recognized as nonrenewable resources and receive additional protection under the Public Resources Code and CEQA.

Public Resources Code Section 5024.1 and CEQA Guidelines Section15064.5(a)—Definition of a Historic Resource

Public Resources Code Section 5024.1 and CEQA Guidelines Section 15064.5(a), in Title 14 of the California Code of Regulations, define a "historical resource" as a resource that:

(1) Is associated with events that have made a significant contribution to the broad patterns of California's history and cultural heritage.

(2) Is associated with the lives of persons important in our past.

(3) Embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of an important creative individual, or possesses high artistic values.

(4) Has yielded, or may be likely to yield, information important in prehistory or history.

CEQA Guidelines Section 15064.5(a)(3)—California Register of Historical Resources Criteria

As defined by CEQA Guidelines, Section 15064.5(a)(3) (A–D), a resource shall be considered historically significant if the resource meets the criteria for listing on the CRHR. The CRHR and many local preservation ordinances have employed the criteria for eligibility to the NRHP as a model (see criteria described above under the description of the NHPA) since the NHPA provides the highest standard for evaluating the significance of historic resources. A resource that meets NRHP criteria is clearly significant. In addition, a resource that does not meet NRHP standards may still be considered historically significant at a local or State level.

CEQA Guidelines 15064.5(c)—Effects on Archaeological Resources

CEQA Guidelines state that a resource need not be listed on any register to be found historically significant. CEQA Guidelines direct lead agencies to evaluate archaeological sites to determine whether they meet the criteria for listing in the CRHR. If an archaeological site is a historical resource, in that it is listed or eligible for listing in the CRHR, potential adverse impacts to it must be considered. If an archaeological site is considered not to be a historical resource but meets the definition of a "unique archaeological resource" as defined in Public Resources Code Section 21083.2, then it would be treated in accordance with the provisions of that section.

CEQA Guidelines Section 15064.5(d)—Effects on Human Remains

- Native American human remains and associated burial items may be significant to descendant communities and/or may be scientifically important for their informational value. They may be significant to descendant communities for patrimonial, cultural, lineage, and religious reasons. Human remains may also be important to the scientific community, such as prehistorians, epidemiologists, and physical anthropologists. The specific stake of some descendant groups in ancestral burials is a matter of law for some groups, such as Native Americans (CEQA Guidelines § 15064.5(d); PRC § 5097.98). CEQA and other State laws and regulations regarding Native American human remains provide the following procedural requirements to assist in avoiding potential adverse effects on human remains within the contexts of their value to both descendant communities and the scientific community.
- When an initial study identifies the existence or probable likelihood that a project would affect Native American human remains, the lead agency is to contact and work with the appropriate Native American representatives identified through the NAHC to develop an agreement for the treatment and disposal of the human remains and any associated burial items (CEQA Guidelines § 15064.5(d); PRC § 5097.98).
- If human remains are accidentally discovered, the County Coroner must be contacted. If the County Coroner determines that the human remains are Native American, the Coroner must contact the NAHC within 24 hours. The NAHC must identify the Most Likely Descendant (MLD) to provide for the opportunity to make recommendations for the treatment and disposal of the human remains and associated burial items (CEQA Guidelines § 15064.5(e)).
- If the NAHC is unable to identify an MLD, the MLD fails to make recommendations within 24 hours of notification, or the project applicant rejects the recommendations of the MLD, the Native American human remains and associated burial items must be reburied in a location not subject to future disturbance on the property (CEQA Guidelines § 15064.5(e)).
- If potentially affected human remains or a burial site may have scientific significance, whether or not it has significance to Native Americans or other descendant communities, then under CEQA, the appropriate mitigation of effect may require the recovery of the scientific information of the remains/burial through identification, evaluation, data recovery, analysis, and interpretation (CEQA Guidelines § 15064.5(c)).

Health and Safety Code Section 7050.5 (Treatment of Human Remains)

Section 7050.5 of the Health and Safety Code sets forth provisions related to the treatment of human remains. As the code states, "every person who knowingly mutilates or disinters, wantonly disturbs, or willfully removes any human remains in or from any location other than a dedicated cemetery without authority of law is guilty of a misdemeanor" except under circumstances as provided in Section 5097.99 of the Public Resource Code. The regulations also provide guidelines for the treatment of human remains found in locations other than a dedicated cemetery, including responsibilities of the Coroner.

Public Resources Code Section 5097.98 (Discovery of Human Remains)

Section 5097.98 provides protocol for the discovery of human remains. It states that "whenever the commission receives notification of a discovery of Native American human remains from a County Coroner pursuant to subdivision (c) of Section 7050.5 of the Health and Safety Code, it shall immediately notify persons believed to be most likely descended from the deceased Native American." It also sets forth provisions for descendants' preferences for treatment of the human remains and what should be done if the commission is unable to identify a descendant.

Local

Envision San José 2040 General Plan

The General Plan includes policies for the purpose of avoiding or mitigating impacts resulting from planned development projects within the City. The following policies are specific to cultural resources and are applicable to the proposed project.

Policies

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 archaeological or paleontological information may be affected by the project and then require, if needed, that appropriate mitigation measures be incorporated into the project design.

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.

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 prehistoric resources.

LU-13.1 Preserve the integrity and fabric of candidate or designated Historic Districts

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.

LU-13.4 Require public and private development projects to conform to the adopted City Council Policy on the Preservation of Historic Landmarks.

LU-13.5 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.

LU-13.6 Ensure modifications to candidate or designated landmark buildings or structures conform to the Secretary of the Interior's Standards for Treatment of Historic Properties and/or appropriate State of California requirements regarding historic buildings and/or structures, including the California Historical Building Code.

LU-13.7 Design new development, alterations, and rehabilitation/remodels within a designated or candidate Historic District to be compatible with the character of the Historic District and conform to the Secretary of the Interior's Standards for the Treatment of Historic Properties, appropriate State of California requirements regarding historic buildings and/or structures (including the California Historic Building Code) and to applicable historic design guidelines adopted by the City Council.

LU-13.8 Require that new development, alterations, and rehabilitation/remodels adjacent to a designated or candidate landmark or Historic District be designed to be sensitive to its character.

LU-13.15 Implement City, State, and federal historic preservation laws, regulations, and codes to ensure the adequate protection of historic resources.

City of San José Standard Permit Conditions

SPC CUL-1a **Subsurface Cultural Resources**. If prehistoric or historic resources are encountered during excavation and/or grading of the site, all activity within a 100-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 (NAHC) for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3 shall examine the find. The archaeologist in consultation with the Tribal representative shall 1) evaluate the find(s) to determine whether they meet the definition of a historical or archaeological resource; and (2) make appropriate recommendations regarding the disposition of such finds prior to issuance of building permits. Recommendations could include collection, recordation, and analysis of any

significant cultural materials. A report of findings documenting any data recovery shall be submitted to the Director of PBCE or the Director's designee, the City's Historic Preservation Officer and the Northwest Information Center (NWIC) (if applicable). Project personnel shall not collect or move any cultural materials.

SPC CUL-1b. In the event of the accidental discovery or recognition of any human remains, CEQA Guidelines Section 15064.5, Health and Safety Code Section 7050.5, and Public Resources Code Sections 5097.94 and Section 5097.98 shall be followed. If during the course of project construction, there is accidental discovery or recognition of any human remains, the following steps shall be taken:

1. There shall be no further excavation or disturbance within 100 feet of the remains until the County Coroner is contacted to determine whether the remains are Native American and if an investigation of the cause of death is required. If the Coroner determines the remains to be Native American, the Coroner shall contact the Native American Heritage Commission (NAHC) within 24 hours, and the NAHC shall identify the person or persons it believes to be the Most Likely Descendant (MLD) of the deceased Native American. The MLD may make recommendations to the landowner or the person responsible for the excavation work within 48 hours, for means of treating or disposing of, with appropriate dignity, the human remains, and any associated grave goods as provided in Public Resource Code Section 5097.98.
2. Where the following conditions occur, the landowner or his or her authorized representative shall rebury the Native American human remains and associated grave goods with appropriate dignity either in accordance with the recommendations of the MLD or on the project site in a location not subject to further subsurface disturbance:
   a. The NAHC is unable to identify an MLD or the MLD failed to make a recommendation within 48 hours after being notified by the commission.
   b. The descendant identified fails to make a recommendation.
   c. The landowner or his authorized representative rejects the recommendation of the descendant, and mediation by the NAHC fails to provide measures acceptable to the landowner.
   d. **Human Remains**. If any human remains are found during any field investigations, grading, or other construction activities, all provisions of California Health and Safety Code Sections 7054 and 7050.5 and Public Resources Code Sections 5097.9 through 5097.99, as amended per Assembly Bill 2641, shall be followed. If human remains are discovered during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The project applicant shall immediately notify the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee and the qualified archaeologist, who shall then notify the Santa Clara County Coroner. The Coroner will make a determination as to whether the remains are Native

American. If the remains are believed to be Native American, the Coroner will contact the NAHC within 24 hours. The NAHC will then designate a Most Likely Descendant (MLD). The MLD will inspect the remains and make a recommendation on the treatment of the remains and associated artifacts. If one of the following conditions occurs, the landowner or his authorized representative shall work with the Coroner to reinter the Native American human remains and associated grave goods with appropriate dignity in a location not subject to further subsurface disturbance:

i. 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.
ii. The MLD identified fails to make a recommendation; or
iii. The landowner or his authorized representative rejects the recommendation of the MLD, and mediation by the NAHC fails to provide measures acceptable to the landowner.

3.3.5 - Approach to Analysis

This evaluation focuses on whether implementation of the proposed project would have potentially significant impacts on historic resources, architectural resources, archaeological resources, or human remains.

The proposed project may have a significant impact on a historical resource if construction of the proposed project would significantly impair a resource's eligibility for inclusion in the CRHR; thus, this information has been considered, as appropriate, as part of the methodology used in this evaluation. Analysis is based, in part, on information collected from record searches at the NWIC, additional archival research, pedestrian surveys, and information from the historic architectural assessment of existing properties more than 45 years in age (if any) located within the project site boundaries. If a project would leave an identified cultural resource no longer able to convey its significance, meaning that the resource would no longer be eligible for listing in the CRHR, then the proposed project's impact would be considered a significant adverse change. Pursuant to CEQA Guidelines Section15126.4(b)(1), if a project adheres to the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings, then the project's impact "shall generally be considered mitigated below a level of significance and thus is not significant."

A project may have an impact on an archaeological resource or human remains if construction of the project would physically damage or destroy archaeological data or human remains (including those interred outside of formal cemeteries). Analysis is based, in part, on information collected from record searches at the NWIC, the additional archival research, and pedestrian surveys.

Both direct and indirect effects of project implementation were considered for this analysis. Direct impacts are typically associated with construction and/or ground-disturbing activities and have the potential to immediately alter, diminish, or destroy all or part of the character and quality of archaeological resources and/or historic architecture, or human remains. Indirect impacts are typically associated with post-project implementation conditions that have the potential to alter or

diminish the historical setting of a cultural resource (generally historic architecture) by introducing visual intrusions on existing historical structures that are considered undesirable.

Cumulative Analysis

The geographic scope for the cumulative analysis is described further below for each type of resource. This analysis evaluates whether the impacts of the proposed project, together with the impacts of other cumulative development, could result in a cumulatively significant impact related to historical and archaeological resources. This analysis then considers whether the incremental contribution of the impacts associated with the implementation of the proposed project would be significant. Both conditions must apply for the proposed project's cumulative effects to rise to the level of significance. If there is no impact associated with respect to a particular CEQA threshold, discussion of cumulative impacts is not required. Accordingly, cumulative discussion is limited to the potential impacts as discussed below.

3.3.6 - Thresholds of Significance

The lead agency utilizes the criteria in the CEQA Guidelines Appendix G Environmental Checklist to determine whether cultural resources impacts resulting from the implementation of the proposed project would be considered significant if the project would:

a) Cause a substantial adverse change in the significance of a historical resource as pursuant to Section 15064.5.

b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to Section 15064.5.

c) Disturb any human remains, including those interred outside of formal cemeteries.

3.3.7 - Project Impacts and Mitigation Measures

This section discusses potential impacts associated with the development of the proposed project and provides mitigation measures where appropriate.

Historic Resources

Impact CUL-1:	**The proposed project would not cause a substantial adverse change in the significance of a historical resource pursuant to Section 15064.5.**

Impact Analysis

Construction

Historic resources in this context refer to the built environment, mainly buildings and structures over 45 years in age, that may be eligible for inclusion on the CRHR, NRHP, or local designation. Records search results, conducted at the NWIC, indicate that five historic resources have been recorded within the 0.5-mile search radius, none of which are located within the project boundaries. Additionally, no historic built environment resources were encountered during the pedestrian field survey. Therefore, construction of the proposed project would not have an adverse impact on historic era built environment resources.

Operation

No operational impacts would occur to the proposed project's potential to cause a substantial adverse change in the significance of a historical resource.

Level of Significance Before Mitigation

No impact.

Mitigation Measures

None required.

Level of Significance After Mitigation

No impact.

Cumulative Analysis

The relevant geographic scope for potential cumulative impacts to historic, built environment resources is the City of San José. This is because the City provides the smallest geographic boundary of potential significance when a historic property is evaluated at the local, State, or federal level. The cumulative setting includes existing mixed-used, residential, and commercial uses. The NWIC identified four built environment historic resources within the 0.5-mile search radius, none of which are located within the project boundaries. No built environment historic resources were identified during the pedestrian survey of the project site. As the proposed project will not impact any existing historic resources, it will not contribute to a cumulative impact.

Level of Cumulative Significance Before Mitigation

No impact.

Mitigation Measure

No mitigation required.

Level of Cumulative Significance After Mitigation

No impact.

Archaeological Resources

Impact CUL-2:	**The proposed project could cause a substantial adverse change in the significance of an archaeological resource pursuant to Section 15064.5.**

Impact Analysis

Construction

Record search results from the NWIC did not identify any archaeological resources located within the project site; however, there are eight archaeological resources (three pre-contact and five historic) recorded within the 0.5-mile search radius. Additionally, no archaeological resources were identified during the pedestrian survey. The entirety of the project site is situated on Holocene deposits; as such, there is always the possibility that earthmoving activities associated with project construction could encounter previously undiscovered archaeological resources. Archaeological resources can

include but are not limited to stone, bone, wood, or shell artifacts or features, including hearths and structural elements. Damage or destruction of these resources would be a potentially significant impact. Implementation of City of San José Standard Permit Condtion SPC CUL-1a-Subsurface Cultural Resources, in addition to Mitigation Measure (MM) CUL-2a and MM CUL-2b would reduce potential impacts to archaeological resources that may be discovered during project construction. Thus, impacts would be less than significant with mitigation implemented.

Operation

Impacts related to a proposed project's potential to cause a substantial adverse change in the significance of an archaeological resource are limited to construction impacts. No respective direct or indirect operational impacts related to archaeological resources would occur.

Level of Significance Before Mitigation

Potentially significant impact.

Mitigation Measures

MM CUL-2a **Cultural Sensitivity Training**. Prior to issuance of any Grading or Building Permit, the project shall be required to conduct a Cultural Awareness Training for construction personnel. The training shall be facilitated by a qualified Archaeologist in collaboration with a Native American representative registered with the Native American Heritage Commission (NAHC) for the City of San José, and that is traditionally and culturally affiliated with the geographic area, as described in Public Resources Code Section 21080.3. The training should include visual aids, a discussion of applicable laws and statutes relating to archaeological resources, types of resources that may found within the project site, and procedures to be followed in the event such resources are encountered. Documentation verifying that Cultural Awareness Training has been conducted shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee prior to issuance of Grading or Building Permits.

Treatment Plan. A qualified Archaeologist in collaboration with a Native American Monitor, registered with the Native American Heritage Commission for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3, shall prepare a treatment plan that reflects permit-level detail pertaining to depths and locations of excavation activities, in case of finds. The treatment plan shall be prepared and submitted to the Director of Planning, Building, and Code Enforcement or Director's designee prior to the issuance of any grading permits. 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).
- Monitoring schedules and individuals.
- 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.
- Security approaches or protocols for finds.
- Appendices: all site records, correspondence, and consultation with Native Americans, etc.

The treatment plan shall utilize data recovery methods to reduce impacts on subsurface resources.

MM CUL-2b **Subsurface Monitoring.** A qualified Archaeologist, in collaboration with a Native American Monitor, registered with the Native American Heritage Commission (NAHC) for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3, shall also be present during applicable earthmoving activities including, but not limited to, trenching, initial or full grading, lifting of foundation, boring on-site, or major landscaping. Prior to issuance of any tree removal, grading, demolition, and/or building permit or activities, the applicant shall notify the Director of Planning, Building, and Code Enforcement, or Director's designee, of grading and construction dates and activities that a qualified Archaeologist and Native American Monitor would be present on the project site during construction.

Level of Significance After Mitigation

Less than significant impact.

Cumulative Analysis

Significant impacts to unique archaeological resources have the potential to adversely affect our understanding of the past on multiple levels and are contingent on the category of resource and reasoning behind its significance. In the absence of any known archaeological resources that will be impacted by the proposed project, the appropriate geographic scope for assessing potential cumulative impacts is the immediate project vicinity. This is because the integrity of any given archaeological resource depends on what occurs in the immediate vicinity around that resource, (such as disruption of soils, etc.) and the immediate vicinity provides the smallest geographic unit within which significant cumulative impacts spanning multiple projects may occur. For this analysis, the geographic scope is defined as the 0.5-mile NWIC records search radius.

The NWIC identified eight archaeological resources (three pre-contact and five historic) recorded within the 0.5-mile search radius, none within the project boundaries, nevertheless, cumulative impacts within the geographic scope would be less than significant because impacts related to the potential for cumulative development to cause a substantial adverse change in the significance of an archaeological resource are limited to construction impacts. As there are no cumulative projects within the relevant geographic scope, cumulative impacts would be less than significant.

Level of Cumulative Significance Before Mitigation

Less than significant cumulative impact.

Human Remains

Impact CUL-3:	**The proposed project could disturb human remains, including those interred outside of formal cemeteries.**

Impact Analysis

Construction

While no formal cemeteries or areas containing human remains are known to be within the proposed project boundaries, the NWIC identified one burial resource within the 0.5-mile search radius. While unlikely, the possibility always exists that construction-related ground disturbance may uncover previously undiscovered human remains. In the unlikely event such a discovery is made, CEQA Guidelines Section 15064.5, Health and Safety Code Section 7050.5, and Public Resources Code Sections 5097.94 and Section 5097.98 must be followed. Implementation of City of San José Standard Permit Conditions CUL-1b-Human Remains, which details inadvertent discovery procedures, would reduce potential impacts to previously undiscovered human remains to a less than significant level.

Operation

Impacts related to a project's potential to disturb human remains are limited to construction. No respective direct or indirect operational impacts related to human remains would occur.

Level of Significance Before Mitigation

Potentially significant impact.

Mitigation Measures

Implement City of San José Standard Permit Conditions

Level of Significance After Mitigation

Less than significant impact.

Cumulative Analysis

Impacts are limited to construction. The relevant geographic scope is defined as the 0.5-mile NWIC records search radius. As there are no cumulative development projects within the geographic scope, impacts would be less than significant. Nonetheless, past, present, and reasonably foreseeable construction activities may have the potential to encounter undiscovered human

remains and/or formal cemeteries, and these cumulative projects would be required to mitigate for impacts through compliance with applicable federal and State laws governing human remains and/or formal cemeteries. Additionally, the implementation of standard construction mitigation measures and Best Management Practices (BMPs) would ensure undiscovered human remains and/or formal cemeteries are not adversely affected by cumulative project-related construction activities, which would prevent the destruction or degradation of potentially significant cultural resources within the geographic scope. Therefore, cumulative impacts would be less than significant.

Level of Cumulative Significance Before Mitigation

Less than significant cumulative impact.

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3.4 - Greenhouse Gas Emissions

3.4.1 - Introduction

This section describes existing climate conditions as well as the relevant regulatory framework. The "Environmental Setting" provides a description of greenhouse gases and the current state of the climate. The "Regulatory Framework" provides a description of relevant federal, State, and local regulatory policies that serve to reduce greenhouse gas (GHG) emissions and are applicable to the 211-281 River Oaks Parkway Residential Project (proposed project).

No public comments were received during the Environmental Impact Report (EIR) scoping period related to GHG emissions.

3.4.2 - Environmental Setting

Earth's temperature is rising,[1] and although the global climate has varied over the long-range time scale, there is strong scientific consensus that the rapid heating in recent decades is both unusual and caused by GHG emissions from human activities such as the burning of fossil fuels, including coal and oil.[2] Gases that trap heat in the atmosphere are referred to as GHGs. The effect is analogous to the way a greenhouse retains heat. Prominent GHGs contributing to the greenhouse effect are carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), hydrofluorocarbons, chlorofluorocarbons, and sulfur hexafluoride. Atmospheric concentrations of CO_2, the most prominent GHG, have been increasing rapidly in recent decades, from approximately 280 parts per million (ppm) before the start of the Industrial Revolution in the 1760s to more than 400 ppm as of 2013.[3] According to the United Nations Intergovernmental Panel on Climate Change (IPCC), it is *extremely unlikely* that global climate change of the past 50 years can be explained without the contribution from human activities.

As the concentration of these gases continues to increase in the atmosphere, Earth's temperature has increased by about 1.2 to 1.4°F (degrees Fahrenheit) since 1900.[4] Even if GHG emissions could be reduced to zero overnight, global temperatures would continue to rise in future years due to the build-up of GHGs that have already accumulated in the atmosphere and the oceans. As future emissions increase the atmospheric concentrations of CO_2 and other GHGs, the impacts of the warming greenhouse effect are projected to steadily worsen.

Global climate change is not confined to a particular project area and is generally accepted as the consequence of global industrialization over the last 200 years. A typical project, even a very large one, does not generate enough GHG emissions on its own to influence global climate change

[1] National Centers for Environmental Information, National Oceanic and Atmospheric Administration (NOAA). 2024. Website: https://www.ncei.noaa.gov/access/monitoring/climate-at-a-glance/global/time-series. Accessed December 5, 2024.
[2] K. Myers et al. "Consensus revisited: quantifying scientific agreement on climate change and climate expertise among Earth scientists 10 years later." Environmental Research Letters, Vol.16 No. 10, 104030 (20 October 2021). doi: 10.1088/1748-9326/ac2774.
[3] Global Monitoring Library, National Oceanic and Atmospheric Administration (NOAA). 2024. Website: https://gml.noaa.gov/ccgg/trends/. Accessed December 5, 2024.
[4] National Aeronautics and Space Administration (NASA). 2024. World of Change: Global Temperatures. Website: https://earthobservatory.nasa.gov/world-of-change/global-temperatures. Accessed December 5, 2024.

significantly; hence, the issue of global climate change is, by definition, a cumulative environmental impact. Therefore, this section discusses the proposed project's contribution to the cumulative GHG impact.

Greenhouse Gases

Unlike emissions of criteria and toxic air pollutants, which have local or regional impacts, emissions of GHGs that contribute to global warming or global climate change have a broader, global impact. Global warming is a process whereby GHGs accumulating in the atmosphere contribute to an increase in the temperature of Earth's atmosphere. The principal GHGs contributing to global warming are CO_2, CH_4, N_2O, and fluorinated gases. The primary GHGs of concern are summarized in Table 3.4-1. These gases allow visible and ultraviolet light from the sun to pass through the atmosphere, but they prevent heat from escaping back out into space.

Table 3.4-1: Description of Greenhouse Gases of Concern

Greenhouse Gas	Description and Sources and (Sinks)	Atmospheric Lifetime	Percent of US Emissions
Carbon Dioxide (CO_2)	• Fossil fuel combustion • Forest clearing • Cement production • (Plants)	50–200	79.7
Methane (CH_4)	• Livestock • Landfills • Leaks from oil and natural gas production	12	11.1
Nitrous Oxide (N_2O)	• Fertilizers • Manure • Fossil Fuel Combustion • Nylon production • Semiconductor Manufacturing • Wastewater treatment	114	6.1
Hydrofluorocarbons (HFCs)	• Automobile air conditioners • Refrigerants.	1–50,000	3.1
Perfluorocarbons (PFCs)	• Primary aluminum production • Semiconductor manufacturing.	10,000–50,000	
Sulfur hexafluoride (SF_6)	• Electrical power transmission equipment • Magnesium industry • Semiconductor manufacturing	3,200	
Nitrogen trifluoride (NF_3)	• Electronics manufacture for semiconductors and liquid crystal displays.	740	
Source: United States Environmental Protection Agency (EPA). April 11, 2024. Website: https://www.epa.gov/ghgemissions/overviewgreenhouse-gases. Accessed October 13, 2024.			

California Greenhouse Gas Emissions Inventory

Emissions of GHGs contributing to global climate change are attributable in large part to human activities associated with the transportation, industrial/manufacturing, utility, residential, commercial, and agricultural sectors. Emissions of CO_2 are byproducts of fossil fuel combustion. Methane, a highly potent GHG, results from off-gassing (the release of chemicals from nonmetallic substances under ambient or greater pressure conditions) and is largely associated with agricultural practices and landfills. N_2O is also largely attributable to agricultural practices and soil management. CO_2 sinks, or reservoirs, include vegetation and the ocean, which absorb CO_2 through sequestration and dissolution, respectively.

As the second largest emitter of GHG emissions in the United States, California contributes a large quantity (381.3 million metric tons [MMT] carbon dioxide equivalent [CO_2e] in 2021) of GHG emissions to the atmosphere.[5] Anthropogenic CO_2 are largely byproducts of fossil fuel combustion and are attributable to transportation, industry/ manufacturing, electricity generation, natural gas consumption, and agriculture processes.

Statewide Climate Impacts

Global temperatures will continue to rise in future years due to the build-up of GHGs that have already accumulated in the atmosphere and the oceans, and the impacts of the warming greenhouse effect are projected to steadily worsen.

These impacts—including substantially higher temperatures, more extreme weather, increased wildfire events and sea level rise—are already being experienced in California today. As reported by the California Natural Resources Agency in 2009, despite annual variations in weather patterns, California has seen a trend of increased average temperatures, more extreme hot days, fewer cold nights, longer growing seasons, less winter snow, and earlier snowmelt and rainwater runoff. Statewide average temperatures increased by about 1.7°F from 1895 to 2011, and a larger proportion of total precipitation is falling as rain instead of snow. Sea level rose by as much as 7 inches along the California coast over the last century, leading to increased erosion and adding pressure to the State's infrastructure, water supplies, and natural resources. Within the past decade, California has experienced some of the most extreme climate events in its recorded history—a severe 4-year drought, a dramatic reduction in Sierra Nevada winter snowpack, five of the State's 20 largest forest fires since 1932, and 2 years back-to-back of the hottest recorded average temperatures.

Local and Regional Climate Impacts

The San Francisco Bay Area has experienced similar trends as California. Averaged across the region, mean annual temperature has increased nearly 1 degree Fahrenheit in the last 30 years over the previous 30-year period.

These observed trends in the San Francisco Bay Area are anticipated to continue in the future:

[5] California Air Resources Board (CARB). 2021. Current California GHG Emission Inventory Data. Website: https://ww2.arb.ca.gov/ghg-inventory-data. Accessed June 13, 2024.

- **Temperatures are projected to rise substantially, and more extreme hot days will occur.** By 2050, Bay Area annual average temperatures are projected to increase by an additional 2.7°F in the absence of actions to reduce GHG emissions. The number of very hot days and severe heat waves are projected to more than double across the region by midcentury.
- **More precipitation extremes, more rain, and less snow.** The Sierra Nevada region has experienced some of the wettest and driest years in more than 100 years of record keeping. The Sierra Nevada is also the source of much of the Bay Area's water supply, which is typically stored as snow melt rather than water, posing challenges to water storage and distribution, particularly during the longer fire seasons.
- S**ea level rise.** Sea level at the Golden Gate Bridge has risen 8 inches over the last 100 years, creating implications on coastal flooding, erosion, and related damages.
- **Increased frequency of wildfires.** Higher temperatures, higher winds and drought are fueling wildfires across the Bay Area and California, while also lengthening the wildfire season. Wildfires can cause dramatic short-term spikes in air pollution levels and emit massive quantities of CO_2 and black carbon (a short-lived GHG), along with other pollutants.
- **Exacerbation of air quality problems and impacts on public health.** The number of days with high ozone levels correlates closely with the years when the Bay Area experiences more extreme-heat days. Higher ozone levels due may increase negative health impacts, such as acute respiratory symptoms, lost school days, and even premature death. In addition, heat-related deaths and illnesses are anticipated to rise and urban heat island impacts will grow. Higher temperatures will increase vector-borne diseases and produce more plant pollen and lengthen allergy seasons.
- **Higher temperatures exacerbate pollution from cars and industry.** Higher temperatures increase the use of air conditioners in buildings and cars, which in turn requires more combustion of fossil fuels, resulting in increased levels of ozone precursors, particulates, toxic air contaminants (TACs), and GHGs.

While the impacts are felt locally, climate change is a global issue because GHGs are global pollutants. Pollutants with localized air quality effects, including criteria air pollutants and TACs, have relatively short atmospheric lifetimes (approximately 1 day) and generally do not travel greatly beyond their point of emission. By contrast, GHGs have long atmospheric lifetimes, ranging from several years to several thousand years. GHGs persist in the atmosphere for a long enough time to be dispersed around the globe, cumulatively combining to cause a global climate effect.

3.4.3 - Regulatory Framework

The following section describes federal, State, regional, and local regulations and policies that are specific to reducing GHG emissions and are applicable to the proposed project.

Federal Regulations for GHGs

The United States Environmental Protection Agency (EPA) is the governing body responsible for regulating air pollution in the United States and setting nationwide air quality and emissions

standards. The EPA adopts and implements several regulations to reduce GHG emissions as well. These include GHG emission reduction standards for passenger cars and light-duty trucks, heavy-duty trucks (including buses), commercial aircraft and large business jets, heavy equipment (with spark-ignition engines and compression-ignition diesel engines), locomotives, marine vessels, recreational vehicles, and small equipment/tools.

California has implemented more stringent GHG emissions reduction regulations on the same sources listed above (excepting commercial aircraft and large business jets). Therefore, those regulations and their impact are discussed in greater detail below.

State Regulations for GHGs

California has taken several legislative steps to reduce Statewide GHG emissions and is internationally known for its leadership on action to address climate change. In 2006, the California Legislature passed Assembly Bill (AB) 32, which created a comprehensive, multi-year program to reduce GHG emissions in California and required the State (by law) to reduce GHG emissions to 1990 levels by 2020. The Legislature built upon this law by passing Senate Bill (SB) 32, which requires the State to reduce GHG emissions 40 percent below 1990 levels by 2030 and later passed AB 1279, which requires the State to achieve net-zero GHG emissions by 2045 and net-negative emissions thereafter. To achieve these State-mandated emissions reduction targets, a document known as the Scoping Plan was required to be created by the California Air Resources Board (CARB) beginning in 2007 and be updated at least once every 5 years to "ensure the GHG emissions reduction activities to be adopted and implemented by the state board are complementary, nonduplicative, and can be implemented in an efficient and cost-effective manner." The Scoping Plan outlines strategies across nearly all levels of California's government and economy and defines—at a granular level—the regulatory actions needed to reduce GHG emissions from all economic sectors to meet the targets.

The CARB is the Statewide governing body which focuses on California's unique air quality challenges by setting the State's own, stricter GHG and air pollutant emissions standards for a range of Statewide pollution sources, including vehicles, fuels, on- and off-road equipment, and consumer products. CARB also manages the cap-and-trade program to achieve GHG emission reductions from large industrial facilities. CARB has pioneered a range of approaches in California that have set the standard for effective air and climate programs for the nation and the world. CARB regulations, based on extensive research and established science, have driven innovation, leading to significant technological developments such as the production of low- and zero-emission cars and trucks and cleaner fuels. As stated, the CARB is tasked by the Legislature with updating the Scoping Plan, which was most recently adopted in 2022 (2022 Scoping Plan), to ensure the State carries out actions to meet the 2030 and 2045 GHG emissions reduction targets.

Other State agencies responsible for regulating GHGs include:

- **California Energy Commission (CEC):** The State's energy policy and planning agency is responsible for climate change related programs including energy efficiency and leading the State to a 100 percent clean energy reality. The CEC mandates building energy efficiency

standards (in new and existing buildings) and manages the Renewables Portfolio Standard (RPS).

- **California Department of Resources Recycling and Recovery (CalRecycle):** California's recycling and waste management agency, responsible for implementation of State climate policies including landfill methane emissions reduction, waste-to-energy production, and composting requirements. CalRecycle implements food and yard waste recycling regulations, including mandates to cut organic waste disposal 75 percent by 2025.
- **California Governor's Office of Planning and Research (OPR):** California's long-range planning agency, responsible for implementing California Environmental Quality Act (CEQA) review and conducting Statewide research on all climate change policies and impacts.

As a result of these actions, California reached its 2020 GHG emissions reduction target of reducing GHG emissions back to 1990 levels 4 years early and is on track to meet the 2030 GHG reduction target. Below is a summary of State regulations that are applicable to the proposed project and will serve to reduce GHG emissions now and in the future to ensure California stays on the path to meeting the State-mandated 2030 and 2045 targets:

- **Advanced Clean Cars II (ACC II)**: Designed to reach 100 percent new vehicle Zero-Emission Vehicles (ZEVs) and clean plug-in hybrid-electric vehicles (PHEVs) in California by the 2035 model year.
- **Advanced Clean Fleets**: A manufacturer requirement for 100 percent of sales of medium- and heavy-duty vehicles to be ZEVs by 2036, and fleet requirements to purchase and deploy ZEVs in State and local government fleets, drayage truck operations, and high-priority federal fleets.
- **Advanced Clean Trucks Regulation**: Require fleets to transition to ZEV medium- and heavy-duty vehicles.
- **Small Off-Road Engine Regulations**: Transition 100 percent of small off-road spark-ignition engines (at or below 25.5 horsepower [hp] and used in non-stationary equipment) to zero-emission by 2035 (where feasible).
- **Low Carbon Fuel Standard**: Increase the availability and use of low carbon fuels, including renewable diesel, biodiesel, renewable, and natural gas by mandating that the fuel carbon intensity in California must achieve a 20 percent reduction by 2030.
- **Renewable Portfolio Standard**: One of California's key programs for advancing renewable energy, it sets continuously escalating renewable energy procurement requirements for the State's load-serving entities. All entities must procure 60 percent of their electricity portfolio from renewable energy resources by 2030.
- **Building Energy Efficiency Standards–Title 24, Part 6 (Energy Code):** contain energy and water efficiency requirements (and indoor air quality requirements) for newly constructed buildings; the requirements have gradually increased in efficiency and technology over the past decades. The current standard, known as the 2022 Energy Code, builds on California's technology innovations, and includes encouraging heat pumps, requiring electric-ready single-family homes, and solar/battery storage standards for various building types. The 2022 Energy

Code also strengthens ventilation standards to improve indoor air quality. The next update to the Energy Code will occur in 2024 (known as the 2025 Energy Code) and will apply to newly constructed buildings effective as of January 1, 2026.

- **California Green Building Standards Code–Title 24, Part 11 (CALGreen)**: mandatory green building standards code for the State with the goal of reducing GHG emissions from buildings, including reducing energy and water consumption.

Regional Regulations for GHGs

The Bay Area Air District regulates air pollutant emissions from businesses and stationary facilities, ranging from oil refineries to auto body shops and dry cleaners. The Bay Area Air District is the primary agency responsible for ensuring that the Clean Air Act and California Ambient Air Quality Standards (CAAQS) are attained and maintained in their jurisdiction. The Bay Area Air District CEQA Thresholds (and associated guidance) are intended to assist lead agencies in evaluating air quality and climate impacts from proposed land use projects in the San Francisco Bay Area Air Basin (SFBAAB) during the environmental review process.

Local Regulations for GHGs

City of San José Greenhouse Gas Reduction Strategy

The General Plan includes strategies, policies, and action items that are incorporated in the City's Greenhouse Gas Reduction Strategy (GHGRS) to help reduce GHG emissions. The General Plan's multiple policies and actions have GHG implications, including land use, housing, transportation, water usage, solid waste generation and recycling, and reuse of historic buildings. The City's GHGRS is intended to meet the mandates outlined in the Bay Area Air District CEQA Guidelines and standards for "qualified plans," as established by the Bay Area Air District. In addition, the City's Green Vision, as reflected in the City's GHGRS, includes a monitoring component that allows for adaptation and adjustment of City programs and initiatives related to sustainability and associated reductions in GHG emissions.

The GHGRS is intended to meet the mandates outlined in the CEQA Air Quality Guidelines, as well as the Bay Area Air District requirements for Qualified GHGRS. The City's 2030 GHGRS is a comprehensive update to the City's original GHGRS and reflects the plans, policies, and codes as approved by the City Council. The strategy builds on the General Plan and Climate Smart San José; these plans expanded the City's Green Vision to advance urban sustainability. Leveraging these existing plans and supporting policy and program frameworks, the 2030 GHGRS provides a set of strategies and additional actions for achieving the 2030 target.

The City's GHGRS identifies GHG emissions reduction measures to be implemented by development projects in four categories: built environment and energy, land use and transportation, recycling and waste reduction, and other GHG reduction measures. Some measures are mandatory for all proposed development projects and others are voluntary.

The primary test for consistency with the City's GHGRS is conformance with the General Plan Land Use/Transportation Diagram and supporting policies. Pursuant to CEQA Guidelines, all land use

development proposals are required to evaluate consistency with the goals and policies outlined in the City's General Plan designed to reduce GHG emissions, generally through the use of a checklist. Projects consistent with the GHGRS would have a less than significant impact on GHG emissions through 2030 and would not conflict with targets in the currently adopted State of California Climate Change Scoping Plan through 2030.

City of San José Municipal Code

The City of San José Municipal Code (Municipal Code) includes the following regulations that would reduce GHG emissions from future development:

- Green Building Regulations for Private Development (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)
- All-electric Ordinance (Chapter 17.845)

City of San José Reach Codes

Beginning in 2019, the City adopted and updates building codes that are more advanced than those required by the State. Known as "reach codes," the requirements apply to any newly constructed building/structure for which an application for a building permit is made on or after July 1, 2024. Currently, the requirements for multi-family housing state, "the Source Energy budget must be less than the Source Energy budget calculated for the Standard Design Building by a compliance margin of 6 percent to comply; electrification-ready."[6] The City's Reach Code also requires the following electric vehicle (EV) requirements for new multi-family developments: 70 percent EV Capable; 20 percent EV Ready; and 10 percent EV supply equipment; with at least one level two charging station in common-use parking areas.[7]

3.4.4 - Methodology

The California Emission Estimator Model (CalEEMod) is used to calculate and assess GHG emissions which are comprised of those on-site and off-site construction and operational emissions generated from all facets of the proposed project. CalEEMod provides a uniform platform for government agencies, land use planners, and environmental professionals to estimate emissions from land use development and linear projects in California. It utilizes widely accepted methodologies for estimating emissions combined with default data that can be used when site-specific information is not available. Sources of these methodologies and default data include the EPA's AP-42, Compilation

[6] Climate Smart San José. 2024. San José's Building Reach Code Summary. Website: https://www.sanjoseca.gov/home/showpublisheddocument/112542/638532753922770000. Accessed October 3, 2024.

[7] City of San José. 2024. San José Reach Code. Website: https://www.sanjoseca.gov/your-government/departments-offices/environmental-services/climate-smart-san-jos/san-jos-reach-code#:~:text=On%20January%2030,%202024,%20Council%20approved%20an%20update%20to%20the. Accessed October 3, 2024.

of Air Pollutant Emissions Factors from Stationary Sources; CARB's vehicle emission models (such as the Emission Factors mobile source emissions model [EMFAC]); and studies commissioned by California agencies such as the CEC. In addition, some local air districts provided customized information to support defaults and calculations for projects located in their jurisdictions.

Construction and operational emissions reported in this analysis were modeled using CalEEMod Version 2022.1.

Greenhouse Gases Assessed

This analysis is restricted to GHGs identified by AB 32, which include CO, CH_4, N_2O, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride. Total greenhouse gas emissions in this report are quantified and expressed as carbon dioxide equivalent (CO_2e).

Certain GHGs defined by AB 32 would not be emitted by the proposed project. Perfluorocarbons and sulfur hexafluoride are typically used in industrial applications, none of which would be used by the proposed project.

Default Data and Assumptions

The recommendations contained within the Bay Area Air District 2022 CEQA were used as a reference in preparation of the air quality analysis.

CalEEMod provides default values for estimating construction and operational emissions from Bay Area=specific projects. Although users may apply the default values, Bay Area Air District strongly recommends that default values be modified whenever project-specific information is available to obtain more accurate emissions quantification. When site-specific information is unavailable, Bay Area Air District recommends that the most conservative estimates be used for the type of construction equipment and number of pieces of equipment to be used, the hours of operation, and the distance to the nearest sensitive receptors.

When changing any default parameters, users must include notes and references in the Justification for Changes box, which will facilitate reviews by lead agencies and other stakeholders. These Justification for Changes were documented when site-specific information was used instead of defaults. The CalEEMod Report in Appendix B includes a listing of these changes and the notes include references to additional calculations and documentation, which are also included in Appendix B following the CalEEMod Report.

Model Inputs

Quantifying air pollutant emissions associated with land development projects involves identifying all sources of relevant air pollutant emissions that could occur as a result of implementation of the proposed project and calculating criteria air pollutants by activity level and emission factor. Emission factors represent the emission rate of a pollutant over a given time or activity, for example, grams of nitrogen oxide ($NO_{X)}$ per vehicle mile traveled or grams of NO_X per horsepower hour of equipment operation. The activity factor is a measure of how active a piece of equipment or device is and can be represented as the amount of material processed, elapsed time that a piece of equipment is in

operation, horsepower of a piece of equipment used, the fuel consumption rate, or Vehicle Miles Traveled (VMT) per day. The CARB has published emission factors for on-road mobile vehicles/trucks in the EMFAC mobile source emissions model and emission factors for off-road equipment and vehicles in the OFF-ROAD emissions model. An air emissions model (or calculator) combines the emission factors and the levels of activity and outputs the emissions for the various pieces of equipment.

GHG Analysis Methodology

Construction

Construction emissions can vary substantially from day to day, depending on the level of activity, the specific type of operation, and prevailing weather conditions. Construction emissions result from on-site and off-site activities. On-site emissions principally consist of exhaust emissions from the activity of light and heavy-duty construction equipment and motor vehicle operation. Off-site emissions are caused by motor vehicle exhaust from delivery vehicles and worker traffic.

Schedule

Based on applicant-provided information, the construction was estimated to begin in mid-2025 and to last for approximately 3 years. The construction emissions modeling reflects that duration and is assumed for the purposes of this environmental analysis. The construction schedule used in the analysis represents a "worst-case" analysis scenario because emission factors for construction equipment decrease as the analysis year increases due to improvements in technology and compliance with more stringent regulatory requirements. Therefore, construction emissions would decrease if the construction schedule moved to later years. The duration of construction activity and associated equipment represent a reasonable approximation of the expected construction fleet as required by the CEQA Guidelines. Construction activities that emit GHG emissions would consist of demolition, site preparation, grading, and building construction. The modeled construction schedule, worker commute trips, vendor and haul truck trips, and construction equipment, along with hours of operation per day, horsepower, and load factor are available in Appendix B.

Construction Equipment Tiers and Emission Factors

A summary of the on-site, off-road construction equipment usage assumptions used to estimate emissions is presented in Appendix B. This analysis uses the CalEEMod default horsepower and load factors for off-road equipment. Off-road equipment is modeled using the "Average" option, which uses Statewide average fleetwide emission factors from CARB's ORION model for the project construction year (for the unmitigated scenario). Tier 4 emissions were modeled using the Carl Moyer Controlled Off-Road Diesel Emission Factors for the mitigated scenario.

Demolition

Quantities of demolition materials may be entered directly in tons or calculated using methods internal to CalEEMod based on the square footage of the building. Because the demolition quantities assume a building structure and demolition would involve both a building and substantial quantities of pavement removal, the amount of material quantity for each was determined outside of CalEEMod (off-model), accounting for the nature of each type of demolition and material density. It

was then converted to tons and entered into CalEEMod this way. Details of these additional calculations are included along with the CalEEMod Report in Appendix B.

Site Preparation and Grading

Hauling would be required to export material to and from the project site; 9,389 cubic yards of soil is assumed to be exported (based on applicant-provided information), which would result in an addition 12 daily haul trips during the site preparation phase.

Building Construction

During building construction activities, on-site emissions are primarily generated from the off-road construction equipment and are calculated using the equipment specified along with the CARB Off-Road Emission and Load Factors, the number of construction days, and hours of operation per day.

Off-site Construction Vehicles

A summary of the construction-related vehicle trips is shown in Appendix A. Note that the total number of construction vehicle trips would not necessarily occur on the same day because construction activities would vary each day during the construction period.

Off-road emissions for demolition, site preparation, and grading phases are based on construction worker and haul trips, both calculated internally in CalEEMod based on the number of pieces of off-road construction equipment for workers and the amount of demolition materials for hauling, assuming a 16 cubic yard capacity truck. Vendor trips may be optionally added for each phase as appropriate to the proposed project and were added to the site preparation phase to account for the off haul of soil export and in the paving phase to account for delivery of asphalt and any aggregate base material needed for paving. Default hauling trips are 20 miles; vendor trips are 8.4 miles and worker commute trip lengths are 11.7 miles based on the site location.

Trips for building construction and architectural coating activities are based on the square footage of the buildings the number of dwelling units for residential land uses.

Mitigation Measures

Emissions modeling was performed for both an unmitigated and mitigated scenario for the proposed project to mitigate emissions of diesel particulate matter (DPM) exhaust. CalEEMod Measure C-5 (Use Advanced Engine Tiers) was used to model MM AIR-1, which specifies Tier 4 equipment for engines greater than 50 hp.

No other mitigation measures were implemented for the mitigated CalEEMod run.

Operation

The major sources of operational emissions that would occur over the long-term operation of the proposed project are summarized below. CalEEMod contains calculations to estimate both direct emissions of GHG emissions at the project site and indirect GHG emissions. Indirect emissions result when the location of consumption or activity is different from where actual emissions are generated. For example, electricity would be consumed at the proposed project site; however, emissions associated with producing that electricity would be generated off-site at a power plant.

Motor Vehicles

Motor vehicle emissions refer to exhaust emissions from the motor vehicles that would travel to and from and within the project site. The GHG emissions from the proposed project's mobile sources were assessed according to the trip generation rates from the project-specific Transportation Impact Assessment (TIA) prepared by Hexagon Transportation Consultants, Inc., dated December 20, 2024 (included as Appendix H). The Santa Clara County average fleet mix for the first operational year (2026) was used to model the vehicle mix of trips generated. This includes a mixture of passenger vehicles, motorcycles, and motor homes, as well as small percentages of medium- and heavy-duty vehicles and buses, in the relative proportions present on the roadways.

Energy (Electricity and Natural Gas Use)

Within CalEEMod, building electricity and natural gas use is divided into two categories: (1) end uses subject to Title 24 standards, and (2) end uses not subject to Title 24 standards. The distinction is required to enable accurate calculation of several energy sector reduction measures.

- **Electricity–**Subject to Title 24: space heating, cooling, ventilation, water heating, outdoor lighting, and the majority of indoor lighting.
- **Electricity–**Not Subject to Title 24: all other end uses, including cooking appliances, clothes washers, electric dryers, refrigeration, office electronics, electric pool/spa heating, well pumping, fans, miscellaneous plug-in uses, and the remainder of indoor lighting.
- **Natural Gas–**Subject to Title 24: space heating and water heating.
- **Natural Gas–**Not subject to Title 24: all other end uses, including range/oven, dryer, pool/spa heating, and other miscellaneous uses.

CalEEMod generates default natural gas and electricity use consumption based on the land use and Electricity Demand Forecast Zone (EDFZ) climate zone as classified by the CEC EDFZ. The EDFZ influences default calculations for building energy consumption and the effectiveness of emission reduction measures in the energy sector.

Default electricity and natural gas consumption is based on 2019 consumption estimates using the CEC's 2018–2030 Uncalibrated Commercial Sector Forecast and 2019 Residential Appliance Saturation Survey.

Electricity

GHG emissions modeling includes those indirect emissions from electricity consumption based on CalEEMod defaults for energy usage based on land use type and the 2019 Title 24 Building Standards.

The energy consumption in megawatt-hours (MWh) per year is used in conjunction with the Energy Intensity of the purchased electricity to calculate the GHG emissions in CO_2e. The model has a default rate of 2.3 pounds of CO_2 per megawatt (MW) of electricity produced, which is based on PGE 2019 emissions rates. Pacific Gas and Electric Company (PG&E) is the official electricity provider for the proposed project.

Energy–Natural Gas

Emissions from this sector are principally from use of space and water heating. Pursuant to the City's Reach Code, the proposed project will be all-electric; accordingly, energy emissions for natural gas are zero.

The electricity consumption to electrify the zeroed-out natural gas end uses are calculated using methods outlined in Measure E-15 of the California Air Pollution Control Officers Association's (CAPCOA's) Handbook for Analyzing Greenhouse Gas Emission Reductions, Assessing Climate Vulnerabilities, and Advancing Health and Equity, [8] using the primary natural gas end uses that are commonly electrified, including space heating, water heating, and range/oven for the EDFZ zone and land use for the proposed project. For regions where the data is missing for the EDFZ or end use, Statewide averages are used to calculate the electricity which would replace natural gas energy. Values for the electricity consumption by land use and EDFZ were taken from Appendix Table E-15.1 for residential land uses and Table E-15.2 for commercial land uses.[9]

Area Sources

In addition to typical mobile source emissions, long-term operational emissions also include area source emissions. Area source emissions include occasional architectural coating activities for repainting of buildings associated with the proposed project. CalEEMod assumes that repainting occurs at a rate of 10 percent of the buildings per year. Therefore, on average, it is assumed that the buildings would be fully repainted every 10 years.

Other area source emissions include consumer products that involve solvents that emit Volatile organic compounds (VOCs) during use. CalEEMod includes default consumer product use rates based on building square footage. Lastly, CalEEMod default emission factors for landscape maintenance equipment were used in this analysis.

Stationary Sources

Emergency diesel generators, boilers, and emergency fire pumps represent common sources of operational stationary sources. Default emission factors for emergency generators correspond to regulatory Tier 3 standards (as emergency generators are not amenable to stable long-term operating ideal for the operation of Selective Catalytic Reduction (SCR) used to achieve emission reductions in Tier 4 off-road engines). The proposed project is a high-rise residential development, and it was assumed that diesel generators may be needed as backup power for elevator use. Therefore, diesel generator emissions were included in the analysis.

Water and Waste

CalEEMod includes calculations for indirect GHG emissions for electricity consumption, water consumption, and solid waste disposal. For water consumption, the model calculates embedded

[8] California Air Pollution Control Officers Association (CAPCOA). 2021. Handbook for Analyzing Greenhouse Gas Emission Reductions, Assessing Climate Vulnerabilities, and Advancing Health and Equity. Website: https://www.airquality.org/ClimateChange/Documents/Final%20Handbook_AB434.pdf. Accessed December 5, 2024.

[9] California Air Pollution Control Officers Association (CAPCOA). 2021. Appendix C: Emission Factors and Data Tables from Handbook for Analyzing Greenhouse Gas Emission Reductions, Assessing Climate Vulnerabilities, and Advancing Health and Equity. Website: https://www.caleemod.com/documents/handbook/appendices/appendix_c.pdf. Accessed December 5, 2024.

energy (e.g., treatment, conveyance, distribution) associated with providing each gallon of potable water to the project site. For solid waste disposal, GHG emissions are generated as solid waste generated by the proposed project decomposes in a landfill.

Refrigerants

During operation, there may be leakages of hydrofluorocarbons from air conditioners and any refrigeration systems. Hydrofluorocarbons are typically used for refrigerants, which are long-lived GHGs.

Vegetation

CalEEMod has a module that addresses impacts of Land Use Change and Sequestration. The project applicant proposes planting trees and integrating landscaping into the proposed design, which would provide carbon sequestration. However, the number of trees to be planted is unknown and data are insufficient to accurately determine the impact that the existing landscaping has on carbon sequestration. For this analysis, emissions due to carbon sequestration were not included to present a conservative analysis.

CalEEMod was designed with default assumptions supported by substantial evidence to the extent available, and the functionality and content of CalEEMod is based on fully adopted methods and data. However, CalEEMod was also designed to allow for a change in defaults to reflect site- or project-specific information, when available, provided that information is supported by substantial evidence. Any changes to default assumptions, inclusion of project-specific information, or additions to the methodology as described in this section are detailed in the impact analysis below (with technical data contained in Appendix B).

CalEEMod emission factors reflect the potential emission reductions from regulatory actions outlined in the Regulatory Framework section which are updated through the EMFAC and OFF-ROAD emissions models developed by CARB. Calendar year average emission factors for construction and light commercial equipment are based on a model run in exhaust and evaporative modes on a Statewide basis for 41 scenario years 2010–2050) to reflect the ongoing emission reductions assumed per year based on regulatory actions.

Construction and operational emissions reported in this analysis were modeled using CalEEMod Version 2022.1.1.

3.4.5 - Thresholds of Significance

The Bay Area Air District's 2022 CEQA Air Quality Guidelines provide recommended significance thresholds for GHGs for land use development projects and plans. The new thresholds state that, if a project would contribute its "fair share" of what will be required to achieve California's long-term climate goal of carbon neutrality by 2045, then a reviewing agency can find that the impact will not be significant because the proposed project will help to solve the problem of global climate change. The thresholds for new land use projects require projects to meet either one of two enumerated Criteria "A" or "B" as shown below. If a land use development project cannot demonstrate

consistency with Criterion A or Criterion B, then that project would result in a potentially significant impact related to the generation of direct and indirect GHG emissions.

Bay Area Air District Thresholds for Land Use Projects (Must Include A or B)

A. Projects must include, at a minimum, the following project design elements:

1. Buildings
   a. The project will not include natural gas appliances or natural gas plumbing (in both residential and nonresidential development).
   b. The project will not result in any wasteful, inefficient, or unnecessary energy usage as determined by the analysis required under CEQA Section 21100(b)(3) and Section 15126.2(b) of the State CEQA Guidelines.
2. Transportation
   a. Achieve a reduction in project-generated Vehicle Miles Traveled (VMT) below the regional average consistent with the current version of the California Climate Change Scoping Plan (currently 15 percent) or meet a locally adopted Senate Bill 743 VMT target, reflecting the recommendations provided in the California Governor's Office of Planning and Research's (OPR) Technical Advisory on Evaluating Transportation Impacts in CEQA:
      i. Residential projects: 15 percent below the existing VMT per capita
      ii. Office projects: 15 percent below the existing VMT per employee
      iii. Retail projects: no net increase in existing VMT
   b. Achieve compliance with off-street electric vehicle requirements in the most recently adopted version of CALGreen Tier 2.

B. Projects must be consistent with a local GHG reduction strategy that meets the criteria under State CEQA Guidelines Section 15183.5(b).

Source: Bay Area Air District. 2022. CEQA Guidelines. April 20.

Project consistency with Criteria A is based on incorporating project design criteria founded on key attributes consistent with the 2022 Scoping Plan and the State's long-term carbon neutrality goals. Projects incorporating these elements would be contributing their "fair share" of what will be required to achieve California's long-term climate goal of carbon neutrality by 2045. These include criteria for building energy design (elimination of natural gas) as well as criteria related to reduction in transportation emissions via VMT reductions and installation of EV charging infrastructure.

Project consistency with Criterion B involves demonstrating compliance with a local "qualified" GHG plan. CEQA Guidelines Section 15183.5(b) allows projects and plans to be analyzed through a streamlined or tiered approach utilizing an adopted Greenhouse Gas Reduction Plan. A "qualified" reduction strategy capable of being utilized for a streamlined or tiered analysis under CEQA must meet the following requirements:

- Quantify GHG emissions, both existing and projected over a specified time period, resulting from activities within a defined geographic area;
- Establish a level, based on substantial evidence, below which the contribution to GHG emissions from activities covered by the plan would not be cumulatively considerable;

- Identify and analyze the GHG emissions resulting from specific actions or categories of actions anticipated within the geographic area;
- Specify measures or a group of measures, including performance standards, that substantial evidence demonstrates, if implemented on a project-by-project basis, would collectively achieve the specified emissions level;
- Establish a mechanism to monitor the plan's progress toward achieving the level and to require amendments if the plan is not achieving specified levels; and
- Be adopted in a public process following environmental review.

In 2020, the City adopted a GHGRS that outlines the actions the City will undertake to achieve its proportional share of State GHG emission reductions for the interim target year 2030. The purpose of the GHGRS Compliance Checklist (Checklist) is to:

- Implement GHG reduction strategies from the 2030 GHGRS to new development projects.
- Provide a streamlined review process for proposed new development projects that are subject to discretionary review and trigger environmental review pursuant to CEQA.

The 2030 GHGRS presents the City's comprehensive path to reduce GHG emissions to achieve the 2030 reduction target, based on SB 32, Bay Area Air District, and OPR. Additionally, the 2030 GHGRS leverages other important City plans and policies, including the General Plan, Climate Smart San José, and the City Municipal Code, in identifying reductions strategies that achieve the City's target. CEQA Guidelines Section 15183.5 allows public agencies to analyze and mitigate GHG emissions as part of a larger plan for the reduction of GHGs. Accordingly, the City's 2030 GHGRS represents San José's qualified Climate Action Plan (CAP) in compliance with CEQA.

As described in the 2030 GHGRS, these GHG reductions will occur through a combination of City initiatives in various plans and policies and will provide reductions from both existing and new developments. This Compliance Checklist specifically applies to proposed discretionary projects that require environmental review pursuant to CEQA. Therefore, the Checklist is a critical implementation tool in the City's overall strategy to reduce GHG emissions. Implementation of applicable reduction actions in new development projects will help the City achieve incremental reductions toward its target. Per the 2030 GHGRS, the City will monitor strategy implementation and make updates, as necessary, to maintain an appropriate trajectory to the 2030 GHG target.

Pursuant to CEQA Guidelines Sections 15064(h)(3), 15130(d), and 15183(b), a project's incremental contribution to a cumulative GHG emissions effect may be determined not to be cumulatively considerable if it complies with the requirements of the GHGRS.

3.4.6 - Project Impacts and Mitigation Measures

This section discusses potential impacts associated with the proposed project and provides mitigation measures where necessary.

Greenhouse Gas Emissions

Impact GHG-1: The proposed project would not generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment.

Impact Analysis

Both construction and operational activities have the potential to generate GHG emissions. The proposed project would generate GHG emissions during temporary (short-term) construction activities such as removal of trees, site grading, operation of construction equipment, operation of on-site heavy-duty construction vehicles, hauling of materials to and from the project site, asphalt paving, and construction worker vehicle trips. On-site construction activities would vary depending on the level of construction activity.

Long-term operational GHG emissions would result from project-generated vehicular traffic, operation of any landscaping equipment, off-site generation of electrical power over the life of the proposed project, the energy required to convey water to and wastewater from the project site, the emissions associated with the hauling and disposal of solid waste from the project site, any fugitive refrigerants from air conditioning or refrigerators, and the operation of any proposed stationary sources such as backup generators or fire pumps (not applicable for the proposed project).

As discussed previously, global climate change is not confined to a particular project area and is generally accepted as the consequence of global industrialization over the last 200 years. A typical project, even a very large one, does not generate enough GHG emissions on its own to influence global climate change significantly; hence, the issue of global climate change is, by definition, a cumulative environmental impact. Therefore, this section measures the proposed project's incremental contribution to the cumulative environmental impact. The following is a discussion of the proposed project's contribution to GHG emissions during both the construction and operation phases. The proposed project's GHG emissions are quantified for informational purposes only.

Project Emissions (for Informational Purposes)

Construction

The proposed project's construction emissions are presented in Table 3.4-2. It should be noted that the analysis conservatively assumes that construction would begin mid-2025. As vehicle and equipment fuel efficiencies and emission control standards continue to incrementally improve with each year, project construction emissions are likely to decrease nominally from what is shown in Table 3.4-2 should the construction schedule move to later years. Therefore, the construction GHG emissions contained in Table 3.4-2 represent a conservative assessment of project construction emissions.

Table 3.4-2: Proposed Project Construction GHG Emissions

Construction Activity	Total GHG Emissions (MT CO_2e per year)
Demolition (2025)	196.936

Construction Activity	Total GHG Emissions (MT CO_2e per year)
Site Preparation (2025)	66.577
Grading (2025)	55.392
Building Construction (2025)	243.535
Building Construction (2026)	1044.239
Building Construction (2027)	1030.050
Building Construction (2028)	266.966
Paving (2028)	35.483
Architectural Coating (2028)	16.410
Total Construction Emissions	2955.588
Emissions Amortized Over 30 Years[1]	98.520

Notes:
GHG = greenhouse gas
MT CO_2e = metric tons carbon dioxide equivalent
Totals may not appear to sum exactly due to rounding.
[1] Construction GHG emissions are amortized over the 30-year lifetime of the proposed project.
Source: Appendix B.

As shown above, the proposed project would generate approximately 2,955.588 MT CO_2e during construction. There is no proposed construction-related climate impact threshold at this time. GHG emissions from construction represent a very small portion of a project's lifetime GHG emissions. The proposed thresholds for land use projects are designed to address operational GHG emissions, which represent the vast majority of project GHG emissions. Furthermore, construction GHG emissions are amortized over 30 years and accounted for as part of operational GHG emissions. Operational GHG impact is discussed below. As demonstrated below, the proposed project (during construction and operation) would have less than significant GHG impacts.

Operation

Operational or long-term emissions occur over the life of a project. Project operations were modeled for the 2026 operational year, which could be considered the earliest time of operation for Phase 1 of the proposed project. Sources for operational emissions are summarized below and are described in more detail in the Modeling Parameters and Assumptions section. Sources for operational GHG emissions include:

- **Motor Vehicles:** These emissions refer to GHG emissions contained in the exhaust from the cars and trucks that would travel to and from the project site.
- **Natural Gas:** These emissions refer to the GHG emissions that occur when natural gas is burned on the project site. Pursuant to the City's Reach Code, the proposed project would be required to be all-electric in design, and therefore natural gas emissions are not applicable.

- **Indirect Electricity:** These emissions refer to those generated by off-site power plants to supply electricity required for the proposed project.
- **Area Sources:** These emissions refer to those produced during activities such as landscape maintenance.
- **Water Transport:** These emissions refer to those generated by the electricity required to transport and treat the water to be used on the project site.
- **Waste:** These emissions refer to the GHG emissions produced by decomposing waste generated by the project.
- **Stationary Sources:** Because of the height of the buildings, it was conservatively assumed that there would be 295-hp backup generators in the market-rate and affordable apartment buildings.

Table 3.4-3 presents the estimated annual GHG emissions from the proposed project's operational activities. As shown in Table 3.4-3, the proposed project would generate approximately 3,467 MT CO_2e per year after the inclusion of 98.5 MT CO_2e per year from project construction.

Table 3.4-3: Operational Greenhouse Gas Emissions

GHG Emissions Source	GHG Emissions (MT CO_2e per year)
Mobile	2,701
Area	9
Energy	422
Water	53
Waste	170
Refrigerants	1
Stationary	11
Amortized Construction Emissions	98.5
Total Annual Project Emissions	3,467
Notes: MT CO_2e = metric tons carbon dioxide equivalent Totals were summed using unrounded numbers and may not appear to sum exactly due to rounding. Source: Appendix B.	

The proposed project's consistency with applicable plans, policy, or regulations of an agency adopted to reduce GHG emissions is discussed below.

3.4.7 - Project Impacts

Construction

Bay Area Air District does not have thresholds of significance for construction-related GHG emissions. GHG emissions from construction activities are one-time, short-term emissions and therefore would not significantly contribute to long-term cumulative GHG emissions impacts of the proposed project. Therefore, construction emissions would be less than significant.

Operation

Long-term operational GHG emissions would result from project-generated vehicular traffic, operation of any landscaping equipment, off-site generation of electrical power over the life of the proposed project, the energy required to convey water to and wastewater from the project site, and the emissions associated with the hauling and disposal of solid waste from the project site.

As previously described, in 2020, the City adopted a GHGRS that outlines the actions the City will undertake to achieve its proportional share of State GHG emissions reductions for the interim target year 2030. As with all residential projects within the City, the proposed project is subject to the GHG reduction strategies identified in the City's 2030 GHGRS Compliance Checklist (Appendix B). The proposed project would implement and comply with all relevant GHG reduction measures as determined by the City. A complete project comparison is included as Appendix B. In summary, GHG reduction strategies to be incorporated into the proposed project include the following:

- **General Plan Policy Compliance**: The proposed project would demonstrate consistency with the General Plan Land Use and Circulation Diagram and is consistent with the General Plan policies related to green building; pedestrian, bicycle and transit site design; and water conservation and urban forestry, as applicable.
- **Implementation of Green Building Measures:** The proposed project would include solar photovoltaics (PV) arrays that meet CALGreen standards and the City's Reach Code; will feature numerous sustainability features, including the use of high-quality construction materials with longer lifespan to reduce construction waste; and will be all-electric in design to reduce fossil fuel use.
- **Pedestrian, Bicycle, and Transit Site Design Measures:** The proposed project would feature ample pedestrian and bicycle connections throughout the site and in connection with the nearby existing public bicycle, pedestrian, and public transit network. The interior of the site features bicycle paths and bicycle parking, ample common outdoor space, interior sidewalks, pedestrian-oriented landscaping and seating areas, and a pedestrian-only thoroughfare (between the affordable apartments and market-rate apartments). The proposed project includes on-site landscaping and new tree plantings and bicycle connections. Impervious surfaces in the form of vehicular access are limited. Surface parking lots are not included in the proposed project, thereby adding density and housing to a previously underutilized site (all parking is covered, which could be used to facilitate car-sharing spaces). The proposed project is also along an existing public transit route with ample bicycle circulation and includes bicycle, connections, pedestrian thoroughfares, and connections to the existing streets and

public transit network. The proposed project exceeds the bicycle parking requirements in both the market-rate and affordable buildings.

- **Water Conservation and Urban Forestry Measures:** The proposed project would implement native tree planting and species to reduce the need for irrigation. In addition, the proposed project would comply with all State and local water efficiency requirements and regulations; may implement the use of recycled water in landscape irrigation if deemed cost-effective or feasible; and would encourage stormwater reuse on-site where feasible.

The proposed project complies with the requirements of the GHGRS adopted by the City in 2020. Furthermore, it was conservatively assumed that the proposed project may include backup generators (due to their building height); according to Bay Area Air District CEQA guidance, the GHG emissions from permitted sources would not be subject to the land use threshold of significance (as detailed in Section 7.1.1) but instead would be subject to the stationary source threshold recommended by Bay Area Air District. According to Bay Area Air District, many projects will require the use of both land use and stationary source thresholds. For a project to have a less than significant impact related to stationary sources of GHG emissions, it must fall below the bright-line threshold of producing less than 10,000 MT CO_2e per year.[10] As shown in Table 3.4-3, the annual CO_2e emissions associated with the operation of backup generators at the proposed project is anticipated to be 11 MT CO_2e. Therefore, the proposed project's incremental contribution to a cumulative GHG emissions effect is not considered to be cumulatively considerable when compared to the appropriate land use and stationary source thresholds. GHG impacts would be less than significant.

Level of Significance

Less than significant impact.

Mitigation Measures

None required.

Cumulative Impact Analysis

The project-related emissions would be considered to have a significant cumulative impact if project-specific impacts are determined to be significant.

The geographic area of this cumulative impact is the SFBAAB. As previously discussed, the proposed project is consistent with the applicable Scoping Plan reduction measures and the Bay Area Air District 2017 Clean Air Plan. The proposed project will implement applicable City of San José policies. As previously noted, the proposed project would have less than significant impact; therefore, its contribution to cumulative impacts would be less than significant.

[10] Bay Area Air District. 2022 CEQA Guidelines. 2022. Website: https://www.baaqmd.gov/~/media/files/planning-and-research/ceqa/ceqa-guidelines-2022/ceqa-guidelines-chapter-6-project-climate-impacts_final-pdf.pdf?rev=ce3ba3fe9d39448f9c15bbabd8c36c7f&sc_lang=en. Accessed October 11, 2024.

Level of Significance

Less than significant impact.

Mitigation Measures

None required.

Conflict with Plan, Policy, or Regulation that Reduces Emissions

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

Impact Analysis

Consistency of the proposed project with respect to CARB's 2022 Scoping Plan, Plan Bay Area 2050, CALGreen and City reach codes, and the City's GHGRS is discussed below.

2022 Scoping Plan Update

The principle State plan and policy for GHG emission reduction targets are set forth in Executive Order S-03-05, AB 32, and the subsequent SB 32. The quantitative goal of AB 32 was to reduce GHG emissions to 1990 levels by 2020. AB 32 required the CARB to develop a Scoping Plan that described California's approach to reducing GHGs to achieve the 2020 emission target. This target was ultimately achieved 4 years earlier than mandated. SB 32 then accelerated the GHG emission reduction goals of AB 32. The 2022 Scoping Plan, the most recent update to the CARB Scoping Plan, reflects the 2030 target of a 40 percent reduction below 1990 levels as set by Executive Order B-30-15 and codified by SB 32. It is applicable to State agencies but is not directly applicable to cities/counties and individual projects (i.e., the Scoping Plan does not require the City to adopt policies, programs, or regulations to reduce GHG emissions). However, new regulations adopted by the State agencies outlined in the Scoping Plan result in GHG emissions reductions at the local level, for example, through Statewide building codes. As a result, local jurisdictions benefit from reductions in transportation emissions, increases in water efficiency in the building and landscape codes, and other Statewide actions that affect a local jurisdiction's emissions inventory from the top down.

Table 3.4-4 demonstrates the consistency of the proposed project with the applicable reduction measures and recommendations contained in CARB's 2022 Scoping Plan.

Table 3.4-4: 2022 Scoping Plan Consistency

2022 Scoping Action Plan	Consistency Determination
Increase in Renewable Energy and Decrease in Oil and Gas Use Actions	**Consistent.** Consistent with the City's Reach Code, the proposed project would be constructed as all-electric buildings. Electricity supplied to the proposed project is supplied by an increasing percentage of renewable sources to meet SB 100 requirements.
Low Carbon Fuels Actions	**Consistent.** Vehicular traffic associated with the proposed project would use fuels subject to the requirements of the LCFS.

2022 Scoping Action Plan	Consistency Determination
Expansion of Electrical Infrastructure Actions	**Consistent.** The proposed project would comply with mandatory CALGreen requirements. Furthermore, the City's Reach Code meets CALGreen Tier 2 EV Charging criteria.
Climate Ready and Climate-Friendly Buildings	**Consistent.** All development proposed as part of the project would comply with current Title 24 and CALGreen standards, which promote energy efficiency, increased use of renewable energy ,and incorporation of sustainable design features in construction and operation.
Expanded Use of Zero-Emission Mobile Source Technology Actions	**Consistent.** The proposed project would comply with mandatory CALGreen requirements. Furthermore, the City's Reach Code meets CALGreen Tier 2 EV Charging criteria.
Organic Waste Diversion and Composing Actions	**Consistent.** Consistent with SB 1383, the City would provide mandatory organic waste diversion and composting services to all residents of the proposed project. The City has adopted ordinances and policies in compliance with SB 1383. Solid waste and recycling collection, disposal, and processing in the City would be conducted in accordance with State law.
Source: California Air Resources Board (CARB). 2022. 2022 Scoping Plan for Achieving Carbon Neutrality.	

Plan Bay Area 2050

Plan Bay Area 2050 is the Bay Area's regional plan that aims to improve housing, the economy, transportation, and the environment by making the Bay Area more equitable and resilient for all residents. Plan Bay Area 2050 identifies opportunities to reduce regional GHG emissions in housing, economic, and transportation sectors. The proposed project would be developed in an area with existing infrastructure on a developed project site. It would replace the older, less energy-efficient buildings with state-of-the-art structures, produce renewable energy, and improve solid waste removal and recycling services for the community, consistent with the Plan Bay Area's aim of reducing regional GHG emissions. Plan Bay Area 2050 was prepared in coordination with Bay Area cities, and the goals, policies, and programs within Plan Bay Area incorporate the existing land uses of those cities. The proposed project is consistent with the site's land use designation and therefore does not conflict with the land use concept plan in Plan Bay Area 2050.

San José GHGRS

The proposed project's consistency with the City's GHGRS is discussed above in Impact GHG-1. As previously discussed, the proposed project would implement and comply with all GHG reduction measures and is considered consistent with the GHGRS. A complete project comparison is included in Appendix B.

CALGreen and City Reach Codes

The proposed project would be required to comply with the most recent update to the CALGreen, as well as the City's Reach Code, which aim to achieve energy savings and GHG reductions beyond the State's minimum requirements.

Summary

The proposed project would be consistent with the reduction measures identified in the CARB's 2022 Scoping Plans and with Plan Bay Area 2050. In addition, the proposed project would be consistent with CALGreen, the City's Reach Code and the City's GHGRS. Therefore, impacts would be less than significant.

Level of Significance

Less than significant impact.

Mitigation Measures

None required.

Cumulative Impact Analysis

The project-related emissions would be considered to have a significant cumulative impact if project-specific impacts are determined to be significant.

The geographic area of this cumulative impact is the SFBAAB. As previously discussed, the proposed project is consistent with the applicable Scoping Plan reduction measures and the Bay Area Air District 2017 Clean Air Plan. The proposed project will implement applicable City of San José policies. As previously noted, the proposed project would not conflict with the applicable State, regional, or local plans, policies, or regulations adopted for the purpose of reducing emissions of GHGs, and its contribution to cumulative impacts would be less than significant.

Level of Significance

Less than significant impact.

Mitigation Measures

The City of San José has the following Standard Permit Conditions (SPCs) which would apply to the proposed project. Unless otherwise discussed in this analysis, the proposed project is assumed to incorporate the following Standard Permit Condition:

SPC for GHG Proof of Enrollment in SJCE

Prior to issuance of any Certificate of Occupancy for the project, the occupant shall provide to the Director of the Department of Planning, Building and Code Enforcement (PBCE), or Director's designee, proof of enrollment in the San José Community Energy (SJCE) GreenSource program (approximately 95 percent carbon free power) or TotalGreen program (approximately 100 percent carbon free power assumed in the approved environmental clearance for the project in accordance with CEQA Guidelines). If it is determined the project's environmental clearance requires enrollment in the TotalGreen program, neither the occupant, nor any future occupant, may opt out of the TotalGreen program.

3.5 - Hazards and Hazardous Materials

3.5.1 - Introduction

This section describes the existing hazards and hazardous materials setting and potential effects from project implementation on the site and its surrounding area. Descriptions and analysis in this section are based on the Modified Phase I Environmental Site Assessment (Phase I ESA), the Agrichemical Soil Assessment, and Soil Gas Sampling Report prepared by ENGEO Incorporated, which is included in this Draft Environmental Impact Report (Draft EIR) as Appendix F. During the EIR scoping period, two comments from the City of San José (City), and one letter from the California Department of Toxic Substances Control (DTSC) related to hazards and hazardous materials was received.

- The Draft EIR should develop an Environmental Impact Analysis for Hazards and Hazardous Materials.
- The Draft EIR should evaluate contaminants associated with imported soil and fill material used for construction and determine whether material is suitable for the intended land use.
- The Draft EIR should analyze the age of the existing structures to be demolished to determine whether asbestos-containing materials are present.

3.5.2 - Environmental Setting

Hazards

This description of existing conditions focuses on hazards from fire and overhead power lines, as well as hazardous materials and wastes. A hazard is a situation that poses a level of threat to life, health, property, or the environment. Hazards can be dormant or potential, with only a theoretical risk of harm. However, once a hazard becomes active, it can create an emergency. A hazardous situation that has already occurred is called an incident. Emergency response is action taken in response to an unexpected and dangerous occurrence in an attempt to mitigate its impact on people, structures, or the environment. Emergency situations can range from natural disasters to hazardous materials problems and transportation incidents.

Hazards Materials and Wastes

Hazardous materials include but are not limited to hazardous materials, hazardous substances, and hazardous wastes, as defined in Section 25501 and Section 25117, respectively, of the California Health and Safety Code. A hazardous material is any material that, because of its quantity, concentration, or physical or chemical characteristics, poses a significant present or potential hazard to human health and safety or to the environment if released; and any material that a handler or an administering regulatory agency under Section 25501 has a reasonable basis for believing would be injurious to the health and safety of persons or harmful to the environment. Various properties may cause a substance to be considered hazardous, including:

- Toxicity—causes human health effects;
- Ignitability—has the ability to burn;

- Corrosivity—causes severe burns or damage to materials; and
- Reactivity—causes explosions or generates toxic gases.

Hazardous waste is any hazardous material that is to be discarded, abandoned, or recycled. The criteria that define a material as hazardous also define a waste as hazardous. Specifically, materials and waste may be considered hazardous if they are poisonous (toxic); can be ignited by open flame (ignitable); corrode other materials (corrosive); or react violently, explode, or generate vapors when mixed with water (reactive). Soil or groundwater contaminated with hazardous materials above specified regulatory State or federal thresholds is considered hazardous waste if it is removed from a site for disposal. If handled, disposed, or otherwise handled improperly, hazardous materials and hazardous waste can result in public health hazards if released into the soil or groundwater or through airborne releases in vapors, fumes, or dust. Soil and groundwater having concentrations of hazardous constituents higher than specific regulatory levels must be handled and disposed of as hazardous waste when excavated or pumped from an aquifer. The California Code of Regulations, Title 22, Sections 66261.20-24 contains technical descriptions of toxic characteristics that could cause soil or groundwater to be classified as hazardous waste.

Hazardous Building Materials

Many older buildings contain building materials that consist of hazardous materials. These materials include lead-based paint, asbestos-containing material (ACM), and polychlorinated biphenyls (PCBs).

Prior to the United States Environmental Protection Agency (EPA) ban in 1978, lead-based paint was commonly used on interior and exterior surfaces of buildings. Disturbances such as sanding and scraping activities, renovation work, and gradual wear and tear, old peeling paint, and paint dust particulates have been found to contaminate surface soils or cause lead dust to migrate and affect indoor air quality. Exposure to residual lead can cause severe health effects, especially in children.

Asbestos is a naturally occurring fibrous material that was extensively used as a fireproofing and insulating agent in building construction materials before such uses were banned by the EPA in the 1970s. In addition, many types of electrical equipment contained PCBs as an insulator, including transformers and capacitors. After PCBs were determined to be a carcinogen in the mid to late 1970s, the EPA banned PCB use in new equipment and began a program to phase out certain existing PCB-containing equipment. For example, fluorescent lighting ballasts manufactured after January 1, 1978, do not contain PCBs and are required to have a label clearly stating that PCBs are not present in the unit.

Hazardous Substances

A hazardous substance can be any biological, natural, or chemical substance, whether solid, liquid, or gas that may cause harm to human health. Hazardous substances are classified on the basis of their potential health effects, whether acute (immediate) or chronic (long-term). Dangerous goods are classified on the basis of immediate physical or chemical effects, such as fire, explosion, corrosion, and poisoning. An accident involving dangerous goods could seriously harm human health or damage property or the environment. Harm to human health may happen suddenly (acute), such as dizziness, nausea, and itchy eyes or skin; or it may happen gradually over years (chronic), such as

dermatitis or cancer. Some people can be more susceptible than others. Hazardous substances and dangerous goods can include antiseptic used for a cut, paint for walls, a cleaning product for the bathroom, chlorine in a pool, carbon monoxide from a motor vehicle, fumes from welding, vapors from adhesives, or dust from cement, stone, or rubber operations. Such hazardous substances can make humans very sick if they are not used properly.

Hazardous Wastes

Hazardous waste is any hazardous material that is to be discarded, abandoned, or recycled. The criteria that define a material as hazardous also define a waste as hazardous. Specifically, materials and waste may be considered hazardous if they are poisonous (toxic); can be ignited by open flame (ignitable); corrode other materials (corrosive); or react violently, explode, or generate vapors when mixed with water (reactive). Soil or groundwater contaminated with hazardous materials above specified regulatory State or federal thresholds is considered hazardous waste if it is removed from a site for disposal. If handled, disposed, or otherwise handled improperly, hazardous materials and hazardous waste can result in public health hazards if released into the soil or groundwater or through airborne releases in vapors, fumes, or dust. Soil and groundwater having concentrations of hazardous constituents higher than specific regulatory levels must be handled and disposed of as hazardous waste when excavated or pumped from an aquifer. The California Code of Regulations, Title 22, Sections 66261.20-24, contains technical descriptions of toxic characteristics that could cause soil or groundwater to be classified as hazardous waste.

Hazardous Materials Listing

The Cortese List is a list of known hazardous materials or hazardous waste facilities that meet one or more of the provisions of Government Code Section 65962.5, including:

- The list of hazardous waste and substances sites from the DTSC EnviroStor Database.[1]
- The list of Leaking Underground Storage Tank (LUST) sites by county and fiscal year from the State Water Resources Control Board (State Water Board) GeoTracker Database.[2]
- The list of solid waste disposal sites identified by the State Water Board with waste constituents exceeding hazardous waste levels outside the waste management unit.[3]
- The list of active cease and desist orders and cleanup and abatement orders from the State Water Board.[4]

[1] California Department of Toxic Substances Control (DTSC). "Cortese" List of DTSC's EnviroStor Database list of Hazardous Waste and Substances sites. DTSC's Hazardous Waste and Substances Site List—Site Cleanup (Cortese List). Website: http://www.dtsc.ca.gov/SiteCleanup/Cortese_List.cfm. Accessed February 5, 2025.

[2] California State Water Resources Control Board (State Water Board). "Cortese" List of Leaking Underground Storage Tank Sites by County (San Francisco County). Website: https://geotracker.waterboards.ca.gov/sites_by_county. Accessed February 5, 2025.

[3] California Environmental Protection Agency (Cal/EPA). "Cortese" List of solid waste disposal sites identified with waste constituents above hazardous waste levels outside the waste management unit. Website: http://www.calepa.ca.gov/files/2016/10/SiteCleanup-CorteseList-CurrentList.pdf. Accessed February 5, 2025.

[4] California Environmental Protection Agency (Cal/EPA). "Cortese" List of State Water Board sites with active Cease and Desist Orders or Cleanup Abatement Orders. Website: http://www.calepa.ca.gov/files/2016/10/SiteCleanup-CorteseList-CDOCAOList.xlsx. Accessed February 5, 2025.

The list of hazardous waste facilities subject to corrective action pursuant to Section 25187.5 of the Health and Safety Code, as identified by the DTSC.[5]

Existing Fire-Related Conditions and Presence of Hazardous Materials

The hazards in the City of San José and the project area discussed in this section are related primarily to fire hazards and hazardous materials. Fire hazards and hazards from hazardous materials are typically site-specific, so existing conditions related to fire hazards and the transport, use, and disposal of hazardous materials are discussed below under "Project Site."

City of San José

As previously mentioned, the DTSC and the State Water Board are responsible for compiling a list of hazardous materials or hazardous waste facilities to the California Environmental Protection Agency (Cal/EPA) annually under Government Code Section 65962.5, known as the Cortese List. A description of recorded hazardous waste facilities and areas with a history or that currently contain hazardous materials, waste, or substances in the City from the Cortese List is provided below.

Hazardous Waste Facilities and Substance Sites

The DTSC's EnviroStor Database lists hazardous waste facilities and substance sites along with recording and documenting cleanup, permitting, enforcement, and investigation efforts for those sites. The City of San José currently contains four facilities or substance sites with two classified as a federal Superfund site while two are listed as a State response area. Of the four listed sites, the two federal Superfund sites are listed as active, while the two State response areas are listed as Certified/Operation and Maintenance, which identifies completed sites with a previously confirmed release that are subsequently certified by the DTSC as having been remediated satisfactorily under DTSC oversight. Three of the sites contain land use restrictions which the DTSC has placed limits or requirements for future uses of the property based on contaminants remaining in the soil and groundwater at the site.[6]

Leaking Underground Storage Tank Sites

The State Water Board GeoTracker Database displays sites that have experienced or currently have an unauthorized leak or spill of hazardous substances that are either under investigation for contamination, have implemented remediation, or have completed remediation processes. According to the GeoTracker Database, the City has a total of 1,265 LUST sites previously recorded, with 1,233 of these sites indicated to have completed remediation with cases closed.[7] The project site does not contain any underground or aboveground storage tanks but is in proximity to two sites that have a history of contamination from underground or aboveground storage tanks. The Foxboro/ICT Site located approximately 0.1 mile west of the project site experienced the release of volatile organic compounds (VOCs) from an underground storage tank in 1985, and the Agnews East

[5] California Environmental Protection Agency (Cal/EPA). "Cortese" List of sites subject to Corrective Action pursuant to Health and Safety Code 25187.5. Website: https://www.calepa.ca.gov/sitecleanup/corteselist/section-65962-5a/. Accessed February 5, 2025.

[6] California Department of Toxic Substance Control (DTSC). 2025. EnviroStor. Website: https://www.envirostor.dtsc.ca.gov/public/search?cmd=search&reporttype=CORTESE&site_type=CSITES,FUDS&status=ACT,BKLG,COM&reporttitle=HAZARDOUS+WASTE+AND+SUBSTANCES+SITE+LIST+%28CORTESE%29. Accessed February 5, 2025.

[7] California State Water Resources Control Board (State Water Board). 2025. GeoTracker. Website: https://geotracker.waterboards.ca.gov/search. Accessed February 5, 2024.

site located approximately 0.1 mile northwest of the project site had recognized environmental conditions (RECs) for underground and aboveground storage tanks. Both sites have undergone successful remediation, and the Agnews East site is annually monitored by the DTSC.[8]

Project Site

ENGEO Incorporated prepared a Modified Phase I ESA on July 5, 2023, to identify if any RECs associated with previous or current uses on the project site. Methodology utilized by ENGEO Incorporated for the Phase I ESA included reviewing any historical sources in the form of aerial photographs and topographic maps to identify historical activities on the project site that may have generated, utilized, or disposed of hazardous materials or waste; analyzing publicly available environmental records searches and previous environmental reports prepared for the project site and nearby properties; conducting written and oral interviews for individuals or companies that have knowledge of the project site' and performing a site reconnaissance to review site use and current conditions. The Phase I ESA did not identify any RECs, historical RECs, or controlled RECs associated with the project site. However, ENGEO Incorporated performed an additional Agrichemical Soil Assessment and Soil Gas Sampling Report because of historical uses on the project site identified from aerial photography and because numerous nearby properties have a history of hazardous material releases or other environmental concerns that could impact the project site. The Phase I ESA prepared by ENGEO Incorporated, along with the Agrichemical Soil Assessment and Soil Gas Sampling Report, are provided in detail below.

Historical Records Sources

ENGEO Incorporated conducted a historical records review to identify previous uses or occupancies on the property and surrounding areas that may have led to any RECs on the property. Topographic maps from 1889 to 1899 indicated that the property was vacant until available ariel photography in 1939 revealed that the property was occupied for agricultural purposes as an orchard with surrounding properties having similar uses. A hospital was identified north of the project site in a 1953 topography map, and aerial photography further showed that the project site and surrounding area began to be developed for commercial and business uses, with office buildings present by 1982. No notable developments have occurred on the project site since 1982.

Environmental Records Search and Reports for the Project Site

ENGEO Incorporated conducted an environmental records search using federal, Tribal, State, and local databases for the project site. Environmental databases yielded four listings of previous companies that utilized the project site regarding the generation, use, or disposal of hazardous materials: Maxtor Corporation, a computer and electronic product manufacturing company associated with transferring and disposing various hazardous liquids; River Oaks Renovation and Marked Ready Improvement, related to stormwater infrastructure during construction; RO Associates LLC, associated with the disposal of asbestos-containing waste at a landfill; and one unknown business associated with a former storage facility. In addition, ENGEO Incorporated obtained a previous Phase I ESA prepared for the project site in 2014 along with an EIR prepared for a redevelopment project that encompassed the project site. The 2014 Phase I ESA did not identify

[8] ENGEO Incorporated. 2023. 211, 251, and 281 River Oaks Parkway Modified Phase I Environmental Site Assessment. July 5.

any RECs on the project site, and the EIR indicated a potential risk associated with pesticide residue in soil but concluded that no environmental accidents were unlikely to occur.

Environmental Records Search for Nearby Properties

The environmental records search performed by ENGEO Incorporated revealed numerous surrounding properties listed on online databases, with four properties having a history of environmental contamination within the soil and groundwater. The Foxboro/ICT Site directly west of the project site had a release of VOCs from an underground storage tank in 1985; the Agnews East site northwest of the project site contained RECs for underground and aboveground storage tanks and had a historical use of transformers containing polychlorinated biphenyl (PCBs); the Cresent Village Site south of the project site contained arsenic, lead, and other pesticides in the sites soil; and the Lockhead Martin Site south of the property released total petroleum hydrocarbons (TPH) as hydraulic oil. All identified sites underwent remedial action, and a cap inspection and occupancy report is submitted by the DTSC annually for the Agnews East site northwest of the project site. Overall findings indicate that due to the distance of these properties from the project site, regional hydraulic grading, and previous remedial actions implemented. ENGEO Incorporated concluded the four nearby properties do not pose an environmental risk to the project site.

Written and Oral Interviews

ENGEO Incorporated contacted many State and local agencies to obtain information and files regarding site history of environmental contamination. As previously mentioned, ENGEO Incorporated obtained an EIR for a redevelopment project that encompassed the project site from the City of San José Environmental Services Division that indicated a potential but undetermined risk associated with pesticide residue in soil but concluded that no environmental accidents are likely to occur. Other local agencies contacted had no files on record for the project site, and the Geotracker and Envirostor databases found no listings for the project site. In addition, ENGEO Incorporated conducted a client-based interview on May 22, 2023, pertaining to any applicable environmental information for the project site. The interviewed client claimed they are unaware of any environmental issues or RECs associated with the project site.

Site Reconnaissance

A site reconnaissance was implemented by ENGEO Incorporated to identify any conditions or evidence indicating soil or groundwater contamination or signs of any underground storage tanks on May 26, 2023, and June 20, 2023. The site reconnaissance recorded stressed vegetation on the project site being an indicator of soil or groundwater contamination, and the interior of one structure contained water damage on the ceiling. However, because of the project site's vacant status, these conditions were due to the lack of proper maintenance and not associated with soil or groundwater contamination. In addition, no physical evidence of any storage tanks, drums, PCB-containing equipment, stains, corrosion, wells, or septic systems were observed on the project site, and the age of the existing structures suggests that asbestos, lead, or PCB-containing materials do not exist on the project site. Overall, the site reconnaissance did not identify any signs of environmental contamination.

Agrichemical Soil Assessment

The Phase I ESA prepared by ENGEO Incorporated did not identify any RECs, historical RECs, or controlled RECs associated with the project site. However, the Phase I ESA revealed that the project site operated as an orchard from 1939 to the early 1970s. Since agricultural uses are associated with pesticide and other chemical uses, ENGEO Incorporated conducted an Agrichemical Soil Assessment on near-surface soil to evaluate potential residual concentrations of organochlorine pesticides (OCPs), lead, and arsenic on June 1, 2023. A total of 25 samples were collected from 20 locations across the project site where five 4-point composite samples were analyzed for OCPs and 10 shallow samples were analyzed discretely for both lead and arsenic. Samples were compared to San Francisco Bay Regional Water Quality Control Board's (San Francisco Bay RWQCB) Environmental Screening Levels (ESLs) for residential land use. Both OCPs and lead samples indicated levels above laboratory reporting limits but below the residential land use ESL. However, arsenic concentrations exceeded the ESL in seven samples, likely resulting from the history of agricultural uses. Further evaluation of arsenic samples revealed that arsenic concentrations were indicative of background concentrations on the project site.[9]

Soil Gas Sampling Report

As previously mentioned, the Phase I ESA prepared by ENGEO Incorporated found that the Foxboro/ICT property directly west of the project site had a history of a LUST releasing VOCs in 1985 and the Agnews East property northwest of the project site removed an underground storage tank in 2013. Since both properties have a history of environmental contamination and remediation. ENGEO Incorporated conducted field sampling activities on June 20, 2023, to determine the risk of soil vapor intrusion on the project site. Soil gas samples were extracted from temporary wells and compared to the San Francisco Bay RWQCB ESLs for residential land use. Results showed that there are no existing on-site sources of VOCs, and analytes were detected at both below and above laboratory reporting limits but below the ESL. Benzene levels were detected above the ESL for all five samples, but ENGEO Incorporated concluded that benzene concentrations at identified levels are common in urbanized areas and existing oxygen levels in the soil are sufficient to support aerobic biodegradation. Since field sampling activities did not identify any on-site sources of VOCs and benzene levels were deemed as having a *de minimis* risk when adjusted for biodegradation, ENGEO Incorporated concluded that environmental conditions on the project site do not present a risk to future residents on the project site.[10]

Existing Fire-Related Conditions

City of San José

The City of San José is located south of the San Francisco Bay with most neighborhoods situated on flat terrain and surrounded by urban infrastructure with little natural vegetation. Some neighborhoods are located within the Wildland-Urban Interface (WUI) consisting of neighborhoods that mix or intermingle with wildland areas and vegetative fuels. Neighborhoods that reside in the WUI tend to experience a greater risk of experiencing large conflagrations due to factors such as containing large vegetation, location on steep terrain, and distance from fire stations and municipal

[9] ENGEO Incorporated. 2023. 211, 251, and 281 River Oaks Parkway Modified Phase I Environmental Site Assessment. July 5.
[10] ENGEO Incorporated. 2023. Soil Gas Sampling Report. July 5.

water utility lines. The City's WUI consist of the East Foothills neighborhood at the base of the Diablo Ranges, and scattered development in south San José in the Almaden Valley.[11]

The City also is in proximity to Fire Hazard Severity Zones (FHSZs) along State Responsibility Areas (SRAs) and encompasses FHSZs in Local Responsibility Areas (LRAs) that are classified as either having a moderate, high, or very high hazard indicating the likelihood an area will experience a wildfire over a 30 to 50-year period without incorporating mitigation measures based on physical conditions that influence the ignition and spread of wildfire such as topography, climate, fuel loads, and fire history. LRAs established as FHSZs inside the City's jurisdiction tend to encroach from SRAs outside city limits and are classified as having a moderate to high FHSZ which includes the eastern portion of the East Foothills and Alum Rock neighborhoods, the eastern area of the Seven Trees neighborhood, neighborhoods southeast of Almaden Lake, and rural neighborhoods on the higher elevations in Almaden Valley.[12]

Project Site

The project site is located in a highly urbanized area with little natural vegetation and flat terrain. The site has direct access to resources that would limit the severity of wildland fires, such as direct connection to water utilities and the San José Fire Department's (SJFD's) Station 29, located at 199 Innovation Drive, approximately 0.25 mile southwest of the project site, which can effectively reach the project site within an estimated 64.8 seconds assuming a constant speed of 35 miles per hour (mph) from a fire engine considering average traffic patterns, terrain, weather conditions, and slowing from intersections.[13] Additionally, the project site is not located in the WUI or a FHSZ as the closest WUI is the East Foothills Neighborhood approximately 4.6 miles east of the project site,[14] while the closest FHSZ is approximately 3.7 miles northeast of the project site and is designated as an LRA with a moderate hazard.[15]

3.5.3 - Regulatory Framework

Federal

Federal Aviation Regulations Part 77

Federal Aviation Regulations, Part 77 Objects Affecting Navigable Airspace, sets forth standards and review requirements for protecting the airspace for safe aircraft operations, 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

[11] City of San José. n.d. Wildland-Urban Interface. Website: https://www.sanjoseca.gov/your-government/departments-offices/fire-department/public-education/wildfire-preparedness/wildland-urban-interface. Accessed February 7, 2025.
[12] California Department of Forestry and Fire Protection (CAL FIRE) Fire Hazard Severity Zones. 2025. Website: https://osfm.fire.ca.gov/what-we-do/community-wildfire-preparedness-and-mitigation/fire-hazard-severity-zones. Accessed March 5, 2025.
[13] University of Tennessee Institute for Public Service. 2023. Website: https://www.mtas.tennessee.edu/reference/estimating-travel-time-fire-apparatus. Accessed February 26, 2025.
[14] City of San José. n.d. Wildland-Urban Interface. Website: https://www.sanjoseca.gov/your-government/departments-offices/fire-department/public-education/wildfire-preparedness/wildland-urban-interface. Accessed February 7, 2025.
[15] California Department of Forestry and Fire Protection (CAL FIRE) Fire Hazard Severity Zones. 2025. Website: https://osfm.fire.ca.gov/what-we-do/community-wildfire-preparedness-and-mitigation/fire-hazard-severity-zones. Accessed March 5, 2025.

projects located within an extended zone defined by an imaginary slope radiating outward for several miles from an airport's runway, or which otherwise stand at least 200 feet in height above the ground.

Occupational Health and Safety Act

The Occupational Safety and Health Administration (OSHA) of the United States Department of Labor is responsible for implementing and enforcing federal laws and regulations that address worker health and safety. OSHA requires specific training for hazardous materials users and handlers, provision of information (procedures for personal safety, hazardous materials storage and handling, and emergency response) to employees who may be exposed to hazardous materials, and acquisition of material safety data sheets from materials manufacturers. Material safety data sheets describe the risks, as well as proper handling and procedures, related to particular hazardous materials. Employee training must include response and remediation procedures for hazardous materials releases and exposures. Construction workers and operational employees at the project site would be subject to these requirements.

Code of Federal Regulations, Titles 29 and 40

Regulations in Code of Federal Regulations, Title 29, include requirements to manage and control exposure to lead-based paint and ACMs. In California, these requirements are implemented by the California Occupational Safety and Health Administration (Cal/OSHA) under California Code of Regulations, Title 8, (see further discussion of California Code of Regulations, Title 8, below). The removal and handling of ACM is governed primarily by EPA regulations under Code of Federal Regulations, Title 40. The regulations require that the appropriate State agency be notified before any demolition, or before any renovations, of buildings that could contain asbestos or ACMs above a specified threshold.

Resource Conservation and Recovery Act and Comprehensive Environmental Response, Compensation, and Liability Act

The EPA is responsible for implementing and enforcing federal laws and regulations pertaining to hazardous materials. The primary legislation includes the Resource Conservation and Recovery Act of 1976 (RCRA) and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA) and the Emergency Planning and Community Right-to-Know Act (known as SARA Title III). RCRA and the 1984 RCRA Amendments regulate the treatment, storage, and disposal of hazardous and nonhazardous wastes and mandate that hazardous wastes be tracked from the point of generation to their ultimate fate in the environment, including detailed tracking of hazardous materials during transport and permitting of hazardous material handling facilities. As permitted by RCRA, in 1992 the EPA approved California's program called the Hazardous Waste Control Law (HWCL), administered by DTSC, to regulate hazardous wastes in California, as discussed further below. The purpose of CERCLA is to identify and clean up chemically contaminated sites that pose a significant environmental health threat, and the Hazard Ranking System is used to determine whether a site should be placed on the National Priorities List for cleanup activities. SARA relates primarily to emergency management of accidental releases and requires annual reporting of continuous emissions and accidental releases of specified compounds that are compiled into a nationwide Toxics Release Inventory. Finally, SARA

Title III requires formation of State and local emergency planning committees that are responsible for collecting material handling and transportation data for use as a basis for planning and provision of chemical inventory data to the community at large under the "right-to-know" provision of the law.

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 related to chemical substances and/or mixtures. Certain substances are generally excluded from TSCA, including food, drugs, cosmetics, and pesticides. The TSCA addresses the production, importation, use, and disposal of specific chemicals including PCBs, asbestos, radon, and lead-based paint.

Hazardous Materials Transportation Act

Under the Hazardous Materials Transportation Act of 1975, the United States Department of Transportation (USDOT), Office of Hazardous Materials Safety, regulates the transportation of hazardous materials on water, rail, and highways, through air, or in pipelines and enforces guidelines created to protect human health and the environment and reduce potential impacts by creating hazardous material packaging and transportation requirements. It also includes provisions for material classification, packaging, marking, labeling, place carding, and shipping documentation. The USDOT provides hazardous materials safety training programs and supervises activities involving hazardous materials. In addition, the USDOT develops and recommends regulations governing the multimodal transportation of hazardous materials.

Clean Water Act

The Clean Water Act (CWA) (Title 33 § 1251, *et seq.* of the United States Code [33 USC 1251, *et seq.*]) is the major federal legislation governing water quality. The CWA established the basic structure for regulating discharges of pollutants into waters of the United States (not including groundwater). The objective of the act is "to restore and maintain the chemical, physical, and biological integrity of the nation's waters." The CWA establishes the basic structure for regulating the discharge of pollutants into waters of the United States. Responsibility for administering the CWA resides with the State Water Board and nine RWQCBs; the San Francisco Bay RWQCB administers the CWA for Santa Clara County. Section 404 of the CWA regulates temporary and permanent fill and disturbance of waters of the United States, including wetlands. The United States Army Corps of Engineers (USACE) requires that a permit be obtained if a project proposes to place fill in navigable waters and/or to alter waters of the United States below the ordinary high-water mark in non-tidal waters. Section 401 of the CWA requires compliance with State water quality standards for actions within State waters. Compliance with the water quality standards required under Section 401 is a condition for issuance of a Section 404 permit. Under Section 401 of the CWA, every applicant for a permit or license for any activity that may result in a discharge to a water body must obtain a State water quality certification from the RWQCB to demonstrate that the proposed activity would comply with State water quality standards.

State

California Hazardous Waste Control Law

The HWCL is the primary hazardous waste statute in the State of California and implements RCRA as a "cradle-to-grave" waste management system for handling hazardous wastes in a manner that protects human health and the environment and would reduce potential resulting impacts. The law specifies that generators have the primary duty to determine whether their waste is hazardous and to ensure proper management. The HWCL also establishes criteria for the reuse and recycling of hazardous waste used or reused as raw materials. The law exceeds federal requirements by mandating source reduction planning and a much broader requirement for permitting facilities that treat hazardous waste. It also regulates a number of types of waste and waste management activities that are not covered by federal law.

California Health and Safety Code

The California Health and Safety Code (HSC § 25141) defines hazardous waste as a waste or combination of waste that may:

> . . . because of its quantity, concentration, or physical, chemical, or infection characteristics:
>
> (1) Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitation-reversible illness.
>
> (2) Pose a substantial present or potential hazard to human health or the environment, due to factors including, but not limited to, carcinogenicity, acute toxicity, chronic toxicity, bioaccumulative properties, or persistence in the environment, when improperly treated, stored, transported, or disposed of or otherwise managed.

These regulations establish criteria for identifying, packaging, and labeling hazardous wastes; prescribe management practices for hazardous wastes; establish permit requirements for hazardous waste treatment, storage, disposal, and transportation; and identify hazardous waste that commonly would be disposed of in landfills.

In accordance with Chapter 6.11 of California Health and Safety Code Section 25404, *et seq.*, local regulatory agencies enforce many federal and State regulatory programs through the Certified Unified Program Agency (CUPA) program, including:

- Hazardous materials business plans (HMBPs) (HSC § 25501, *et seq*.).
- State Uniform Fire Code (UFC) requirements (UFC § 80.103, as adopted by the State Fire Marshal pursuant to HSC § 13143.9).
- Underground storage tanks (USTs) (HSC § 25280, *et seq*.).
- Aboveground storage tanks (HSC § 25270.5(c)).
- Hazardous waste-generator requirements (HSC § 25100, *et seq*.).

The Santa Clara County Department of Environmental Health, Hazardous Materials Compliance Division is the CUPA for the County. As the CUPA, the department enforces State statutes and regulations through the Hazardous Materials Unified Program Agency, which oversees aboveground petroleum tanks, generations of hazardous materials, storage and treatment, and USTs; generation of medical waste; the accidental release prevention program; and the Local Oversight Program. If a facility ever handles any individual hazardous material in an aggregate amount equal to or greater than 55 gallons (liquids), 500 pounds (solids), or 200 cubic feet (gases), an HMBP must be submitted which includes:

- Details that include facility floor plans and identify the business conducted at the site.
- An inventory of hazardous materials handled or stored on the site.
- An emergency response plan.
- A training program in safety procedures and emergency response for new employees who may handle hazardous materials, with an annual refresher course in the same topics for those same employees.

California Code of Regulations, Title 8

Cal/OSHA assumes primary responsibility for developing and enforcing workplace safety regulations. These regulations concern the use of hazardous materials in the workplace, including requirements for employee safety training; availability of safety equipment; accident and illness prevention programs; hazardous substance exposure warnings; and preparation of emergency action and fire prevention plans.

Cal/OSHA also enforces hazard communication program regulations, including procedures for identifying and labeling hazardous substances, and requires that safety data sheets (formerly known as material safety data sheets) be available for employee information and training programs. Cal/OSHA standards are generally more stringent than federal regulations. Construction workers and operational employees at the project site would be subject to these requirements.

California Code of Regulations, Title 8, Section 1529 authorizes Cal/OSHA to implement the survey requirements of Code of Federal Regulations, Title 29, relating to asbestos. These federal and State regulations require facilities to take all necessary precautions to protect employees and the public from exposure to asbestos. Workers who conduct asbestos abatement must be trained in accordance with federal and State OSHA requirements. The Bay Area Air Quality Management District (BAAQMD) oversees the removal of regulated ACM (see “Asbestos Demolition, Renovation, and Manufacturing Rule” below).

California Code of Regulations, Title 8, Section 1532.1 includes requirements to manage and control exposure to lead-based paint. These regulations cover the demolition, removal, cleanup, transportation, storage, and disposal of lead-containing material. The regulations outline the permissible exposure limit, protective measures, monitoring, and compliance to ensure the safety of construction workers exposed to lead-based material. Loose and peeling lead-based paint must be disposed of as a State and/or federal hazardous waste if the concentration of lead equals or exceeds applicable hazardous waste thresholds. Federal and State OSHA regulations require a supervisor who is certified with respect to identifying existing and predictable lead hazards to oversee air monitoring

and other protective measures during demolition activities in areas where lead-based paint may be present. Special protective measures and notification of Cal/OSHA are required for highly hazardous construction tasks related to lead, such as manual demolition, abrasive blasting, welding, cutting, or torch burning of structures, where lead-based paint is present.

California Code of Regulations, Title 22, Division 4.5

California Code of Regulations, Title 22, Division 4.5, contains the Environmental Health Standards for the Management of Hazardous Waste, which includes California waste identification and classification regulations. California Code of Regulations, Title 22, Chapter 11, Article 3, Soluble Threshold Limits Concentrations/Total Threshold Limits Concentration Regulatory Limits, identifies the concentrations at which soil is determined to be a California hazardous waste. California's Universal Waste Rule provides an alternative set of management standards in lieu of regulation as hazardous wastes for certain common hazardous wastes, as defined in California Code of Regulations, Title 22, Section 66261.9. Universal wastes include fluorescent lamps, mercury thermostats, and other mercury-containing equipment. Existing structures may contain fluorescent light ballasts that could contain mercury or lead. The Alternative Management Standards for Treated Wood Waste (22 CCR § 67386) were developed by the DTSC to allow for disposal of treated wood as a nonhazardous waste, to simplify and facilitate the safe and economical disposal of such waste. Chemically treated wood can contain elevated levels of hazardous chemicals (e.g., arsenic, chromium, copper, pentachlorophenol, or creosote) that equal or exceed applicable hazardous waste thresholds. The Alternative Management Standards provide for less stringent storage requirements and extended accumulation periods, allow shipments without a hazardous waste manifest and a hazardous waste hauler, and allow disposal at specific nonhazardous waste landfills.

Porter-Cologne Act

The Porter-Cologne Water Quality Control Act of 1969 (Porter-Cologne Act) is California's statutory authority for the protection of water quality. Under the Porter-Cologne Act, the State must adopt water quality policies, plans, and objectives that protect the State's waters for the use and enjoyment of the people. Regional authority for planning, permitting, and enforcement is delegated to the nine RWQCBs. The RWQCBs are required to formulate and adopt water quality control plans (also known as basin plans) for all areas of the region and establish water quality objectives in the plans. The Porter-Cologne Act sets forth the obligations of State Water Board and RWQCBs to adopt and periodically update water quality control plans that recognize and reflect the differences in existing water quality, the beneficial uses of the region's groundwater and surface water, and local water quality conditions and problems. It also authorizes the State Water Board and RWQCBs to issue and enforce waste discharge requirements and to implement programs for controlling pollution in State waters. Finally, the Porter-Cologne Act also authorizes the State Water Board and RWQCBs to oversee site investigation and cleanup for unauthorized releases of pollutants to soils and groundwater and in some cases to surface waters or sediments.

California Emergency Response Plan

California has developed an emergency response plan to coordinate emergency services provided by federal, State, and local governments and private agencies. Responding to hazardous materials incidents is one part of this plan. The plan is administered by the California Governor's Office of

Emergency Services, which coordinates the responses of other agencies. Emergency response team members respond and work with local fire and police agencies, emergency medical providers, the California Highway Patrol (CHP), CAL FIRE, California Department of Fish and Wildlife (CDFW), and California Department of Transportation (Caltrans).

California Department of Forestry and Fire Protection

CAL FIRE has mapped fire threat potential throughout California. CAL FIRE maps fire threat based on the availability of fuel and the likelihood of an area burning (based on topography, fire history, and climate). The threat levels include no fire threat, moderate, high, and very high fire threat. Additionally, CAL FIRE produced a 2010 Strategic Fire Plan for California, which contains goals, objectives, and policies to prepare for and mitigate the effects of fire on California's natural and built environments. CAL FIRE's Office of the State Fire Marshal provides oversight of enforcement of the California Fire Code as well as overseeing hazardous liquid pipeline safety.

California Building Standards Code

The State of California provided a minimum standard for building design through the 2022 California Building Standards Code (CBC), which is located in Part 2 of Title 24 of the California Code of Regulations. The 2022 CBC is based on the 2021 International Building Code but has been modified for California conditions. It is generally adopted on a jurisdiction by-jurisdiction basis, subject to further modification based on local conditions. Commercial and residential buildings are plan-checked by local City and County building officials for compliance with the CBC. Typical fire safety requirements of the CBC include the installation of sprinklers in all new high-rise buildings and residential buildings; the establishment of fire resistance standards for fire doors, building material; and particular types of construction.

California Air Resources Board

The California Air Resources Board (ARB) establishes State air quality regulations for a range of statewide and local pollution sources and monitors air pollution control efforts to maintain health-based air quality standards to protect public health and the environment. The ARB administers 35 local air pollution control districts that regulate emissions from a variety of mobile and stationary sources.

California Public Resources Code

The California Public Resources Code includes fire safety regulations that restrict the use of equipment that may produce a spark, flame, or fire; require the use of spark arrestors[16] on construction equipment that use an internal combustion engine; specify requirements for the safe use of gasoline-powered tools in fire hazard areas; and specify fire suppression equipment that must be provided on-site for various types of work in fire-prone areas.

These regulations include the following:

[16] A spark arrester is a device that prohibits exhaust gases from an internal combustion engine from passing through the impeller blades where they could cause a spark. A carbon trap is commonly used to retain carbon particles from the exhaust.

- Earthmoving and portable equipment with internal combustion engines would be equipped with a spark arrester to reduce the potential for igniting a wildland fire (California Public Resources Code [PRC] § 4442);
- Appropriate fire suppression equipment would be maintained during the highest fire danger period—from April 1 to December 1 (PRC § 4428);
- On days when a burning permit is required, flammable materials would be removed to a distance of 10 feet from any equipment that could produce a spark, fire, or flame, and the construction contractor would maintain the appropriate fire suppression equipment (PRC § 4427); and
- On days when a burning permit is required, portable tools powered by gasoline-fueled internal combustion engines would not be used within 25 feet of any flammable materials (PRC § 4431).

Government Code Section 65962.5

Section 65962.5 of the Government Code requires Cal/EPA 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 California Environmental Quality Act (CEQA) requirements. The Cortese List includes hazardous substance release sites identified by DTSC and the State Water Board.

Worker Health and Safety

Worker health and safety is regulated at the federal level by OSHA. In California workers' health and safety protections are regulated by Cal/OSHA, which also provides consultant assistance to employers. California standards for workers dealing with hazardous materials are contained in the California Code of Regulations, Title 8, and include practices for all industries (General Industrial Safety Orders), with specific practices for construction and other industries. Workers at hazardous waste sites (or workers who may be exposed to hazardous wastes that might be encountered during excavation of contaminated soils) must receive specialized training and medical supervision according to the Hazardous Waste Operations and Emergency Response regulations (8 CCR § 5192). Additional regulations have been developed for construction workers potentially exposed to lead (8 CCR § 1532.1) and asbestos (8 CCR § 1529). Cal/OSHA enforcement units conduct on-site evaluations and issue notice of violation to enforce necessary improvements to health and safety practices.

Regional

Santa Clara County Department of Environmental Health

The Santa Clara County Department of Environmental Health acts as the local oversight agency for investigation and cleanup of petroleum releases from USTs through implementation of the Local Oversight Program by contact with the State Water Board and RWQCB. There are nine RWQCBs throughout the State. The San Francisco Bay RWQCB has jurisdiction over projects in the City. Individual RWQCBs function as the lead agencies responsible for identifying, monitoring, and remediating LUSTs. Storage of hazardous materials in USTs is regulated by the State Water Board which oversees the nine RWQCB.

Bay Area Air Quality Management District

The BAAQMD has primary responsibility for control of air pollution from sources other than motor vehicles and consumer products (which are the responsibility of the EPA and ARB). The BAAQMD is responsible for preparation and attainment plans for nonattainment criteria pollutants, control of stationary air pollutant sources, management of VOC-containing soils (District Rule 8-40), and the issuance of permits for the removal of ACM before demolition and renovation activities (District Rule 11-2).

Local

Envision San José 2040 General Plan

The Envision San José 2040 General Plan (General Plan), adopted in 2011 and amended in 2024, addresses a variety of elements through goals, policies, and implementation actions for the City's long-term physical development and serves as a consistent framework for land use development. Under State law, no development project may be approved unless the City finds that project design and use is compatible with the General Plan. The General Plan's goals, policies, and implementation actions pertaining to hazards and hazardous materials are listed below.

Goal EC-6 Protect the community from the risks inherent in the transportation, distribution, use, storage, and disposal of hazardous materials.

Policy EC-6.1 Require all users and producers of hazardous materials and wastes to clearly identify and inventory the hazardous materials that they store, use, or transport in conformance with local, State, and federal laws, regulations and guidelines.

Policy EC-6.2 Require proper storage and use of hazardous materials and waste to prevent leakage, potential explosions, fires, or the escape of harmful gases, and to prevent individually innocuous materials from combining to form hazardous substances, especially at the time of disposal by businesses and residences. Require proper disposal of hazardous materials and wastes at licensed facilities.

Policy EC-6.4 Require all proposals of new or expanded facilities that handle hazardous materials that could impact sensitive uses off-site to include adequate mitigation to reduce identified hazardous materials impacts to less than significant levels.

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.

Action EC-6.10 Promote source reduction and recycling as alternatives to hazardous materials land disposal whenever feasible.

Goal EC-7 Protect the community and environment from exposure to hazardous soil, soil vapor, groundwater, and indoor air contamination and hazardous building materials in existing and proposed structures and development and on public properties, such as parks and trails.

Policy EC-7.1 For development and redevelopment projects, require evaluation of the proposed site's historical and present uses to determine whether 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-7.3 Where a property is located in near proximity of known groundwater contamination with volatile organic compounds or within 1,000 feet of an active or inactive landfill, evaluate and mitigate the potential for indoor air intrusion of hazardous compounds to the satisfaction of the City's Environmental Compliance Officer and appropriate regional, State and federal agencies prior to approval of a development or redevelopment project.

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.

Action 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.

Action EC-7.9 Ensure coordination with the County of Santa Clara Department of Environmental Health, Regional Water Quality Control Board, California 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.

Action EC-7.10 Require review and approval of grading, erosion control and dust control plans prior to issuance of a grading permit by the Director of Public Works on sites with known soil contamination. Construction operations shall be conducted to limit the creation and dispersion of dust and sediment runoff.

Action 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.

Policy EC-8.1 Minimize development in very high fire hazard zone areas. Plan and construct permitted development so as to reduce exposure to fire hazards and to facilitate fire suppression efforts in the event of a wildfire.

Policy EC-8.2 Avoid actions which increase fire risk, such as increasing public access roads in very high fire hazard areas, because of the great environmental damage and economic loss associated with a large wildfire.

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 CD-5.8 Comply with applicable Federal Aviation Administration regulations identifying maximum heights for obstructions to promote air safety.

City of San José Code of Ordinances

Chapter 17.68, Hazardous Materials Storage Permit, contains regulations that are designed to protect health, life, resources, and property through prevention and control of unauthorized discharges of hazardous materials. This ordinance applies to any person, firm, or corporation which stores any hazardous materials and requires a hazardous materials storage permit and conformance with an approved hazardous materials management plan.

3.5.4 - Methodology

Impacts related to hazards and hazardous materials for the City of San José and the project site were analyzed using a variety of State and local online databases, City websites, web maps, the Modified Phase I ESA, and the Supplemental Environmental Evaluation prepared by ENGEO Incorporated including the Agrichemical Soil Assessment and Soil Gas Sampling Report (see Appendix F).

Information on hazardous waste facilities and substance sites, along with hazardous waste sites subject to corrective action, was provided by online databases by the DTSC through the Cortese List. Hazardous waste facilities and substance sites within the City were evaluated in the EnviroStor

Database, including details on the sites program type, status, location, and land use restrictions. The State Water Board provided public online records through the Cortese List for information on solid waste disposal sites with waste discharges to adjacent land and active cease and desist and abatement orders. Information on sites that have completed remediation for LUSTs, along with sites that have open cases undergoing site assessments or remediation for LUSTs within the City, was obtained from the State Water Board's GeoTracker Database.

The Modified Phase I ESA prepared by ENGEO Incorporated was scrutinized to determine the project site and adjacent properties historical or current land uses to ascertain if properties were associated with any RECs or had previously experienced environmental contamination or concerns. In addition, the Agrichemical Soil Assessment and Soil Gas Sampling Report prepared by ENGEO Incorporated was analyzed to assess if subsurface conditions on the project site contained any hazardous substances from the results of previous land uses on and surrounding the project site, along with the potential risk of soil vapor intrusion.

Neighborhoods within the City and surrounding SRAs that yield greater fire hazards, such as the WUI and FHSZ, were located using The City of San José's Wildland-Urban Interface web map, while FHSZ in adjacent SRAs were identified through CAL FIRE's Fire Hazard Severity Zones map. The project site's location was compared to these identified areas to determine susceptibility to fire hazards.

Cumulative Analysis

A cumulative impact combines the potential impact generated from the proposed project with other past, present, and foreseeable future projects. The geographic scope of the cumulative analysis related to hazards and hazardous materials is the immediate project vicinity near the project area as the adverse effects of hazards and hazardous materials tend to be localized. The cumulative analysis also covers the past, present, and reasonably foreseeable development projects in the City and other surrounding municipalities, as listed in Chapter 3, Environmental Impact Analysis, Table 3-1, Cumulative Projects. Therefore, each impact analysis section below contains a cumulative impact statement to determine whether the proposed project, in concurrence with other surrounding projects, would result in a significant cumulative impact and if the proposed project's incremental contribution is cumulatively considerable.

3.5.5 - Thresholds of Significance

The Lead Agency utilizes the criteria in the CEQA Guidelines Appendix G Environmental Checklist to determine whether hazards and hazardous materials impacts resulting from the implementation of the proposed project would be considered significant if the project would:

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

3.5.6 - Project Impacts and Mitigation Measures

This section discusses potential impacts associated with the development of the proposed project and provides mitigation measures where appropriate.

Routine Transport, Use, or Disposal of Hazardous Materials

Impact HAZ-1:	**The proposed project would not create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials.**

Impact Analysis

Construction

The proposed project would implement construction activities, including the demolition of three existing two-story office buildings along with the associated parking lots and landscaping, to construct 100 townhome units and two apartment buildings with 130 and 505 units respectively. Other construction activities would include ground-disturbing activities along with the routine transport, use, and disposal of hazardous materials. As previously mentioned above, the project site along with surrounding properties operated as an orchard from at least 1939 to the early mid-1970s. The Agrichemical Soil Assessment and Soil Gas Sampling Report prepared by ENGEO Incorporated detected samples of arsenic and benzene to be above the residential ESL where ground-disturbing activities such as grading, site preparation, and the transportation and disposal of contaminated soils could expose construction workers to hazardous materials. However, further analysis indicated that arsenic levels were indicated with background concentrations at the property, and benzene levels were determined to contain a *de minimis* risk due to oxygen levels within the subsurface being sufficient to support natural attenuation. In addition, the Phase I ESA, the Agrichemical Soil Assessment, and the Soil Gas Sampling Report did not identify any RECs on the project site and deemed the development of the proposed project to be suitable for residential uses with no further environmental studies required. As such, any transport or disposal of contaminated soil on the project site during construction would not create a significant hazard to construction workers, the public, or the environment.

During construction the proposed project would be expected to involve the transport, use, and disposal of hazardous materials including, but not limited to, aggregates, metals, paints, cement, and diesel fuels for the construction of on-site townhomes, apartments, and other project amenities where construction workers could be exposed to hazardous materials. However, the proposed project would be subject to a variety of federal and State regulations, including the Occupational Health and Safety Act, which requires construction workers to undergo specific training for hazardous material use and handling. The Hazardous Materials Transportation Act, California Health and Safety Code, and California Code of Regulations Title 8 establish regulations and procedures pertaining to the appropriate identification, labeling, and packaging of hazardous materials and waste to be transported, along with providing material safety training programs for construction workers to protect human health, safety, and the environment, and General Plan goals and policies EC-6, EC-6.1, EC-6.2 provide provisions for the transportation, use, and disposal of hazardous materials such as identifying and keeping inventories of hazardous materials, properly storing hazardous materials to prevent exposure, and disposing hazardous waste at licensed facilities.

As previously discussed, existing buildings on the project site would be demolished during the first phase of construction. The historical records review in the Phase I ESA identified existing structures to be present by at least 1982 and further concluded the presence of lead, asbestos, and PCB-containing materials to be unlikely within the structures. Although the existing structures were constructed after the EPA ban on lead-based paints (LBPs) in 1978 and the phasing out of asbestos and PCB-containing materials in the 1970s. The structures may have been constructed prior to 1982 and any unidentified hazardous building materials could result in a potential impact on the health of construction workers and the surrounding public if not removed prior to demolition. If materials are to be present within the existing structures, the demolition phase of construction would be required to comply with federal and State regulations such as the National Emission Standards for Hazardous Air Pollutants (NESHAP) guidelines from the EPA which require friable ACMs to be removed prior to demolition activities. State regulations such as California Code of Regulations Title 8 Section 1529 and Section 1532.1 further authorize proactive measures for the proper removal, transportation, and disposal of ACMs and LBPs prior to demolition, and District Rule 11-2 from the BAAQMD requires that those who conduct asbestos abatement must be trained in accordance with OSHA requirements and demolition activities must obtain applicable permits for the proper removal, transportation, and disposal of ACMs. In addition, General Plan Goal EC-7 and Policy EC-7.4 require proposed projects on redevelopment sites to investigate the presence of hazardous building materials prior to project approval and to implement mitigation and remediation to properly reduce the impacts of hazardous building materials.

Since the Phase I ESA, Agrichemical Soil Assessment, and Soil Gas Sampling Report prepared by ENGEO Incorporated determined the project site to be suitable for residential development, and construction of the proposed project would abide by federal, State, and local rules and regulations on the proper transportation, use, and disposal of hazardous materials and building materials, impacts related to generating public hazards through the transport, use, or disposal of hazardous materials would be less than significant.

Operation

During project operations, hazardous materials may be transported, used, or disposed of on the project site. However, hazardous materials used on the project site would be associated with typical daily household and residential items that are used in small quantities, such as pesticides, fertilizers, cleaning agents, and solvents that represent a low risk to the public and the environment when applied properly. In addition, Santa Clara County, the City of San José, and other participating organizations and companies provide household hazardous waste services and drop-off locations where residents can properly dispose of hazardous materials. These services would be provided for future residents at the project site.[17] Since hazardous materials associated with residential uses provide low risk to exposure and future residents would have access to numerous resources for the proper disposal of hazardous materials, operation of the proposed project would not generate any significant hazards to the public through the transport, use, and disposal of hazardous materials. Therefore, operational impacts would be less than significant.

Level of Significance Before Mitigation

Less than significant impact.

Mitigation Measures

No mitigation required.

Level of Significance After Mitigation

Less than significant impact.

Cumulative Analysis

The cumulative projects listed in Chapter 3, Environmental Impact Analysis, Table 3-1 consist of the development of mixed-use, multi-family residential, or residential projects and would implement construction activities such as demolition of existing structures, if necessary, ground-disturbing activities, and the use of construction equipment. Construction activities would involve the transport, use, and disposal of hazardous materials including diesel fuels, paints, cements, aerosols, and potentially hazardous building materials and contaminated soils that may be situated on each project site where the transport of such materials may lead to a cumulatively considerable increase in creating a significant hazard to the public and environment. There are no cumulative projects within the immediate vicinity of the proposed project that could contribute to a potential construction-related cumulative impact. Accordingly, cumulative impacts would be less than significant.

Nevertheless, past, present and reasonably foreseeable projects and the proposed project would be required to abide by the same federal, State, and regional regulations pertaining to implementing precautionary measures toward the transporting, handling, usage, storage, and disposal of hazardous materials, including those from the Hazardous Materials Transportation Act, California Code of Regulations, and Health and Safety Code. Furthermore, the Agrichemical Soil Assessment

[17] City of San José. n.d. Household Hazardous Waste. Website: https://www.sanjoseca.gov/your-government/departments-offices/environmental-services/recycling-garbage/residents/how-to-recycle-right/household-hazardous-waste. Accessed February 7, 2025.

and Soil Gas Sampling Report indicated the project site to be suitable for development and would not pose a risk to the public or the environment. As such, the transportation, handling, and disposal of any contaminated soil or other hazardous building materials on the project site during construction would not have an incremental contribution to the cumulatively considerable impact. Therefore, the cumulatively considerable impact related to creating hazards through the transport, use, and disposal of hazardous materials during the construction phase of each project would be less than significant and the proposed project's incremental contribution would be less than significant. As previously discussed, each cumulative project in Table 3-1 would consist of residential uses similar to the proposed project during operation. The transportation, use, and disposal of hazardous materials associated with residential land uses are utilized in small quantities and represent a low risk to generating hazards when properly used. Therefore, the cumulatively considerable impact related to creating hazards through the transport, use, and disposal of hazardous materials during operation of each project would be less than significant and the proposed project's incremental contribution would be less than significant.

Level of Cumulative Significance Before Mitigation

Less than significant cumulative impact.

Mitigation Measures

No mitigation required.

Level of Cumulative Significance After Mitigation

Less than significant cumulative impact.

Risk of Upset

Impact HAZ-2:	**The proposed project would not create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the likely release of hazardous materials into the environment.**

Impact Analysis

Construction

As previously mentioned, construction activities associated with the proposed project would consist of the transportation, use, and disposal of hazardous materials such as paints, aerosols, aggregates, and diesel fuels, and demolition of the existing structures on-site could contain hazardous building materials. As such, future foreseeable upset and accident conditions during the construction phases could involve the improper handling and use of hazardous substances, vehicular accidents through the transportation of hazardous materials to and from the project site, and aerosols released into the surrounding environment from the demolition of existing structures from ACM and LBPs. In addition, previous agricultural uses on the project site may have applied pesticides as the Agrichemical Soil Assessment indicated higher levels of arsenic and benzene in the soil. As such, ground-disturbing activities and improper excavation and removal of the soil could release these substances into the environment. However, the proposed project would be subject to the Hazardous Materials Transportation Act, Health and Safety Code, California Code of Regulations, Title 8, and General Plan Goal EC-6 and Policies EC-6.1 and EC-6.2, which would reduce and limit the risk of an

accident involving the transportation and use of hazardous materials. The demolition of the existing office buildings would comply with California Code of Regulations, Title 8, Sections 1529 and 1532.1; the BAAQMD District Rule 11-2; and General Plan Goal EC-7 and Policy EC-7.4 and would take precautionary measures to reduce the release of hazardous building materials during demolition activities.

In addition, General Plan Action EC-7.8 requires the implementation of mitigation measures when hazardous materials are found in the subsurface; EC-7.9 requests coordination with applicable regulatory agencies when subsurface contamination is present; and EC-7.11 requisites sampling for agricultural chemicals on properties that have a history of agricultural uses that are undergoing redevelopment. Furthermore, an Agrichemical Soil Assessment and Soil Gas Sampling Report prepared by ENGEO Incorporated determined that arsenic and benzene concentrations in the project site contained no risk to individuals on the project site. Since construction of the proposed project would abide federal, State, and local rules and regulations pertaining to the transportation, use, and disposal of hazardous materials, hazardous building materials, subsurface contamination, and field sampling by ENGEO Incorporated determined no risk from pollutants in the subsurface to impact uses on the project site or the surrounding environment. Construction of the proposed project would not create a significant hazard through the release of hazardous materials into the environment. Impacts related to generating reasonably foreseeable upset and accident conditions through the release of hazardous materials would be less than significant during construction.

Operation

As previously mentioned, the proposed project would develop 100 townhome units and two apartment buildings. As such, the proposed project would not include industrial or retail development that involves the handling hazardous materials in high quantities that could pose a significant environmental accident. Hazardous materials associated with the proposed project would be associated with routine household and residential uses that are applied in small quantities and pose a low risk of generating an accident that would develop a significant hazard to the public and the environment. Therefore, the operation of the proposed project would not cause an accident that would release hazardous materials into the environment that could impact the public. Impacts related to hazardous materials upset risk during operation would be less than significant.

Level of Significance Before Mitigation

Less than significant impact.

Mitigation Measures

No mitigation required.

Level of Significance After Mitigation

Less than significant impact.

Cumulative Analysis

As previously mentioned, the cumulative projects listed in Table 3-1 consist of mixed-use and residential projects within a two-mile radius of the project site that will be constructed on

redevelopment sites. Construction activities associated with the cumulative projects may result in reasonably foreseeable upset and accident conditions through the demolition of existing structures and ground-disturbing activities. However, all cumulative projects are required to abide with the same federal, State, and local rules and regulations such as the Hazardous Materials Transportation Act, HSC, California Code of Regulations Title 8 Sections 1529 and 1532.1, and the BAAQMD District Rule 11-2. In addition, no cumulative projects are in proximity to each other as cumulative impacts related to hazards and hazardous materials are typically confined to the direct vicinity of each project. As such, the cumulatively considerable impact related to upset and accident conditions would have no impact. Furthermore, the project site has no history of RECs, is not listed on hazardous materials sites, and subsurface contamination was determined to not pose any risk to the public or the environment. Therefore, the proposed projects' incremental contribution to generating any upset or accident conditions during construction would have no impact. Lastly, the proposed project and the cumulative projects are residential projects which only use hazardous materials that generate low risk to creating accident conditions. Since each cumulative project is required to comply with the same regulations, no cumulative projects are in direct proximity to each other, existing conditions on the project site were determined to not pose a risk to the public or environment, and hazardous materials use would be associated with residential uses, the cumulatively considerable impact related to the release of hazardous materials through accident conditions would have no impact and the proposed project incremental contribution would have no impact.

Level of Cumulative Significance Before Mitigation

No impact.

Mitigation Measures

No mitigation required.

Level of Cumulative Significance After Mitigation

No impact.

Hazardous Emissions Proximate to a School

Impact HAZ-3:	**The proposed project would not emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school.**

Impact Analysis

There are three schools within 0.25 mile of the project site that are all located within the same complex. Abram Agnew Elementary School is approximately 0.15 mile directly north of the project site; Dolores Huerta Middle School is approximately 0.20 mile northwest of the project site; and Kathleen MacDonald High School is approximately 0.25 mile northwest of the project site. As such, the proposed project would handle hazardous materials, substances, and waste in proximity to these schools.

Construction

As discussed above, construction activity would involve the transportation, use, and disposal of hazardous materials such as diesel fuels, paints, cement, aggregates, metals, and aerosols and could involve the removal of hazardous building materials. However, construction of the proposed project would abide with the Hazardous Materials Transportation Act, HSC, California Code of Regulations, Title 8, and other local rules and regulations, including General Plan Goal EC-6 and Policy EC-6.2 requiring the proper transportation, use, and storage of hazardous materials and EC-6.4 and EC-6.6 requiring precautionary measures when handling hazardous materials near sensitive receptors. In addition, construction activities are required to comply with California Code of Regulations Title 8, Section 1532.1 and 1529, District Rule 11-2 by the BAAQMD, and General Plan Policy EC-7.4 providing measures on handling and removing hazardous building materials. As such, federal, State, and local rules and regulations would prevent emissions related to hazardous materials, substances, or waste on surrounding school. Therefore, construction of the proposed project would have a less than significant impact on nearby schools.

Operation

Operations of the proposed project would result in the handling of hazardous materials, substances, and waste. However, hazardous materials would be comprised of residential uses such as cleaning supplies, pesticides, fertilizers, and solvents that are utilized in small quantities and provide low risk when used appropriately. Therefore, operation impacts related to hazardous emissions and hazardous materials in proximity to a school would be less than significant.

Level of Significance Before Mitigation

Less than significant impact.

Mitigation Measures

No mitigation required.

Level of Significance After Mitigation

Less than significant impact.

Cumulative Analysis

As previously discussed, the proposed project site is within 0.25 mile of three schools. As such, the geographic scope of the cumulatively considerable impact of emitting or handling hazardous materials in proximity to a school would be within 0.25 mile of the surrounding schools. There are no cumulative projects within the geographic scope as the nearest cumulative project listed in Table 3-1 is the Baypointe Residential Development Project, approximately 0.8 mile northwest of the project site and 0.5-mile northwest of the three schools. Although the construction of cumulative projects could transport hazardous materials in proximity to the surrounding schools, and future foreseeable development could occur within vacant lots in proximity to the project site and within 0.25 mile of the surrounding schools. Cumulative and any future projects would be required to comply with the same federal, State, and local regulations on the transportation and handling of hazardous materials. Therefore, the cumulatively considerable impact related to emitting or handling hazardous materials within a surrounding school would be less than significant.

Although the project site has a history of environmental contamination within the subsurface through previous agricultural uses, subsurface contamination was deemed to not pose any risk to the public or surrounding environment, and the compliance with federal, State, and local rules and regulations would prevent emissions from being released on the surrounding schools. In addition, the operation of the cumulative projects and the proposed project would only use hazardous materials associated with residential land uses. Since cumulative projects, foreseeable future developments, and the proposed project would be required to comply with regulations mandating the proper transportation and handling of hazardous materials, and the operations of each project would only use hazardous materials related to residential uses. The cumulatively considerable impact related to emitting or handling hazardous materials in proximity to a surrounding school would be less than significant and the proposed project would not make an incremental contribution to the cumulative impact.

Level of Cumulative Significance Before Mitigation

Less than significant impact.

Mitigation Measures

No mitigation required.

Level of Cumulative Significance After Mitigation

Less than significant impact.

Government Code Section 65962.5 Sites

Impact HAZ-4:	**The proposed project would not 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 not create a significant hazard to the public or the environment.**

Impact Analysis

Government Code Section 65962.5 refers to the Hazardous Waste and Substance Site List, commonly known as the Cortese List. The Cortese List contains the EnviroStor and GeoTracker Databases which provide a list of hazardous waste and substance sites, along with sites that previously contained or currently have LUSTs that are active and are undergoing a site assessment or remediation or have completed corrective action where any remaining constituents have been determined to be a low risk to human health and the environment. The project site was not identified on the EnviroStor or GeoTracker Database that would indicate a history of environmental contamination and the four active sites in San José are not located near the project site. The closest sites with a history of environmental contamination is the Foxboro/ICT Site directly across Iron Point Drive to the west and the Agnews East site neighboring the project site to the north. The GeoTracker Database reported a LUST at the Foxboro/ICT Site in 1985 with soils containing high arsenic concentrations, but soil gas samples determined that VOC levels were below the ESL and the arsenic impacted soil was excavated and remediation has been completed.

The EnviroStor Database documented the Agnews East site with pollutants of concern from previous agricultural activities, semi-volatile organics from USTs, PCBs from electrical transformers, and naturally occurring asbestos impacting soil and groundwater. Sampling on the Agnews East site indicated higher levels of arsenic, lead, PCBs, and naturally occurring asbestos in the soil across the site. The site underwent remedial action removing an UST in 2013 and is monitored annually by the DTSC through a cap inspection and occupancy report.

The Phase I ESA identified both sites through an environmental records search and performed an Agricultural Soil Assessment and Soil Gas Sampling Report on the project site to determine the concentrations of pesticide-related chemicals and risk of soil vapor intrusion from VOCs. Field sampling identified arsenic and benzene levels above the residential ESL, but arsenic concentrations were determined to be indicative of background conditions and existing oxygen levels in the soil were suitable enough to support the aerobic biodegradation of benzene. The Phase I ESA further concluded that the Foxboro/ICT and Agnews East sites do not pose a risk to the project site due to completing remediation activities, site distance, and regional hydraulic grading. In addition, no RECs have been associated with the project site. Since the project site is not located on a list of hazardous materials sites, no active hazardous materials sites are adjacent to the project site, and those in proximity to the project site have completed remediation, along with field sampling indicating no risk to human health on the project site, the proposed project would not create a significant hazard to the public or the environment. Therefore, there would be no impact.

Level of Significance Before Mitigation

No impact.

Mitigation Measures

No mitigation required.

Level of Significance After Mitigation

No impact.

Cumulative Analysis

The proposed project would have no impact with respect to hazardous materials site pursuant to Government Code 65962.5 and, therefore, would not contribute to any potential cumulative impact. Moreover, there are no cumulative projects located on a potential site within the relevant geographic scope. Since no cumulative project is in direct proximity to the project site and the proposed project is not listed on any hazardous materials site and has no history of environmental contamination, there would be no cumulatively considerable impact related to hazardous materials sites and the proposed project's incremental contribution would have no impact as it is not located on a hazardous materials site.

Level of Cumulative Significance Before Mitigation

No cumulative impact.

Mitigation Measures

No mitigation required.

Level of Cumulative Significance After Mitigation

No cumulative impact.

Proximity to Public Airport Safety Hazard

Impact HAZ-5:	**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, the proposed project would not result in a safety hazard or excessive noise for people residing or working the project area.**

Impact Analysis

The Airport Land Use Compatibility Plan Santa Clara County (ALUCP) for the San José Mineta International Airport is the applicable airport land use plan for the project area. The purpose of the ALUCP is to ensure adequate and consistent development of the airport and surrounding projects within the identified Airport Influence Area (AIA). Projects within the defined AIA are subject to stricter development standards to protect future residents from noise and other safety considerations.

The San José Mineta International Airport AIA encompasses the airport and its surrounding area with boundaries defined at 33 road intersections. The closest intersection to the project site that serves as a boundary for the AIA is the Montague Expressway and Orchard Drive intersection approximately 0.75 mile west of the project site.[18] Furthermore, the San José Mineta International Airport is approximately 2.2 miles southwest of the project site. Since the proposed project is not located within the designated AIA established by the ALUCP and is greater than 2 miles away from the San José Mineta International Airport, the proposed project would not expose residents or workers to safety hazards or excessive noise generated by the airport. There would be no impact.

Level of Significance Before Mitigation

No impact.

Mitigation Measures

No mitigation required.

Level of Significance After Mitigation

No impact.

Cumulative Analysis

The proposed project would have no impact and therefore would not contribute to any potential cumulative impact.

[18] Santa Clara County Airport Land Use Commission. 2024. Airport Land Use Compatibility Plan Santa Clara County, San José Mineta International Airport. March 27.

Level of Cumulative Significance Before Mitigation

No Impact.

Mitigation Measures

No mitigation required.

Level of Cumulative Significance After Mitigation

No Impact.

Emergency Response and Evacuation

Impact HAZ-6: The proposed project would not impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan.

Impact Analysis

Construction

The City of San José Emergency Operations Plan (EOP) is the emergency response plan for the City. During the construction phase, the proposed project may temporarily alter existing roadways through construction vehicles and equipment entering and exiting the project site, along with the installation and connection to surrounding utilities which could temporarily impair emergency response objectives and procedures within the EOP. However, construction of the proposed project would abide Chapter 13.36 (Public Right-of-Way Work Permits) of the Municipal Code, which requires the applicant to obtain a permit from the City if construction of the proposed project results in any impairment of the public right-of-way. Permits are required to undergo review, and any permit that is found to conflict with emergency requirements or response to a public disaster can be suspended, and encroachments can be cleared without notice in the event of an emergency.

In addition, major construction projects must develop a Construction Impact Mitigation Plan prior to obtaining a public right-of-way work permit for approval. Construction Impact Mitigation Plans would include details of the potential impacts of construction activities on surrounding businesses and residents.[19] Since the proposed project would be required to obtain a permit for construction activities that may impair the public right-of-way, and would develop a Construction Impact Mitigation Plan for approval of a Public Right-of-Way Permit, the proposed project would not impair or physical interfere with the EOP during construction and impacts would be less than significant.

Operation

As previously mentioned, access points to the proposed project include entry points directly from River Oaks Parkway, Iron Point Drive, and Cisco Way. . According to the EOP, the San José Police Department (SJPD) manages and coordinates evacuations for the City. Depending on the severity and the location of the emergency, the SJPD may require new residents to evacuate the project site. Evacuation routes would likely occur through the most reasonable and safe exists out of the City and would comprise of arterial roadways connecting to major freeways and State Routes. The project site

[19] San José, CA, Municode Codification. 2025. Website: https://library.municode.com/ca/san_jose/codes/code_of_ordinances?nodeId=TIT13STSIPUPL_CH13.36PURI-WWOPE. Accessed February 8, 2025.

is located in proximity to three arterial roadways: Zanker Road, approximately 0.2 mile east of the project site traveling in a north–south direction, connects to State Route (SR) 237; Montague Expressway, approximately 0.4 miles south of the project site traveling in an east–west direction, connects to both United States Highway 101 (US-101) and Interstate 880 (I-880); and Tasman Drive, approximately 0.5 mile northeast of the project site traveling in an east–west direction, connects to I-880. Therefore, the proposed project would utilize the identified evacuation routes and would be incorporated into the EOP.

Proposed driveways and internal circulation roads that provide access to the townhomes in the north portion of the project site would be required to abide by the 2022 California Fire Code for fire apparatus access roads. However, three of the four roads adjacent to the Affordable Apartment Building are not fully compliant with the requirements of a fire apparatus access road including Iron Point Drive to the west of the Affordable Apartment Building as parking is required on both sides of Iron Point Drive which limits fire truck staging access.

The proposed project would incorporate design features into off-site infrastructure and the Affordable Apartment Building to compensate for the fire apparatus access roads that are noncompliant by constructing truck staging zones along the east side of Iron Point Drive and north of the Affordable Apartment Building to allow efficient emergency response. The Affordable Apartment Building will incorporate two interior exit stairways with roof level access and a standpipe hose valve on the roof to ensure efficient evacuation during an emergency. With the implementation of these features into project design, the proposed project would not impair implementation or interfere with the EOP during operation. Since the proposed project would utilize the identified evacuation routes from the SJPD during evacuation and would incorporate fire safety design features into the proposed project, operation of the proposed project would not impair implementation or interfere with the EOP and impacts would be less than significant.

Level of Significance Before Mitigation

Less than significant impact.

Mitigation Measures

No mitigation required.

Level of Significance After Mitigation

Less than significant impact.

Cumulative Analysis

As previously mentioned, the emergency response plan applicable to the project site is the City of San José EOP, As such, the geographic scope of the cumulatively considerable impact related to impairing or interfering with an emergency response plan or evacuation plan would be the City of San José. Two cumulative projects listed in Chapter 3, Environmental Impact Analysis, Table 3-1 are located within the City's jurisdiction—the 0 Seely Avenue Mixed-use Project approximately 0.8 mile southeast of the project site and the Baypointe Residential Development Project approximately 0.8 mile northwest of the project site. The simultaneous construction of the two cumulative projects could temporarily interfere with the EOP. Evacuation routes that the two cumulative projects would

use are arterial roadways that connect to major freeways and would be incorporated into the EOP. In addition, cumulative projects would be required to abide the California Fire Code and CBC standards on fire access apparatus roads and fire safety design features, including local regulations on construction activities interfering with the public right-of-way. Since the two cumulative projects, as well as the proposed project, would be incorporated into the EOP, would utilize identified evacuation routes, and would adhere to State and local regulations, the proposed project would not make a cumulatively considerable contribution related to interfering with or impairing an emergency response or evacuation plan and the cumulative impact would be less than significant.

Level of Cumulative Significance Before Mitigation

Less than significant cumulative impact.

Mitigation Measures

No mitigation required.

Level of Cumulative Significance After Mitigation

Less than significant cumulative impact.

Wildland Fires

Impact HAZ-7:	**The proposed project would not expose people or structures, either directly or indirectly to a significant risk of loss, injury or death involving wildland fires.**

Impact Analysis

Areas that are highly susceptible to direct and indirect wildfire hazards experience critical fire weather consisting of high temperatures, low humidity, and high winds, are positioned or adjacent to steep topography, and are surrounded by high amounts of vegetative fuel loads. In San José, these areas are associated with the WUI or SRAs and LRAs with established FHSZs delineated by CAL FIRE and are located in the East Foothills and Alum Rock neighborhoods along the Diablo Range, the eastern portion of the Seven Trees neighborhood, and rural development in the Almaden Valley. The proposed project is not located within or near a moderate, high, or very high FHSZ in an SRA or LRA.[20]

The project site is located within the Urban Growth Boundary (UGB), the entire area of which is not located in a FHSZ or in the WUI that is more susceptible to experiencing significantly different prevailing winds or high wind events on more complex topography along dense vegetative fuel loads. Furthermore, as part of the proposed project, landscaping would be managed to not accumulate large fuel loads that would be able to exacerbate a large wildfire. The proposed development is surrounded by a highly urbanized environment with existing roadways bordering the project site serving as urban fuel breaks and has direct access to City resources to prevent the ignition or spread of wildfire with water lines along the surrounding roadways and San José Fire

[20] California Department of Forestry and Fire Protection (CAL FIRE) Fire Hazard Severity Zones. 2024. Website: https://osfm.fire.ca.gov/what-we-do/community-wildfire-preparedness-and-mitigation/fire-hazard-severity-zones. Accessed February 28, 2025.

Department (SJDF) Station 29 approximately 0.25 miles southwest of the project site providing an estimated emergency response time of 64.8 seconds.

Lastly, the proposed project would incorporate two truck staging zones along Iron Point Drive and north of the Affordable Apartment Building, and two interior stairways with access to roof level above code minimums within the apartment building to comply with fire apparatus access road requirements within the California Fire Code, to avoid interference with the EOP regarding response, recovery, and evacuation efforts, and would abide by other California Fire Code and CBC standards and design features. Since the project site is not located in the WUI or an FHSZ, is surrounded by urbanized areas on relatively flat terrain with no dense vegetation having direct proximity to SJFD Station 29 with direct access to urban water supplies, and the proposed project is required to comply with California Fire Code and CBC regulations, the proposed project would not directly or indirectly expose individuals or structures to a significant risk of wildland fires. Impacts related to exposure to wildland fire risk would be less than significant.

Level of Significance Before Mitigation

Less than significant impact.

Mitigation Measures

No mitigation required.

Level of Significance After Mitigation

Less than significant impact.

Cumulative Analysis

The geographic scope for the cumulatively considerable impact related to directly or indirectly exposing structures or residents to wildland fire risks is the extent of the related project sites as listed in Chapter 3, Environmental Impact Analysis, Table 3-1, Cumulative Projects. As previously discussed, areas that are highly susceptible to wildfire impacts in or adjacent to San José are associated with the WUI or SRAs and LRAs classified as FHSZs by CAL FIRE. These areas are located on the outskirts and rural areas away from the San José Metropolitan Area and are situated in neighborhoods along the Diablo Ranges to the east, the Seven Trees neighborhood to the southeast, and in Almaden Valley to the south. The cumulative projects listed in Table 3-1, along with the proposed project, are in a highly urbanized area on relatively flat terrain with little natural vegetative fuel loads and have direct access to water utilities and services provided by the SJFD. None of the cumulative projects or the proposed project are located within the WUI or in a moderate, high, or very high FHSZ. Additionally, all cumulative projects would be required to comply with applicable California Fire Code and CBC regulations related to fire safety design features and emergency access. Since the cumulative projects, including the proposed project, are in a highly urbanized area with no natural features to exacerbate direct and indirect wildfire hazards, are not in areas classified as the WUI or a FHSZ, and would adhere with the California Fire Code and CBC standards, the cumulatively considerable impact associated with direct or indirect exposure to wildland fires would have a less than significant cumulative impact. The proposed project's incremental contribution to direct or indirect exposure to wildland fires would be less than significant.

Level of Cumulative Significance Before Mitigation

Less than significant cumulative impact.

Mitigation Measures

No mitigation required.

Level of Cumulative Significance After Mitigation

Less than significant cumulative impact.

3.6 - Land Use and Planning

3.6.1 - Introduction

This section describes the existing land use and potential effects from project implementation on the site and its surrounding area. Descriptions and analysis in this section are based, in part, on-site plans, site/aerial reconnaissance, and the Envision 2040 General Plan and Zoning Ordinance. During the Environmental Impact Report (EIR) scoping period, the following comments were received related to land use and planning:

- Concerned about the lack of retail and recreational amenities included in the project to make for a more walkable community.
- Density may overwhelm adjacent River Oaks Park; consider Agnews Park improvements or expansion.
- Good density and housing mix, providing integration for affordable home ownership.
- Above inclusionary housing standards.

3.6.2 - Environmental Setting

Land Use

Project Site

The project site's existing land use is Office Space with three vacant 2-story commercial office buildings, associated surface parking, a central courtyard, and landscaping.

Land Use Designations

Project Site

The project site has a General Plan Land Use Designation of Industrial Park (IP). The proposed project site is also located within the Transit Employment Residential Overlay (TERO), which identifies sites within the North San José Employment Center that may be appropriate for residential development and supports residential development as an alternate use at a minimum average net density of 75 units per acre. Sites with this overlay may also be developed with uses consistent with the underlying designation. The proposed project anticipates 76.2 dwelling units per acre, providing a mix of apartment housing and market-rate townhomes. Available plans indicate that the proposed project would comply with TERO height and development standards.

Surrounding Land Uses

As listed below in Table 3.6-1 Surrounding Land Use Designations, surrounding land uses include Abram Agnew Elementary School, Dolores Huerta Middle School, and Kathleen MacDonald High School alongside business parks/offices located to the north. To the south lies River Oaks Park and multi-family residential uses. To the west is multi-family residential and a small orchard, and to the east is business park/office uses.

Table 3.6-1: Surrounding Land Use Designations

Land Use	Relationship to Project Site	Land Use Designation	
		General Plan	Zoning
Public Institution (Schools), Business Park/Office	North	Public/Quasi-Public (PQP) Industrial Park (IP)	Industrial Park
Park, Multi-family Residential	South	Industrial Park	Planned Development Industrial Park
Multi-family Residential, small orchard	West	Neighborhood/Community Commercial (NCC) Transit Residential (TR) Industrial Park	Planned Development Industrial Park
Business Park/Office	East	Industrial Park	Planned Development Industrial Park
Source: Envision San José 2040 General Plan.			

3.6.3 - Regulatory Framework

Federal

No federal plans, policies, regulations, or laws related to land use and planning are applicable to the proposed project.

State

California Senate Bill 1818

California Senate Bill (SB) 1818, Chapter 928, provides developers with a density bonus and other incentives for constructing lower income housing units within a development provided the developer meets certain requirements, as enumerated in Section 65915(b) of the Government Code:

> 65915 (b) A city, county, or city and county shall grant a density bonus and incentives or concessions described in subdivision (d) when the applicant for the housing development seeks and agrees to construct at least any one of the following:
>
> (1) Ten percent of the total units of a housing development for lower income households, as defined in Section 50079.5 of the Health and Safety Code.
> (2) Five percent of the total units of a housing development for very low income households, as defined in Section 50105 of the Health and Safety Code.
> (3) A senior citizen housing development as defined in Sections 51.3 and 51.12 of the Civil Code.
> (4) Ten percent of the total dwelling units in a condominium project as defined in subdivision (f) of, or in a planned development as defined in subdivision (k) of, Section 1351 of the Civil Code, for persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code.

With respect to parking requirements, Section 65915.p(1) states:

> Upon the request of the developer no city, county, or city and county shall require a vehicular ratio, inclusive of handicapped and guest parking, of a development meeting the criteria of subdivision (b) that exceeds the following ratios:
>
> (A) Zero to one bedrooms: one on-site parking space
> (B) Two to three bedrooms: two on-site parking spaces

Regional

Association of Bay Area Governments–Plan Bay Area 2050

Plan Bay Area, published by the Metropolitan Transportation Commission (MTC) and Association of Bay Area Governments (ABAG), is a long-range integrated transportation and land use/housing strategy through 2050 for the Bay Area. Plan Bay Area functions as the sustainable communities' strategy mandated by Senate Bill (SB) 375. It is a "30-year plan that charts a course for a Bay Area that is affordable, connected, diverse, healthy and vibrant for all residents through 2050 and beyond."[1] The four strategies of Plan Bay Area 2050 are housing, economy, transportation, and environment.

As a regional land use plan, Plan Bay Area aims to reduce per capita greenhouse gas (GHG) emissions through the promotion of more compact, mixed-use residential and commercial neighborhoods located near transit. Plan Bay Area is built on Priority Development Areas selected and approved by city and county governments with planning grants, technical assistance, and prioritization for regional and State transportation and affordable housing funds. Plan Bay Area is a limited and focused update that builds upon a growth pattern and strategies developed in the original Plan Bay Area (adopted by MTC in 2013) but with updated planning assumptions that incorporate key economic, demographic, and financial trends from the last 4 years.

Plan Bay Area 2050 is currently in process by the MTC and ABAG. Plan Bay Area 2050 focuses on four key issues: the economy, the environment, housing, and transportation. This new regional plan outlines strategies for growth and investment through the year 2050, while simultaneously striving to meet and exceed federal and State requirements.[2]

Regional Housing Needs Plan

In February 2021, ABAG projected regional housing needs in its Regional Housing Needs Plan for the San Francisco Bay Area: 2023-2031.[3] According to this plan, San José's projected housing need from 2023–2031 is 62,200 residential units, consisting of:

- 15,088 units within the very low income level (0–50 percent of area median income);
- 8,687 units within the low-income level (51–80 percent of area median income);

[1] Plan Bay Area 2050. 2021. Final Plan Bay Area 2050. October 21. Website: https://www.planbayarea.org/finalplan2050. Accessed March 12, 2024.
[2] Plan Bay Area 2050. 2021. Website: https://www.planbayarea.org/plan-bay-area-2050-1. Accessed October 29, 2024.
[3] Association of Bay Area Governments (ABAG). 2021. Regional Housing Needs Allocation (RHNA) Draft Methodology: San Francisco Bay Area, 2023-2031. Website: https://abag.ca.gov/sites/default/files/documents/2021-02/ABAG_Draft_RHNA_Methodology_Report_2023-2031.pdf. Accessed October 29, 2024.

- 10,711 units within the moderate-income level (81–120 percent of area median income); and
- 27,714 units within the above-moderate-income level (more than 120 percent of area median income).

Local

City of San José Zoning Ordinance

As part of the City's Municipal Code, the City of San José Zoning Ordinance (Zoning Ordinance) includes regulations, requirements, and standards that define and enforce the design, construction, and operation standards of new development within the cities jurisdictional area. The Zoning Ordinance was adopted to protect and to promote the public health, safety, comfort, convenience, prosperity, and general welfare of residents and businesses in the City.

Chapter 5.08 Inclusionary Housing Ordinance

The Inclusionary Housing Ordinance (IHO) requires all residential developers who create new, additional, or modified For-Sale or Rental units to provide 15 percent of housing on-site that is affordable to income qualified buyers/renters specified below. The base obligation is where 15 percent of the Inclusionary Units are provided on-site. Developers have multiple options to satisfy the affordable housing obligation.

San José Envision 2040 General Plan

The Envision San José 2040 General Plan (General Plan), adopted on November 1, 2011, and amended May 12, 2023, sets forth a vision and a comprehensive road map to guide the City's continued growth through the year 2040. The Plan includes land use policies to shape the transformation of strategically identified and historically underutilized Growth Areas into higher-density, mixed-use, urban districts or "Urban Villages" that can accommodate employment and housing growth and reduce the environmental impacts of that growth by promoting transit use and walkability. This land use strategy, in combination with progressive economic and environmental policies, will guide the City toward fulfillment of its future vision. The General Plan comprises an integrated, internally consistent and compatible statement of the official land use policy of the City of San José. It contains a statement of development policies and includes a Land Use/Transportation Diagram as well as text which sets forth the objectives, principles, standards and plan proposals. The General Plan represents the City's assessment of the amount, type, and phasing of development needed to achieve its social, economic, and environmental goals. California planning law requires consistency between the General Plan and its implementing programs, such as zoning and subdivision ordinances, capital improvement programs, specific plans, environmental impact procedures, and building and housing codes.

A key component of the General Plan is a basic requirement that all job and housing growth should be accommodated within the City's existing Urban Growth Boundary (UGB) with strong emphasis given to directing new job and housing growth to areas served by transit and other existing City services to minimize the fiscal and environmental impacts of that new growth. In support of that basic premise, the Task Force incorporated into the Guidelines use of identified intensification areas (Growth Areas) to accommodate nearly all of the City's growth. These Growth Areas include the Downtown, existing Specific Plan areas, North San José, existing employment land areas, major

commercial/transit corridors and new "Villages" located at transit stations or within walking distance of existing neighborhoods. The Growth Areas provide development sites adequate to meet the planned housing and job growth capacity so that all new development can be contained within the City's Greenline/UGB.

The following General Plan goals and policies are relevant to the proposed project:

Goal LU-1 General Land Use. Establish a land use pattern that fosters a more fiscally and environmentally sustainable, safe, and livable city.

Policy LU-1.2 Encourage Walking. Create safe, attractive, and accessible pedestrian connections between developments and to adjacent public streets to minimize vehicular miles traveled.

Policy LU-1.3 Create safe, attractive, and accessible pedestrian connections between developments and to adjacent public streets to minimize vehicular miles traveled.

Goal LU-9 High Quality Living Environments Provide high quality living environments for San José's residents.

Policy LU-9.1 Create a pedestrian-friendly environment by connecting new residential development with safe, convenient, accessible, and pleasant pedestrian facilities. Provide such connections between new development, its adjoining neighborhood, transit access points, schools, parks, and nearby commercial areas. Consistent with Transportation Policy TR-2.11, prohibit the development of new cul-de-sacs, unless it is the only feasible means of providing access to a property or properties, or gated communities, that do not provide through- and publicly accessible bicycle and pedestrian connections.

Policy LU-9.3 Integrate housing development with our City's transportation system, including transit, roads, and bicycle and pedestrian facilities.

Policy LU-9.4 Prohibit residential development in areas with identified hazards to human habitation unless these hazards are adequately mitigated.

Policy LU-9.5 Require that new residential development be designed to protect residents from potential conflicts with adjacent land uses.

Policy LU-9.6 Require residential developments to include adequate open spaces in either private or common areas to partially provide for residents' open space and recreation needs.

Policy LU-9.7 Ensure that new residential development does not impact the viability of adjacent employment uses that are consistent with the Envision General Plan Land Use/Transportation Diagram.

Policy LU-9.8 When changes in residential densities in established neighborhoods are proposed, the City shall consider such factors as neighborhood character and identity; historic preservation; compatibility of land uses and impacts on livability; impacts on services and facilities, including schools, to the extent permitted by law; accessibility to transit facilities; and impacts on traffic levels on both neighborhood streets and major thoroughfares.

Policy LU-9.17 Limit residential development in established neighborhoods that are not identified Growth Areas to projects that conform to the site's Land Use/Transportation Diagram designation and meet Urban Design policies in this Plan.

Goal LU-10 Meet the housing needs of existing and future residents by fully and efficiently utilizing lands planned for residential and mixed-use and by maximizing housing opportunities in locations within a half mile of transit, with good access to employment areas, neighborhood services, and public facilities.

Policy LU-10.1 Develop land use plans and implementation tools that result in the construction of mixed-use development in appropriate places throughout the City as a means to establish walkable, complete communities.

Policy LU-10.3 Develop residential and mixed-use-designated lands adjacent to major transit facilities at high densities to reduce motor vehicle travel by encouraging the use of public transit.

Goal LU-11 Residential Neighborhoods. Regulate the urban form, architectural quality and contextual compatibility of new construction and uses within the City's varied residential neighborhoods to promote a residential neighborhood environment conducive to a high quality of life for neighborhood residents and visitors.

Policy LU-11.3 Direct all significant new residential growth to identified Growth Areas to further the environmental, transit, healthy community, and other Envision General Plan objectives. Limit infill development within areas designated as Residential Neighborhood on the Land Use/Transportation Diagram to projects that maintain the prevailing neighborhood form and density as it exists on adjoining properties, with particular emphasis upon establishing and/or maintaining a consistent streetscape form between new and existing development.

Policy LU-11.5 Integrate new and existing neighborhoods and facilitate movement throughout the City by connecting streets and particularly by providing pedestrian and bicycle cross-access connections. Integrate new infill development into the existing neighborhood pattern, continuing, and where applicable extending or completing, the existing street network.

Policy CD-4.9 For development subject to design review, ensure the design of new or remodeled structures is 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 H-4 Housing–Environmental Sustainability Provide housing that minimizes the consumption of natural resources and advances our City's fiscal, climate change, and environmental goals.

Housing Element

The 2023-2031 Housing Element is the City's eight-year housing strategy and commitment for how it will meet the housing needs of everyone in the community. This housing strategy intends to address the housing crisis in San José through a number of goals, policies, and programs that focus on expanding the housing stock and offer a wider range of housing choices for everyone in the City. Equity, inclusion, and anti-displacement are themes woven throughout the document and reflected in many policies and programs. The City aims to ensure that San José is an equitable and inclusive city by protecting and providing opportunities to those residents who are most vulnerable and prioritizing community resources toward historically disadvantaged communities.

The purpose of the Housing Element is to:

- Identify the City's housing needs;
- State the community's goals and objectives with regard to housing production, rehabilitation, and conservation to meet those needs;
- Define the policies and programs that will be implemented to achieve goals and objectives.

The following goals and policies are contained within the Housing Element and are relevant to the proposed project:

Goal 1 An abundant and affordable housing stock

Policy P-1 Align Zoning with the General Plan Methodology–Align zoning with General Plan designations for all sites planned for housing by April 2024.

Policy P-3 North San José Affordable Housing Overlay Zones

- Identify areas for housing to be integrated into North San José and propose changes to the General Plan, zoning code, and Rincon South urban village plan to facilitate the production of all 24,000 planned housing units in North San José.
- To integrate affordability, identify North San José-specific Affordable Housing Overlay Zones that support only Industrial uses, 100 percent affordable housing, or market-rate housing that integrates affordable units into their developments.
- Rezone identified sites in the North San José Affordable Housing Overlay Zones through the sites inventory rezoning process. Sites that are rezoned are subject to the requirements of Government Code Section 65583.2, subdivisions (h) and (i), including:

  - By right permitting of owner-occupied and rental multi-family uses for developments in which 20 percent or more of the units are affordable to lower income households.
  - A minimum site capacity of 16 units.
  - A minimum density of 20 units per acre.
  - At least 50 percent of the shortfall of low- and very-low [Regional Housing Needs Allocation] RHNA can be accommodated on sites designed for exclusively residential uses or if accommodating more than 50 percent of the low- and very-low RHNA on sites designated for mixed-uses, all sites designated for mixed-uses must allow 100 percent residential use and require residential use to occupy at least 50 percent of the floor area in a mixed-use project.
- Communicate to the development community about the new program.
- As a subsequent step, identify additional properties, which have a pre-existing Transit Employment Residential Overlay (TERO) designation in the General Plan and zoning, that should also be considered for an affordable housing overlay for either 100 percent affordable or mixed income. When additional properties are identified, propose such land use and zoning amendments to these sites for City Council consideration.
- Apply the TERO General Plan land use designation and zoning overlay to sites identified previously for inclusion in the TERO but not included in the sites inventory. Sites were identified as part of the process to retire the North San José Area Development Policy in 2022.

Analysis in this section focuses on whether project implementation would physically divide an established community and whether the proposed project would conflict with land use plans, policies, or regulations adopted to avoid or mitigate an environmental effect. Conflicts and inconsistencies with a policy, in and of themselves, do not constitute significant environmental impacts, unless such conflicts or inconsistencies result in direct physical environmental impacts. Physical project impacts are discussed throughout Chapter 3, Environmental Impact Analysis, of this Draft EIR. The potential for land use impacts was assessed through review of applicable land use policy documents.

Santa Clara Valley Habitat Plan

The project site lies within the boundaries of the Santa Clara Valley Habitat Plan (SCVHP) Permit Area The project site is in an area designated “Urban Areas” (No Land Cover Fee) and would not be subject to any Land Cover or sensitive habitat fees.

3.6.4 - Methodology

The analysis is based on the City’s Envision San José 2040 General Plan, Zoning Ordinance, and Housing Element Update.

Cumulative Analysis

The geographic scope for the cumulative analysis utilizes a projections methodology, as all development in the City is pertinent to a discussion of consistency with land use plans and zoning. The analysis evaluates whether the impacts of the proposed project, together with the impacts of other cumulative development, could result in a cumulatively significant impact related to land use and planning. This analysis then considers whether the incremental contribution of the impacts associated with the implementation of the proposed project would be significant. Both conditions must apply for the proposed project's cumulative effects to rise to the level of significance. If there is no impact associated with respect to a particular California Environmental Quality Act (CEQA) threshold, discussion of cumulative impacts is not required. Accordingly, cumulative discussion is limited to the potential impacts as discussed below.

3.6.5 - Thresholds of Significance

The Lead Agency utilizes the criteria in the CEQA Guidelines Appendix G Environmental Checklist to determine whether land use and planning impacts are significant environmental effects. The proposed project would have a potential impact if it would:

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.

3.6.6 - Project Impacts and Mitigation Measures

This section discusses potential impacts associated with the proposed project and provides mitigation measures where necessary.

Divide an Established Community

Impact LAND-1: The proposed project would not physically divide an established community.

Impact Analysis

The proposed project would not block any roads, bicycle lanes or pedestrian walkways during project construction. Any construction impacts would be temporary and would not impair access to any established community or impede travel. No respective construction impacts would occur.

The physical division of an already established community typically refers to construction of a linear feature, such as a roadway, interstate, railroad tracks, or the removal of a means of access that would impact mobility within an established community.

The proposed project would construct 737 dwelling units and does not propose a linear feature such as a new roadway that could separate a community. The project site is already developed with vacant office buildings, which would be demolished. The proposed circulation and pedestrian walkways would be internal to the project site.. No impacts would occur.

Level of Significance Before Mitigation

No impact.

Mitigation Measures

No mitigation required.

Level of Significance After Mitigation

No impact.

Cumulative Analysis

As there is no impact related to physical division of an established community, the proposed project would not contribute to any cumulative impact.

Level of Cumulative Significance Before Mitigation

No impact.

Mitigation Measures

Not applicable.

Level of Cumulative Significance After Mitigation

No impact.

Conflict with Applicable Plans, Policies, or Regulations

Impact LAND-2:	**The proposed project would not 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.**

Impact Analysis

The project site is situated in a mixed-use area characterized by zoning of Industrial Park (IP) and Planned Development uses. The proposed project is designed to deliver a mix of affordable and market-rate housing in an existing mixed-use neighborhood as well as to assist the City of San José to satisfy its RHNA for market-rate and below-market-rate housing units while delivering 17.6 percentage of affordable units, 7.6 percent higher than the required 10 percent. Additionally, the proposed project would revitalize an existing developed site in the heart of a residential neighborhood and create a lively and walkable tree-lined neighborhood environment with improved sidewalks and open space. The proposed project would also provide pedestrian links to the existing surrounding single-family neighborhood, River Oaks Park, local schools, and transit.

The project site has a General Plan Land Use Designation of IP and is located within the TERO, which identifies sites within the North San José Employment Center that may be appropriate for residential development and supports residential development as an alternate use at a minimum average net density of 75 dwelling units per acre (du/acre). Sites with this overlay may also be developed with uses consistent with the underlying IP designation. The proposed project requests a Planned Development Permit, which would be consistent with the TERO.

The proposed project anticipates 76.2 du/acre, providing a mix of apartment housing and market-rate townhomes. Review of the project plans indicates that the proposed project would comply with TERO height and development standards.

Table 3.6-2 presents the project's consistency with the individual goals and policies of the Envision San José 2040 General Plan.

Table 3.6-2: Project Consistency with Applicable Envision San José 2040 General Plan Policies

Element	Goal/Objective/Policy		Consistency Determination
	No.	Goal	
Land Use	Goal LU-1	General Land Use Establish a land use pattern that fosters a more fiscally and environmentally sustainable, safe, and livable city.	**Consistent.** The project site has a General Plan Land Use Designation of Industrial Park (IP) and is located within the Transit Employment Residential Overlay (TERO), which identifies sites within the North San José Employment Center that may be appropriate for residential development and supports residential development as an alternate use at a minimum average net density of 75 dwelling units per acre (du/acre). The proposed project would result in a density of 76.2 du/acre.
	LU-1.2	Encourage Walking. Create safe, attractive, and accessible pedestrian connections between developments and to adjacent public streets to minimize vehicular miles traveled.	**Consistent.** As further outlined in Section 3.5, Transportation, the proposed project would include improvements to existing sidewalks along Cisco Drive and Iron Point Drive. The proposed project's paseo would provide a connection from the project site to River Oaks Park to the south, and the project would also provide internal walkways and pedestrian connections as described in Figure 2-10. One of the noteworthy features of the proposed project is a proposed green belt between the two proposed apartment buildings, linking them to River Oaks Parkway. The green belt would feature a combination of enhanced paving, terraced planters, and direct access to each apartment building. The presence of the entrance plaza on the southern side of the green belt would establish a visual relationship to River Oaks Park.
	LU-1.3	Create safe, attractive, and accessible pedestrian connections between	**Consistent.** The proposed project would include connections to existing sidewalks provided along Cisco Way and Iron Point

Element	Goal/Objective/Policy		Consistency Determination
	No.	Goal	
		developments and to adjacent public streets to minimize vehicular miles traveled.	Drive. Additionally, the green belt would feature a combination of enhanced paving, terraced planters, and direct access to each apartment building.
	Goal LU-9	Provide high quality living environments for San José's residents.	**Consistent**. The proposed project would result in the development of 737 residential units with pedestrian amenities such as a greenbelt/paseo, entrance plaza, and architectural details and landscaping.
	LU-9.1	Create a pedestrian-friendly environment by connecting new residential development with safe, convenient, accessible, and pleasant pedestrian facilities. Provide such connections between new development, its adjoining neighborhood, transit access points, schools, parks, and nearby commercial areas. Consistent with Transportation Policy TR-2.11, prohibit the development of new cul-de-sacs, unless it is the only feasible means of providing access to a property or properties, or gated communities, that do not provide through- and publicly accessible bicycle and pedestrian connections.	**Consistent.** The proposed project would include connections to existing pedestrian infrastructure provided along Cisco Way and Iron Point Drive. The existing standard crosswalk at the Cisco Way/River Oaks Parkway intersection would be improved from white striping to high-visibility yellow ladder striping to enhance safety for children accessing the Abram Agnew campus schools. The proposed project does not include the creation of any new cul-de-sacs.
	LU-9.3	Integrate housing development with our City's transportation system, including transit, roads, and bicycle and pedestrian facilities.	**Consistent.** The proposed project would include connections to existing pedestrian infrastructure provided along Cisco Way and Iron Point Drive and would also enhance the visibility and safety of the standard crosswalk at Cisco Way/River Oaks Parkway. Class II bicycle lanes would be integrated to promote alternative transportation methods. The River Oaks Light Rail Transit (LRT) Station is located 0.5-mile west of the project site at the intersection of North First Street and River Oaks Parkway and serves the Santa Teresa-BayPoint LRT line (Blue Line) and Winchester-Old Ironsides LRT line (Green Line). The Cisco Way LRT Station is located 0.5-mile north of the project site at the intersection of Cisco

Element	Goal/Objective/Policy		Consistency Determination
	No.	Goal	
			Way and Tasman Drive and serves the Mountain View-Alum Rock LRT line (Orange Line). All three LRT lines operate with 15-minute headways during the weekday peak commute and midday hours. Santa Clara Valley Transportation Authority (VTA) bus stops are located along Montague Expressway within walking distance (approximately 0.5-mile) of the project site. The Altamont Corridor Express (ACE) Brown shuttle stops on River Oaks Parkway in the eastbound direction directly across the street from the project site.
	LU-9.4	Prohibit residential development in areas with identified hazards to human habitation unless these hazards are adequately mitigated.	**Consistent.** The proposed project would not be developed in an area with identified hazards to human habitation.
	LU-9.5	Require that new residential development be designed to protect residents from potential conflicts with adjacent land uses.	**Consistent.** The proposed project would result in the development of 737 residential units surrounded by an existing residential neighborhood. The surrounding land uses include multi-family residential uses and River Oaks Park; thus, the project would be consistent with surrounding uses.
	LU-9.6	Require residential developments to include adequate open spaces in either private or common areas to partially provide for residents' open space and recreation needs.	**Consistent.** The proposed project would include a greenbelt and extensive landscaping as well as a south-facing plaza to create a visual connection with River Oaks Park. Figure 2-10 illustrates the open space plan.
	LU-9.7	Ensure that new residential development does not impact the viability of adjacent employment uses that are consistent with the Envision General Plan Land Use/Transportation Diagram.	**Consistent.** The proposed project is surrounded on two sides by Residential Neighborhood land uses as well as schools to the north; the project would not impact the viability of any adjacent employment uses.
	LU-9.8	When changes in residential densities in established neighborhoods are proposed, the City shall consider such factors as neighborhood character and identity; historic preservation;	**Consistent.** The proposed project would result in the development of 737 residential units at a similar density to the multi-family residential uses in the surrounding area. The proposed project would result in a density of 76.2 du/acre,

Element	Goal/Objective/Policy		Consistency Determination
	No.	Goal	
		compatibility of land uses and impacts on livability; impacts on services and facilities, including schools, to the extent permitted by law; accessibility to transit facilities; and impacts on traffic levels on both neighborhood streets and major thoroughfares.	consistent with the TERO overlay. The proposed project would integrate the visual aspects of the buildings (architectural details and landscaping) to improve the visual character of the area, compared to the vacant office buildings currently located on the site. There are no historic structures on the site. Further, the proposed project will increase walkability and provide additional open space . The proposed project would increase the residential population in the area, but this increase would be consistent with growth projections in the General Plan. A traffic study was prepared by Hexagon on December 20, 2024. Since the proposed project would meet the City's residential screening criteria described in Section 3.2.4 Methodology, the proposed project is exempt from preparing a CEQA-level Transportation Analysis (i.e., VMT analysis). As such, impacts would be less than significant and the project would be consistent with CEQA Guidelines Section 15064.3.
	LU-9.17	Limit residential development in established neighborhoods that are not identified Growth Areas to projects that conform to the site's Land Use/Transportation Diagram designation and meet Urban Design policies in this Plan.	**Consistent.** The proposed project would be constructed in the North San José Employment Center growth area and would be consistent with the TERO overlay, which allows residential development at a minimum density of 75 du/acre. The proposed project would comply with all Urban Design policies, as discussed in Chapter 4 ,Effects Found not to be Significant, of this document.
	Goal LU-10	Meet the housing needs of existing and future residents by fully and efficiently utilizing lands planned for residential and mixed-use and by maximizing housing opportunities in locations within a half mile of transit, with good access to employment areas, neighborhood services, and public facilities.	**Consistent.** The proposed project is subject to a Development Permit and is consistent with the TERO overlay for the North San José Employment Center growth area. The proposed project would result in the development of 737 residential units in a mix of townhome, market-rate, and affordable apartments. The project would improve connections to River Oaks Park to the south as well as pedestrian connections to schools to the north. Additionally, alongside Cisco Way

Element	Goal/Objective/Policy		Consistency Determination
	No.	Goal	
			and River Oaks Parkway, Class II bicycle lanes would be integrated to promote alternative transportation methods. The proposed project is located within 0.5 mile of bus stops and light rail stations.
	LU-10.1	Develop land use plans and implementation tools that result in the construction of mixed-use development in appropriate places throughout the City as a means to establish walkable, complete communities.	**Consistent.** The proposed project would result in the development of 737 residential units in a mix of townhome, market-rate, and affordable apartments. The project would improve connections to River Oaks Park to the south as well as pedestrian connections to schools to the north. The proposed project would be integrated into an existing residential neighborhood, with business park/commercial uses and schools nearby.
	LU-10.3	Develop residentially- and mixed-use-designated lands adjacent to major transit facilities at high densities to reduce motor vehicle travel by encouraging the use of public transit.	**Consistent.** The River Oaks LRT Station is located 0.5-mile west of the project site at the intersection of North First Street and River Oaks Parkway and serves the Santa Teresa-BayPoint LRT line (Blue Line) and Winchester-Old Ironsides LRT line (Green Line). The Cisco Way LRT Station is located 0.5-mile north of the project site at the intersection of Cisco Way and Tasman Drive and serves the Mountain View-Alum Rock LRT line (Orange Line). All three LRT lines operate with 15-minute headways during the weekday peak commute and midday hours. VTA bus stops are located along Montague Expressway within walking distance (approximately 0.5-mile) of the project site. The ACE Brown shuttle stops on River Oaks Parkway in the eastbound direction directly across the street from the project site.
	Goal LU-11	Residential Neighborhoods. Regulate the urban form, architectural quality and contextual compatibility of new construction and uses within the City's varied residential neighborhoods to promote a residential neighborhood	**Consistent**. The proposed project would result in the development of 737 residential units. The project site is located within an existing neighborhood and would not conflict with the nature of surrounding land uses. As discussed in Chapter 4, Effects Found not to be Significant, the proposed project would

Element	Goal/Objective/Policy		Consistency Determination
	No.	Goal	
		environment conducive to a high quality of life for neighborhood residents and visitors.	not conflict with applicable zoning and other regulations governing scenic quality. The exterior of the proposed structures would reflect Craftsman and Bungalow designs and a warm and modern aesthetic, harmonizing with the residential setting. The 100 percent affordable apartment building would stand at five stories, the market-rate apartment building at seven stories, and the townhomes at three stories. This diversity in building heights not only reflects the various housing types but also contributes to a varied architectural tapestry within the community, including a blend of styles and forms. The proposed project would include a visual connection with River Oaks Park to the south via a south-facing entry plaza and would include a greenbelt and walkways within the development connecting the various buildings.
	LU-11.3	Direct all significant new residential growth to identified Growth Areas to further the environmental, transit, healthy community, and other Envision General Plan objectives. Limit infill development within areas designated as Residential Neighborhood on the Land Use/Transportation Diagram to projects that maintain the prevailing neighborhood form and density as it exists on adjoining properties, with particular emphasis upon establishing and/or maintaining a consistent streetscape form between new and existing development.	**Consistent.** The proposed project would result in the development of 737 residential units within an identified growth area adjacent to Residential Neighborhood land use designations.
	LU-11.5	Integrate new and existing neighborhoods and facilitate movement throughout the City by connecting streets and particularly by providing pedestrian and bicycle cross-access connections. Integrate	**Consistent**. The proposed project would develop 737 residential units within an existing neighborhood. The proposed project would contain an internal street network with sidewalks connects to existing sidewalks on River Oaks Parkway, Iron Point Drive, and Cisco Way.

Element	Goal/Objective/Policy		Consistency Determination
	No.	Goal	
		new infill development into the existing neighborhood pattern, continuing, and where applicable extending or completing, the existing street network.	
	Goal H-4	Housing–Environmental Sustainability. Provide housing that minimizes the consumption of natural resources and advances our City's fiscal, climate change, and environmental goals.	**Consistent**. The proposed project would include the demolition of three existing commercial buildings and development of 737 residential units in a mix of townhomes, market-rate, and affordable housing. Sustainability measures for the proposed project would include, but are not limited to, all electric buildings that meet CALGreen and City of San José Reach Code minimums, ample electric vehicle charging stations, on-site bicycle storage and repair facilities, water-efficient plumbing fixtures, use of native/adapted species to reduce irrigation needs, and construction materials with longer lifespan and durability to reduce construction waste and increase performance.
Community Development	CD-4.9	For development subject to design review, ensure the design of new or remodeled structures is 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).	**Consistent.** The architectural design of the apartments and townhomes would be a warm and modern aesthetic, harmonizing with the residential setting. The 100 percent affordable apartment building would stand at five stories, the market-rate apartment building at seven stories, and the townhomes at three stories. This diversity in building heights not only reflects the various housing types but also contributes to a varied architectural tapestry within the community, including a blend of styles and forms. As discussed in Chapter 4, Effects Found not to be Significant, Section 4.2.1, Aesthetics the City would ensure compliance with all requirements related to scenic quality during its design review process. As such, the proposed project would not conflict with regulations governing scenic quality and would be consistent with the surrounding neighborhood.

Element	Goal/Objective/Policy		Consistency Determination
	No.	Goal	
Housing	Goal 1	An abundant and affordable housing stock.	**Consistent.** The proposed project would result in the development of 737 residential units in a mix of townhome, market-rate, and affordable apartments.
	P-1	Align Zoning with the General Plan Methodology–Align zoning with General Plan designations for all sites planned for housing by April 2024.	**Consistent.** The Planned Development Permit would align the project site's zoning with the TERO overlay in the North San José Employment Center growth area.
	P-3	North San José Affordable Housing Overlay Zones • Identify areas for housing to be integrated into North San José and propose changes to the General Plan, zoning code, and Rincon South urban village plan to facilitate the production of all 24,000 planned housing units in North San José. • To integrate affordability, identify North San José-specific Affordable Housing Overlay Zones that support only Industrial uses, 100 percent affordable housing, or market-rate housing that integrates affordable units into their developments. • Rezone identified sites in the North San José Affordable Housing Overlay Zones through the sites inventory rezoning process. Sites that are rezoned are subject to the requirements of Government Code Section 65583.2, subdivisions (h) and (i), including: – By right permitting of owner-occupied and rental multi-family uses for developments in which 20 percent or more of the units are affordable to lower income households – A minimum site capacity of 16 units	**Consistent.** The Planned Development Permit would align the project site's zoning with the TERO overlay in the North San José Employment Center growth area.

Element	Goal/Objective/Policy		Consistency Determination
	No.	Goal	
		– A minimum density of 20 units per acre – At least 50 percent of the shortfall of low- and very-low RHNA can be accommodated on sites designed for exclusively residential uses or if accommodating more than 50 percent of the low- and very-low RHNA on sites designated for mixed-uses, all sites designated for mixed-uses must allow 100 percent residential use and require residential use to occupy at least 50 percent of the floor area in a mixed-use project. • Communicate to the development community about the new program. • As a subsequent step, identify additional properties, which have a pre-existing Transit Employment Residential Overlay (TERO) designation in the General Plan and zoning, that should also be considered for an affordable housing overlay for either 100 percent affordable or mixed income. When additional properties are identified, propose such land use and zoning amendments to these sites for City Council consideration. • Apply the TERO General Plan land use designation and zoning overlay to sites identified previously for inclusion in the TERO but not included in the sites inventory. Sites were identified as part of the process to retire the North San José Area Development Policy in 2022.	

City of San José Zoning Code Consistency

The project site is currently zoned IP and is located in the TERO and North San José Employment Center growth area. The TERO identifies sites within the North San José Employment Center growth area that may be appropriate for residential development and supports residential development as an alternate use at a minimum average net density of 75 units per acre. Table 3.6-3 includes development standards for the TERO overlay.

Table 3.6-3: Zoning District Development Standards

Regulation	Required	Proposed Project	Project Consistency
100% Residential du/ac	75–250 du/ac	76.2 du/ac	Meets criterion
Maximum Building Height	270 feet	Affordable apt: Up to 65 feet from lowest grade to the top of typ. parapet Market-rate apt: Up to 93 feet to the top of typ. parapet Townhomes: Up to 40 feet to top of roof deck stair penthouse	Meets criteria
Setback Regulations • Front • Rear	 Maximum 10 feet Maximum 10 feet	Front: 2 feet, 6 inches to 5 feet (from landscape easement to building) 27 feet, 3 inches to 29 feet (from property line to building) Rear: 13 feet, 6 inches	Requesting a waiver for front setback
Common and Private Open Space Regulations for 100% Residential and Mixed Use	Refer to Section 20.65.060 Common Open Space: Not required Private Open Space: 17,720 square feet	Common Open Space: The proposed project would provide 103,671 square feet of common open space. Private Open Space: Townhomes–23,765 square feet Affordable Apts.–0 square feet Market-rate Apts.–24,533 square feet Total–48,298 square feet	Meets criteria: Exempt from common open space requirements – less than 0.5 mile walking distance from River Oaks Park. Private open space exceeds requirements.
Lighting	Refer to Section 20.55.103	Lighting would be compliant with all regulations of Section	Meets criteria

Regulation	Required	Proposed Project	Project Consistency
100% Residential du/ac	75–250 du/ac	76.2 du/ac	Meets criterion
		20.55.103. All lighting would conform to the requirements of Council Policy 4-3, Outdoor Lighting on Private Developments.	
Parking	For general parking regulations, refer to Chapter 20.90. Affordable Apts: No requirement. Market-Rate Apts: 569 spaces. Townhomes:	Affordable Apts: 104 parking spaces; 48 bicycle parking spaces; 3 motorcycle spaces. Market-Rate Apts: 557 assigned parking spaces; 30 guest parking spaces; 177 bicycle spaces; 15 motorcycle spaces.	Meets criteria

Based on the analysis in this section, the proposed project would not conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect. Additionally, the development would be required to implement General Plan policies and existing regulations designed to prevent impacts associated with conflicting land uses. The impact would be less than significant.

Level of Significance Before Mitigation

Less than significant impact.

Mitigation Measures

No mitigation required.

Level of Significance After Mitigation

Less than significant impact.

Cumulative Analysis

The geographic scope of the cumulative analysis for land use and planning is the City of San José because the City's thresholds of significance relate to local land use plans and policies and consistency with local zoning. The cumulative land use analyses utilizes a growth projections methodology combined with the cumulative projects listed in Chapter 3, Environmental Impact Analysis, Table 3-1.

The compatibility of new development with adjacent land uses, and the general character of surrounding areas are considered as part of San José's architectural and environmental review processes. Through appropriate site design review of these urban projects, impacts due to conflict

with applicable plans and policies would be avoided. Past, present and reasonably forseeable future projects would be subject to General Plan goals, policies, and actions that require appropriate buffers, edges, and transition areas between dissimilar land uses. In addition, the setbacks, design, and operational requirements of the San José Municipal Code would minimize land use impacts. Accordingly, cumulative impacts would be less than significant. The project, in conformance with the applicable General Plan goals, policies, and actions and with implementation of mitigation measures, would not result in significant land use impacts or conflict with a policy or regulation adopted for the purpose of avoiding or mitigating an environmental impact. For these reasons, the proposed project, in combination with the other cumulative projects, would not result in a cumulatively considerable contribution to a less than significant cumulatively significant land use impact.

Level of Cumulative Significance Before Mitigation

Less than significant impact.

Mitigation Measures

No mitigation required.

Level of Cumulative Significance After Mitigation

Less than significant impact.

3.7 - Noise

3.7.1 - Introduction

This section describes the existing noise setting and potential effects from project implementation on the site and its surrounding area. Descriptions and analysis in this section are based on noise modeling performed by FirstCarbon Solutions (FCS). The noise modeling output is included in this Draft Environmental Impact Report (Draft EIR) as Appendix G. No public comments were received during the EIR scoping period related to noise.

3.7.2 - Environmental Setting

Characteristics of Noise

Noise is generally defined as unwanted or objectionable sound. Sound becomes unwanted when it interferes with normal activities, when it causes actual physical harm or when it has adverse effects on health. The effects of noise on people can include general annoyance, interference with speech communication, sleep disturbance, and in the extreme, hearing impairment. Noise effects can be caused by pitch or loudness. *Pitch* is the number of complete vibrations or cycles per second of a wave that result in the range of tone from high to low; higher-pitched sounds are louder to humans than lower-pitched sounds. *Loudness* is the intensity or amplitude of sound.

Sound is produced by the vibration of sound pressure waves in the air. Sound pressure levels are used to measure the intensity of sound and are described in terms of decibels. The decibel (dB) is a logarithmic unit, which expresses the ratio of the sound pressure level being measured to a standard reference level. The 0 point on the dB scale is based on the lowest sound level that the healthy, unimpaired human ear can detect. Changes of 3 dB or less are only perceptible in laboratory environments. Audible increases in noise levels generally refer to a change of 3 dB or more, as this level has been found to be barely perceptible to the human ear in outdoor environments. Only audible changes in existing ambient or background noise levels are considered potentially significant.

The human ear is not equally sensitive to all frequencies within the audible sound spectrum, so sound pressure level measurements can be weighted to better represent frequency-based sensitivity of average healthy human hearing. One such specific “filtering” of sound is called “A-weighting.” A-weighted decibels (dBA) approximate the subjective response of the human ear to a broad frequency noise source by discriminating against very low and very high frequencies of the audible spectrum. They are adjusted to reflect only those frequencies that are audible to the human ear. Because decibels are logarithmic units, they cannot be added or subtracted by ordinary arithmetic means. For example, if one noise source produces a noise level of 70 dB, the addition of another noise source with the same noise level would not produce 140 dB; rather, they would combine to produce a noise level of 73 dB.

Noise Descriptors

There are many ways to rate noise for various intervals, but an appropriate rating of ambient noise affecting humans also accounts for the annoying effects of sound. Equivalent continuous sound level (L_{eq}) is the total sound energy of time-varying noise over a sample period. However, the predominant

rating scales for human communities in the State of California are the L_{eq} and Community Noise Equivalent Level (CNEL) or the day-night average level (L_{dn}) based on dBA. CNEL is the time-varying noise over a 24-hour period, with a 5 dBA weighting factor applied to the hourly L_{eq} for noises occurring from 7:00 p.m. to 10:00 p.m. (defined as relaxation hours) and a 10 dBA weighting factor applied to noise occurring from 10:00 p.m. to 7:00 a.m. (defined as sleeping hours). L_{dn} is similar to the CNEL scale but without the adjustment for events occurring during the evening hours. CNEL and L_{dn} are within one dBA of each other and are normally exchangeable. The noise adjustments are added to the noise events occurring during the more sensitive hours.

Other noise rating scales of importance when assessing the annoyance factor include the maximum noise level (L_{max}), which is the highest exponential time-averaged sound level that occurs during a stated time period. The noise environments discussed in this analysis are specified in terms of maximum levels denoted by L_{max} for short-term noise impacts. L_{max} reflects peak operating conditions and addresses the annoying aspects of intermittent noise.

Noise Propagation

From the noise source to the receiver, noise changes both in level and frequency spectrum. The most obvious is the decrease in noise as the distance from the source increases. The manner in which noise reduces with distance depends on whether the source is a point or line source, as well as ground absorption, atmospheric conditions (wind, temperature gradients, and humidity) and refraction, and shielding by natural and manmade features. Sound from point sources, such as an air conditioning condenser, a piece of construction equipment, or an idling truck, radiates uniformly outward as it travels away from the source in a spherical pattern.

The attenuation or sound drop-off rate is dependent on the conditions of the land between the noise source and receiver. To account for this ground-effect attenuation (absorption), two types of site conditions are commonly used in noise models: soft-site and hard-site conditions. Soft-site conditions account for the sound propagation loss over natural surfaces such as normal earth and ground vegetation. For point sources, a drop-off rate of 7.5 dBA per each doubling of the distance (dBA/DD) is typically observed over soft ground with landscaping, as compared with a 6 dBA/DD drop-off rate over hard ground such as asphalt, concrete, stone and very hard packed earth. For line sources, such as traffic noise on a roadway, a 4.5 dBA/DD is typically observed for soft-site conditions compared to the 3 dBA/DD drop-off rate for hard-site conditions. Table 3.7-1 briefly defines these measurement descriptors and other sound terminology used in this section.

Table 3.7-1: Sound Terminology

Term	Definition
Sound	A vibratory disturbance created by a vibrating object which, when transmitted by pressure waves through a medium such as air, can be detected by a receiving mechanism such as the human ear or a microphone.
Noise	Sound that is loud, unpleasant, unexpected, or otherwise undesirable.

Term	Definition
Ambient Noise	The composite of noise from all sources near and far in a given environment.
Decibel (dB)	A unitless measure of sound on a logarithmic scale, which represents the squared ratio of sound pressure amplitude to a reference sound pressure. The reference pressure is 20 micropascals, representing the threshold of human hearing (0 dB).
A-Weighted Decibel (dBA)	An overall frequency-weighted sound level that approximates the frequency response of the human ear.
Equivalent Noise Level (L_{eq})	The average sound energy occurring over a specified time period. In effect, L_{eq} is the steady-state sound level that in a stated period would contain the same acoustical energy as the time-varying sound that actually occurs during the same period.
Maximum and Minimum Noise Levels (L_{max} and L_{min})	The maximum or minimum instantaneous sound level measured during a measurement period.
Day-Night Level (DNL or L_{dn})	The energy average of the A-weighted sound levels occurring during a 24-hour period, with 10 dB added to the A-weighted sound levels occurring between 10:00 p.m. and 7:00 a.m. (nighttime).
Community Noise Equivalent Level (CNEL)	The energy average of the A-weighted sound levels occurring during a 24-hour period, with 5 dB added to the A-weighted sound levels occurring between 7:00 p.m. and 10:00 p.m. and 10 dB added to the A-weighted sound levels occurring between 10:00 p.m. and 7:00 a.m.
Source: Data compiled by FirstCarbon Solutions (FCS). 2024.	

Traffic Noise

The level of traffic noise depends on the three primary factors: (1) the volume of the traffic, (2) the speed of the traffic, and (3) the number of trucks in the flow of traffic. Generally, the loudness of traffic noise is increased by heavier traffic volumes, higher speeds, and greater number of trucks. Vehicle noise is a combination of the noise produced by the engine, exhaust, and tires. Because of the logarithmic nature of noise levels, a doubling of the traffic volume (assuming that the speed and truck mix do not change) results in a noise level increase of 3 dBA. Based on the Federal Highway Administration (FHWA) community noise assessment criteria, this change is "barely perceptible." For reference, a doubling of perceived noise levels would require an increase of approximately 10 dBA. The truck mix on a given roadway also has an effect on community noise levels. As the number of heavy trucks increases and becomes a larger percentage of the vehicle mix, adjacent noise levels increase.

Stationary Noise

A stationary noise producer is any entity in a fixed location that emits noise. Examples of stationary noise sources include machinery, engines, energy production, and other mechanical or powered equipment and activities such as loading and unloading or public assembly that may occur at commercial, industrial, manufacturing, or institutional facilities. Furthermore, noise generated by the use of motor vehicles over public roads is preempted from local regulation, although the use of these vehicles is considered a stationary noise source when operated on private property such as at a construction site, a truck terminal, or warehousing facility. The emitted noise from the producer can be mitigated to acceptable levels either at the source or on the adjacent property through the use of proper planning, setbacks, block walls, acoustic-rated windows, dense landscaping, or by changing the location of the noise producer.

The effects of stationary noise depend on factors such as characteristics of the equipment and operations, distance and pathway between the generator and receptor, and weather. Stationary noise sources may be regulated at the point of manufacture (e.g., equipment or engines), with limitations on the hours of operation, or with provision of intervening structures, barriers or topography.

Construction activities are a common source of stationary noise. Construction-period noise levels are higher than background ambient noise levels but eventually cease once construction is complete. Construction is performed in discrete steps, each of which has its own mix of equipment and, consequently, its own noise characteristics. These various sequential phases would change the character of the noise generated on each construction site and, therefore, would change the noise levels as construction progresses. Despite the variety in the type and size of construction equipment, similarities in the dominant noise sources and patterns of operation allow construction-related noise ranges to be categorized by work phase. Table 3.7-2 shows typical noise levels of construction equipment as measured at a distance of 50 feet from the operating equipment.

Table 3.7-2: Typical Construction Equipment Maximum Noise Levels

Type of Equipment	Impact Device? (Yes/No)	Specification Maximum Sound Levels for Analysis (dBA at 50 feet)
Impact Pile Driver	Yes	95
Auger Drill Rig	No	85
Vibratory Pile Driver	No	95
Jackhammers	Yes	85
Pneumatic Tools	No	85
Pumps	No	77
Scrapers	No	85
Cranes	No	85
Portable Generators	No	82
Rollers	No	85
Bulldozers	No	85
Tractors	No	84

Type of Equipment	Impact Device? (Yes/No)	Specification Maximum Sound Levels for Analysis (dBA at 50 feet)
Front-End Loaders	No	80
Backhoe	No	80
Excavators	No	85
Graders	No	85
Air Compressors	No	80
Dump Truck	No	84
Concrete Mixer Truck	No	85
Pickup Truck	No	55

Notes:
dBA = A-weighted decibel
Source: Federal Highway Administration (FHWA) 2006. Highway Construction Noise Handbook, August.

Noise from Multiple Sources

Because sound pressure levels in decibels are based on a logarithmic scale, they cannot be added or subtracted in the usual arithmetical way. Therefore, sound pressure levels in decibels are logarithmically added on an energy summation basis. In other words, adding a new noise source to an existing noise source, both producing noise at the same level, will not double the noise level. Instead, if the difference between two noise sources is 10 dBA or more, the louder noise source will dominate, and the resultant noise level will be equal to the noise level of the louder source. In general, if the difference between two noise sources is 0–1 dBA, the resultant noise level will be 3 dBA higher than the louder noise source, or both sources if they are equal. If the difference between two noise sources is 2–3 dBA, the resultant noise level will be 2 dBA above the louder noise source. If the difference between two noise sources is 4–10 dBA, the resultant noise level will be 1 dBA higher than the louder noise source.

Characteristics of Vibration

Groundborne vibration consists of rapidly fluctuating motion through a solid medium, specifically the ground, which has an average motion of zero and in which the motion's amplitude can be described in terms of displacement, velocity, or acceleration. The effects of groundborne vibration typically only causes a nuisance to people, but in extreme cases, excessive groundborne vibration has the potential to cause structural damage to buildings. Although groundborne vibration can be felt outdoors, it is typically only an annoyance to people indoors where the associated effects of the shaking of a building can be notable. Groundborne noise is an effect of groundborne vibration and only exists indoors, since it is produced from noise radiated from the motion of the walls and floors of a room, and may also consist of the rattling of windows or dishes on shelves.

Several different methods are used to quantify vibration amplitude such as the maximum instantaneous peak in the vibrations velocity, which is known as the peak particle velocity (PPV) or the root mean square (rms) amplitude of the vibration velocity. Because of the typically small amplitudes of vibrations, vibration velocity is often expressed in decibels—denoted as LV—and is

based on the reference quantity of 1 microinch per second. To distinguish vibration levels from noise levels, the unit is written as "VdB."

Although groundborne vibration can be felt outdoors, it is typically only an annoyance to people indoors where the associated effects of the shaking of a building can be notable. When assessing annoyance from groundborne vibration, vibration is typically expressed as rms velocity in units of decibels of 1 microinch per second, with the unit written in VdB. Typically, developed areas are continuously affected by vibration velocities of 50 VdB or lower. Human perception to vibration starts at levels as low as 67 VdB. Annoyance due to vibration in residential settings starts at approximately 70 VdB.

Off-site sources that may produce perceptible vibrations are usually caused by construction equipment, steel-wheeled trains, and traffic on rough roads, while smooth roads rarely produce perceptible groundborne noise or vibration. Construction activities, such as blasting, pile driving and operating heavy earthmoving equipment, are common sources of groundborne vibration. Construction vibration impacts on building structures are generally assessed in terms of PPV. Typical vibration source levels from construction equipment are shown in Table 3.7-3.

Table 3.7-3: Vibration Levels of Construction Equipment

Construction Equipment	PPV at 25 Feet (inches/second)	rms Velocity in Decibels (VdB) at 25 Feet
Water Trucks	0.001	57
Scraper	0.002	58
Bulldozer—Small	0.003	58
Jackhammer	0.035	79
Concrete Mixer	0.046	81
Concrete Pump	0.046	81
Paver	0.046	81
Pickup Truck	0.046	81
Auger Drill Rig	0.051	82
Backhoe	0.051	82
Crane (Mobile)	0.051	82
Excavator	0.051	82
Grader	0.051	82
Loader	0.051	82
Loaded Trucks	0.076	86
Bulldozer—Large	0.089	87
Caisson drilling	0.089	87
Vibratory Roller (small)	0.101	88

Construction Equipment	PPV at 25 Feet (inches/second)	rms Velocity in Decibels (VdB) at 25 Feet
Compactor	0.138	90
Clam shovel drop	0.202	94
Vibratory Roller (large)	0.210	94
Pile Driver (impact-typical)	0.644	104
Pile Driver (impact-upper range)	1.518	112

Notes:
PPV = peak particle velocity
rms = root mean square
VdB = velocity in decibels
Sources: Federal Transit Administration (FTA). 2018. Transit Noise and Vibration Impact Assessment Manual, September.
Federal Highway Administration (FHWA). 2006. Highway Construction Noise Handbook. August.

The propagation of groundborne vibration is not as simple to model as airborne noise. This is because noise in the air travels through a relatively uniform medium, while groundborne vibrations travel through the earth, which may contain significant geological differences. Factors that influence groundborne vibration include:

- **Vibration source:** Type of activity or equipment, such as impact or mobile, and depth of vibration source;
- **Vibration path:** Soil type, rock layers, soil layering, depth to water table, and frost depth; and
- **Vibration receiver:** Foundation type, building construction, and acoustical absorption.

Among these factors that influence groundborne vibration, there are significant differences in the vibration characteristics when the source is underground compared to at the ground surface. In addition, soil conditions are known to have a strong influence on the levels of groundborne vibration. Among the most important factors are the stiffness and internal damping of the soil and the depth to bedrock. Vibration propagation is more efficient in stiff clay soils than in loose sandy soils, and shallow rock seems to concentrate the vibration energy close to the surface and can result in groundborne vibration problems at large distance from the source. Factors such as layering of the soil and depth to the water table can have significant effects on the propagation of groundborne vibration. Soft, loose, sandy soils tend to attenuate more vibration energy than hard, rocky materials. Vibration propagation through groundwater is more efficient than through sandy soils. There are three main types of vibration propagation: surface, compression, and shear waves. Surface waves, or Rayleigh waves, travel along the ground's surface. These waves carry most of their energy along an expanding circular wave front, similar to ripples produced by throwing a rock into a pool of water. P-waves, or compression waves, are body waves that carry their energy along an expanding spherical wave front. The particle motion in these waves is longitudinal (i.e., in a "push-pull" fashion). P-waves are analogous to airborne sound waves. S-waves, or shear waves, are also body waves that carry energy along an expanding spherical wave front. However, unlike P-waves, the particle motion is transverse, or side-to-side and perpendicular to the direction of propagation.

As vibration waves propagate from a source, the vibration energy decreases in a logarithmic nature and the vibration levels typically decrease by 6 VdB per doubling of the distance from the vibration source. As stated above, this drop-off rate can vary greatly depending on the soil type, but it has been shown to be effective enough for screening purposes, in order to identify potential vibration impacts that may need to be studied through actual field tests. The vibration level (calculated below as "PPV") at a distance from a point source can generally be calculated using the vibration reference equation:

$$PPV = PPV_{ref} * (25/D)^n \text{ (in/sec)}$$

Where:

PPV_{ref} = reference measurement at 25 feet from vibration source
D = distance from equipment to the receptor
n = vibration attenuation rate through ground

According to Section 7 of the Federal Transit Administration (FTA) Transit Noise and Vibration Impact Assessment manual, an "n" value of 1.5 is recommended to calculate vibration propagation through typical soil conditions.[1]

Existing Noise Levels

Ambient Noise

The project site is surrounded by Anza Road, Levee Road, Abram Agnew Elementary School, and commercial development to the north; River Oaks Parkway, River Oaks Park, and residential development to the south; Cisco Way and commercial development to the east; and Iron Point Drive and residential development to the west.

The dominant noise sources in the project vicinity include traffic on local roadways, primarily from traffic on River Oaks Parkway which runs along the southern boundary of the project site, Cisco Way which runs along the eastern boundary of the project site, and Anza Road which runs along the northern boundary of the project site. Existing stationary noise sources on the project site include mechanical ventilation system operations and parking lot activity.

An ambient noise monitoring effort was conducted to document daytime ambient noise levels on the project site. Short-term noise monitoring was conducted by FCS on May 8, 2024, between 1:27 p.m. and 2:50 p.m. The noise measurements were taken during the midday hours, as the midday hours typically have the highest daytime noise levels in urban environments. It should be noted that peak noise hours often vary slightly from peak traffic hours, as peak noise hours more closely align with high volume traffic that is still free flowing; while peak traffic hours often result in slower vehicle speeds due to the volume of traffic on the roadway. The short-term existing noise measurement results are summarized in Table 3.7-4 The noise monitoring data sheets are included in Appendix E.

[1] Federal Transit Administration (FTA). 2006. Transit Noise and Vibration Impact Assessment. May.

Table 3.7-4: Existing Ambient Noise Levels on the Project Site

Site ID #	Description	L_{eq}	L_{min}	L_{max}
ST-1	At the southwest corner of the project site, next to Iron Point Drive and River Oaks Parkway intersection. Approximately 15 feet off roadway.	59.6	47.9	77.7
ST-2	At the southeast corner of the project site, next to River Oaks Parkway and Cisco Way intersection. Approximately 15 feet off roadway.	60.1	49.0	77.0
ST-3	At the northeast corner of the project site, next to 3534 Zanker Road (Elementary School) entrance to Cisco Way, approximately 15 feet from Cisco Way roadway.	63.7	46.6	83.6
ST-4	At the northwest corner of the project site, by the Elementary School and near Iron Point Drive terminal. Approximately 15 feet south of Anza Road roadway.	51.1	45.9	69.9

Notes:
L_{eq} = equivalent sound level
L_{min} = minimum noise/sound level
L_{max} = maximum noise level
Source: FirstCarbon Solutions (FCS). 2024.

3.7.3 - Regulatory Framework

Federal

Noise Control Act

The adverse impact of noise was officially recognized by the federal government in the Noise Control Act of 1972, which serves three purposes:

- Promulgating noise emission standards for interstate commerce
- Assisting state and local abatement efforts
- Promoting noise education and research

The Federal Office of Noise Abatement and Control (ONAC) was initially tasked with implementing the Noise Control Act. However, the ONAC has since been eliminated, leaving the development of federal noise policies and programs to other federal agencies and interagency committees.

Among the agencies now regulating noise are the Occupational Safety and Health Administration (OSHA), which limits noise exposure of workers to 90 dB L_{eq} or less for 8 continuous hours or 105 dB L_{eq} or less for 1 continuous hour; the United States Department of Transportation (USDOT), which assumed a significant role in noise control through its various operating agencies; and the Federal Aviation Administration (FAA), which regulates noise of aircraft and airports. Surface transportation system noise is regulated by a host of agencies, including the FTA. Transit noise is regulated by the federal Urban Mass Transit Administration, while freeways that are part of the interstate highway system are regulated by the FHWA. Finally, the federal government actively advocates that local jurisdictions use their land use

regulatory authority to arrange new development in such a way that "noise-sensitive" uses are either prohibited from being sited adjacent to a highway, or alternatively, that developments are planned and constructed in such a manner that minimize potential noise impacts.

Since the federal government has preempted the setting of standards for noise levels that can be emitted by transportation sources, local jurisdictions are limited to regulating the noise generated by the transportation system through nuisance abatement ordinances and land use planning.

Federal Transit Administration Standards and Guidelines

The FTA has established industry accepted standards for vibration impact criteria and impact assessment. These guidelines are published in its Transit Noise and Vibration Impact Assessment document.[2] The FTA guidelines include thresholds for construction vibration impacts for various structural categories as shown in Table 3.7-5.

Table 3.7-5: Federal Transit Administration Construction Vibration Impact Criteria

Building Category	PPV (in/sec)	Approximate VdB
I. Reinforced Concrete, Steel, or Timber (no plaster)	0.5	102
II. Engineered Concrete and Masonry (no plaster)	0.3	98
III. Nonengineered Timber and Masonry Buildings	0.2	94
IV. Buildings Extremely Susceptible to Vibration Damage	0.12	90

Notes:
PPV = peak particle velocity
VdB = velocity in decibels
Source: Federal Aviation Administration (FAA) 2006. Transit Noise and Vibration Impact Assessment.

State

California General Plan Guidelines

Established in 1973, the California Department of Health Services Office of Noise Control was instrumental in developing regularity tools to control and abate noise for use by local agencies. One significant model is the "Land Use Compatibility for Community Noise Environments Matrix," which allows the local jurisdiction to delineate compatibility of sensitive uses with various incremental levels of noise.[3]

Government Code Section 65302 mandates that the legislative body of each county and city in California adopt a noise element as part of its comprehensive general plan. The local noise element must recognize the land use compatibility guidelines published by the State Department of Health Services. The guidelines rank noise/land use compatibility in terms of normally acceptable, conditionally acceptable, normally unacceptable, and clearly unacceptable. The project is also

[2] Federal Aviation Administration (FAA) 2006. Transit Noise and Vibration Impact Assessment.
[3] California Department of Health Services Office of Noise Control. Land Use Compatibility for Community Noise Environments Matrix. 1976.

subject to review under the State of California Environmental Quality Act (CEQA). Appendix G of the CEQA Guidelines provides impact thresholds for potential noise and vibration impacts.

California Building Standards Code

California has established noise insulation standards for new hotels, motels, apartment houses, and dwellings (other than single-family detached housing). These requirements are provided in the California Building Standards Code (CBC) (California Code of Regulations [CCR] Title 24). The 2022 CBC was published on July 1, 2022, with an effective date of January 1, 2023. As provided in the CBC, the noise insulation standards set forth an interior standard of 45 dBA CNEL as measured from within a structure's interior. When such structures are located within a 65-dBA CNEL (or greater) exterior noise contour associated with a traffic noise along a roadway, an acoustical analysis is required to ensure that interior levels do not exceed the 45-dBA CNEL threshold. Title 24 standards are typically enforced by local jurisdictions through the building permit application process.

Assembly Bill 1307 Public Resources Code Section 21085

Assembly Bill 1307 went into effect January 1, 2024. This bill added Section 21085 to the Public Resources Code, stating that "for residential projects, the effects of noise generated by project occupants and their guests on human beings is not a significant effect on the environment."[4] Therefore, this analysis does not address potential noise impacts from future occupants and their guests on sensitive receptors in the project vicinity.

Local

Envision San José 2040 General Plan

The project site is located within the City of San José and this analysis was performed using the City's noise regulations. The City of San José addresses noise in the Noise Element of the Envision San José 2040 General Plan (General Plan) and in the City of San José Municipal Code (Municipal Code).

Envision San José 2040 Relevant Noise and Vibration Policies	
Policies	**Description**
Policy ES-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: **Interior Noise Levels** • 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 Envision San José 2040 General Plan traffic volumes to ensure land use compatibility and General Plan consistency over the life of this plan.

[4] California Legislative Information. Assembly Bill No. 1307. Website: https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240AB1307. Accessed March 22, 2024.

Envision San José 2040 Relevant Noise and Vibration Policies	
Policies	**Description**
	Exterior Noise Levels • The City's acceptable exterior noise level objective is 60 dBA DNL or less for residential and most institutional land uses (refer to Table EC-1 in the General Plan or Table 4.12-1 in this Initial Study). Residential uses are considered "normally acceptable" with exterior noise exposures of up to 60 dBA DNL and "conditionally compatible" where the exterior noise exposure is between 60 and 75 dBA DNL such that the specified land use may be permitted only after detailed analysis of the noise reduction requirements and needed noise insulation features are included in the design.
Policy EC-1.2	Minimize the noise impacts of new development on land uses sensitive to increased noise levels (Land Use Categories 1, 2, 3, and 6 in Table EC-1 in the General Plan or Table 4.12-1 in this Initial Study) 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 5 dBA DNL or more where the noise levels would remain "Normally Acceptable." • 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.
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-2.3	Require new development to minimize vibration impacts to adjacent uses during demolition and construction. For sensitive historic structures, a vibration limit of 0.08 in/sec peak particle velocity (PPV) will be used to minimize the potential for cosmetic damage to a building. A vibration limit of 0.20 in/sec PPV will be used to minimize the potential for cosmetic damage at buildings of normal conventional construction.
Notes: dBA = A-weighted decibel DNL = Day-Night Level in/sec = inches per second PPV = peak particle velocity Source: City of San José. 2018. Envision San José General Plan 2040.	

City of San José Municipal Code

The Municipal Code restricts construction hours within 500 feet of a residential unit to between 7:00 a.m. and 7:00 p.m. Monday through Friday, unless otherwise expressly allowed in a Development Permit or other planning approval. No construction activities are permitted on the weekends at sites within 500 feet of a residence, unless expressly allowed in a Development Permit or other Planning approval.

The Zoning Ordinance limits noise levels to 55 dBA maximum (L_{max}) at any residential property line and 60 dBA L_{max} at commercial property lines, unless otherwise expressly allowed in a Development Permit or other planning approval. The Zoning Ordinance also limits noise emitted by stand-by/backup and emergency generators to 55 dBA at the property line of residential properties. The testing of generators is limited to between 7:00 a.m. and 7:00 p.m., Monday through Friday.

3.7.4 - Methodology

Construction Noise Analysis Methodology

A worst-case scenario was analyzed assuming each piece of modeled equipment would operate simultaneously at the nearest reasonable locations to the closest noise-sensitive receptor for the loudest phase of construction. Noise emission levels recommended by FHWA's Highway Construction Noise Handbook were used to ascertain the noise generated by specific types of construction equipment. The calculation spreadsheet with the detailed modeling assumptions is provided in the noise report in Appendix G.

Traffic Noise Analysis Methodology

For the purposes of this analysis, traffic noise levels along selected roadway segments in the project vicinity would result in a significant impact if the proposed project would cause the DNL at noise-sensitive receptors to increase by 5 dBA DNL or more where the noise levels would remain "normally acceptable"; or where it would cause the DNL at noise-sensitive receptors to increase by 3 dBA DNL or more where noise levels would equal or exceed the "normally acceptable" level. Typically, a doubling of the average daily traffic (ADT) hourly volumes on a roadway segment is required in order to result in an increase of 3 dBA in traffic noise levels. Therefore, for the purposes of this analysis, a doubling of the existing ADT volumes would result in a substantial permanent increase in traffic noise levels.

The ADT volumes used in this analysis were obtained from the traffic analysis prepared for the proposed project by Hexagon Transportation Consultants, Inc.[5]

Stationary Source Noise Analysis Methodology

The proposed project would generate noise from new mechanical equipment sources. To provide a conservative analysis, the highest end of the range of reference noise levels for these stationary noise sources, the usage factors of these activities, and the distance to the nearest sensitive receptor land uses were used to calculate the reasonable worst-case hourly average noise levels from each

[5] Hexagon Transportation Consultants, Inc.2024. 5670 Camden Avenue Residential Draft Transportation Analysis. May 14.

noise source as measured at the nearest sensitive receptor land uses. The calculation spreadsheet with the detailed modeling assumptions is included in the noise report provided in the noise report in Appendix G.

Vibration Impact Analysis Methodology

Reasonable worst-case construction vibration levels are identified based on reference vibration levels for construction equipment identified in Table 3.11-3. The City of San José Policy EC-2.3 requires new development to minimize vibration impacts to adjacent uses during demolition and construction. For sensitive historic structures, a vibration limit of 0.08 in/sec PPV (peak particle velocity) is used as the threshold for potential cosmetic damage. A vibration limit of 0.20 in/sec PPV is used as the threshold for potential cosmetic damage at buildings of normal conventional construction.

Cumulative Analysis Methodology

The geographic scope of the cumulative noise analysis is limited by the range of potential noise impacts. Noise impacts tend to be localized; therefore, noise impacts for construction, mobile, and stationary noise sources are limited to approximately 500 feet from the source. Noise impacts for airport-related noise sources are limited to the areas within an airport's 65 dBA CNEL noise contours. There are no cumulative projects within this scope.

Groundborne vibration impacts are also very localized. Therefore, potential cumulative impacts from groundborne vibration would be limited to 50 feet from the type of single event activity (such as temporary construction) that could occur with implementation of this project. In addition, the only cumulatively considerable contribution to permanent or ongoing operational groundborne vibration conditions in the project vicinity would result from introduction of new permanent sources of groundborne vibration to an existing impacted environment. There are no cumulative projects within this scope.

The cumulative impact analysis evaluates whether the impacts of the proposed project, together with the impacts of cumulative development, could result in a cumulatively significant impact with respect to noise. The analysis also considers whether incremental contribution of impacts associated with the implementation of the proposed project would be significant. Both conditions must apply for a project's cumulative effects to rise to the level of a significant impact. If there is no impact associated with respect to a particular CEQA threshold, discussion of cumulative impacts is not required. Accordingly, cumulative discussion is limited to the potential impacts as discussed below.

3.7.5 - Thresholds of Significance

The Lead Agency utilizes the criteria in CEQA Guidelines Appendix G Environmental Checklist to determine whether noise impacts resulting from the implementation of the proposed project would be considered significant if the project would cause:

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?

3.7.6 - Project Impacts and Mitigation Measures

This section discusses potential impacts associated with the development of the project and provides mitigation measures where appropriate.

Substantial Noise Increase in Excess of Standards

Impact NOI-1:	**The proposed project would not generate 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.**

Impact Analysis

Construction

A significant impact would occur if construction activities would result in a substantial temporary increase in ambient noise levels outside of the City's permissible hours for construction that would result in annoyance or sleep disturbance of nearby sensitive receptors. The City's permissible hours for construction activity are between the hours of 7:00 a.m. and 7:00 p.m. Monday through Friday. No construction is permitted on Saturdays, Sundays, or federal holidays. The City enforces the regulations through Municipal Code Section 20.100.450 Hours of Construction Within 500 Feet of a Residential Unit, as described in the regulatory discussion above.

Construction is completed in discrete steps, each of which has its own mix of equipment and, consequently, its own noise characteristics. These various sequential phases would change the character of the noise generated on the site and, therefore, the noise levels surrounding the site as construction progresses. Despite the variety in the type and size of construction equipment, similarities in the dominant noise sources and patterns of operation allow construction-related noise ranges to be categorized by work phase. Typical operating cycles for these types of construction equipment may involve one or two minutes of full-power operation followed by three or four minutes at lower power settings. Impact equipment, such as impact pile drivers, are not planned to be used during construction of this proposed project.

The loudest phase of construction is typically the site preparation and grading phase, as that is when the loudest pieces of heavy construction equipment would operate. For example, the maximum noise level generated by each scraper is assumed to be 85 dBA L_{max} at 50 feet from this equipment. Each bulldozer would also generate 85 dBA L_{max} at 50 feet. The maximum noise level generated by graders is approximately 85 dBA L_{max} at 50 feet. Construction of the project is expected to require the use of a variety of equipment, the loudest being a grader, excavator, and bulldozer, all of which generate maximum reference noise levels of 85 dBA L_{max} at 50 feet.

A conservative but reasonable assumption is that this equipment would operate simultaneously and continuously over at least a 1-hour period in the vicinity of the closest existing residential receptors but would move linearly over the project site as they perform their earthmoving operations, spending a relatively short amount of time adjacent to any one receptor. A characteristic of sound is that each doubling of sound sources with equal strength increases a sound level by 3 dBA. Assuming that each piece of construction equipment operates at some distance from the other equipment, a reasonable worst-case combined noise level during this phase of construction would be 90 dBA L_{max} at a distance of 50 feet from the acoustic center of a construction area. The acoustical center reference is used because construction equipment must operate at some distance from one another on a project site, and the combined noise level as measured at a point equidistant from the sources (acoustic center) would be the worst-case maximum noise level. These operations would be expected to result in a conservative worst-case hourly average of 86 dBA L_{eq} at a distance of 50 feet from the acoustic center of a construction area. These worst-case construction noise levels would only occur during the site preparation phase of development.

The project estimates an overall construction timeline of approximately 48 months and does not propose extended or weekend hours. The closest noise-sensitive receptor to the proposed project site is the multi-family residence located along the western border of the project site. This closest receptor would be located approximately 80 feet from the nearest acoustic center of construction activity where multiple pieces of heavy construction equipment would potentially operate simultaneously at the project site. At this distance, conservative worst-case construction noise levels could range up to approximately 81 dBA L_{max}, intermittently, and could have an hourly average of up to 76 dBA L_{eq}, at the façade of the nearest multi-family residential home.

Conservative worst-case calculated construction noise levels would not exceed existing ambient noise levels documented in the project vicinity. Although there could be a relatively high single-event noise exposure potential causing an intermittent noise nuisance, the effect of construction activities on longer-term (hourly or daily) ambient noise levels would be small. In addition, the City restricts hours for construction activities to between the hours of 7:00 a.m. and 7:00 p.m. Monday through Friday. This would preclude noise impacts during nighttime hours. However, since construction will last longer than 12 months, the construction no longer meets the City's definition of a temporary impact, therefore the proposed project would be required to implement Mitigation Measure (MM) NOI-1 to ensure that the proposed project would not result in substantial increases at the off-site sensitive receptors above standards established in the General Plan, and construction noise impacts on sensitive receptors in the project vicinity would be less than significant.

Operation

Mobile Source Operational Noise Impacts

A significant impact would occur if project-generated traffic would result in a substantial increase in ambient noise levels compared with those that would exist without the proposed project. The City considers a significant noise impact to occur if a project would cause the day-night average sound level (DNL) at noise-sensitive receptors to increase by 5 dBA DNL or more where the noise levels would remain "normally acceptable"; or where it would cause the DNL at noise-sensitive receptors

to increase by 3 dBA DNL or more where noise levels would equal or exceed the "normally acceptable" level.

Typically, a doubling of the ADT hourly volumes on a roadway segment is required in order to result in an increase of 3 dBA in traffic noise levels, which, as discussed in the characteristics of noise discussion above, is the lowest change that can be perceptible to the human ear in outdoor environments. Therefore, for the purposes of this analysis, a doubling of the existing ADT volumes would result in a substantial permanent increase in traffic noise levels.

Based on the traffic analysis prepared for the project by Hexagon Transportation Consultants, Inc.,[6] existing traffic conditions on River Oaks Parkway includes 764 AM peak-hour trips and 883 PM peak-hour trips. The proposed project is calculated to generate 238 new AM peak-hour trips (61 inbound and 177 outbound) and 249 new PM peak-hour trips (148 inbound and 101 outbound). These net new trips would not double existing traffic trips on River Oaks Parkway or any access roadway segment in the project vicinity. Furthermore, this increase in trips would result in a less than 1 dBA increase in traffic noise levels along any roadway segment in the project vicinity. This increase is below a level that would be a perceptible increase and well below a level that would be considered a substantial increase in traffic noise levels. Therefore, the proposed project would not result in a substantial permanent increase in ambient noise levels from project-generated traffic trips, and mobile source operational noise impacts would be less than significant.

Stationary Noise Sources

A significant impact would occur if operational noise levels generated by stationary noise sources at the proposed project site would result in a substantial permanent increase in ambient noise levels in excess of any of the noise performance thresholds established by the City of San José. The Zoning Ordinance limits operational noise levels to 55 dBA L_{max} as measured at any receiving residential property.

Mechanical Equipment Operations

The primary new stationary noise source associated with implementation of the proposed project would be the new mechanical ventilation system operations associated with the proposed residential uses. Noise levels for residential-grade mechanical ventilation equipment systems range up to approximately 70 dBA L_{eq} at a distance of 3 feet.

The proposed project would have residential-grade mechanical ventilation equipment for each proposed residential unit. Proposed mechanical ventilation equipment could be located as close as approximately 110 feet from the nearest off-site receptor, the multi-family residence located along the west border of the project site. At this distance and with minimal shielding assumed by the building parapet, noise generated by rooftop mechanical ventilation equipment would attenuate to below 36 dBA L_{max} at the nearest off-site residential receptors. As a conservative worst-case scenario, if these operations were to occur every hour over a 24-hour period, the resulting noise level would be 30 dBA DNL as measured at this nearest receptor. The noise calculation sheets are provided in Appendix F.

[6] Hexagon Transportation Consultants, Inc. 2024. 211-251-281 River Oaks Parkway Residential Development Draft Local Transportation Analysis. June 24.

These operational noise levels would not exceed the City's noise performance thresholds of 55 dBA L_{max} as measured at the nearest residential property. Therefore, rooftop mechanical ventilation system operational noise levels would not result in a substantial permanent increase in noise levels in excess of established standards. The impact of mechanical ventilation equipment operational noise levels on sensitive off-site receptors would be less than significant.

Stationary Source Operational Noise Impact Conclusion

As shown in the analysis above, the project's stationary operational noise sources would not individually result in a substantial permanent increase in noise levels in excess of established standards as measured at the nearest receptors. Therefore, noise impacts from individual stationary operational noise sources would be less than significant.

City of San José Standard Permit Conditions

SPC NOI-1 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 units. The project applicant shall conform with any special building construction techniques requested by the City's Building Department, which may include sound-rated windows and doors, sound-rated wall constructions, and acoustical caulking.

Level of Significance Before Mitigation

Potentially significant impact.

Mitigation Measures

Project construction would exceed the City's General Plan Policy EC-1.7 construction noise standards and would temporarily result in substantial noise-generating activities for more than 12 months. To reduce this impact to less than significant, the following mitigation measure shall be applied:

MM NOI-1 Construction Noise Logistics Plan

Prior to the issuance of any grading or demolition permits, a qualified acoustical consultant shall prepare a Construction Noise Logistics Plan. The Construction Noise Logistics Plan shall include, at a minimum, the following requirements:

- Pile Driving is prohibited.
- Limit construction to the hours of 7:00 a.m. to 7:00 p.m. 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 use.

- Construct solid plywood fences around ground level construction sites adjacent to operational businesses, residences, or other noise-sensitive land uses.
- Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment.
- Prohibit unnecessary idling of internal combustion engines.
- Locate stationary noise-generating equipment such as air compressors or portable power generators as far as possible from sensitive receptors. Construct temporary noise barriers to screen stationary noise-generating equipment when located near adjoining sensitive land uses.
- Utilize "quiet" air compressors and other stationary noise sources where technology exists.
- Control noise from construction workers' radios to a point where they are not audible at existing residences bordering the project site.
- Notify all adjacent business, residences, and other noise-sensitive land uses of the construction schedule, in writing, and provide a written schedule of "noisy" construction activities to the adjacent land uses and nearby residences.
- If complaints are received or excessive noise levels cannot be reduced using the measures above, erect a temporary noise control blanket barrier along surrounding building façades that face the construction sites.
- Designate a "disturbance coordinator" who shall be responsible for responding to any complaints about construction noise. The disturbance coordinator shall determine the cause of the noise complaint (e.g., bad muffler, etc.) and shall require that reasonable measures be implemented to correct the problem. Conspicuously post a telephone number for the disturbance coordinator at the construction site and include it in the notice sent to neighbors regarding the construction schedule.

Prior to issuance of any demolition or grading permits, the project applicant shall submit a copy of the Construction Noise Logistics Plan to the Director of Planning, Building and Code Enforcement or the Director's designee, and the project applicant shall implement the requirements of the Construction Noise Logistics Plan during project construction.

Level of Significance After Mitigation

Less than significant with mitigation incorporated.

Cumulative Analysis

Construction Noise

The geographic scope of the cumulative noise analysis is limited by the range of potential noise impacts. Noise impacts tend to be localized; therefore, noise impacts for construction-related noise sources are limited to approximately 500 feet from the source. No cumulative projects are located within 500 feet of the project site that would contribute to a cumulative construction noise impact

with the project. Accordingly, there would be no cumulative construction impact. In addition, as shown in the construction noise impact analysis, with implementation of MM NOI-1, project-related construction noise impacts would not result in a substantial temporary increase in ambient noise levels as measured at the nearest sensitive receptors in the project vicinity. Therefore, the proposed project would not result in a potentially significant cumulatively considerable contribution to temporary construction noise levels in the project vicinity. This impact would be less than significant.

Operational Traffic Noise Impacts

The significance threshold for a cumulative traffic noise impact would be a substantial permanent increase in traffic noise levels in the vicinity of the project along any roadway segment that already experiences noise levels in excess of normally acceptable standards for adjacent land uses.

Based on the existing ambient noise monitoring effort (which included traffic noise sources), the existing daytime ambient noise levels in the project vicinity range from 51.1 dBA to 63.7 dBA L_{eq} adjacent to nearby residential land uses, commercial land uses, and roadways in the project vicinity. These noise levels are considered normally acceptable for nearby land uses and do not constitute an existing cumulative noise impact. In addition, based on the analysis above, implementation of the proposed project would result in a less than 1 dBA increase in traffic noise levels along any roadway segment in the project vicinity. This increase is below a level that would be a perceptible increase and well below a level that would be considered a substantial increase in traffic noise levels. Therefore, implementation of the project would not result in a potentially significant cumulatively considerable contribution to traffic noise impacts in the project vicinity, and this impact would be less than significant.

Operational Stationary Noise Impacts

The geographic scope of the cumulative noise analysis is limited by the range of potential noise impacts. Noise impacts tend to be localized; therefore, noise impacts for stationary noise sources are limited to approximately 500 feet from the source.

The significance threshold for a cumulative stationary source operational noise impact would be a substantial temporary noise increase at any location that is already exposed to excessive noise levels from stationary source operational noise. Based on the existing ambient noise monitoring effort, the existing daytime ambient noise levels in the project vicinity range from 51.1 dBA to 63.7 dBA L_{eq} adjacent to nearby residential land uses, commercial land uses, and roadways in the project vicinity. These noise levels are considered normally acceptable for nearby land uses and do not constitute an existing cumulative noise impact. Therefore, since there is not an existing cumulative stationary source noise impact in the project vicinity, implementation of the proposed project would result in a less than significant cumulative impact related to stationary source noise. In addition, as shown in the analysis above, noise generated by mechanical ventilation equipment would attenuate to below 24 dBA L_{eq} at the nearest off-site residential receptors. These noise levels would not be audible above existing ambient noise levels as measured at the nearest sensitive receptor. Therefore, implementation of the project would not result in a cumulatively considerable contribution to stationary source noise impacts in the project vicinity. This impact would be less than significant.

Level of Cumulative Significance Before Mitigation

Less than significant impact.

Mitigation Measures

None.

Level of Cumulative Significance After Mitigation

Less than significant.

Groundborne Vibration/Noise Levels

Impact NOI-2:	**The proposed project would not result in generation of excessive groundborne vibration or groundborne noise levels.**

Impact Analysis

Construction

A significant impact would occur if the proposed project would generate excessive groundborne vibration or groundborne noise levels. According to Policy EC-2.3 of the General Plan, a vibration limit of 0.08 inches per second (in/sec) peak particle velocity (PPV) shall be used to minimize the potential for cosmetic damage to sensitive historical structures, and a vibration limit of 0.20 in/sec PPV shall be used to minimize damage at buildings of normal conventional construction.

Of the variety of equipment used during construction, the small vibratory rollers anticipated to be used in the site preparation phase of construction would produce the greatest groundborne vibration levels. Small vibratory rollers produce groundborne vibration levels ranging up to 0.101 inch per second (in/sec) PPV at 25 feet from the operating equipment.

The nearest off-site structure is a multi-family residential building located along the western border of the project site, approximately 80 feet from the nearest construction footprint where a small vibratory roller would potentially operate. At this distance, groundborne vibration levels could range up to 0.02 in/sec PPV from operation of a small vibratory roller. This is well below the City's construction vibration impact criteria of 0.2 in/sec PPV for buildings of normal conventional construction, and even below the City's threshold of 0.08 in/sec PPV for sensitive historic structures.

Therefore, construction-related groundborne vibration would not exceed the City's construction vibration impact criteria as measured at the nearest receiving structures in the project vicinity. Project construction-related groundborne vibration impacts would be less than significant.

Operation

Implementation of the proposed project would not include any permanent sources that would expose persons in the project vicinity to groundborne vibration levels that could be noticeable without instruments at the lot line of the project. In addition, there are no existing significant permanent sources of groundborne vibration in the project vicinity. Therefore, project operations would not generate excessive groundborne vibration levels or expose proposed uses to excessive groundborne vibration levels, and groundborne vibration impacts would be less than significant.

Level of Significance Before Mitigation

Less than significant impact.

Mitigation Measures

None required.

Level of Significance After Mitigation

Less than significant impact.

Cumulative Analysis

Construction Vibration Impacts

Construction-related groundborne vibration impacts are very localized; therefore, only areas within approximately 50 feet of a construction site could potentially be affected by groundborne vibration resulting from construction activities. The closest pending development, the Seely Avenue Mixed-Use Project (PD22-002, 3-18127); is located approximately 0.70 mile from the project site, which is well over 50 feet from the proposed project's construction footprint. Therefore, there are no cumulative development projects undergoing construction in the Project vicinity that would constitute an existing cumulative groundborne vibration impact. Therefore, since there is not an existing cumulative groundborne vibration impact in the project vicinity, then implementation of the Specific Plan would result in a less than significant cumulative impact related to construction groundborne vibration. Therefore, implementation of the project would not result in a cumulatively considerable contribution to construction vibration impacts in the project vicinity. This impact would be less than significant.

Operational Groundborne Vibration Impacts

The only cumulatively considerable contribution to groundborne vibration conditions in the project vicinity would result from introduction of new permanent sources of groundborne vibration to an existing impacted environment. Implementation of the proposed project would not include any permanent sources that would expose persons in the project vicinity to groundborne vibration levels that could be perceptible without instruments at any existing sensitive land use in the project vicinity. In addition, there are no existing significant permanent sources of groundborne vibration in the project vicinity to which the proposed project would be exposed. Therefore, implementation of the proposed project would not result in a potentially significant cumulatively considerable contribution to ongoing operational groundborne vibration conditions in the project vicinity. This impact would be less than significant.

Level of Cumulative Significance Before Mitigation

Less than significant impact.

Mitigation Measures

None required.

Level of Cumulative Significance After Mitigation

Less than significant impact.

Excessive Noise Levels from Airport Activity

Impact NOI-3: **The proposed project would not expose people residing or working in the project area to excessive noise levels 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.**

Impact Analysis

A significant impact would occur if the proposed project would expose people residing or working in the project area to excessive noise levels for a project located within the vicinity of a private airstrip or an Airport Land Use Compatibility Plan or, where such a plan has not been adopted, within 2 miles of a public airport or public use airport.

The nearest airport to the project site is the San José Mineta International Airport, located approximately 2 miles south of the project site. Because of the distance from and orientation of the airport runways, the project site is located well outside of the 65 dBA CNEL airport noise contours.[7] While aircraft noise is occasionally audible on the project site from aircraft flyovers, aircraft noise associated with nearby airport activity would not expose people residing or working near the project site to excessive noise levels. Therefore, implementation of the proposed project would not expose persons residing or working in the project vicinity to noise levels from airport activity that would be in excess of normally acceptable standards for residential land use development, and there would be no project impact associated with airport noise.

Level of Significance Before Mitigation

No impact.

Mitigation Measures

None required.

Level of Significance After Mitigation

No impact.

Cumulative Analysis

A cumulative analysis of this threshold is not required, as the proposed project would have no contribution to a potential cumulative impact.

Level of Cumulative Significance Before Mitigation

Not applicable.

Mitigation Measures

Not applicable.

Level of Cumulative Significance After Mitigation

Not applicable.

[7] County of Santa Clara. 2024. Adopted San José International Airport 2024 Airport Land Use Compatibility Plan and Revised Airport Influence Area-Initial Study. Website: https://stgenpln.blob.core.windows.net/document/ALUC_SJC_ALUCPandAIA.pdf. Accessed: January 31, 2025.

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3.8 - Transportation and Traffic

3.8.1 - Introduction

This section describes existing conditions related to transportation in the project area as well as the relevant regulatory framework. This section also evaluates the possible impacts related to transportation that could result from implementation of the 211-281 River Oaks Parkway Residential Project (proposed project). Information in this section is based, in part, on the project-specific Local Transportation Analysis (LTA) prepared by Hexagon Transportation Consultants, Inc., dated December 20, 2024 (included as Appendix H). Two public comments were received during the Environmental Impact Report (EIR) scoping period related to transportation:

- Consider traffic from high-density projects approved but not yet developed.
- Concern about truck traffic during construction—will there be a traffic control plan?

3.8.2 - Setting

Regulatory Framework

Federal

No federal plans, policies, regulations, or laws related to transportation are applicable to the proposed project.

State

California Department of Transportation Level of Service Goals1

The California Department of Transportation (Caltrans) builds, operates, and maintains the State highway system, including the interstate highway system. Caltrans's mission is to improve mobility Statewide. The department operates under strategic goals to provide a safe transportation system, optimize throughput and ensure reliable travel times, improve the delivery of State highway projects, provide transportation choices, and improve and enhance the State's investments and resources. Caltrans controls the planning of the State highway system and accessibility to the system. Caltrans establishes Level of Service (LOS) goals for highways and works with local and regional agencies to assess impacts and develop funding sources for improvements to the State highway system. Caltrans requires encroachment permits from agencies or new development before any construction work may be undertaken within the State's right-of-way. For projects that would impact traffic flow and levels of services on State highways, Caltrans would review measures to mitigate the traffic impacts. However, Caltrans has adopted the 2013 Contra Costa Transportation Authority (CCTA) Congestion Management Plan (CMP) standards, which are the criteria used to identify impacts in the project-specific LTA and this Draft EIR.

Senate Bill 743

In November 2017, the California Governor's Office of Planning and Research (OPR) released a technical advisory containing recommendations regarding the assessment of Vehicle Miles Traveled (VMT), proposed thresholds of significance, and potential mitigation measures for lead agencies to use while implementing the required changes contained in Senate Bill (SB) 743. Also in November

2017, OPR released the proposed text for Section 15064.3, Determining the Significance of Transportation Impacts, which summarizes the criteria for analyzing Transportation impacts for land use projects and transportation projects and directs lead agencies to "choose the most appropriate methodology to evaluate a project's VMT, including whether to express the change in absolute terms, per capita, per household or in any other measure." OPR recommends that for most instances, a per service population threshold should be adopted and that a 15 percent reduction below that of existing development would be a reasonable threshold.

As noted in the OPR Guidelines, agencies are directed to choose metrics that are appropriate for their jurisdiction to evaluate the potential impacts of a project in terms of VMT. The deadline for adopting policies to implement SB 743 was July 2020; the change to VMT was formally adopted as part of updates to the California Environmental Quality Act (CEQA) Guidelines in December 2018.

The updated guidelines eliminate the use of automobile delay metrics, such as LOS, from determining significant environmental impacts from vehicle travel. VMT has been identified as the most appropriate metric to evaluate a project's Transportation impacts, as projects that result in lower-than-average VMT support goals of reducing greenhouse gas (GHG) emissions, while projects that result in higher than average levels of vehicle travel contribute to an increasing rate of greenhouse gas emissions.

Projects that are within 0.5 mile of an existing major transit stop, which is define as a rail transit station, ferry terminal served by bus or rail transit, or at the intersection of two or more major bus routes with service frequencies of 15-minutes or less during the morning and afternoon peak commute periods, are presumed to be less than significant if the project has the following characteristics:

- Has a floor area ratio (FAR) greater than 0.75.
- Does not include more parking for use by residents, customers, or employees of the project than required by the jurisdiction (if the jurisdiction requires the project to supply parking).
- Is consistent with the applicable Sustainable Communities Strategy (SCS) (as determined by the lead agency, with input from the Metropolitan Planning Organization [MPO]).
- Does not replace affordable residential units with a smaller number of moderate or high-income residential units.

If a project meets the screening requirements, it is presumed to have a less than significant impact related to VMT.

Since there are no standards in effect on VMT analysis, a preliminary assessment of the VMT generated by the proposed project was prepared for informational and disclosure purposes only. No determination on the significance of VMT impacts is made in this document since none is legally required.

Regional Regulations

Metropolitan Transportation Commission/Association of Bay Area Governments Plan Bay Area 2050

On October 21, 2021, the Metropolitan Transportation Commission (MTC) and the Executive Board of the Association of Bay Area Governments (ABAG) jointly adopted Plan Bay Area 2050 and its

related supplemental reports. The momentous milestone makes Plan Bay Area 2050 the official regional long-range plan, charting a course for a Bay Area that is affordable, connected, diverse, healthy and vibrant for all residents through 2050 and beyond.

Plan Bay Area 2050 connects the elements of housing, the economy, transportation and the environment through 35 strategies that will make the Bay Area more equitable for all residents and more resilient in the face of unexpected challenges. In the short-term, the plan's Implementation Plan identifies more than 80 specific actions for MTC, ABAG and partner organizations to take over the next five years to make headway on each of the 35 strategies.[1]

Santa Clara Valley Transportation Authority

The Santa Clara Valley Transportation Authority (VTA) is an independent special district that provides sustainable, accessible, community-focused transportation options that are innovative, environmentally responsible, and designed to promote the vitality of the region.

VTA provides bus, light rail, and paratransit services, as well as participates as a funding partner in regional rail service including Caltrain, Capitol Corridor, and the Altamont Corridor Express. As the Santa Clara County (County) congestion management agency, VTA is responsible for Countywide transportation planning, including congestion management, design and construction of specific highway, and pedestrian and bicycle improvement projects, as well as promotion of transit oriented development.

VTA provides these services throughout the County, including Campbell, Cupertino, Gilroy, Los Altos, Los Altos Hills, Los Gatos, Milpitas, Monte Sereno, Morgan Hill, Mountain View, Palo Alto, San José, Santa Clara, Saratoga and Sunnyvale. VTA continually builds partnerships to deliver transportation solutions that meet the evolving mobility needs of Santa Clara County.[2]

Local Regulations

Local Regulations City of San José General Plan

Goal TR-1 Balanced Transportation System Complete and maintain a multimodal transportation system that gives priority to the mobility needs of bicyclists, pedestrians, and public transit users while also providing for the safe and efficient movement of automobiles, buses, and trucks.

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 (VMT).

Policy TR-1.2 Consider impacts on overall mobility and all travel modes when evaluating transportation impacts of new developments or infrastructure projects.

[1] Plan Bay Area 2050. 2021. Final Plan Bay Area 2050 (2021). Website: https://planbayarea.org/finalplan2050. Accessed February 4, 2025.

[2] Santa Clara Valley Transportation Authority (VTA). 2024. About VTA. Website: https://www.vta.org/about. Accessed November 5, 2024.

Policy TR-1.4 Through the entitlement process for new development, projects shall be required to fund or construct needed transportation improvements for all transportation modes, giving first consideration to improvement of bicycling, walking and transit facilities and services that encourage reduced vehicle travel demand.

Policy TR-1.8 Actively coordinate with regional transportation, land use planning, and transit agencies to develop a transportation network with complementary land uses that encourage travel by bicycling, walking and transit, and ensure that regional greenhouse gas emissions standards are met.

Policy TR-1.9 Give priority to the funding of multimodal projects that provide the most benefit to all users. Evaluate new transportation projects to make the most efficient use of transportation resources and capacity.

Policy TR-2.1 Coordinate the planning and implementation of citywide bicycle and pedestrian facilities and supporting infrastructure. Give priority to bicycle and pedestrian safety and access improvements at street crossings and near areas with higher pedestrian concentrations (school, transit, shopping, hospital, and mixed-use areas).

Policy TR-2.2 Provide a continuous pedestrian and bicycle system to enhance connectivity throughout the City by completing missing segments. Eliminate or minimize physical obstacles and barriers that impede pedestrian and bicycle movement on City streets. Include consideration of grade separated crossings at railroad tracks and freeways. Provide safe bicycle and pedestrian connections to all facilities regularly accessed by the public, including the Mineta San José International Airport.

Policy TR-2.5 Integrate the financing, design and construction of pedestrian and bicycle facilities with street projects. Build pedestrian and bicycle improvements at the same time as improvements for vehicular circulation.

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-2.10 Coordinate and collaborate with local School Districts to provide enhanced, safer bicycle and pedestrian connections to school facilities throughout San José.

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 toward transit ridership, and require that new development is designed to accommodate and provide direct access to transit facilities.

Policy TR-4.1 Support the development of amenities and land use and development types and intensities that increase daily ridership on the VTA, BART, Caltrain, ACE and Amtrak California systems and provide positive fiscal, economic, and environmental benefits to the community.

Policy TR-8.1 Promote transit oriented development with reduced parking requirements and promote amenities around transit hubs and stations to facilitate the use of transit services.

Policy TR-8.3 Support using parking supply limitations and pricing as strategies to encourage the use of non-automobile modes.

Policy TR-8.6 Allow reduced parking requirements for mixed-use developments and for developments providing shared parking or a comprehensive Transportation Demand Management (TDM) program, or developments located near major transit hubs or within Urban Villages and other Growth Areas.

Policy CD-3.3 Within new development, create and maintain a pedestrian-friendly environment by connecting the internal components with safe, convenient, accessible, and pleasant pedestrian facilities and by requiring pedestrian connections between building entrances, other site features, and adjacent public streets.

Policy LU-9.1 Create a pedestrian-friendly environment by connecting new residential development with safe, convenient, accessible, and pleasant pedestrian facilities. Provide such connections between new development, its adjoining neighborhood, transit access points, schools, parks, and nearby commercial areas.

Policy LU-10.5 Facilitate the development of housing close to jobs to provide residents with the opportunity to live and work in the same community.

Policy Pr-8.5 Encourage all developers to install and maintain trails when new development occurs adjacent to a designated trail location. Use the City's Parkland Dedication Ordinance and Park Impact Ordinance to have residential developers build trails when new residential development occurs adjacent to a designated trail location, consistent with other parkland priorities. Encourage developers or property owners to enter into formal agreements with the City to maintain trails adjacent to their properties.

City of San José Municipal Code

TDM Requirement

To be consistent with the goals of the Envision 2040 General Plan and the Climate Smart San José Plan, the proposed project is required to provide Transportation Demand Management (TDM)

measures to meet its "TDM Points Target" (minimum of 25 TDM points for Level 1 Home-End uses) as detailed in the City's new Parking and TDM Ordinance.[3]

A TDM points evaluation was prepared using the City's TDM Checklist, and a comprehensive TDM Plan was also prepared for the proposed project. Note that annual TDM Plan compliance documentation is required for Level 1 residential projects (residential projects of 16 to 299 dwelling units [du]), but TDM monitoring reports are not.

Parking

The City of San José recently amended Title 20 of the Municipal Code to remove citywide minimum off-street vehicle parking requirements for developments, with the exception of single-family properties and areas where the City has defined contractual agreements regarding parking supply. The changes are intended to encourage the use of alternative modes of transportation, thereby reducing VMT and GHG emissions. All projects requiring a development permit that are not exempt per Municipal Code Section 20.90.900.B are required to adhere to the new parking ordinance, which includes new mandatory TDM requirements per City Council Policy 5-1.

The removal of vehicle parking requirements and the addition of TDM requirements are intended to improve consistency with Climate Smart San José and the Envision San José 2040 General Plan transportation and land use goals. Developers have the flexibility to determine the appropriate number of vehicle parking spaces based on a project's specific needs and market conditions rather than based on a minimum number of spaces determined by the City.

Though the minimum vehicle parking requirements have been removed, Chapter 20.90 of the Municipal Code continues to maintain existing minimum bicycle parking requirements for most land uses. Also included are new minimum parking requirements for "two-wheeled motorized vehicles," as opposed to "motorcycles," since not all licensed two-wheeled vehicles are considered motorcycles. The update requires most developments to provide two-wheeled motorized vehicle parking equal to 2.5 percent of the total vehicle parking provided.

Transportation Analysis Policy (City Council Policy 5-1)

As established in City Council Policy 5-1, Transportation Analysis Policy, the City of San José uses VMT as the metric to assess Transportation impacts from new development. According to the policy, a residential project's transportation impact would be less than significant if the project VMT is 15 percent or more below the existing average citywide VMT per capita. 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 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 an LTA to analyze non-CEQA transportation issues, including local transportation operations, intersection LOS, site access and circulation, and neighborhood transportation issues such as pedestrian and bicycle access and recommend

[3] City of San José. 2024. Municipal Code. Website: https://library.municode.com/ca/san_jose/codes/code_of_ordinances?nodeId=TIT20ZO_CH20.90PALOTRDEMA_PT9TRDEMA. Accessed November 5, 2024.

transportation improvements. The VMT policy does not negate Area Development policies and Transportation Development policies approved prior to adoption of Policy 5-1; however, it does negate the City's Protected Intersection policy as defined in Policy 5-3.

Existing Transportation Conditions

VMT of Existing Land Uses in the Project Area

Based on the City of San José's VMT Evaluation Tool, the existing VMT per capita in the project vicinity is 12.73 daily miles per capita. The current vicinity City average is 13.40 VMT per capita.[4,5] Thus, the VMT levels of existing land uses in the project vicinity are below the City average VMT levels.

Roadway Facilities

Regional

Regional access to the project site is provided via Interstate 880 (I-880) and State Route (SR) 237. I-880 is an eight-lane north–south freeway with three mixed-flow lanes and one High Occupancy Vehicle (HOV) lane in each direction in the project vicinity. It extends northeast to the City of Oakland and south to I-280 in the City of San José (City), at which point it transitions into SR-17 and extends to Santa Cruz. Access to the project site is provided via a full interchange at Tasman Drive. SR-237 is oriented in an east–west direction with two mixed-flow lanes and one HOV lane in each direction in the project vicinity. SR-237 provides access to the project site via a full interchange at Zanker Road and connects to I-880 approximately 1 mile east of the Zanker Road interchange.

Local

Local access to the project site is provided via Montague Expressway, North First Street, Zanker Road, Tasman Drive, River Oaks Parkway, and Cisco Way:

- **Montague Expressway** is generally an east–west designated expressway that begins at U.S. Highway 101 (US-101) and runs through north San José and Milpitas to I-680. Montague Expressway is an eight-lane roadway, including HOV lanes, and has a posted speed limit of 45 miles per hour (mph). The HOV lane designation is in effect in both directions of travel during both the AM and PM peak commute hours. During other times, the HOV lanes are open to all users. Most segments of Montague Expressway have sidewalks on one side of the street. Montague Expressway provides access to and from the project site via Zanker Road.
- **North First Street** is a north–south Grand Boulevard that extends from Downtown San José to North San José with the VTA Light Rail Transit (LRT) service running in the middle of the street. In the project vicinity, North First Street has four lanes and a posted speed limit of 45 mph. Class II bike lanes and sidewalks are provided along both sides of the street with crosswalks at the signalized intersections in the project vicinity. North First Street provides access to the site via its intersection with River Oaks Parkway.

[4] City of San José. 2021. 2021 per Capita VMT per Parcel. Website: https://csj.maps.arcgis.com/apps/instant/interactivelegend/index.html?appid=148b83cbf734426c93213082d62e7145. Accessed February 4, 2025.

[5] City of San José. 2023. Transportation Analysis Handbook. Website: https://www.sanjoseca.gov/home/showpublisheddocument/28461/638168096438270000. Accessed February 4, 2025.

- **Zanker Road** is a north–south oriented divided roadway that extends from SR-237 to the north to Old Bayshore Road to the south. In the vicinity of the project site, Zanker Road is two to three lanes in each direction and has a posted speed limit of 45 mph. It is designated a City Connector Street in the City's General Plan and has Class II bike lanes and sidewalks on both sides of the street. Zanker Road provides access to the project site via its intersection with River Oaks Parkway.
- **Tasman Drive** is an east–west Grand Boulevard that extends from Morse Avenue to the west in Sunnyvale to I-880 interchange to the east in Milpitas. East of I-880 it becomes Great Mall Parkway. In the vicinity of the project site, Tasman Drive has a four-lane cross-section west of Zanker Road and six-lane cross-section east of Zanker Road with VTA light rail service running in the middle of the street. Tasman Drive provides site access via its intersections with Zanker Road and Cisco Way. Tasman Drive has sidewalks and Class II bike lanes on both sides of the street and has a posted speed limit of 45 mph.
- **River Oaks Parkway** is generally an east–west two-lane divided roadway extending from North First Street to Montague Expressway. Southwest of Montague Expressway, it becomes East Plumeria Drive. River Oaks Parkway is designated an On-Street Primary Bicycle Facility in the City's General Plan and has Class II bike lanes and sidewalks on both sides of the street. It has a posted speed limit of 35 mph and provides direct access to the project site.
- **Cisco Way is** a two-lane undivided street that bisects the Cisco campus and connects River Oaks Parkway and Tasman Drive. It has a posted speed limit of 35 mph and sidewalks on both sides of the street. Cisco Way provides direct access to the project site.
- **Iron Point Drive** is a 450-foot-long undivided residential street that runs north-to-south along the western boundary of the project site. Iron Point Drive currently provides access to the existing residential development located west of the project site and ultimately would provide access to the affordable apartments and townhome components of the proposed project. Iron Point Drive has a sidewalk along the west side of the street only and has no bicycle facilities.

Existing Pedestrian Facilities

Pedestrian facilities in the project area consist primarily of sidewalks along the streets and crosswalks with pedestrian signal heads at the intersections. Sidewalks are found along all previously described local roadways in the study area. The existing network of sidewalks and crosswalks provides adequate connectivity for pedestrians between the project site and other surrounding land uses and transit stops. Crosswalks with pedestrian signal heads and push buttons are located at the signalized intersections in the study area. Curb ramps with truncated domes are also provided at all intersection crosswalks near the site. Truncated domes are the standard Americans with Disabilities Act (ADA) design requirement for detectable warnings which enable people with visual disabilities to determine the boundary between the sidewalk and the street.

The Coyote Creek Trail and Guadalupe River Trail are multiuse trails (Class I bikeways) that are separated from motor vehicle traffic. The closest entrance to the Coyote Creek Trail is provided northeast of the project site via Tasman Drive, approximately a 0.75-mile walk from the site. The

closest entrance to the Guadalupe River Trail is provided west of the project site via River Oaks Parkway, approximately a 0.75-mile walk from the site.

Existing Bicycle Facilities

Bicycle facilities are divided into four classes. Class I bikeways are bike paths that are physically separated from motor vehicles and offer two-way bicycle travel on a separate path. Class II bikeways are striped bike lanes on roadways that are marked by signage and pavement markings. Class III bikeways are bike routes and only have signs and/or Sharrows (bike route lane markings) to help guide bicyclists on recommended routes to certain locations. Class IV bicycle facilities (i.e., cycle tracks) are on-street bikeways that incorporate physical barriers (e.g., raised curbs, flexible bollards, vehicle parking, grade separation, etc.) to separate bicycles from the flow of vehicular traffic. There are no Class III or Class IV bicycle facilities in the project area.

There are a number of roadways in the project study area that have striped bike lanes (Class II bicycle facilities). Bike lanes currently exist on the following roadway segments:

- North First Street–Class II bike lanes between Brokaw Road and Alviso
- Zanker Road–Class II bike lanes along its entirety
- Tasman Drive–Class II bike lanes along its entirety
- River Oaks Parkway/Plumeria Drive–Class II bike lanes along its entirety

The Coyote Creek Multiuse Trail (Class I bikeway) runs along both sides of Coyote Creek and is completely separated from motor vehicle traffic. The Coyote Creek Trail extends from the northern extent of McCarthy Boulevard south to Zanker Road in San José. The closest trail access is provided north of the project site via Tasman Drive, an approximately 0.75-mile bike ride from the site.

The Guadalupe River Multiuse Trail (Class I bikeway) runs along both sides of the Guadalupe River and is completely separated from motor vehicle traffic. The Guadalupe River Trail runs from Alviso to south San José. The closest trail access is provided west of the project site via River Oaks Parkway, an approximately 0.75-mile bike ride from the site.

Existing Public Transit Service and Facilities

Existing LRT, bus and shuttle services near the project site are provided by the VTA and Altamont Commuter Express (ACE).

Light Rail Transit Service

The River Oaks LRT Station is located 0.5 mile west of the project site at the intersection of North First Street and River Oaks Parkway and serves the Santa Teresa-Baypointe LRT line (Blue Line) and Winchester-Old Ironsides LRT line (Green Line). The Cisco Way LRT Station is located 0.5 mile north of the project site at the intersection of Cisco Way and Tasman Drive and serves the Mountain View-Alum Rock LRT line (Orange Line). All three LRT lines operate with 15-minute headways during the weekday peak commute and midday hours.

Bus and Shuttle Service

VTA local bus route 20 operates along Montague Expressway near the project site. Route 20 operates between the Milpitas Bay Area Rapid Transit (BART) station and the Sunnyvale Transit Center and provides service every 30 minutes during the weekday AM and PM peak commute periods of the day. Bus stops are located along Montague Expressway within walking distance (approximately 0.5 mile) of the project site.

The ACE Brown shuttle operates along River Oaks Parkway and provides service between the Great America ACE station and south Sunnyvale. ACE provides four eastbound shuttles during the weekday AM commute period and four westbound shuttles during the weekday PM commute period. The ACE Brown shuttle stops on River Oaks Parkway in the eastbound direction directly across the street from the project site.

Emergency Access and Routes

The City of San José Fire Department requires that all portions of the buildings be within 150 feet of a fire department access road and requires a minimum of 3 feet clearance from the property line along all sides of the building.

3.8.3 - Methodology

Hexagon Transportation Consultants, Inc., prepared the LTA for the proposed project. The complete report is provided in Appendix H. The methodology of the analysis is described as follows.

Project Trip Generation

Trips generated by any new development are typically estimated based on counts of existing developments of the same land use type. A compilation of typical trip generation rates can be found in the Institute of Transportation Engineers' (ITE) Trip Generation Manual, 11th Edition (2021). Project trip generation was estimated by applying to the size of the proposed development the appropriate residential trip generation rates obtained from the ITE Trip Generation Manual. Trips that would be generated by the project were estimated using the ITE average trip rates for "Single-family Attached Housing" (Land Use 215), "Multi-family Housing Mid-rise Not Close to Rail Transit" (ITE Land Use 221), and "Affordable Housing" (Land Use 223) located in a General Urban/Suburban setting.

Screening Criteria for VMT Analysis Exemption

The City of San José's Transportation Analysis Handbook, 2023, includes screening criteria for projects that are expected to result in a less than significant VMT impact based on the project description, characteristics and/or location. Projects that meet the screening criteria do not require a CEQA transportation analysis but are typically required to provide an LTA to identify potential operational issues that may arise due to the project.

Screening Criteria for Residential Projects

1. Planned Growth Areas: Located within a Planned Growth Area as defined in the Envision San José 2040 General Plan; and

2. High-Quality Transit: Located within 0.5 mile of an existing major transit stop or an existing stop along a high-quality transit corridor; and
3. Transit-Supporting Project Density:
   - Minimum of 35 units per acre for residential projects or components;
   - If located in a General Plan Land Use Designation with 35 units per acre, the maximum density allowed in the General Plan Land Use Designation must be met; and
4. Active Transportation: Not negatively impact transit, bike, or pedestrian infrastructure.

The proposed project would meet all of the above residential screening criteria as follows:

- Is located within a Planned Growth Area (North San José). Criterion 1 met;
- Is located within 0.5 mile of high-quality transit. Criterion 2 met;
- Would have a density of 76.2 dwelling units/acre (du/acre) (737 du/9.86 acre = 76.2 du/acre). Criterion 3 met; and
- Would not negatively impact transit, bike, or pedestrian infrastructure. Criterion 4 met.

Since the proposed project would meet the City's residential screening criteria described above, no CEQA-level Transportation Analysis (i.e., VMT analysis) is required.

TDM Requirement

As discussed previously, the proposed project is required to provide TDM measures to meet its "TDM Points Target" as detailed in the City's new Parking and TDM Ordinance. A TDM points evaluation was prepared using the City's TDM Checklist and a comprehensive TDM Plan was also prepared for the proposed project. Note that annual TDM Plan compliance documentation is required for Level 1 residential projects (residential projects of 16 to 299 DUs), but TDM monitoring reports are not. This discussion is included for informational purposes and is not related to CEQA thresholds.

Parking

As discussed previously, the City recently removed minimum off-street parking requirements for developments, with the exception of single-family properties and areas where the City has defined contractual agreements regarding parking supply. The changes are intended to encourage the use of alternative modes of transportation. The analysis evaluates consistency with Title 20 including code requirements for bicycle parking.

Cumulative Analysis

The cumulative impact analysis for Transportation uses the "summary of projections" approach set forth in Title 14 California Code of Regulations Section 15130(b)(1)(B), using the General Plan. The geographic context for cumulative Transportation impacts related to a conflict with a transportation policy or plan is the North San José Planning Area, as defined in the General Plan. The analysis also considered the four cumulative projects as identified in Chapter 1.

The LTA's analysis only included the Seely Avenue Project from the cumulative projects listed in Table 3-1. The 210 Baypointe project is located about 0.75-mile away and has one study intersection in common: Zanker/Tasman. However, this intersection would operate at LOS D (City standard) under the cumulative conditions the LTA evaluated and would continue to do so with the addition of 210 Baypointe project trips. The Barber Lane project is located about 1.25 miles away and has no overlap in terms of study intersections. The 612 Main Street site is approximately 2 miles away has no overlap of study intersections.

3.8.4 - Thresholds of Significance

The Lead Agency utilizes the criteria in CEQA Guidelines Appendix G Environmental Checklist to determine whether transportation and traffic impacts are significant environmental effects. The proposed project would have a potentially significant impact if it would:

a) Conflict with a program plan, ordinance or policy of the circulation system, including transit, roadway, bicycle, 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.

3.8.5 - Project Impacts and Mitigation Measures

This section discusses potential impacts associated with the proposed project and provides mitigation measures where necessary.

Effects on Circulation System

Impact TRANS-1:	**The proposed project would not conflict with a program plan, ordinance or policy of the circulation system, including transit, roadway, bicycle and pedestrian facilities.**

Impact Analysis

Pedestrian Facilities

General Plan Policy LU-9.1 requires the creation of a pedestrian-friendly environment by connecting new residential development with high-quality pedestrian facilities by providing connections between new development, its adjoining neighborhood, transit access points, schools, parks, and nearby commercial areas. Continuous sidewalks are currently provided along River Oaks Parkway and Cisco Way and throughout the area surrounding the project site. Additionally, the proposed project would include internal streets with 5-foot sidewalks on both sides. All local bus stops would be accessible to and from the project site via existing sidewalks and crosswalks. As such, the proposed project would be connected to high-quality pedestrian facilities and would comply with Policy LU-9.1.

General Plan Policy CD-3.3 requires the creation and maintenance of a pedestrian-friendly environment. In the project vicinity, signalized intersections are equipped with countdown pedestrian signal heads and have marked crosswalks, promoting pedestrian safety. According to the LTA, the project site has adequate connectivity between the project site and nearby transit stops and other points of interest. Continuous sidewalks are present along streets in the project vicinity. Street lighting in the project vicinity is provided via overhead light posts, creating a pedestrian-friendly environment at nighttime. The proposed project would not conflict with applicable or adopted policies, plans or programs related to pedestrian facilities or otherwise decrease the performance or safety of pedestrian facilities.

Bicycle Facilities

The General Plan as well as the City's Better Bike Plan include policies that encourage bicycle use and bicycle safety. Class II bicycle lanes are provided along North First Street, Zanker Road, Tasman Drive, and River Oaks Parkway/Plumeria Drive near the project vicinity. Overall, existing bicycle facilities provide adequate connectivity between the proposed project site and the adjacent area. The proposed project would not impact these facilities. As such, the proposed project would not create a conflict with a bicycle policy. Alongside Cisco Way and River Oaks Parkway, Class II bicycle lanes would be integrated to promote alternative transportation methods.

General Plan Policy TR-2.8 requires that new developments provide on-site facilities such as bicycle storage and dedicate land to expand existing facilities or provide new facilities such as sidewalks and/or bicycle lanes/paths or share the cost of improvements. The proposed project would provide a total of 120 Class 1 and Class 2 bike stalls along with four designated motorcycle parking spots.

The City's Bike Master Plan establishes goals, policies, and actions to make bicycling a daily part of life in San José. The Master Plan includes designated bike lanes along many City streets, as well as on designated bike corridors. In order to further the goals of the City, pedestrian and bicycle facilities should be encouraged with new development projects. The proposed project would be required to provide a fair share monetary contribution toward the future Class IV protected bikeway that is planned along the River Oaks Parkway and Cisco Way project frontages as identified in the San José Better Bike Plan 2025. With this contribution, the proposed project would comply with policies related to bicycle facilities.

Transit Services

General Plan Policy TR-4.1 encourages support of development that would increase the daily ridership on VTA systems. The River Oaks LRT Station 0.5 mile west of the site and served by the Blue and Green Lines, and the Cisco Way LRT Station 0.5 mile north of the site and served by the Orange Line, provide LRT service every 15-minutes during the weekday peak commute and midday hours. VTA Local Bus Route 20, which operates along Montague Expressway and provides service every 30 minutes during the weekday peak commute hours, has stops within 0.5 mile of the project site. The ACE Brown shuttle operates along River Oaks Parkway and provides four eastbound shuttles during the weekday AM commute period and four westbound shuttles during the weekday PM commute period. The ACE Brown shuttle stops on River Oaks Parkway in the eastbound direction directly across the street from the project site.

Since the study area is served by multiple transit options, it is reasonable to assume that some residents would utilize the available transit services. It is estimated that the increase in transit ridership generated by the proposed project could be accommodated by the current available ridership capacities of the nearby transit services. Note that River Oaks Parkway and Cisco Way, which provide access to the nearby LRT stations and bus stops, both have Class II bike lanes and sidewalks. Curb ramps and pedestrian signal heads are also provided at the surrounding signalized intersections. As such, the proposed project would be compliant with General Plan Policy TR-4.1 and impacts would be less than significant.

Level of Significance Before Mitigation

Less than significant impact.

Mitigation Measures

None required.

Level of Significance After Mitigation

Less than significant impact.

Cumulative Analysis

The Circulation Element of the General Plan includes a set of balanced, long-range, multimodal transportation goals and policies that provide for a transportation network that is safe, efficient, and sustainable (minimizes environmental, financial, and neighborhood impacts). These transportation goals and policies are intended to improve multimodal accessibility to all land uses and create a city where people are less reliant on driving to meet their daily needs. The Envision San José 2040 General Plan contains the following policies to encourage the use of non-automobile transportation modes to minimize vehicle trip generation and reduce VMT:

TR-1.2 Consider impacts on overall mobility and all travel modes when evaluating transportation impacts of new developments or infrastructure projects;

TR-1.4 Through the entitlement process for new development, projects shall be required to fund or construct needed transportation improvements for all transportation modes, giving first consideration to the improvement of biking, walking and transit facilities and services that encourage reduced vehicle travel demand;

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;

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 toward transit ridership. In addition, require that new development be designed to accommodate and to provide direct access to transit facilities;

TR-8.6 Allow reduced parking requirements for mixed-use developments and for developments providing shared parking or a comprehensive Transportation Demand Management (TDM) program, or developments located near major transit hubs or within Villages and Corridors and other Growth Areas.

Implementation of General Plan Policies and Actions and conformance with mandatory ordinances and policies would substantially limit or preclude transportation policy conflicts. Moreover, there is no development currently planned in the project vicinity, and past and existing development within the geographic context were required to comply with these policies. Accordingly, cumulative impacts are less than significant.

The proposed residential project would provide multimodal infrastructure improvements and would be consistent with the General Plan's policies listed above. Based on the planned improvements, the proposed project would be consistent with the General Plan and would be considered part of the cumulative solution to meet the City's long-range transportation goals. For these reasons, and as further discussed in Impact TRANS-1, the proposed project would not have a cumulatively considerable contribution to the less than significant cumulative impacts.

Level of Cumulative Significance Before Mitigation

Less than significant impact.

Mitigation Measures

None required.

Level of Cumulative Significance After Mitigation

Less than significant impact.

Conflict with CEQA Guidelines Section 15064.3, Subdivision (b)

Impact TRANS-2: The proposed project would not conflict or be inconsistent with CEQA Guidelines Section 15064.3, subdivision (b).

Impact Analysis

Per San José Council Policy 5-1, the effects of the proposed project on VMT are evaluated using the methodology outlined in the City's Transportation Analysis Handbook. VMT is the total miles of travel by personal motorized vehicles a project is expected to generate in a day. VMT measures the full distance of personal motorized vehicle trips with one end within the project. The project-level impact analysis under CEQA uses the VMT metric to evaluate a project's transportation impact by comparing against the VMT thresholds of significance as established in the Transportation Analysis Policy. The San José VMT Evaluation Tool is used to estimate project VMT based on the project location (Assessor's Parcel Number [APN]), type of development, Project Description, and proposed trip reduction measures. The threshold of significance for development projects is shown in Table 3.8-1.

Table 3.8-1: VMT Thresholds of Significance for Development

Project Type	Significance Criteria	Current Level	Threshold
Residential	Project VMT per capita greater than (1) 15 percent below the existing citywide average VMT per capita OR (2) 15 percent below the existing regional average VMT per capita, whichever is lower	13.40 VMT per capita (citywide average)	11.39 VMT per capita
Office, Research and Development, Assisted Living	Project VMT per employee greater than 15 percent below existing regional average VMT per employee	16.53 VMT per employee (regional average)	14.05 VMT per employee
Industrial, Mini Storage	Project VMT per employee greater than existing regional average VMT per employee	16.53 VMT per employee (regional average)	16.53 VMT per employee
Retail, Lodging, Education	Net increase in existing regional total VMT	Regional Total VMT	Net Increase
Public/Quasi-Public	In accordance with the most appropriate type(s) as determined by Public Works Director	Appropriate levels listed above	Appropriate thresholds listed above
Mixed Uses	Evaluate each land use component of a mixed-use project independently and apply the threshold of significance for each land use type included	Appropriate levels listed above	Appropriate thresholds listed above
Change of Use/ Additions to Existing Development	Evaluate the full site with the change of use or additions to existing development and apply the threshold of significance for each project type included	Appropriate levels listed above	Appropriate thresholds listed above
Urban Village Plans, Station Area Plans, Specific Plans, Development Policies, Other Area Plans	Evaluate each land use component of the area plan independently and apply the threshold of significance for each land use type included	Appropriate levels listed above	Appropriate thresholds listed above

Based on the City of San José's VMT Evaluation Tool, the existing VMT per capita in the project vicinity is 12.73 daily miles per capita. The current City average is 13.40 VMT per capita.[6,7] Thus, the VMT levels of existing land uses in the project vicinity are below the City average VMT levels. The City of San José's Transportation Analysis Handbook, 2023, includes screening criteria for projects that are expected to result in a less than significant VMT impact based on the project description,

[6] City of San José 2021. 2021 per Capita VMT per Parcel. Website: https://csj.maps.arcgis.com/apps/instant/interactivelegend/index.html?appid=148b83cbf734426c93213082d62e7145. Accessed February 4, 2025.

[7] City of San José. 2023. Transportation Analysis Handbook. Website: https://www.sanjoseca.gov/home/showpublisheddocument/28461/638168096438270000. Accessed February 4, 2025.

characteristics and/or location. The proposed project would meet the City's residential screening criteria described in Section 3.2.4, Methodology, the proposed project is exempt from preparing a CEQA-level Transportation Analysis (i.e., VMT analysis). As such, impacts would be less than significant.

Level of Significance Before Mitigation

Less than significant impact.

Mitigation Measures

None required.

Level of Significance After Mitigation

Less than significant impact.

Cumulative Analysis

The geographic context for cumulative Transportation impacts related to consistency with Section 15064.3 is the North San José Planning Area, as defined in the General Plan.

General Plan Goal TR-9 aims to reduce VMT per service population by 20 percent from the 2017 level, which was 14.62 according to the General Plan EIR. Currently, the reported citywide average is 13.4 daily VMT per capita. As such, the City's goal has not been met and there is a significant cumulative impact related to VMT. Additionally, other projects in the City may generate new VMT which would be added to the regional roadway network. Any new projects would be required to mitigate their fair share of impacts. Nonetheless, the proposed project in conjunction with any other projects in the City would have a cumulatively significant impact related to VMT.

However, the proposed project's incremental contribution to cumulative impacts would not be cumulatively considerable. The proposed project would demonstrate consistency with the Envision San José 2040 General Plan to address potential cumulative impacts. The Circulation Element of the General Plan includes a set of balanced, long-range, multimodal transportation goals and policies that provide for a transportation network that is safe, efficient, and sustainable. These transportation goals and policies are intended to improve multimodal accessibility to all land uses and create a city where people are less reliant on driving to meet their daily needs. The Envision San José 2040 General Plan contains the following policies to encourage the use of non-automobile transportation modes to minimize vehicle trip generation and reduce VMT:

- Consider impacts on overall mobility and all travel modes when evaluating transportation impacts of new developments or infrastructure projects (TR-1.2).
- Through the entitlement process for new development, projects shall be required to fund or construct the needed transportation improvements for all transportation modes, giving first consideration to the improvement of biking, walking and transit facilities and services that encourage reduced vehicle travel demand (TR-1.4).
- 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 (TR-2.8).

- 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 toward transit ridership. In addition, require that new development be designed to accommodate and to provide direct access to transit facilities (TR-3.3).
- 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 (TR-8.6).

The proposed project would meet the City's residential screening criteria and would thus have a less than significant impact related to VMT. Additionally, the proposed project is located within 0.5 miles of high-quality transit (two LRT stations, one bus route, and one shuttle within 0.5 mile of the site) and is proposing a residential development density of 75 du/acre, which meets the minimum development density requirement for the Transit Employment Residential Overlay (TERO). Based on the project description, the project site's General Plan land use designation, and the site's proximity to transit, the proposed project would be consistent with the General Plan and would be considered part of the cumulative solution to meet the City's long-range multimodal transportation goals and policies. As such, the proposed project would not have a cumulatively considerable contribution to VMT. Therefore, the proposed project, in conjunction with other planned and approved projects, would result in a less than significant cumulative impact with respect to VMT.

Level of Cumulative Significance Before Mitigation

Less than significant impact.

Mitigation Measures

None required.

Level of Cumulative Significance After Mitigation

Less than significant impact.

Hazards

Impact TRANS-3:	**The proposed project would not substantially increase hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment).**

Impact Analysis

An analysis of queueing, site access and circulation, sight distance, and circulation was prepared as part of the LTA.

Driveway Design and Operations

As proposed, the project would provide seven full access driveways. One driveway on River Oaks Parkway and one driveway on Cisco Way would provide full access to the parking garage serving the

market-rate apartments. Two driveways on Cisco Way and one driveway on Iron Point Drive would provide full access to the townhomes. One driveway on Iron Point Drive would provide full access to the parking garage serving the affordable apartments, and an additional driveway on Iron Point Drive would provide access to a small loading area for the affordable apartments.

According to the City of San José Department of Transportation (SJDOT) Geometric Design Guidelines, the typical width for a two-way driveway that serves a multi-family residential development is 26 feet. This provides adequate width for vehicular ingress and egress and a reasonably short crossing distance for pedestrians. All seven driveways would meet the City's design standard for residential driveways (26 feet wide with standard curb cuts).

According to the LTA, adequate gaps in traffic along River Oaks Parkway and Cisco Way would exist to allow left turns to and from the project driveways with minimal delay. In addition, adequate width would exist to allow vehicles to pass by any stopped vehicles waiting to turn left into the project site from either roadway. Thus, operational issues related to vehicle queueing or delays at the project driveways are not expected to occur and no safety hazards would be created.

Sight Distance

The proposed project would retain some trees and add new trees along the project frontages on River Oaks Parkway, Cisco Way, and Iron Point Drive. Any new street trees added along the project frontages would be planted and maintained so that their canopies are at least 6 feet off the ground to ensure the vision of exiting drivers is not blocked. Parking is currently prohibited along the project frontages on River Oaks Parkway, Cisco Way, and Iron Point Drive. The proposed project would maintain the no parking zones along River Oaks Parkway and Cisco Way to ensure adequate sight distance is provided at those project driveways. The proposed project would provide/add on-street parking along the project frontage (east side) of Iron Point Drive, which could potentially impact sight distance and increase hazards caused by the proposed project. As such, the proposed project would implement establish 25-foot-long no parking zones (painted red curb) between the northern and central driveways, south of the central driveway, and south of the southern driveway on Iron Point Drive, which would ensure adequate sight distance is provided at the driveways along the project frontage. As such impacts would to sight distance would be less than significant.

Providing the appropriate sight distance reduces the likelihood of a collision at a driveway or intersection and provides drivers with the ability to locate sufficient gaps in traffic. Sight distance generally should be provided in accordance with Caltrans standards. The minimum acceptable sight distance is often considered the Caltrans stopping sight distance. Sight distance requirements vary depending on the roadway speeds. For River Oaks Parkway and Cisco Way, which both have a speed limit of 35 mph, the Caltrans stopping sight distance is 300 feet (based on a design speed of 40 mph). This means a driver must be able to see 300 feet down each street in both directions to locate a sufficient gap to turn out of any project driveway. For Iron Point Drive, which has a speed limit of 25 mph, the Caltrans stopping sight distance is 200 feet (based on a design speed of 30 mph). Providing adequate stopping sight distance also gives drivers traveling along these streets adequate time to react to vehicles exiting the project driveways. Adequate stopping sight distance would be provided at all seven project driveways. As such, impacts related to sight distance would be less than significant.

Level of Significance Before Mitigation

Less than significant impact.

Mitigation Measures

None required.

Level of Significance After Mitigation

Less than significant impact.

Cumulative Analysis

The geographic context for cumulative Transportation impacts related to a design hazard is the project vicinity. There are four cumulative projects located within 2-miles of the proposed project. However, as discussed in Section 3.6.3, Methodology, the LTA's analysis only included the Seely Avenue Project from the cumulative projects listed in Table 3-1. As such, the proposed project, together with the Seely Avenue Mixed-Use Project and additional projected cumulative projects anticipated in the General Plan, would be consistent with the City's General Plan policies related to transportation design features and the applicable chapters of the Municipal Code, such as Chapter 19.36 which establishes roadway design requirements for the City. As such, past, present, and projected cumulative projects, together with the proposed project, would not result in any design hazards; there would be a less than significant cumulative impact. Accordingly, cumulative impacts would be less than significant and no cumulative mitigation is necessary. Additionally, as described above, the proposed project would implement the SJDOT Geometric Design Guidelines, regarding appropriate width for driveways to ensure vehicular ingress and egress. All seven driveways would meet the City's design standards. Further, the proposed project would include appropriate site distances. Therefore, the proposed project's incremental contribution to the less than significant cumulative impacts would not be cumulatively considerable.

Level of Cumulative Significance Before Mitigation

Less than significant impact.

Mitigation Measures

None required.

Level of Cumulative Significance After Mitigation

Less than significant impact.

Emergency Access

Impact TRANS-4: The proposed project would not result in inadequate emergency access.

Impact Analysis

Construction

Typical activities related to the construction of any development could include lane narrowing and/or lane closures, sidewalk and pedestrian crosswalk closures, and bike lane closures. In the event of any type of closure, clear signage (e.g., sidewalk closure and detour signs) must be provided

to ensure vehicles, pedestrians, and bicyclists are able to adequately reach their intended destinations safely. Per City standard practice, the proposed project would be required to submit a construction management plan for City approval that addresses the construction schedule, street closures and/or detours, construction staging areas and parking, and the planned truck routes. Therefore, impacts would be less than significant impacts.

Operation

The City of San José Fire Department requires that all portions of the buildings be within 150 feet of a fire department access road and requires a minimum of 6 feet clearance from the property line along all sides of the building, a minimum of 13.5 feet of vertical clearance, and requires driveways to provide at least 20 feet of width for fire access. According to the proposed site plan, the proposed project would meet the fire access requirements. Therefore, impacts would be less than significant.

Level of Significance Before Mitigation

Less than significant impact.

Mitigation Measures

None required.

Level of Significance After Mitigation

Less than significant impact.

Cumulative Analysis

The geographic scope for the evaluation of impacts related to emergency access is limited to a 2 mile radius of the proposed project. There are four cumulative projects located within a 2 mile radius of the project site. However, as discussed in Section 3.8.3, Methodology, the LTA's analysis only included the Seely Avenue Project from the cumulative projects listed in Table 3-1.As such, the proposed project, together with past, present, and projected cumulative projects anticipated in the General Plan, would be consistent with the City's Emergency Plan. Past and current projects would be consistent with regulations and requirements in the zoning code and, therefore, the combined development of these projects would have a less than significant cumulative impact related to emergency access. Moreover, the proposed project would not have a cumulatively considerable contribution to these less than significant impacts, as discussed above in Impact TRANS-4.

Level of Cumulative Significance Before Mitigation

Less than significant impact.

Mitigation Measures

None required.

Level of Cumulative Significance After Mitigation

Less than significant impact.

Non-CEQA Considerations

Trip Generation

For informational purposes the following information is provided related to trip generation; however, trip generation estimates are not used as a metric for identifying significant impacts on the environment. The proposed residential project is estimated to generate 2,889 new daily vehicle trips, with 238 new trips (61 inbound and 177 outbound) occurring during the AM peak-hour and 249 new trips (148 inbound and 101 outbound) occurring during the PM peak-hour (see Table 3.6-1).

Table 3.8-2: Project Trip Generation Estimates

Land Use	Size	Daily		AM Peak-hour				PM Peak-hour			
					Trip				Trip		
		Rate	Trips	Rate	In	Out	Total	Rate	In	Out	Total
Townhomes[1]	100 Dwelling Units	7.20	720	0.48	15	33	48	0.57	32	25	57
Market-Rate Apartments[1]	505 Dwelling Units	4.54	2,293	0.37	43	144	187	0.39	120	77	197
Affordable Apartments[1]	132 Dwelling Units	4.81	635	0.50	19	47	66	0.46	36	25	61
Gross Project Trips	—	—	**3,648**	—	**77**	**224**	**301**	—	**188**	**127**	**315**
Location-Based Vehicle Mode Share (12%)[2]	—	—	(438)	—	(9)	(27)	(36)	—	(23)	(15)	(38)
Project-specific Trip Reduction (10%) [3]	—	—	(321)	—	(9)	(20)	(27)	—	(17)	(11)	(28)
Total Net Project Trips	—	—	**2,889**	—	**61**	**177**	**238**	—	**148**	**101**	**249**

Notes:

[1] Trip generation based on average rates contained in the ITE Trip Generation Manual, 11th Edition, for Single-family Attached Housing (Land Use 215), Multi-family Housing Mid-rise Not Close to Rail Transit (Land Use 221), and Affordable Housing (Land Use 223) located in a General Urban/Suburban setting. Rates expressed in trips per dwelling unit (du).

[2] A 12 percent trip reduction was applied to the proposed project based on the location-based vehicle mode share percent outputs (Table 17 of Transportation Analysis Handbook) produced from the San José Travel Demand Model for place type: Suburban with Multi-family Housing.

[3] A 10 percent trip reduction was applied to the proposed project based on the external trip adjustments obtained from the City's VMT Evaluation Tool. This reduction reflects the increase in residential density for the site and 18 percent affordable housing component of the proposed project. It is assumed that every percent reduction in VMT per capita is equivalent to a 1 percent reduction in peak-hour vehicle trips.

Intersection Queueing Analysis

The intersection queueing analysis is based on vehicle queueing for left-turn movements at intersections near the project site where the project would add a noteworthy number of trips (10 or more peak-hour vehicle trips per lane). Based on the project trip distribution pattern and trip assignment, five intersections were evaluated as part of the queueing analysis. According to the LTA's queueing analysis, all the left-turn movements evaluated would provide adequate vehicle storage for the estimated vehicle queues under all traffic scenarios.

TDM Requirements

All projects requiring a development permit that are not exempt per Municipal Code Section 20.90.900.B are required to adhere to the new Parking and TDM Ordinance (Ordinance No. 30857), which includes new mandatory TDM requirements. To be consistent with the goals of the Envision 2040 General Plan and the Climate Smart San José Plan, most projects are required to provide a TDM Plan that meets the "TDM Points Target" as detailed in the City's new Ordinance. The City of San José's TDM Points Checklist is used to calculate the TDM points associated with each TDM measure included in the TDM Plan.

TDM Screening Criteria

The City of San José Transportation Analysis Handbook, 2023 provides TDM screening criteria for development projects. The TDM screening criteria for residential projects are described below.

TDM Screening Criteria for Residential Projects

1. Affordability: Includes 100 percent affordable units; and
2. High-Quality Transit: Located within 0.5 mile of an existing major transit stop or an existing stop along a high-quality transit corridor; and
3. Transit-Supporting Project Density:
   - Minimum of 35 units per acre for residential projects or components;
   - If located in a General Plan Land Use Designation with 35 units per acre, the maximum density allowed in the General Plan Land Use Designation must be met.

The proposed project would meet all but one of the above residential screening criteria as follows:

- Is a 100 percent affordable housing development = Criterion 1 not met;
- Is located within a 0.5-mile of high-quality transit = Criterion 2 met;
- Would have a density of 75 du/ac (737 DU / 9.82 AC = 75 du/ac) = Criterion 3 met.

The proposed project would not meet the City's residential screening criteria because it would not include 100 percent restricted affordable residential units. Therefore, a TDM Checklist that meets the TDM Points Target and associated TDM Plan are required. The proposed project meets the definition of a Level 2 residential project (residential projects of 300 dwelling units or more) and is categorized as a Level 2 Home-End Use per the Municipal Code. Level 2 project (referred to as "large projects") require both annual TDM Plan compliance documentation and annual monitoring reports.

TDM Checklist

The City of San José's TDM Points Checklist was used to calculate the TDM points for the proposed residential project. As shown in the checklist, the project would achieve the 25-point TDM requirement by providing the following project characteristics, parking attributes, and programmatic TDM measures:

- MI03: Provide Pedestrian Network Improvements–1 TDM Point
- PK01: Right-Size Off-Site Vehicle Parking Supply–20 TDM Points
- TP04: Provide Education, Marketing and Outreach–1 TDM Point
- TP16: Unbundle Parking Costs from Property Costs–2 TDM Points
- TP18: Provide a Voluntary Travel Behavior Change Program–1 TDM Point

3.9 - Tribal Cultural Resources

3.9.1 - Introduction

This section describes the existing Tribal Cultural Resources (TCRs) setting in the region and project area as well as the relevant regulatory setting. This section also evaluates the possible impacts related to TCRs that could result from implementation of the proposed project. Information in this section is based on information provided by the Native American Heritage Commission (NAHC), subsequent consultation with Tribal representatives identified by the NAHC who may have interest in or additional information on TCRs that may be impacted by project development (Appendix D). In addition, recommendations provided in the River Oaks Parkway Residential Project Phase I Cultural Resources Assessment (Phase I CRA) pertaining to feasible mitigation of identified potential significant impacts to TCRs are also addressed in this section. No public comments were received during the Environmental Impact Report (EIR) scoping period related to TCRs.

3.9.2 - Environmental Setting

Overview

The term "Tribal Cultural Resources" encompasses TCRs and burial sites. Below is a brief summary of each component:

- **Tribal Cultural Resources:** TCRs include sites, features, places, or objects that are of cultural value to one or more California Native American Tribes.
- **Native American Burial Sites and Cemeteries:** Burial sites and cemeteries are formal or informal locations where human remains have been interred and that are of cultural value to one or more California Native American Tribes.

Overall Tribal Cultural Resources Setting

Following is a brief overview of the relevant pre-contact, ethnography, and historic background, providing context in which to understand the background and relevance of sites found in the general project vicinity. This section is not intended to be a comprehensive review of the current academic resources available; rather, it serves as a general overview. Unless otherwise stated, information contained in this section is drawn directly from the Phase I CRA conducted by FirstCarbon Solutions (FCS). Further details can be found in ethnographic studies, mission records, and major published sources referenced in the Phase I CRA.[1]

Pre-contact Background and Ethnographic Background

In general, archaeological research in the greater San Francisco Bay Area has focused on coastal areas, where large shellmounds were relatively easily identified on the landscape. This research and its chronological framework, however, is relevant to and has a bearing on our understanding of prehistory in areas adjacent to the San Francisco Bay, including modern Santa Clara County.

[1] FirstCarbon Solutions (FCS). 2024. River Oaks Parkway Residential Project Phase I Cultural Resource Assessment. October.

The San Francisco Bay Area supported a dense population of hunter-gatherers over thousands of years, leaving a rich and varied archaeological record. The Bay Area was a place of incredible language diversity, with seven languages spoken at the time of Spanish settlement in 1776. The diverse ecosystem of the San Francisco Bay and surrounding lands supported an average of three to five persons per square mile but reached 11 persons per square mile in the North Bay. At the time of Spanish contact, the people of the Bay Area were organized into local tribelets that defended fixed territories under independent leaders. Typically, individual Bay Area tribelets included 200 to 400 people distributed among three to five semi-permanent villages, within territories measuring approximately 10 to 12 miles in diameter.

Native American occupation and use of the greater Bay Area, including the regions comprising Concord and Oakley, extended over 5,000–7,000 years and possibly longer. Early archaeological investigations in Central California were conducted at sites located in the Sacramento-San Joaquin Delta region. The first published account documents investigations in the Lodi and Stockton area. The initial archaeological reports typically contained descriptive narratives, with more systematic approaches sponsored by Sacramento Junior College in the 1930s. At the same time, University of California at Berkeley excavated several sites in the lower Sacramento Valley and Delta region, which resulted in recognizing archaeological site patterns based on a variation of intersite assemblages. Research during the 1930s identified temporal periods in Central California prehistory and provided an initial chronological sequence. In 1939, researcher Jeremiah Lillard of Sacramento Junior College noted that each cultural period led directly to the next and that influences spread from the Delta region to their regions in Central California. In the late 1940s and early 1950s, researcher Richard Beardsley of the University of California Berkeley documented similarities in artifacts among sites in the San Francisco Bay region and the Delta and refined his findings into a cultural model that ultimately became known as the Central California Taxonomic System (CCTS). This system proposed a uniform, linear sequence of cultural succession.

To address some of the flaws in the CCTS system, D.A. Fredrickson introduced a revision that incorporated a system of spatial and cultural integrative units. Fredrickson separated cultural, temporal, and spatial units from each other and assigned them to six chronological periods: Paleo-Indian (12,000 to 8000 years Before Present [BP]; Lower, Middle, and Upper Archaic [8000 to 1500 BP], and Emergent [Upper and Lower, 1500 to 250 BP]). The suggested temporal ranges are similar to earlier horizons, which are broad cultural units that can be arranged in a temporal sequence. In addition, Fredrickson defined several patterns—a general way of life shared within a specific geographical region. These patterns include:

- Windmiller Pattern or Early Horizon (4500 to 3500 BP)
- Berkeley Pattern or Middle Horizon (3500 to 1500 BP)
- Augustine Pattern or Late Horizon (1500 to 250 BP)

Brief descriptions of these temporal ranges and their unique characteristics are as follows:

Windmiller Pattern or Early Horizon (4500 to 3500 BP)

Characterized by the Windmiller Pattern, the Early Horizon was centered in the Cosumnes district of the Delta and emphasized hunting rather than gathering, as evidenced by the abundance of

projectile points in relation to plant processing tools. Additionally, atlatl, dart, and spear technologies typically included stemmed projectile points of slate and chert but minimal obsidian. The large variety of projectile point types and faunal remains suggests exploitation of numerous types of terrestrial and aquatic species. Burials occurred in cemeteries and intra-village graves. These burials typically were ventrally extended, although some dorsal extensions are known with a westerly orientation and a high number of grave goods. Trade networks focused on acquisition of ornamental and ceremonial objects in finished form rather than on raw material. The presence of artifacts made of exotic materials such as quartz, obsidian, and shell indicate an extensive trade network that may represent the arrival of Utian populations into Central California. Also indicative of this period are rectangular *Haliotis* and *Olivella* shell beads, and charmstones that usually were perforated.

Berkeley Pattern or Middle Horizon (3500 to 1500 BP)

The Middle Horizon is characterized by the Berkeley Pattern, which displays considerable changes from the Early Horizon. This period exhibited a strong milling technology represented by minimally shaped cobble mortars and pestles, although metates and manos were still used. Dart and atlatl technologies during this period were characterized by non-stemmed projectile points made primarily of obsidian. Fredrickson suggests that the Berkeley Pattern marked the eastward expansion of Miwok groups from the San Francisco Bay Area. Compared with the Early Horizon, there is a higher proportion of grinding implements at this time, implying an emphasis on plant resources rather than on hunting. Typical burials occurred within the village with flexed positions, variable cardinal orientation, and some cremations. As noted by Lillard, the practice of spreading ground ochre over the burial was common at this time. Grave goods during this period are generally sparse and typically include only utilitarian items and a few ornamental objects. However, objects such as charmstones, quartz crystals, and bone whistles occasionally were present, which suggest the religious or ceremonial significance of the individual. During this period, larger populations are suggested by the number and depth of sites compared with the Windmiller Pattern. According to Fredrickson, the Berkeley Pattern reflects gradual expansion or assimilation of different populations rather than sudden population replacement and a gradual shift in economic emphasis.

Augustine Pattern or Late Horizon (1500 to 250 BP)

The Late Horizon is characterized by the Augustine Pattern, which represents a shift in the general subsistence pattern. Changes include the introduction of bow-and-arrow technology and, most importantly, acorns became the predominant food resource. Trade systems expanded to include raw resources as well as finished products. There are more baked clay artifacts and extensive use of Haliotis ornaments of many elaborate shapes and forms. According to Moratto, burial patterns retained the use of flexed burials with variable orientation, but there was a reduction in the use of ochre and widespread evidence of cremation. Judging from the number and types of grave goods associated with the two types of burials, cremation seems to have been reserved for individuals of higher status, whereas other individuals were buried in flexed positions. Johnson suggests that the Augustine Pattern represents expansion of the Wintuan population from the north, which resulted in combining new traits with those established during the Berkeley Pattern.

Central California research has expanded from an emphasis on defining chronological and cultural units to a more comprehensive look at settlement and subsistence systems. This shift is illustrated by the early use of burials to identify mortuary assemblages and more recent research using osteological data to determine the health of prehistoric populations. Although debate continues over a single model or sequence for California, the framework consisting of three temporal/cultural units is generally accepted, although the identification of regional and local variation is a major goal of current archaeological research.

Native American Background

The Ohlone (Costanoan)

At the time of European contact in the eighteenth century, the San Francisco Bay and Monterey Bay areas were occupied by the Costanoan-speaking Native American tribelets. The Costanoan group designates a linguistic family consisting of eight different, yet related, languages. The eight languages are the Karkin, Ramaytush, Chochenyo, Tamyen, Awaswas, Chalon, Mutsun, and Rumsen. The Costanoan languages were quite different from one another, with each language being related to its geographically contiguous neighbors. The term "Costanoan" comes from the Spanish word *Costanos* which means coast people. There are two other terms that were used to identify the Costanoan-speaking people, Olhonean and Mutsun. Olhonean is the name of a tribelet, olxon, that is in San Mateo County near the San Gregorio Creek. Mutsun is the name of the village in a place called Natividad, which is in the hills that is between the Salinas and Pajaro rivers.

The arrival of Costanoan-speaking groups into the Bay Area appears to be temporally consistent with the appearance of the Late Horizon artifact assemblage in the archaeological record, as documented at sites such as the Emeryville Shellmound or the Ellis Landing Shellmound. It is probable that the Costanoan moved south and west from the Delta region of the San Joaquin-Sacramento River region into the Bay Area. The Tribal group that most likely occupied the project site is the Tamyen language group or Santa Clara Costanoan, whose territory extended from the south end of the San Francisco Bay to the lower end of the Santa Clara Valley.

The various Costanoan Tribes subsisted as hunter-gatherers and relied on local terrestrial and marine flora and fauna for subsistence. The predominant plant food source was the acorn, but they also exploited a wide range of other plants, including various seeds, buckeye, berries, and roots. Protein sources included grizzly bear, elk, sea lions, antelope, and black-tailed deer, as well as smaller mammals such as raccoon, brush rabbit, ground squirrels, and wood rats. Waterfowl, including Canadian geese, mallards, green-winged teal, and American widgeon, were captured in nets using decoys to attract them. Fish also played an important role in the Costanoan diet and included steelhead, salmon, and sturgeon.

The Costanoan constructed watercraft from tule reeds and possessed bow-and-arrow technology. They fashioned blankets from sea otter pelts, fabricated basketry from twined reeds of various types, and assembled a variety of stone and bone tools in their assemblages. Costanoan villages typically consisted of domed dwelling structures, communal sweathouses, dance enclosures, and assembly houses constructed from thatched tule reeds and a combination of wild grasses, wild alfalfa, and ferns.

The Costanoan were politically organized into autonomous tribelets that had distinct cultural territories. Individual tribelets contained one or more villages with several seasonal camps for resource procurement within the tribelet territory. The tribelet chief could be either male or female, and the position was inherited patrilineally, but approval of the community was required. The tribelet chief and council were essentially advisers to the community and were responsible for feeding visitors and directing hunting and fishing expeditions, ceremonial activities, and warfare on neighboring tribelets.

The first European contact with the Costanoan, specifically the Rumsen triblets, was in 1602, when Sebastian Vizcaíno's expedition arrived in Monterey. The estimated Costanoan population in 1770—when the first mission was established in Ohlone territory—was approximately 10,000. By 1832, the population had declined to fewer than 2,000, mainly due to diseases introduced by the European explorers and settlers. When the Spanish mission system rapidly expanded across California, the Costanoan traditional way of life was irreversibly altered. The pre-contact hunter-gatherer subsistence economy was replaced by an agricultural economy, and the Spanish missionaries prohibited traditional social activities. After secularization of the missions between 1834 and 1836, some Native Americans returned to traditional religious and subsistence practices while others labored on Mexican ranchos. Thus, multi-ethnic Indian communities grew up in and around the area and provided informant testimony to ethnologists from 1878 to 1933.

The California Gold Rush brought further disease to the Native inhabitants, and by the 1850s, nearly all of the Costanoan-speaking groups had adapted in some way or another to economies based on cash income. Hunting and gathering activities continued to decline and were rapidly replaced with economies based on ranching and farming. The Costanoan languages most likely went extinct by 1935. By the 1970s the estimated number of Costanoan descendants or Ohlone descendants in the San Francisco Bay Area was approximately 200. The descendants of the Costanoan united to form the Ohlone Indian Tribe and received ownership of the Ohlone Indian Cemetery where their ancestors of Mission San José are buried. Some of the Costanoan descendants in the Monterey Bay area prefer the term "Ohlone," which comes from the name of a village on the San Francisco Peninsula.

3.9.3 - Methodology

Records Searches to Identify Existing Tribal Cultural Resources

The information in this section is based, in part, on the Phase I CRA prepared for the proposed project by FCS in October 2024. The Phase I CRA used the methods below to analyze the potential impacts of project implementation.

NAHC Sacred Lands File Search and Tribal Correspondence

On April 30, 2024, FCS sent a request to the NAHC in an effort to determine whether any sacred sites are listed on its Sacred Lands File (SLF) for the project site. A response was received on May 6, 2024, indicating that the SLF search produced a negative result for Native American cultural resources in the project area. The NAHC included a list of 18 Tribal representatives available for consultation. To ensure that all Native American knowledge and concerns over potential TCRs that may be affected

by the implementation of the proposed project are addressed, a letter containing project information and requesting any additional information was sent to each Tribal representative on May 10, 2024. No responses have been received to date.

Summary of Existing Tribal Cultural Resources at the Project Site

While no TCRs have been recorded within the project site, it is possible they could be discovered during project construction.

3.9.4 - Regulatory Framework

Federal

National Historic Preservation Act

The National Historic Preservation Act of 1966 (NHPA), as amended, established the National Register of Historic Places (NRHP), which contains an inventory of the nation's significant prehistoric and historic properties. Under the Code of Federal Regulations (CFR) 36 CFR 60, a property is recommended for possible inclusion on the NRHP if it is at least 50 years old, has integrity, and meets one of the following criteria:

- It is associated with significant events in history, or broad patterns of events.
- It is associated with significant people in the past.
- It embodies the distinctive characteristics of an architectural type, period, or method of construction; or it is the work of a master or possesses high artistic value; or it represents a significant and distinguishable entity whose components may lack individual distinction.
- It has yielded, or may yield, information important in history or prehistory.

Certain types of properties are usually excluded from consideration for listing in the NRHP, but they can be considered if they meet special requirements in addition to meeting the criteria listed above. Such properties include religious sites, relocated properties, graves and cemeteries, reconstructed properties, commemorative properties, and properties that have achieved significance within the past 50 years.

Archaeological Resources Protection Act

The Archaeological Resources Protection Act (ARPA) amended the Antiquities Act of 1906 (16 United States Code [USC] 431–433) and set a broad policy that archaeological resources are important to the nation and should be protected and required special permits before the excavation or removal of archaeological resources from public or Indian lands. The purpose of ARPA was to secure, for the present and future benefit of the American people, the protection of archaeological resources and sites that are on public lands and Indian lands and to foster increased cooperation and exchange of information between governmental authorities, the professional archaeological community, and private individuals having collections of archaeological resources and data that were obtained before October 31, 1979.

American Indian Religious Freedom Act

The American Indian Religious Freedom Act (AIRFA) established federal policy to protect and preserve the inherent rights of freedom for Native groups to believe, express, and exercise their traditional religions. These rights include but are not limited to access to sites, use and possession of sacred objects, and freedom to worship through ceremonials and traditional rites.

Native American Graves Protection and Repatriation Act

The Native American Graves Protection and Repatriation Act (NAGPRA) of 1990 sets provisions for the intentional removal and inadvertent discovery of human remains and other cultural items from federal and Tribal lands. It clarifies the ownership of human remains and sets forth a process for repatriation of human remains and associated funerary objects and sacred religious objects to the Native American groups claiming to be lineal descendants or culturally affiliated with the remains or objects. It requires any federally funded institution housing Native American remains or artifacts to compile an inventory of all cultural items within the museum or with its agency and to provide a summary to any Native American Tribe claiming affiliation.

State

CEQA Guidelines Section 15064.5(a)–CEQA Definition of Historical Resources

California Environmental Quality Act (CEQA) Guidelines Section 15064.5(a), in Title 14 of the California Code of Regulations, defines a "historical resource" as:

(1) A resource listed in, or determined to be eligible by the State Historical Resources Commission, for listing in the California Register of Historical Resources.

(2) A resource included in a local register of historical resources, as defined in Section 5020.1(k) of the Public Resources Code or identified as significant in a historical resource survey meeting the requirements of Section 5024.1(g) of the Public Resources Code, shall be presumed to be historically or culturally significant. Public agencies must treat any such resource as significant unless the preponderance of evidence demonstrates that it is not historically or culturally significant.

(3) Any object, building, structure, site, area, place, record, or manuscript which a lead agency determines to be historically significant or significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, or cultural annals of California may be considered to be a historical resource, provided the lead agency's determination is supported by substantial evidence in light of the whole record. Generally, a resource shall be considered by the lead agency to be "historically significant" if the resource meets the criteria for listing on the California Register of Historical Resources.

(4) The fact that a resource is not listed in, or determined to be eligible for listing in the California Register of Historical Resources, not included in a local register of historical resources (pursuant to Section 5020.1(k) of the Public Resources Code), or identified in a historical resources survey (meeting the criteria in Section 5024.1(g) of the Public Resources Code) does not preclude a lead agency from determining that the resource may be a historical resource as defined in Public Resources Code Sections 5020.1(j) or 5024.1.

Therefore, under the CEQA Guidelines, even if a resource is not included on any local, State, or federal register or identified in a qualifying historical resources survey, a lead agency may still determine that any resource is a historical resource for the purposes of CEQA if there is substantial evidence supporting such a determination. A lead agency must consider a resource to be historically significant if it finds that the resource meets the criteria for listing in the California Register of Historical Resources (CRHR).

Archaeological and historical sites are protected pursuant to a wide variety of State policies and regulations, as enumerated in the Public Resources Code. Cultural resources are recognized as nonrenewable resources and receive additional protection under the Public Resources Code and CEQA.

Public Resources Code Section 5024.1 and CEQA Guidelines Section15064.5(a)—Definition of a Historic Resource

Public Resources Code Section 5024.1 and CEQA Guidelines Section 15064.5(a), in Title 14 of the California Code of Regulations, define a "historical resource" as a resource that:

(1) Is associated with events that have made a significant contribution to the broad patterns of California's history and cultural heritage.

(2) Is associated with the lives of persons important in our past.

(3) Embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of an important creative individual, or possesses high artistic values.

(4) Has yielded, or may be likely to yield, information important in prehistory or history.

CEQA Guidelines Section 15064.5(a)(3)—California Register of Historical Resources Criteria

As defined by CEQA Guidelines, Section 15064.5(a)(3) (A-D), a resource shall be considered historically significant if the resource meets the criteria for listing on the CRHR. The CRHR and many local preservation ordinances have employed the criteria for eligibility to the NRHP as a model (see criteria described above under the discussion of the NHPA), since the NHPA provides the highest standard for evaluating the significance of historic resources. A resource that meets NRHP criteria is clearly significant. In addition, a resource that does not meet NRHP standards may still be considered historically significant at a local or State level.

CEQA Guidelines 15064.5(c)—Effects on Archaeological Resources

CEQA Guidelines state that a resource need not be listed on any register to be found historically significant. CEQA Guidelines direct lead agencies to evaluate archaeological sites to determine whether they meet the criteria for listing in the CRHR. If an archaeological site is a historical resource, in that it is listed or eligible for listing in the CRHR, potential adverse impacts to it must be considered. If an archaeological site is considered not to be a historical resource but meets the definition of a "unique archaeological resource" as defined in Public Resources Code Section 21083.2, then it would be treated in accordance with the provisions of that section.

CEQA Guidelines Section 15064.5(d)—Effects on Human Remains

Native American human remains and associated burial items may be significant to descendant communities and/or may be scientifically important for their informational value. They may be significant to descendant communities for patrimonial, cultural, lineage, and religious reasons. The specific stake of some descendant groups in ancestral burials is a matter of law for some groups, such as Native Americans (CEQA Guidelines § 15064.5(d); Public Resources Code [PRC] § 5097.98). CEQA and other State regulations regarding Native American human remains provide the following procedural requirements to assist in avoiding potential adverse effects on human remains within the contexts of their value to both descendant communities and the scientific community:

- When an initial study identifies the existence or probable likelihood that a project would affect Native American human remains, the lead agency is to contact and work with the appropriate Native American representatives identified through the NAHC to develop an agreement for the treatment and disposal of the human remains and any associated burial items (CEQA Guidelines § 15064.5(d); PRC § 5097.98).
- If human remains are accidentally discovered, the County Coroner must be contacted. If the County Coroner determines that the human remains are Native American, the coroner must contact the NAHC within 24 hours. The NAHC must identify the most likely descendant (MLD) to provide for the opportunity to make recommendations for the treatment and disposal of the human remains and associated burial items.
- If the MLD fails to make recommendations within 24 hours of notification or the project applicant rejects the recommendations of the MLD, the Native American human remains and associated burial items must be reburied in a location not subject to future disturbance within the project site (PRC § 5097.98).
- If potentially affected human remains or a burial site may have scientific significance, whether or not it has significance to Native Americans or other descendant communities, then under CEQA, the appropriate mitigation of effect may require the recovery of the scientific information of the remains/burial through identification, evaluation, data recovery, analysis, and interpretation (CEQA Guidelines § 15064.5(c)(2)).

Health and Safety Code Section 7050.5 (Treatment of Human Remains)

Section 7050.5 of the Health and Safety Code sets forth provisions related to the treatment of human remains. As the code states, “every person who knowingly mutilates or disinters, wantonly disturbs, or willfully removes any human remains in or from any location other than a dedicated cemetery without authority of law is guilty of a misdemeanor” except under circumstances as provided in Section 5097.99 of the Public Resource Code. The regulations also provide guidelines for the treatment of human remains found in locations other than a dedicated cemetery, including responsibilities of the Coroner.

Public Resources Code Section 5097.98 (Discovery of Human Remains)

Section 5097.98 provides protocol for the discovery of human remains. It states that “whenever the commission receives notification of a discovery of Native American human remains from a County Coroner pursuant to subdivision (c) of Section 7050.5 of the Health and Safety Code, it shall

immediately notify persons believed to be most likely descended from the deceased Native American." It also sets forth provisions for descendants' preferences for treatment of the human remains and what should be done if the commission is unable to identify a descendant.

California Public Resources Code Section 5097.91–Native American Heritage Commission

Section 5097.91 of the Public Resources Code established the NAHC, whose duties include the inventory of places of religious or social significance to Native Americans and the identification of known graves and cemeteries of Native Americans on private lands. Under Section 5097.91 of the Public Resources Code, a State policy of noninterference with the free expression or exercise of Native American religion was articulated along with a prohibition of severe or irreparable damage to Native American sanctified cemeteries, places of worship, religious or ceremonial sites or sacred shrines located on public property. Section 5097.98 of the Public Resources Code specifies a protocol to be followed when the NAHC receives notification of a discovery of Native American human remains from a County Coroner. Section 5097.5 defines as a misdemeanor the unauthorized disturbance or removal of archaeological, historic, or paleontological resources located on public lands.

California Senate Bill 18–Protection of Tribal Cultural Places

Senate Bill (SB) 18 (California Government Code § 65352.3) incorporates the protection of California traditional Tribal cultural places into land use planning for cities, counties, and agencies by establishing responsibilities for local governments to contact, refer plans to, and consult with California Native American Tribes as part of the adoption or amendment of any general or specific plan proposed on or after March 1, 2005. SB 18 requires public notice to be sent to Tribes listed on the NAHC SB 18 Tribal Consultation list within the geographical areas affected by the proposed changes. Tribes must respond to a local government notice within 90 days (unless a shorter time frame has been agreed upon by the Tribe), indicating whether or not they want to consult with the local government. Consultations are for the purpose of preserving or mitigating impacts to places, features, and objects described in Sections 5097.9 and 5097.993 of the Public Resources Code that may be affected by the proposed adoption or amendment to a general or specific plan.

California Assembly Bill 52—Effects on Tribal Cultural Resources

Assembly Bill (AB) 52 was signed into law on September 25, 2014, and provides that any public or private "project with an effect that may cause a substantial adverse change in the significance of a Tribal Cultural Resource is a project that may have a significant effect on the environment." TCRs include "[s]ites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American Tribe that are eligible for inclusion in the California Register of Historical Resources or included in a local register of historical resources." Under prior law, TCRs were typically addressed under the umbrella of "Cultural Resources," as discussed above. AB 52 formally added the category of "Tribal Cultural Resources" to CEQA and extended the consultation and confidentiality requirements to all projects, rather than just projects subject to SB 18 as discussed above.

The parties must consult in good faith, and consultation is deemed concluded when either: (1) the parties agree to measures to mitigate or avoid a significant effect on a Tribal Cultural Resource (if such a significant effect exists); or (2) when a party concludes that mutual agreement cannot be

reached. Mitigation measures agreed upon during consultation must be recommended for inclusion in the environmental document. AB 52 also identifies mitigation measures that may be considered to avoid significant impacts if there is no agreement on appropriate mitigation. Recommended measures include:

- Preservation in place
- Protecting the cultural character and integrity of the resource
- Protecting the traditional use of the resource
- Protecting the confidentiality of the resource
- Permanent conservation easements with culturally appropriate management criteria

California Public Resources Code Section 21074—Effects on Tribal Cultural Resources

AB 52 amended the CEQA statute to identify an additional category of resource to be considered under CEQA, called "Tribal Cultural Resources" and added Public Resource Code Section 21074, which defines "Tribal Cultural Resources" as follows:

(a) "Tribal Cultural Resources" are either of the following:
  (1) Sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American Tribe that are either of the following:
    A) Included or determined to be eligible for inclusion in the CRHR.
    B) Included in a local register of historical resources as defined in subdivision (k) of Section 5020.1.
  (2) 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 Section 5024.1. In applying the criteria set forth in subdivision (c) of Section 5024.1 for the purposes of this paragraph, the lead agency shall consider the significance of the resource to a California Native American Tribe.

(b) A cultural landscape that meets the criteria of subdivision (a) is a Tribal Cultural Resource to the extent that the landscape is geographically defined in terms of the size and scope of the landscape.

(c) A historical resource described in Section 21084.1, a unique archaeological resource as defined in subdivision (g) of Section 21083.2, or a "nonunique archaeological resource" as defined in subdivision (h) of Section 21083.2 may also be a Tribal Cultural Resource if it conforms with the criteria of subdivision (a).

Local

Envision San José 2040 General Plan

The General Plan includes policies for the purpose of avoiding or mitigating impacts resulting from planned development projects within the City. The following policies are specific to cultural resources and are applicable to the proposed project.

Policies

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.

City of San José Standard Permit Conditions

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

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

iii. The landowner or his authorized representative rejects the recommendation of the MLD, and mediation by the NAHC fails to provide measures acceptable to the landowner.

3.9.5 - Approach to Analysis

This evaluation focuses on whether implementation of the proposed project would impact TCRs. The TCR impact analysis is based on information collected from record searches at the NAHC and information from Tribal consultation conducted pursuant to AB 52. Impacts are typically associated with construction and/or ground-disturbing activities that have the potential to immediately alter, diminish, or destroy all or part of the character and quality of Native American artifacts and/or human remains that could be uncovered.

3.9.6 - Thresholds of Significance

The Lead Agency utilizes the criteria in the CEQA Guidelines Appendix G Environmental Checklist to determine whether cultural resources impacts resulting from the implementation of the proposed project would be considered significant if the proposed project would:

a) 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 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) 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 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?

3.9.7 - Project Impacts and Mitigation Measures

This section discusses potential impacts associated with the development of the proposed project and provides mitigation measures where appropriate.

Significance of Tribal Cultural Resource and Eligibility for California Register Listing

Impact TCR-1:	**The proposed project could 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).**

Impact Analysis

Construction

A review of the CRHR, local registers of historic resources, a records search conducted at the Northwest Information Center (NWIC) and a pedestrian survey failed to identify any listed TCRs that may be adversely affected by the proposed project, and the NAHC SLF results were negative for TCRs in the project site. Letters containing project information and requesting any additional information regarding TCRs were sent to each Tribal representative on May 10, 2024. No responses were received. Should any undiscovered TCRs be encountered during project construction, implementation of City of San José Standard Permit Conditions SPC CUL-1a-Subsurface of Cultural Resource and SPC CUL-1b-Human Remains, in addition to MM) CUL-2a and MM CUL-2bwould ensure that undiscovered TCRs are not adversely affected by project-related construction activities. As such, construction-related impacts would be less than significant with the implementation of mitigation.

Operation

Impacts related to a project's potential to cause a substantial adverse change in the significance of a State-listed or eligible TCR are limited to construction impacts. No respective operational impacts would occur.

Level of Significance Before Mitigation

Potentially significant impact.

Mitigation Measures

Implement MM CUL-2a and MM CUL-2b.

Level of Significance After Mitigation

Less than significant impact.

Cumulative Analysis

Significant impacts to unique TCRs have the potential to adversely affect our understanding of the past on multiple levels and are contingent on the category of resource and reasoning behind its significance. In the absence of any known TCRs that will be impacted by the proposed project, the appropriate geographic scope for assessing potential cumulative impacts is the immediate project vicinity. This is because the integrity of any given TCRs depends on what occurs in the immediate vicinity around that resource (such as disruption of soils, etc.) and the immediate vicinity provides the smallest geographic unit within which significant cumulative impacts spanning multiple projects may occur. Accordingly, for this analysis, the geographic scope is defined as the 0.5-mile NWIC records search radius.

The NWIC, and a pedestrian survey failed to identify any listed TCRs within the 0.5-mile search radius, none of which are located within the project boundaries. Additionally, cumulative impacts are limited to construction and none of the cumulative projects are located within the relevant geographic scope. Accordingly cumulative impacts within the geographic scope would be less than significant. Moreover, as the proposed project will not impact any known historic resources, and the pedestrian survey did not identify any resources in the geographic scope, the proposed project

would not have a cumulatively considerable contribution to the less than significant cumulative impact with respect to unique TCRs.

Level of Cumulative Significance Before Mitigation

Less than significant impact.

Mitigation Measures

None required.

Level of Cumulative Significance After Mitigation

Less than significant impact.

Significance of Tribal Cultural Resource and Eligibility as Determined by Lead Agency

Impact TCR-2:	**The proposed project could cause a substantial adverse change in the significance of a Tribal Cultural 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.**

Impact Analysis

Construction

AB 52 requires lead agencies to conduct formal consultations with California Native American Tribes during the CEQA process to identify TCRs that may be subject to significant impacts by a project. Where a project may have a significant impact on a TCR, 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.

- On July 9, 2018, a representative of the Ohlone Indian Tribe, Inc., requested notification of projects in accordance with Public Resources Code Section 21080.3.1 subd (b). In a meeting with City staff and the representative on July 12, 2018, clarification was received that such notification be sent only for projects in the City of San José that involve ground-disturbing activities in Downtown, and that such requests may be sent via email only for future projects require a Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report. As this project is not in Downtown, no notification was sent to the Ohlone Indian Tribe, Inc.
- On June 17, 2021, Chairwoman Geary of the Tamien Nation verbally requested AB 52 notification and written notice was received June 28, 2021, requesting notification of projects in accordance with Public Resources Code Section 21080.3.1 subd (b), for all proposed projects that require a Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report. Accordingly, AB 52 notification was sent via email and U.S. mail to Tamien Nation on November 19, 2024. The City received a request for consultation on November 19, 2024, and sent requested supplemental information back to the Tribal representatives on January 21, 2025. City staff met with Chairwoman Quirina Geary on March 20, 2025, to discuss the consultation request. Chairwoman Quirina Geary noted that the site and vicinity are archaeologically sensitive and requested that Tribal and archaeological monitoring take

place during ground disturbance. Tribal and archaeological monitoring was incorporated as a mitigation measure, and consultation was closed out on April 18, 2025.

- On November 11, 2024, City staff also sent a notification letter to Kanyon Sayers-Roods, a representative of the Indian Canyon Band of Costanoan Ohlone People, and a request for consultation was received on December 11, 2024. The consultation request letter recommended that Cultural Sensitivity Training be conducted prior to ground moving activities and that Tribal and archaeological monitoring take place during ground-disturbing activities. City staff responded on December 11, 2024, with confirmation that a portion of the recommendation was already included as a required measure for the project, and that the City would consider the rest. Consultation was closed out the same day.
- Operation Impacts related to a project's potential to cause a substantial adverse change in the significance of a State-listed or eligible TCR are to be determined.

Level of Significance Before Mitigation

Potentially significant impact.

Mitigation Measures

Demolition, grading, building, and other ground disturbance-related activities have the potential to cause a substantial adverse change in the significance of a TCR. This impact would be reduced with the implementation of the City's Standard Permit Conditions and MM CUL-2a and MM CUL-2b.

Level of Significance After Mitigation

Less than significant with mitigation.

Cumulative Analysis

Significant impacts to TCRs may range from impacts to a resource meeting the CEQA definition of a significant historic resource to impacts to resources identified through consultation between a lead agency and Native American Tribe. As such, the scope and range of potential cumulative impacts to TCRs are highly contingent on the nature of the resource and status of consultation. In the absence of any known TCRs that will be impacted by the proposed project, the appropriate geographic scope for assessing potential cumulative impacts to TCRs is the project vicinity. This is because any undiscovered TCRs will likely be archaeological in nature and the immediate project vicinity provides the smallest geographic unit within which significant cumulative impacts spanning multiple projects may occur. For this analysis, the immediate vicinity is defined as the 0.5-mile NWIC records search radius.

Level of Cumulative Significance Before Mitigation

Less than significant impact.

Mitigation Measures

Non required.

Level of Cumulative Significance After Mitigation

Less than significant impact.

CHAPTER 4: EFFECTS FOUND NOT TO BE SIGNIFICANT

4.1 - Introduction

This section focuses on impacts of the proposed project that were determined not to be significant and were not discussed in detail in the impact section of the Draft Environmental Impact Report (Draft EIR), in accordance with the California Environmental Quality Act (CEQA) Guidelines Sections 15128 and 15143. This chapter is based, in part, on the Notice of Preparation (NOP), dated November 7, 2024, and public scoping meeting dated November 14, 2024. During the NOP scoping process, certain impacts were found not to be significant, because construction and operation of the proposed project would not result in such impacts including aesthetics, agricultural resources, energy, geology and soils, hydrology and water quality, mineral resources, population and housing, public services, recreation, utilities, and wildfire. Implementation of the proposed project would result in no impacts on these resources.

4.2 - Environmental Effects Found not to be Significant

4.2.1 - Aesthetics

Scenic Vistas

The City of San José General Plan (General Plan) defines scenic vistas in the City of San José as views of and from the Santa Clara Valley, surrounding hillsides, and urban skyline. The proposed project would be located on the valley floor in an area recognized by the General Plan Program Environmental Impact Report (General Plan PEIR) and the Housing Element Update Supplemental Environmental Impact Report (Housing Element Update SEIR) as having a less than significant impact on scenic vistas. Additionally, the proposed project would be subject to existing regulations, including Government Code Sections 65560-65570 and the Santa Clara County Municipal Code Chapter 3.30, and adopted policies of the General Plan designed to prevent significant aesthetic impacts, such as Policies CD-1.1, CD-1.2, CD-1.6, CD-1.7, CD-1.8, and CD-1.11, which require strong design controls, attractive urban infrastructure, and pedestrian amenities to be incorporated into new development. Compliance with these policies would ensure direct, indirect and cumulative impacts related to scenic vistas are not significant.

State Scenic Highways

The nearest State Scenic Highways, Interstate 680 (I-680) and I-280, are located approximately 11 miles northeast and northwest of the project site, respectively, and are not visible from the valley floor due to distance and intervening development. Therefore, the likelihood of the project site being visible from a designated scenic highway is negligible. The proposed project would be consistent in visual character with the surrounding development, which includes commercial and residential development, as well as an elementary school and a park. The proposed project would also be required to comply with applicable General Plan and Housing Element policies related to aesthetics, such as Policies CD-1.1, CD-1.2, CD-1.6, CD-1.7, CD-1.8, and CD-1.11, described above. Therefore, there would be no impact related to State Scenic Highways.

Visual Character

The proposed project is located in an urbanized area; therefore, impacts to scenic quality are analyzed in terms of compatibility with applicable zoning and other regulations governing scenic quality. The project site is within the North San José Planning area, which is defined as the area located between Downtown and State Route (SR) 237. The General Plan described the visual context of North San José as predominantly urban, though a few undeveloped and partially developed properties remain within the area. The General Plan states that this area is expected to maintain its urban, modern industrial character as it develops into more densely urban forms. The project site is within a predominantly Industrial Park and Planned Development designated area. The City would confirm the proposed project's consistency with these requirements as part of the development review process.

The proposed project includes the construction of buildings that align with the scale, massing, design, and intensity of the existing surrounding development. The addition of trees and other landscaping on the site would provide a visual softening effect and retain the campus-like plantings envisioned by the General Plan. Additionally, the proposed project would include variation in building heights to contribute to a varied architectural tapestry within the community, including a blend of styles and forms. Consequently, direct and indirect environmental impacts related to consistency with applicable zoning and scenic quality regulations, as well as visual quality and character, would not be significant due to the design review process and compliance with existing General Plan policies, such as Policies CD-1.1, CD-1.2, CD-1.6, CD-1.7, CD-1.8, and CD-1.11, described above.

Light and Glare

The project site currently consists of commercial offices. The proposed project would result in increased light and glare compared to existing conditions due to the greater intensity of development with associated lighting. The new sources of light would originate from interior and exterior lighting during construction and operation.

To reduce potential impacts related to glare and light trespass, the proposed project would be required to conform to City Council Policy 4-3: Outdoor Lighting on Private Developments, pertaining to how lights are directed and shielded and the hours they should be used. In addition, the proposed project would comply with Zoning Code Section 20.40.530, which states that light fixture heights should not exceed eight feet when adjacent to residential uses unless the setback of the fixture from the property line is twice the height of the fixture. The nearest residences are approximately 500 feet south of the project site, and the proposed project would include trees along the border of the project site to further shield surrounding uses from light and glare.

The proposed project would be required to adhere to all applicable development standards and design guidelines provided in the General Plan and Zoning Code, which are intended to reduce daytime glare and nighttime lighting. The City would confirm consistency with these requirements as part of the development review process. Therefore, the proposed project would not have a significant direct and indirect impacts related to light and glare.

4.2.2 - Agriculture and Forestry Resources

Important Farmland

The project site does not contain any soils considered Important Farmland (Prime Farmland, Unique Farmland, or Farmland of Statewide Importance) pursuant to the Farmland Mapping and Monitoring Program (FMMP) of the California Resources Agency. The project site is situated within an urbanized area and is currently developed with commercial offices. The proposed project would not result in the loss of any farmland; there would be no impact.

Williamson Act Contracts or Agricultural Zoning

The project site is zoned as Industrial Park (IP), which does not permit agricultural uses. Furthermore, there are no existing agricultural uses on the project site. Therefore, the proposed project would not conflict with existing zoning for agricultural use. The project site is also under a Williamson Act contract; there would be no impact related to agricultural zoning and Wiliamson Act contracts.

Forest Zoning

The project site is zoned as IP, which does not permit uses associated with forest land or timberland. Furthermore, there are no existing timberland production uses on the project site. Thus, the project site does not contain forest land or timberland, and there would be no impacts in this regard.

Conversion of Forest Land

As discussed above, the project site is zoned as IP, which does not permit uses associated with forest land or timberland. Furthermore, there are no existing timberland production uses on the project site. Therefore, the project site does not contain forest land or timberland, and there would be no impacts in this regard.

Pressures to Convert Farmland or Forest Land

The project site does not contain any farmland or forest land and would not result in the conversion of farmland or forest land to nonagricultural or non-forest use. No impacts would occur.

4.2.3 - Energy

An analysis was conducted to determine whether the proposed project would result in a potentially significant impact due to wasteful, inefficient or unnecessary consumption of energy resources during construction or operation, and whether it would conflict with or obstruct a State or local plan for renewable energy or energy efficiency. The analysis concluded that the proposed project would not result in wasteful, inefficient or unnecessary consumption of energy resouces, nor would it conflict with any plan for renewable energy or energy efficiency.

Construction Impacts: The proposed project's construction was assumed to begin in August 2025 and last approximately 35 months based on project applicant-provided information. If the construction schedule moves to later years, construction emissions would likely decrease because of improvements in technology and more stringent regulatory requirements as older, less efficient

equipment is replaced by newer and cleaner equipment. The types of on-site equipment used during construction of the proposed project could include gasoline- and diesel-powered construction and transportation equipment, including trucks, excavators, forklifts, and pavers. Construction equipment is estimated to consume a total of 307,351 gallons of diesel fuel over the entire construction duration (Appendix A).

Fuel use associated with construction vehicle trips generated by the proposed project was also estimated; trips include construction worker trips, haul truck trips for material transport, and vendor trips for construction material deliveries. Fuel use from these vehicles traveling to the proposed project site was based on (1) the projected number of trips the proposed project would generate during construction, (2) average trip distances by trip type, and (3) fuel efficiencies estimated in the ARB EMFAC mobile source emission model. The specific parameters used to estimate fuel usage are included in Appendix A. In total, the proposed project is estimated to generate 4,654,785 Vehicle Miles Traveled (VMT) and 221,912 gallons of combined gasoline and diesel for vehicle travel during construction.

The overall construction schedule and process is already designed to be efficient in order to avoid excess monetary costs. For example, equipment and fuel are not typically used wastefully due to the added expense associated with renting the equipment, maintaining it, and fueling it. Therefore, the opportunities for future efficiency gains during construction are limited. Thus, it is anticipated that the construction phase of the proposed project would not result in wasteful, inefficient, and unnecessary consumption of energy. Construction-related energy impacts would not be significant.

Operational Impacts: The proposed project would consume energy as part of building operations and transportation activities. As previously discussed, the proposed project would be all electric, and therefore will not be associated with natural gas use. Project energy consumption was estimated for fuel use and building energy are summarized below:

- Operational Vehicle Gasoline Fuel Consumption: 274,441 gallons
- Operational Vehicle Diesel Fuel Consumption: 26,330 gallons
- Operational Vehicle Compressed Natural Gas Consumption: 1,231 gallons
- Operational Vehicle Electricity Use: 172,559 kilowatt hour (kWh)
- Building Energy Consumption: 4,519,315 kWh of electricity

The proposed project would be considered to result in wasteful, inefficient, or unnecessary consumption of energy resources if it would conflict with the following energy conservation goals:

- Decreasing overall per capita energy consumption;
- Decreasing reliance on fossil fuels such as coal, natural gas, or oil; and
- Increasing reliance on renewable energy sources.

Decreasing Overall Per Capita Energy Consumption

The proposed project's buildings would be designed and constructed in accordance with CALGreen energy efficiency standards of Title 24. Title 24 standards include a broad set of energy conservation requirements that apply to the structural, mechanical, electrical, and plumbing systems in a building.

For example, the Title 24 Lighting Power Density requirements define the maximum wattage of lighting that can be used in a building based on its square footage. Title 24 standards, widely regarded as the most advanced energy efficiency standards, would help to reduce the amount of energy required for lighting, water heating, and heating and air conditioning in buildings and would promote energy conservation. Moreover, the proposed project would use energy-efficient models and systems whenever possible and would incorporate new technologies as they become available. Sustainability measures for the proposed project would include, but are not limited to, all electric buildings with on-site solar photovoltaics (PV) arrays that meet California Green Building Standards Code (CALGreen) and City of San José Reach Code minimums, ample electric vehicle (EV) charging stations, on-site bicycle storage and repair facilities, water-efficient plumbing fixtures, use of native/adapted species to reduce irrigation needs, and high-quality construction materials with longer lifespan and durability to reduce construction waste and increase performance.

Therefore, the proposed project would be consistent with this criterion. The decreasing reliance on fossil fuels and increasing use of renewable energy discussed below would also reduce per capita energy consumption for the proposed project.

Decreasing Reliance on Fossil Fuels

The proposed project would incorporate elements from CALGreen, which would include, but are not limited to, all electric buildings with on-site solar photovoltaics (PV) arrays and City of San José Reach Code minimums, ample EV charging stations, on-site bicycle storage and repair facilities, water-efficient plumbing fixtures, and use of native/adapted species to reduce irrigation needs. Increasing the number of electric appliances and mechanisms associated with the proposed project would decrease natural gas use, thereby reducing reliance on fossil fuels as well, and therefore would have decreasing reliance on gasoline fuel.

Increasing Reliance on Renewable Energy Sources

As previously discussed, the proposed project would comply with the City of San José Reach Code minimums for EV charging infrastructure, which would accelerate both the regions and the proposed project's adoption of EVs and allow the future transportation energy supply necessary for residents and visitors to utilize renewable energy sources. As such, the proposed project would facilitate a greater dependence on renewable energy sources for building and transportation energy demands. Therefore, the proposed project would be consistent with this criterion.

Conclusion

As discussed, the proposed project's energy consumption would not result in the wasteful, inefficient, or unnecessary consumption of energy resources, consistent with the guidance derived from Appendix F of the CEQA Guidelines and the Appellate Court decision in *League to Save Lake Tahoe Mountain etc. v. County of Placer* (2022) 75 Cal.App.5th 63, 164-168. The construction-related and operation-related impacts related to electricity, natural gas, and fuel consumption would not be significant. Therefore, the proposed project would not introduce new significant environmental impacts or substantially increase the severity of previously analyzed significant effects under any scenario. No additional analysis is required, and impacts would not be significant.

The proposed project would utilize electricity provided by Pacific Gas and Electric Company (PG&E). The proposed project would be all electric and would not use natural gas. According to PG&E, approximately 38 percent of its electricity is currently obtained from renewable energy sources.[1] Therefore, the proposed project's electricity provider meets the State's current objective of 33 percent renewable energy. The proposed project's electricity provider would also be required to meet the State's future objective of 60 percent of in-State electricity sales being generated from renewable energy sources by 2030.

The proposed buildings would also be compliant with Title 24 Standards and would adhere to the energy efficiency, water efficiency, and material conservation requirements, as well as the City's reach code for all-electric and electric-ready requirements, as previously discussed.

Therefore, the proposed project would be consistent with all applicable energy policies and plans, and this impact would not be significant.

4.2.4 - Geology, Soils, and Seismicity

Fault Rupture, Ground Shaking, Ground Failure, Landslides

The project site is within the fault zone of the Silver Creek Fault.[1] However, as described by the General Plan PEIR, fault zones are ubiquitous throughout the City and are unavoidable environmental factors. The proposed project would comply with all program-level avoidance measures included within the General Plan Policies and Actions, such as EC-3.2, EC-4.1, EC-4.2, EC-4.3, EC-4.4, EC-4.5, and EC-4.7, which require geotechnical investigations and compliance with the California Building Standards Code (CBC), as well as all other applicable federal, State, and local regulations, including adherence to standard conditions described below and all CBC design recommendations, as well as undergoing site review. Therefore, direct and indirect impacts related to fault rupture, ground shaking, ground failure, and landslides would not be significant.

Erosion

As discussed in the Project Description, the project site is relatively flat. In addition, the proposed project would comply with all measures related to grading included in the General Plan, the National Pollutant Discharge Elimination System (NPDES) Permit, the Best Management Practices (BMPs) therein, and the General Plan Policies and Actions. This would include the preparation of a project-specific Storm Water Pollution Prevention Plan (SWPPP) and adherence to Municipal Code Chapter 17.04 to reduce potential erosion impacts to the maximum extent possible.[2] Through compliance with all federal, State, and local regulations, direct and indirect impacts related to erosion or the loss of topsoil would not be significant.

[1] California Department of Conservation. Fault Activity Map of California. Website: https://maps.conservation.ca.gov/cgs/fam/. Accessed November 7, 2024.
[2] City of San José. 2024. Municipal Code–Chapter 17.04, Building Code. Website: https://library.municode.com/ca/san_jose/codes/code_of_ordinances?nodeId=TIT17BUCO_CH17.04BUCO. Accessed November 7, 2024.

Unstable Soils or Geologic Units

As described above, the proposed project is located in the fault zone for the Silver Creek Fault. As stated by the project-specific Geotechnical Investigation (Appendix E), prepared by Cornerstone Earth Group on June 19, 2023, the project site is expected to experience strong ground shaking, as do most sites in the Bay Area.[3] The Geotechnical Investigation found that the proposed project could undergo potential liquefaction of localized sand layers and large static and long-term consolidation settlements over the design life of the structure. The Geotechnical Investigation recommended mitigation and earthwork design features, as well as more detailed analysis to be prepared through a design-level Geotechnical Investigation. Through compliance with the recommendations in the Geotechnical Investigation, CBC requirements, project design review prior to approval, and all applicable federal, State, and local regulations, the proposed project would not have significant direct and indirect impacts related to construction on unstable soils or geologic units.

Expansive Soils

The Geotechnical Investigation of the project site found that the existing soils on-site have moderately to highly expansive soils present. To reduce the potential for damage to the proposed project, the Geotechnical Investigation includes recommendations for slabs-on-grade, footings, and proactive drainage. Additionally, the proposed project would be subject to project design review by an approved engineer prior to project approval. The proposed project would also adhere to General Plan Goals and Policies related to expansive soils, such as EC-3.2, EC-4.1, EC-4.2, EC-4.3, EC-4.4, EC-4.5, and EC-4.7, which require geotechnical investigations and compliance with the California Building Code, and compliance with State regulations, such as the CBC. Direct and indirect impacts would not be significant.

Septic or Alternative Wastewater Disposal Systems

The proposed project would not utilize septic tanks or alternative wastewater treatment systems and would connect to the City's existing wastewater treatment system. Therefore, there would be no impact.

Destruction of Paleontological Resources or Unique Geologic Features

The project site is in an urbanized, developed area. Geologic mapping indicates that the project site is underlain by Holocene-age alluvial deposits (Qa) at the surface. These deposits are characterized as alluvial gravel, sand, and clay, including alluvial fan deposits. While not mapped at the surface at the project site, older, Pleistocene-age deposits (Qoa) are mapped in the area. Although these deposits are not mapped at the surface (according to current geologic mapping), they are present in the subsurface, but at an unknown depth.

In general, Holocene-age sedimentary deposits are considered to have a low potential to contain significant paleontological resources at the surface; however, the deeper/older layers of Holocene-age sedimentary deposits have an increased potential. A review of the University of California Museum of Paleontology (UCMP) online fossil locality database indicates that there are 12

[3] Cornerstone Earth Group. 2023. Preliminary Geotechnical Investigation, River Oaks Residential. June 19.

Holocene-age fossil localities within Santa Clara County—including invertebrate, plant, and microfossil specimens. Two localities along the Guadalupe River (R655) and Alum Creek (R1400) have no description as to the type of fossils recovered.

Pleistocene-age sedimentary deposits are generally considered to have a high potential to contain significant paleontological resources. In some cases, Pleistocene-age deposits may be several feet beneath the surface, however, recent vertebrate fossil discoveries in the Guadalupe River (approximately 3.7 miles south of the project site) indicate that Pleistocene-age deposits are close to the surface along the river.[4]

The Geotechnical Investigation recommends that any existing foundations, debris, slabs, and/or abandoned underground utilities be removed entirely and the resulting excavations backfilled with engineered fill. Additional recommendations include that any native soil that is disturbed during demolition of the existing structures should be removed and replaced as engineered fill. The proposed project would be required to comply with the recommendations in the Geotechnical Investigation.

Although the project site is mapped within Holocene-age alluvial deposits (which generally have a low potential to contain significant paleontological resources), previous discoveries from Holocene-age deposits in the area suggest that Pleistocene-age, fossiliferous deposits are close to the surface—particularly in areas near the Guadalupe River. Given that the project site has been previously disturbed, and excavation is not expected to extend into previously undisturbed deposits, the likelihood that significant paleontological resources occur in the surficial deposits at the project site are low.

In the unlikely event that paleontological resources are encountered during construction, the proposed project would implement General Plan policies, including Policy ER-11.1 and Policy ER-11.3, which would ensure that paleontologically sensitive areas are protected and all applicable federal, State, and City preservation laws, regulations, and codes are enforced. Additionally, the proposed project would comply with the City's Standard Permit Condition for paleontological resources, which requires work to stop in the event vertebrate fossils are encountered during construction activities, until a qualified Paleontologist can assess the find and determine its significance. If significant paleontological resources are found they would be treated based on a qualified Paleontologist's recommendations and a report of all findings would be submitted to the Director of Planning, Building and Code Enforcement (PBCE) or Director's designee.

With implementation of General Plan Policies ER-11.1 and ER-11.3, as well as the City's Standard Permit Condition, direct and indirect impacts related to paleontological resources would not be significant.

[4] Maguire, Kaitlin and Patricia Holroyd (Maguire and Holroyd). 2016. Pleistocene Vertebrates of Silicon Valley (Santa Clara County, California). *PaleoBios*. 33:1-14. Ucmp_paleobios_31767.

Standard Permit Conditions

Seismic Hazards

a) A Geotechnical Report shall be submitted, reviewed, and approved by the City Geologist. The Geotechnical Report shall determine the site-specific soil conditions and identify the appropriate design and construction techniques to minimize risks to people and structures, including but not limited to: foundation, earthwork, utility trenching, retaining and drainage recommendations. The investigation should be consistent with State of California guidelines for the preparation of seismic hazard evaluation reports (CGS Special Publication 117A, 2008, and the Southern California Earthquake Center report, SCEC, 1999). A recommended minimum depth of 50 feet should be explored and evaluated in the investigation. The City Geologist will review the Geotechnical Report and issue a Geologic Clearance.

b) All excavation and grading work shall be scheduled in dry weather months or construction sites shall be weatherized.

c) Stockpiles and excavated soils shall be covered with secured tarps or plastic sheeting.

d) Ditches shall be installed to divert runoff around excavations and graded areas if necessary.

e) The project shall be constructed in accordance with the standard engineering practices in the California Building Code, as adopted by the City of San José. A grading permit from the San José Department of Public Works shall be obtained prior to the issuance of a Public Works clearance. These standard practices would ensure that the future building on the site is designed to properly account for soils-related hazards on the site.

f) 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.

Paleontological Resources

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

4.2.5 - Hydrology and Water Quality

Water Quality

Construction

The proposed project would include the demolition of existing buildings and associated infrastructure located on the project site and the construction of a 737-unit apartment and

townhome complex. Construction of the proposed project could lead to degraded stormwater quality as a result of grading and site preparation, as well as from the temporary use of chemicals related to construction activities.

However, potential impacts to surface water runoff would be reduced with adherence to all applicable General Plan policies, such as Policies MS-20.2 and MS-20.3, which require protecting ground water through flood protection measures and stormwater infiltration practices. The proposed project would also be required to implement a project-specific SWPPP under the NPDES Phase II stormwater permitting program, which requires the preparation and implementation of a SWPPP for construction activities greater than 1-acre NPDES permit as the proposed project would disturb more than 1 acre of land. The SWPPP would identify measures that shall be included in the proposed project to minimize and control construction and post-construction runoff to the "maximum extent practicable." Additionally, the proposed project includes more than 16,000 square feet of Low Impact Design (LID) features, which are not required under the proposed project's Special Project Exemption under the Special Project Criteria, and therefore far exceed the permit requirements. In addition, the proposed project would adhere to all applicable federal, State, and local laws, regulations, and General Plan Policies and Actions regarding stormwater runoff. Direct and indirect impacts would not be significant.

Operation

The proposed project consists of residential uses and, as such, would not involve the use or discharge of hazardous chemicals that would significantly affect runoff water quality. However, buildout of the proposed project would result in a net increase of 442,264 square feet of impervious surfaces, which could also increase stormwater runoff. After flowing through one of the 36 proposed drainage management areas, stormwater would be routed to a series of bioretention units, flow-through planters, and self-retaining areas. According to the site plans, the stormwater infrastructure would be capable of treating 10-year storm events.

As mentioned above, potential impacts to surface water runoff would be reduced with adherence to all applicable General Plan policies, such as Policies MS-20.2 and MS-20.3, which require protecting ground water through flood protection measures and stormwater infiltration practices. The proposed project would also be required to implement a project-specific SWPPP under the NPDES Phase II stormwater permitting program, which requires the preparation and implementation of a SWPPP for construction activities greater than 1-acre NPDES permit as the proposed project would disturb more than 1 acre of land. The SWPPP would identify measures that shall be included in the proposed project to minimize and control construction and post-construction runoff to the "maximum extent practicable." Additionally, the proposed project includes more than 16,000 square feet of LID features, which are not required under the proposed project's Special Project Exemption under the Special Project Criteria, and therefore far exceed the permit requirements. In addition, the proposed project would adhere to all applicable federal, State, and local laws, regulations, and General Plan Policies and Actions regarding stormwater runoff. Direct and indirect impacts would not be significant.

Groundwater

The proposed project would result in a higher density development thereby, increase the demand for potable water, which could lead to increased groundwater extraction. San José Municipal Water System (Muni Water) relies on four sources of supply: surface water from San Francisco Public Utilities Commission (SFPUC), local and imported surface water from Santa Clara Valley Water District (Valley Water), recycled water from the South Bay Water Recycling (SBWR) Program, and groundwater from the Santa Clara groundwater basin. According to Muni Water's Urban Water Management Plan (UWMP), sources are generally considered to be consistent, except during times of prolonged drought during which supplies would be decreased based on reduced availability of wholesale supplies. Natural recharge occurs principally as infiltration from streambeds that exit the upland areas within the drainage basin and from direct percolation of precipitation that falls on the basin floor.[5] As such, the project site is not within a natural groundwater recharge area. The proposed project would be consistent with General Plan Policies ER-10.5 and MS-20.3, which would ensure there are no potentially significant impacts associated with groundwater supply and recharge by properly managing groundwater through stormwater infiltration methods and protecting recharge areas. Therefore, direct and indirect impacts would not be significant.

Drainage

Construction

Construction activities would include demolition of the existing paved surfaces and structures, site preparation, grading, building construction, architectural coatings, and paving. If gone unmanaged, ground disturbance from construction activities would result in a potentially significant impact.

The proposed project would have a significant impact if it were to substantially alter the existing drainage pattern of the site in a manner that would result in substantial erosion or siltation on- or off-site. Such drainage effects could occur from grade changes at the project site, exposure of soils for periods of time during stormwater discharge, or alterations to creek beds. These types of changes would have a potentially significant impact related to on-site drainage patterns. The proposed project would involve construction in an area that is currently characterized almost entirely by impervious surfaces, and the on-site drainage and storm runoff generally sheet flows across the site or is captured by small drainage inlets on-site that are connected by underground storm drain pipes and discharge into existing storm drain facilities.

To reduce potential impacts related to drainage and erosion, the proposed project would be compliant with all applicable General Plan policies, such as Policies IN-3.4, IN-3.5, IN-3.9, and IN-3.10, which require flood and stormwater reduction measures, and would implement flood protection and storm drainage measures included within said General Plan policies. Adherence to all applicable federal, State, and local laws, regulations, and policies would ensure construction impacts associated with drainage would not be significant. Therefore, direct and indirect impacts would not be significant.

[5] California Department of Water Resources (DWR).2004. Santa Clara Valley Groundwater Basin, Santa Clara Subbasin. Website: https:// water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/Groundwater-Management/Bulletin-118/Files/2003-Basin-Descriptions/2_009_02_SantaClaraSubbasin.pdf. Accessed February 10, 2025.

Operation

The proposed project development would increase the impervious area by 5.8 percent. However, the proposed project would include 36 drainage management areas (DMAs) and 16,000 square feet of LID infrastructure which would be designed to withstand a 10-year storm event. These stormwater retention areas would connect to 15-inch and 18-inch storm drains in Iron Point Drive and Cisco Way which would ultimately connect to a 54-inch storm drain located beneath River Oaks Parkway.

To reduce potential impacts related to drainage and erosion, the proposed project would be compliant with all applicable General Plan policies, such as Policies IN-3.4, IN-3.5, IN-3.9, and IN-3.10, which require flood and stormwater reduction measures, and would implement flood protection and storm drainage measures included within said General Plan policies. Adherence to all applicable federal, State, and local laws, regulations, and policies would ensure impacts associated with drainage would not be significant. Therefore, direct and indirect impacts would not be significant.

Risk of Pollutant Release Due to Inundation

The project site is not located within a tsunami or seiche zone.[6] The City is located within a dam failure inundation area from one or more of seven upstream reservoirs. However, the General Plan includes several Policies and Actions that provide program-level avoidance measures and additional protection against flooding and inundation, such as Policies EC-5.1, EC-5.2, EC-5.4, and EC-5.7, which require evaluation and mitigation of flood hazards prior to approval of development projects. Compliance with the applicable General Plan Policies and Actions would direct and indirect impacts would not be significant.

Water Quality Control or Sustainable Groundwater Management Plans Consistency

As described above, the proposed project would include demolition of the existing buildings and infrastructure and the construction of a 737-unit residential complex. The proposed project would increase the amount of impervious cover of the project site by 5.8 percent; however, the proposed project would include 36 DMAs and would connect to the City's stormwater infrastructure. The proposed project would also be required to implement a project-specific SWPPP under the NPDES Phase II stormwater permitting program, which requires the preparation and implementation of a SWPPP for construction activities greater than 1-acre. The SWPPP would identify measures that shall be included in the proposed project to minimize and control construction and post-construction runoff to the "maximum extent practicable." Construction and operation of the proposed project would also be in compliance with all applicable federal, State, and local laws and regulations regarding water quality and groundwater management, including the Valley Water Groundwater Management Plan, which would ensure potential impacts would not be significant. Accordingly, direct, indirect and cumulative impacts would not be significant.

[6] California Geological Survey (CGS). 2024. CGS Information Warehouse: Tsunami Hazard Area Map. Website: https://maps.conservation.ca.gov/cgs/informationwarehouse/ts_evacuation/. Accessed November 15, 2024.

Standard Permit Conditions

Construction-related Water Quality

i. Burlap bags filled with drain rock shall be installed around storm drains to route sediment and other debris away from the drains.

ii. Earthmoving or other dust-producing activities shall be suspended during periods of high winds.

iii. All exposed or disturbed soil surfaces shall be watered at least twice daily to control dust as necessary.

iv. Stockpiles of soil or other materials that can be blown by the wind shall be watered or covered.

v. All trucks hauling soil, sand, and other loose materials shall be covered and all trucks shall maintain at least two feet of freeboard.

vi. All paved access roads, parking areas, staging areas and residential streets adjacent to the construction sites shall be swept daily (with water sweepers).

vii. Vegetation in disturbed areas shall be replanted as quickly as possible.

viii. All unpaved entrances to the site shall be filled with rock to remove mud from tires prior to entering City streets. A tire wash system shall be installed if requested by the City.

ix. The permittee 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.

4.2.6 - Mineral Resources

The proposed project does not fall within the Communications Hill Specific Plan area, which is the sole region designated by the State Mining and Geology Board as containing mineral deposits of regional significance within the City. Consequently, there would be no impact to mineral resources.

4.2.7 - Population and Housing

Growth Inducement

The proposed project aligns with the General Plan PEIR by not exceeding the growth projections established by the Association of Bay Area Governments (ABAG) for the San Francisco Bay Area. The proposed project is an infill project that would not require new infrastructure other than connections to existing facilities to support this growth.

Additionally, while the Housing Element Update SEIR did not specifically address this project's impact, it does identify the project site as a potential area for future residential development, consistent with the growth projections in the General Plan. The Housing Element Update SEIR, incorporating ABAG's 2040 projections, indicates that San José 's population is expected to reach 1,377,145 by 2040, an increase of 355,359 persons from 2019.

According to the U.S. Census Bureau, for the period from 2018 to 2022, the average household size in San José is 3.03 persons per household.[7] The proposed project would result in 132 affordable apartment units, 505 market rate apartment units, and 100 townhomes, totaling 737 units. Using the average household size, the proposed project would add approximately 2,233 people to the area. This increase represents about 0.006 percent of ABAG's total growth projections for the City.

Therefore, the proposed project would be consistent with the growth projections outlined in the City's General Plan and Housing Element. Therefore, direct and indirect impacts would not be significant.

Displacement of Persons or Housing

The project site is currently developed with vacant commercial uses. As such, there would be no displacement of housing or people as a result of the proposed project, and there would be no direct or indirect impact.

4.2.8 - Public Services and Utilities

Fire Protection

The proposed project would include multi-family residential uses that would require additional fire protection and emergency services beyond those required by the existing commercial offices on the project site. The closest fire station to the project site is San José Fire Department's Station 29, located at 199 Innovation Drive, approximately 0.25 mile southwest of the project site, which would presumably allow emergency personnel to reach the site within the City's target response time of 4 minutes. The project site is surrounded on all sides by existing industrial and residential uses that receive fire services from the San José Fire Department. As the project lies within the same area of service, the proposed project would not cause the San José Fire Department to travel farther or require additional time to reach the project site. It is consistent with planned growth in the General Plan as found in the General Plan PEIR, which anticipated the addition of 429,350 dwelling units in San José by 2035, which the project falls within. The General Plan PEIR prepared for the 2040 General Plan found that implementation of the proposed General Plan would result in an increase in calls for fire protection services but was not anticipated to result in the need for construction of fire stations above those currently planned.

In addition, the proposed project would meet the California State Fire Code and City building requirements. With adherence to the fire code and General Plan policies, such as Policies FS-5.6, ES-3.1, ES-3.5, ES-3.8, ES-3.9, ES-3.10, and ES-3.11, direct and indirect impacts would not be significant.

Police Protection

According to the General Plan PEIR, the San José Police Department operates out of their headquarters located at 201 West Mission Street, approximately 3.95 miles south of the project site. Policies ES-3.1 of the General Plan is the goal of response time of 6 minutes or less for 60 percent of Priority 1 calls and a response time of 11 minutes or less for 60 percent of Priority 2 calls. In January

[7] United States Census Bureau. 2022. QuickFacts: San José City, California. Website: https://www.census.gov/quickfacts/fact/table/sanjosecitycalifornia/HSD410222#HSD410222. Accessed November 15, 2024.

2025, the City had an average of 46.67 percent of Priority 1 calls under 6 minutes and an average of 35.82 percent of Priority 2 calls under 11 minutes.[8] The project site is located within the existing response area and the multi-family residential use on the project site resulting from the proposed project would not increase response times for various calls for service, as the proposed project is located in an area already currently served by police protection services with sufficient capacity to serve the proposed project. The project would not increase travel time for police being already within boundaries. In addition, the proposed project would adhere to General Plan policies to further reduce potential impacts on police protection services, such as FS-5.6, ES-3.1, ES-3.5, ES-3.5, ES-3.8, ES-3.9, ES-3.10, ES-3.11, ES-3.21. Therefore, direct and indirect impacts would not be significant.

Schools

The project site falls within the jurisdiction of the Santa Clara Unified School District. The Santa Clara Unified developer fees are $5.17 per square foot for both single-family detached and multi-family attached.[9] The proposed project has 125,549 square feet for affordable apartments; 544,807 square feet for market rate apartments; and 157,349 square feet for the town homes, coming to a total of 827,705 square feet. The approximate developer fees would be $4,279,235.

The servicing schools are located immediately northeast of the project site at Kathleen MacDonald Highschool, Dolores Huerta Middle School, and Abram Agnew Elementary School.[10] Abram Agnew Elementary School has a current enrollment of 401 students, Dolores Huerta Middle School has a current enrollment of 607 students, and Kathleen MacDonald High School has a current enrollment of 434 students.[11]

As per the additional capacity outlined in Table 3.9-4 of the General Plan PEIR, the proposed project is situated in a school district with the highest available additional capacity throughout the City, amounting to 3,566 additional student slots alongside planned construction of new facilities. Consequently, this student capacity aligns with the projected growth assessed in the General Plan. Considering both the potential increase in student population indirectly generated by the proposed project and its location within the district offering the greatest capacity, the proposed project would not have significant impacts related to school facilities. Direct and indirect impacts would not be significant.

Parks and Other Public Facilities

The City of San José oversees nine regional parks, 207 neighborhood parks, 290 park playgrounds, 48 community centers, and approximately 61 miles of trails.[12] The nearest park to the project site is

[8] San José Police Department. 2025. Police Dashboard. Website: https://www.sjpd.org/records/crime-stats-maps/police-dashboards. Accessed February 4, 2025.

[9] Santa Clara Unified School District. 2025. Developer Fees. Website: https://www.santaclarausd.org/about-us/departments/facility-development-and-planning/developer-fees. Accessed February 4, 2025.

[10] Santa Clara Unified School District. 2025. My school Locator. Website: https://locator.pea.powerschool.com/?StudyID=217157. Accessed February 4, 2025.

[11] California Department of Education. 2025. School Profile Search Results for Santa Clara Unified. Website: https://www.cde.ca.gov/sdprofile/default.aspx?dcode=4369674. Accessed February 4, 2025.

[12] City of San José. 2025. About Parks, Recreation & Neighborhood Services. Website: https:// www.sanjoseca.gov/your-government/departments-offices/parks-recreation-neighborhood-services/general-information/activatesj. Accessed February 10, 2025.

River Oaks Park, which is adjacent to the south of the project site. The proposed project falls within the anticipated population growth parameters outlined in the General Plan for planned development.

Additionally, the proposed project would meet the City of San José's adopted Parkland Dedication Ordinance (PDO) (Municipal Code Chapter 19.38) and Parkland Impact Ordinance (PIO) (Municipal Code 14.25) which requires new housing projects to provide 3 acres of neighborhood/community serving parkland per 1,000 population, provide recreational facilities on-site, and/or pay an in lieu fee. The project proponent would be required to pay the applicable PDO/PIO fees. The project's PDO/PIO fees would be used for neighborhood serving elements (such as playgrounds/tot-lots and basketball courts) within 0.75 mile of the project site, and/or community serving elements (such as soccer fields and community gardens) within a 3-mile radius of the project site, consistent with General Plan Policies PR-2.4 and PR-2.5. Since the proposed project would be required to comply with payment of the PDO/PIO fees, implementation of the proposed project would not result in significant impacts to park and recreational facilities in San José.

Additionally, in alignment with the determination of anticipated population growth, the City is projected to surpass its minimum requirements for library services in terms of square footage and has ample digital capacity to accommodate the development. Therefore, direct and indirect impacts would not be significant.

4.2.9 - Recreation

The City of San José oversees nine regional parks, 207 neighborhood parks, 290 park playgrounds, 48 community centers, and approximately 61 miles of trails.[13] The nearest park to the project site is River Oaks Park, which is adjacent to the south of the project site. The proposed project would introduce new residential units and would directly contribute to population growth in the City. As described in the Project Description, the proposed project would create 737 new dwelling units and would add approximately 1,850 new residents to the City. As noted by the General Plan and in subsection 4.2.9, Population and Housing, of this Draft EIR, this population increase would not have a significant impact on the City; however, it would potentially result in increased use and deterioration of existing parkland resources.

Although the proposed project does not include specific recreational amenities such as a playground, it does include substantial common usable greenspace areas (see Exhibit 2-10). The proposed project would be required to comply with all General Plan Policies and Actions, including adherence to the PDO and PIO and payment of applicable in lieu fees. Through adherence to all applicable federal, State, and local policies and regulations, direct and indirect impacts would not be significant.

[13] City of San José. 2025. About Parks, Recreation & Neighborhood Services. Website: https:// www.sanjoseca.gov/your-government/departments-offices/parks-recreation-neighborhood-services/general-information/activatesj. Accessed February 10, 2025.

4.2.10 - Utilities and Service Systems

Water, Wastewater, Stormwater, Electricity, Natural Gas, or Telecommunications Facilities

Water

The proposed project would be served by Muni Water via an 18-inch diameter water line located on Cisco Way, with 6-inch diameter water lines under the proposed internal streets. Therefore, new or expanded water facilities would not be required, outside of those evaluated throughout this Draft EIR. Impacts, including direct and indirect would not be significant.

Wastewater Treatment

The proposed project would be served by a 10-inch diameter sanitary sewer line located under Iron Point Drive and an 8-inch sanitary sewer line located under Cisco Way. Additionally, 6-inch sanitary sewer lines would be located under the proposed internal streets.

The treatment facilities of Muni Water at an San José-Santa Clara Regional Wastewater Facility, one of the largest advanced wastewater treatment facilities in the western United States would process the runoff from the proposed site. Therefore, new or expanded wastewater treatment facilities would not be required. Impacts, including direct, indirect, and cumulative, would not be significant. The proposed project is consistent with the development anticipated in the General Plan PEIR and would be required to comply with General Plan policies related to wastewater treatment, such as Policies IN-3.1, IN-3.3, IN-3.4, IN-3.5, IN-4.2, and IN-4.6, and IP-15.1, which requires measures to reduce any potential impacts and construct any required public services for the proposed project. Because the proposed project is consistent with the General Plan PEIR and relevant General Plan policies, as well as the City of San José Municipal Code, the implementation of the proposed project would not have significant impacts related to wastewater treatment capacity. Impacts, including direct and indirect, would not be significant.

Stormwater Drainage

The proposed project would include storm drainage lines, with diameters ranging from 12 to 18 inches, would connect to an existing 18-inch storm drainage line on Cisco Way and a 54-inch diameter storm drainage line located at the south corner of the project along River Oaks Parkway. This 54-inch pipe is integrated into the City's stormwater collection system, which ultimately drains into the Guadalupe River.

Stormwater management at the project site would traverse through a network of features, including multiple bioretention facilities and planters designed to collect stormwater, along with a large landscaped self-retaining area situated at the southern portion of the site adjacent to River Oaks Parkway. Stormwater collected on-site through drainage pipes, gutters, and planter retention systems would be directed toward a 15-foot storm drainage pipe located beneath Iron Point Drive. In instances where runoff exceeds infiltration capacity, it would be directed into storm drainage lines via grates positioned around proposed internal streets, parking areas, and loading spaces. Runoff originating from most areas of the site will flow over rooftops, parking areas, sidewalks, and landscaped regions. It will then be directed toward vegetated buffer strips and vegetated swales, serving as pretreatment and treatment zones for stormwater quality. Along the frontage, runoff will

be directed over landscaping toward the public right-of-way, where it will undergo self-treatment processes.

The proposed project would be required to comply with all post-construction requirements under Phase II NPDES Stormwater Permit, the City's Storm Water Master Plan and Stormwater Management Guidance Manual, City and State Water Resource Control Board detention or retention requirements, City of San José Municipal Code requirements, and General Plan Goals and Policies. The General Plan PEIR found that although construction and/or expansion of pump stations would be required, construction of such facilities consistent with 2040 General Plan policies and existing regulations would ensure any physical impacts from these facilities would not be significant. Impacts, including direct and indirect would not be significant.

Electricity, Natural Gas, and Telecommunications

Electricity and natural gas services for the proposed project would be provided by PG&E, and the proposed project would be all electric. Spectrum would provide telecommunications services to the project site. Infrastructure is currently in place or within the planning parameters of PG&E and Spectrum to serve the project site. The proposed project would be required to implement General Plan policies, such as Policy CD-1.27, TR-1.16, MS-2.8, MS-2.9, MS-14.5, that would reduce energy consumption. The proposed project would also be constructed according to the most recent CBC and Title 24 standard, which is the state-of-the-art for energy efficiency. Impacts, including direct and indirect would not be significant.

Water Supply

A Water Supply Assessment (WSA) was prepared under the direction of Muni Water for the site to assess whether Muni Water's existing and future water supplies for the North San José/Alviso service area would be adequate to meet the project's projected water demands (Appendix I). Findings of the Draft WSA are included below, however, the Draft WSA is not anticipated to be approved by City Council until early June. The final, approved WSA will be included as an attachment to this Draft EIR prior to the proposed project's eventual public hearing.

Muni Water historically provided potable water to the site's original commercial development and will be supplying both potable and recycled water to the proposed project in the future. Muni Water would supply water to the project site via an 18-inch diameter water line located on Cisco Way, with 6-inch diameter water lines under the proposed internal streets. The WSA projects the proposed project's maximum water demands at approximately 99 acre-feet per year (AFY). Most of the project demand is associated with residential units and will be supplied by potable water. Recycled water is projected to be used for the landscaping demand.

The project's water demands for expected 2030 completion fall into growth forecasts for residential water use identified in Muni Water's 2020 UWMP. Additionally, the proposed projects water supply needs are partially offset by the existing water supply capacity which was historically used to meet the site's original commercial buildings. The potable and recycled water demands for this proposed project are within the increase projected by the General Plan and UWMP. Based on the assumed number of residents per unit (1 for studios and 2.98 for all other units), the estimated population of

the Project is 2,034 people. This increase in population falls within the projected 2030 population growth in the Muni Water 2020 UWMP (35,000 people). The proposed project is estimated to contribute 5.7 percent of the projected population growth by 2030. The estimated water demand of the proposed project is 1.2 percent of the projected 2030 water demand increase.

Muni Water has determined that it has adequate resources to meet the water demands for its growing population and has taken measures to decrease its per capita water use. There are enough water resources for the proposed project for normal, single dry, and multiply dry years during the 20 year projection. Therefore, Impacts, including direct and indirect, would not be significant.

Solid Waste Reduction Goals Consistency

The proposed project would increase production of solid waste as compared to existing conditions. As discussed above, buildout of the General Plan could result in increased solid waste generation or landfilled daily capacity. However, the General Plan PEIR concluded that compliance with City and County waste reduction programs and policies, in coordination with federal and State mandates for solid waste reduction, would reduce the volume of waste entering landfills. Similarly, the proposed project would operate in compliance with local policies and federal and State mandates for the reduction of the solid waste stream. Impacts, including direct and indirect would not be significant.

Solid Waste Regulations

The proposed project would be consistent with the General Plan PEIR and Housing Element Update SEIR as it would comply with General Plan Goals and Policies, such as Policy IN-5.3, which requires using solid waste reduction techniques, as well as federal, State, and local mandates related to solid waste reduction, recycling, and waste diversion. Impacts, including direct and indirect would not be significant.

4.2.11 - Wildfire

Emergency Response/Evacuation Plan Consistency

During construction, it is expected that construction equipment and vehicles would access and exit the project site, which in turn could potentially impede evacuation or emergency vehicles access. During operation of the proposed project, resident vehicles would need to access and leave the project site.

The City of San José Emergency Operations Plan (EOP) contains provisions for emergency response within the City. The EOP plans and identifies emergency response policies, describes the response and recovery organization, and assigns specific roles and responsibilities to City departments, agencies, and community partners. The proposed project would be required to comply with the City's EOP to ensure that the proposed project would not interfere with an adopted emergency response or evacuation plan.

According to the City's EOP, the City is currently developing an evacuation plan with established evacuation routes within the City. The project site is located Zanker Road which is an arterial roadway that connects to Montague Expressway and U.S. Highway 101 (US-101) and could serve as

potential evacuation routes during a disaster. Additionally, the proposed project is located approximately 1.08 miles west of Interstate 880 (I-880), which could serve as another potential evacuation route during a disaster. Further, the proposed project would include on-site circulation improvements such as internal drive aisles with the City's standard minimum width for two-way drive aisles of 26 feet wide, which would permit emergency vehicle access within and adjacent to the project site.

Additionally, the proposed project is not located within or near a Fire Hazard Severity Zone (FHSZ) in a State Responsibility Area (SRA) or a Very High Fire Hazard Severity Zone (VHFHSZ) in a Local Responsibility Area (LRA) zone. The closest area is 4 miles northeast in a SRA.[14] Therefore, impacts would be less than significant.

Expose Project Occupants to Pollutant Concentrations from Wildfire

The proposed project is not located within or near an FHSZ in an SRA or VHFHSZ in an LRA.[15] The project site is located within the Urban Growth Boundary (UGB), whose entire area is non-VHFHSZ. It is not located in an area that would experience significantly different prevailing winds, nor is it located in a location where occasional wind events would pose a significant additional risk related to wildfire spread. Furthermore, as part of the proposed project, landscaping would be managed and so as to not provide fuel for a wildfire. Additionally, the proposed development would be subject to the existing City and State regulations created to reduce potential impacts resulting from wildfires. As such, impacts would be less than significant.

Infrastructure that Exacerbates Fire Risk

The proposed project is not located within or near an FHSZ in an SRA or VHFHSZ in an LRA.[16] The project site is located within the UGB, whose entire area is non-VHFHSZ. Additionally, the proposed development would be subject to the existing City and State regulations created to reduce potential impacts resulting from wildfires and how they relate to the installation or maintenance of associated infrastructure that may exacerbate fire risk. Therefore, there would be no impact.

Flooding and Landslide Hazards due to Post-fire Slope Instability/Drainage Changes

The General Plan PEIR and Housing Element Update SEIR determined that the various General Plan policies were created to mitigate environmental impacts resulting from planned development within the City regarding wildfires, including Policies EC-8.1 and EC-8.2. There was a determination of no impact. The proposed project would be required to comply with the same General Plan and Housing Element policies related to wildfire risk. The project site is not located in an urban-wildland interface area and is not subject to high risk of wildfire. Therefore, there would be no impact.

[14] California Department of Forestry and Fire Protection (CAL FIRE). 2024. Fire Hazard Severity Zone Viewer. Website: https://experience.arcgis.com/experience/03beab8511814e79a0e4eabf0d3e7247/. Accessed November 15, 2024.
[15] Ibid.
[16] Ibid.

CHAPTER 6: ALTERNATIVES TO THE PROPOSED PROJECT

6.1 - Introduction

In accordance with California Environmental Quality Act (CEQA) Guidelines Section 15126.6, this Draft Environmental Impact Report (Draft EIR) contains a comparative impact assessment of alternatives to the proposed project. The primary purpose of this section is to provide decision-makers and the general public with a reasonable number of feasible project alternatives that could attain most of the basic project objectives, while avoiding or reducing any of the proposed project's significant environmental effects. This Draft EIR includes sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project. A matrix displaying the major characteristics and significant environmental effects of each alternative is included to summarize the comparison. If an alternative would cause one or more significant effects in addition to those that would be caused by the project as proposed, the significant effects of the alternative s are discussed, but in less detail than the significant effects of the project as proposed. Important considerations for these alternatives analyses are noted below (as stated in CEQA Guidelines § 15126.6).

- An EIR need not consider every conceivable alternative to a project;
- An EIR should identify alternatives that were considered by the lead agency, but rejected as infeasible during the scoping process;
- Reasons for rejecting an alternative include:
  - Failure to meet most of the basic project objectives;
  - Infeasibility[1]; or
  - Inability to avoid significant environmental effects.

6.1.1 - Significant Impacts

The proposed project would not result in any significant and unavoidable impacts. All potentially significant impacts can be mitigated to less than significant and include:

- **Air Quality:** The proposed project could expose sensitive receptors to substantial pollutant concentrations during construction. Implementing Mitigation Measure (MM) AIR-1 and the City's Standard Permit Condition (SPC) for Air Quality would reduce this impact to a less than significant level.

[1] Among the factors that may be taken into account when addressing the feasibility of alternatives are site suitability, economic viability, availability of infrastructure, general plan consistency, other plans or regulatory limitations, jurisdictional boundaries (projects with a regionally significant impact should consider the regional context), and whether the proponent can reasonably acquire, control or otherwise have access to the alternative site (or the site is already owned by the proponent). No one of these factors establishes a fixed limit on the scope of reasonable alternatives (California Code of Regulations [CCR] Title 14 § 15126.6)

- **Biological Resources:** Construction activities associated with the proposed project could result in removal of nesting and roosting habitat for special-status species. Implementing MM BIO-1, MM BIO-2, SPC BIO-1, and SPC BIO-2 would reduce this impact to a less than significant level.
- **Cultural Resources:** Project ground-disturbing activities could result in a substantial adverse change in the significance of an archaeological resource. Implementing MM CUL-2a, MM CUL-2b, and SPC CUL-1a would reduce this impact to a less than significant level.
- **Noise:** The proposed project would result in a substantial noise increase due to construction lasting longer than 12 months, and as a result the construction no longer meets the City's definition of a temporary impact. Implementing MM NOI-1 would ensure that the proposed project construction activities would not result in substantial increases at the off-site sensitive receptors above standards established in the General Plan, and construction noise impacts on sensitive receptors in the project vicinity would be reduced to a less than significant level.
- **Tribal Cultural Resources:** Project ground-disturbing activities could result in a substantial adverse change in the significance of tribal cultural resource. Implementing MM CUL-2a, MM CUL-2b, and SPC CUL-1a and SPC CUL-1b would reduce this impact to a less than significant level.

All of these impacts would be mitigated to less than significant with the implementation of the identified mitigation measures and Standard Permit Conditions. Therefore, the proposed project would not have any significant and unavoidable environmental impacts.

6.2 - Project Objectives

The proposed project would provide a diverse mix of residential product types to allow more housing options in the City of San José. The following are the objectives of the proposed project:

- Deliver a mix of affordable and market-rate high-quality housing in an existing residential neighborhood.
- Construct housing with sufficient density (that satisfies the City of San José density requirements) to be marketable and produce a reasonable return on investment for the project applicant and its investors such that it is able to attract investment capital and construction financing.
- Assist the City of San José to satisfy its regional housing needs allocation for market-rate and below-market-rate housing units while delivering a greater percentage of 17.6 percent affordable units than is the City's required 15 percent per Inclusionary Housing Ordinance (IHO) Chapter 5.08 of the Municipal Code.
- Revitalize and redevelop a vacant and underutilized commercial site in the heart of a residential neighborhood.
- Create a lively and walkable tree-lined neighborhood environment with improved sidewalks and open space.

- Provide pedestrian links to the existing surrounding single-family neighborhood, River Oaks Park, local schools, and transit.
- Enhance the architectural and visual character of the neighborhood with buildings designed with a modern aesthetic, harmonizing with the residential setting while preserving some of the existing redwood trees that line River Oaks Parkway.

6.3 - Alternatives to the Proposed Project

6.3.1 - Alternatives Considered and Rejected from Further Consideration

This chapter compares the impacts of the proposed project with two land use project alternatives: the No Project–No Development Alternative and the No Project–Develop with Base General Plan and Zoning Alternative. An environmentally superior alternative is identified. In addition, alternatives initially considered but rejected from further consideration are discussed. The purpose of this chapter is to identify ways to mitigate or avoid the significant effects that the proposed project may have on the environment, the discussion of alternatives shall focus on alternatives to the proposed project or its location which are capable of avoiding or substantially lessening any significant effects of the proposed project, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly.

Location Alternative

CEQA Guidelines Section 15126.6(2)(A) provides: "The key question and first step in analysis is whether any of the significant effects of the project would be avoided or substantially lessened by putting the project in another location." Here, the proposed project would not result in any significant unavoidable impacts. Even so, the possibility of an alternate project location was analyzed and determined to be infeasible for the following reasons.

In order to identify an alternative site that might be reasonably considered to "feasibly accomplish most of the basic purposes" of the proposed project, and would also reduce significant impacts, it was assumed that such a site would ideally have the following characteristics:

- Vacant
- Controlled by the Applicant
- Would reduce impacts of the proposed project

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 of similar size that the applicant is capable of acquiring and that allow for high-density residential uses.

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 site(s) they can feasibly acquire or control. Additionally, a relocation of the proposed project would not result in a reduction of impacts associated with the proposed project, because it would cause those impacts, largely related to construction activity near residences, to occur at another location. Residential uses are frequently placed near other similar uses and in residential neighborhoods, and constructing the project at an alternative location that is similarly situated near housing would lead to similar construction-related impacts that would require essentially the same mitigation measures identified for the proposed project to reduce impacts to less than significant levels. Therefore, discussion of an alternative location for the proposed project is not required or useful and this alternative is rejected from further consideration.

Reduced Housing Unit Density Alternative

The primary impacts of the proposed project would result from construction. Therefore, a reduced-scale alternative that would reduce the size of a project in massing or density, most commonly by a percentage of 25–50 percent, could reduce significant impacts of a proposed project by shortening the construction timeframe and/or reducing the number/duration of heavy equipment used on-site. Under a reduced-scale alternative, the proposed project would be downsized to reduce impacts created by the proposed project commensurately, such as construction air quality and noise, or operational traffic. It should be noted that the proposed project, with mitigation, would not result in any significant and unavoidable impacts. Any reduction in density would reduce the already less than significant impacts of the proposed project but would not change the significance conclusions for the proposed project.

This EIR discloses that the proposed project is compatible with the height and massing of nearby residential structures, and no significant unavoidable project impacts would occur. Additionally, all impacts that would occur from implementation of the proposed project would be mitigated to less than significant levels.

Reducing the scale of the proposed project would still require the removal of trees and disturbance of soils underlaying the site. As a result, the biological, cultural resources, hazardous materials, and tribal cultural resources impacts would remain the same as the proposed project and would require mitigation to reduce impacts to less than significant. Therefore, reducing the scale of the proposed project would not substantially lessen or avoid these impacts.

Additionally, under CEQA Guidelines Section 21159.26, with respect to a project that includes housing development, a public agency may not reduce the proposed number of housing units as a mitigation measure or project alternative for a particular significant effect on the environment if it determines that there is another feasible specific mitigation measure or project alternative that would provide a comparable level of mitigation.

Most importantly, a Reduced Density Alternative would not be consistent with the zoning of the site; the Transit Employment Residential Overlay (TERO) overlay requires a minimum density of 75 dwelling units/acre, and the proposed project would result in a density of 76.2 units/acre.

This alternative would not construct housing with sufficient density (that satisfies the City of San José density requirements) to be marketable and produce a reasonable return on investment for the project applicant and its investors such that it is able to attract investment capital and construction financing, nor would it assist the City of San José to satisfy its Regional Housing Needs Allocation (RHNA) for market-rate and below-market-rate housing units while delivering a greater percentage of 17.6 percent affordable units than is the City's required 15 percent per IHO Chapter 5.08 of the Municipal Code.

Alternative Site Design

The City considered variations in site design such as below-ground parking and placing the townhomes fronting River Oaks Parkway rather than at the back of the site to reduce building height facing River Oaks Park and adjacent residential units. The proposal the applicant has submitted is for a specific development plan that sites the townhomes at the rear of the project site and provides all parking above ground. The site plan took into consideration required minimum density and site shape and has been refined throughout the design review and CEQA process based on City comments and requirements regarding parking, landscape, etc. It is not anticipated that the taller buildings in the front would create substantial shade on River Oaks Park for a significant period of time due to separation distance. Additionally, the City of San José's threshold for determining whether a project would have a shade and shadow impact is if the project would result in a 10 percent or greater increase in the shadow cast onto any one of the six major spaces in the Downtown Area. River Oaks Park is not one of the six major downtown open spaces, therefore, an impact under CEQA would not occur. As the proposed project is the development proposal before the City decision-makers, alternative site design was rejected from further consideration.

6.3.2 - Alternatives Considered

Given the requirements of minimum density of 75 dwelling units/acre (du/acre) as prescribed by the TERO, and the proposed project's underlying purpose and objectives, particularly providing a range of housing, including affordable housing, to help the City meet its RHNA, only two alternatives are feasible and considered in this chapter for further analysis.

No Project–No Development Alternative

The CEQA Guidelines Section 15126.6(d) require that when a project would result in a significant unavoidable impact, an EIR must specifically discuss a "No Project" alternative, which shall address both "the existing conditions, as well as what would be reasonably expected to occur in the foreseeable future if the project is not approved, based on current plans and consistent with available infrastructure and community services."

The No Project Alternative would retain the existing land use on-site as is, three vacant commercial office buildings and associated parking area. If the project site was to remain developed as is, the significant impacts resulting during construction of the proposed project would not occur. This

alternative would maintain the baseline conditions described throughout this EIR; however, this alternative would not meet any of the project objectives.

No Project–Develop with Base General Plan and Zoning

The No Project–Develop with Base General Plan and Zoning Development Alternative would not construct the proposed project as designed and would instead allow for the future construction of another commercial or residential development consistent with the General Plan designation of Industrial Park and TERO overlay for the project site which allows housing with a density of between 75 and 250 dwelling units per acre. These would include replacement of the existing vacant commercial buildings with similar or larger commercial building or development of a high-density residential project, which could include residential density greater than proposed by the project. Both commercial and residential options would result in similar or greater site disturbance and would construct buildings of similar or larger scale than the proposed project adjacent to the same sensitive receptors. This would create construction impacts and require excavation comparable to the proposed project, which would result in similar impacts. There is also the possibility that a future project that includes subterranean parking would yield greater construction impacts and excavation compared to the proposed project. Development under the base General Plan and Zoning could result in far greater traffic impacts if residential development is proposed at greater density, as residential uses are the highest generators of vehicle trips. Similarly, if a project is proposed that contains substantial square footage of commercial/office uses, impacts to all resource topics could be greater. Therefore, this alternative would not reduce or avoid any of the impacts identified for the proposed project, including potentially significant impacts to Air Quality, Biological Resources, Cultural and Tribal Cultural Resources, Land Use, Noise, and Transportation, and could result in greater impacts than the proposed project. This alternative would likely not achieve many of the project objectives, including helping the City meet its RHNA, particularly if the development proposed is commercial use rather than residential.

6.4 - Comparison of Environmental Impacts for Alternatives to the Proposed Project

A comparison of alternatives based upon whether they avoid or substantially lessen the significant environmental effects is shown in the table below.

Table 6-1: Summary of Alternatives

Environmental Topic Area	Proposed Project	No Project–No Development	No Project–Develop with Base General Plan and Zoning
Aesthetics, Light, and Glare	LTS	LTS,=	LTS,=
Agriculture and Forestry Resources	NI	NI,=	LTS, >
Air Quality	LTSM	NI, <	LTSM, >
Biological Resources	LTSM	NI, <	LTSM, >
Cultural Resources and Tribal Cultural Resources	LTSM	NI, <	LTSM, >

Environmental Topic Area	Proposed Project	No Project–No Development	No Project–Develop with Base General Plan and Zoning
Geology, Soils, and Seismicity	LTS	NI, <	LTS, =
Greenhouse Gas Emissions	LTS	NI, <	LTSM, >
Hazards and Hazardous Materials	LTS	NI, <	LTS, =
Hydrology and Water Quality	LTS	NI, <	LTS, =
Land Use	LTS	NI, <	LTS, >
Minerals	NI	NI, =	NI, =
Noise	LTSM	NI, <	LTSM,
Population and Housing	LTS	NI, <	LTS, =
Public Services	LTS	NI, <	LTS, =
Transportation	LTS	NI, <	>
Tribal Cultural Resources	LTSM	NI, <	LSTM, =
Utilities	LTS	NI, <	LTS, =
Wildfire	NI	NI, <	NI, =

Notes:
LTS = Less than significant impact
LTSM = Less than significant impact with mitigation incorporated
NI = No impact
> = Potentially greater than
Source: FirstCarbon Solutions (FCS). 2024.

6.5 - Environmentally Superior Alternative

CEQA Guidelines Section 15126(e)(2) requires identification of an environmentally superior alternative. If the No Project Alternative is environmentally superior, CEQA requires selection of the "environmentally superior alternative other than the No Project Alternative" from among the project and the alternatives evaluated.

Based on the above discussion, the environmentally superior alternative is the No Project–No Development Alternative. The No Project–No Development Alternative would retain the site in its current condition. Retaining the status quo on the site would avoid all construction and operational impacts associated with the proposed project and no mitigation or imposition of Standard Permit Conditions would be required. Therefore, the No Project–No Development Alternative is the environmentally superior alternative; however, it would not achieve the project objectives.

Beyond the No Project–No Development Alternative, the Reduced Density Alternative (which was considered but rejected) would be the environmentally superior alternative. However, this alternative would not be consistent with the TERO overlay, which requires a minimum density of 75 dwelling units/acre. The Reduced Density Alternative could result in a slight reduction of air quality

and noise impacts compared to the proposed project but would still require mitigation and imposition of Standard Permit Conditions to reduce the impacts to less than significant. This alternative would not achieve the density goal of the General Plan Overlay for the project site and would not meet all the objectives of the proposed project. Development under existing zoning could result in greater impacts in various resource areas compared to the proposed project, depending on the development proposed.

CHAPTER 7: PERSONS AND ORGANIZATIONS CONSULTED/LIST OF PREPARERS

7.1 - Lead Agency

7.1.1 - City of San José

Planning, Building and Code Enforcement

Environmental Project Manager.....Tina Garg
Planner III.....Kara Hawkins

7.2 - Project Sponsor and Sponsor Consultants

7.2.1 - River Oaks Housing Partners, LLC

Applicant.....Scott Connelly

7.2.2 - Cornerstone Earth Group

Geotechnical Project Manager.....Maura F. Ruffatto, PE
Quality Assurance Reviewer.....Danh T. Tran, PE

7.3 - List of Preparers

7.3.1 - Lead Consultant

FirstCarbon Solutions

Project Director.....Mary Bean
Senior Project Manager.....Alison Rondone
Legal Counsel.....Megan Starr, JD
Director of Cultural Resources.....Dana DePietro, PhD, RPA
Senior Archaeologist.....Stefanie Griffin
Archaeologist.....Natalie Adame
Director of Noise and Air Quality.....Phil Ault, LEED® AP
Senior Air Quality Scientist.....Marianne Aydil, PhD
Senior Air Quality Scientist.....Jackie Winkel
Senior Biologist.....Robert Carroll
Biologist.....Kelly Evans
Analyst.....Alex Ortiz
Analyst.....Matthew Dionisio
Analyst.....Henry Welch
Noise Analyst.....Sara Landucci
Senior Managing Editor.....Susie Harris
Publications Coordinator.....Alec Harris
Technical Editor.....Sarah Vine

Document Specialist..... Melissa Ramirez
GIS/Graphics .....Karlee McCracken
GIS/Graphics .....Sebastian Macias

7.3.2 - Technical Subconsultants

Hexagon Transportation Consultants

Senior Associate .....Brian Jackson

Todd Groundwater

President ..... Iris Priestaf, PhD