

Draft Environmental Impact Report  
**San José Flea Market Planned Development Rezoning**

PDC17-051



Prepared by



In Consultation with



October 2020



**NOTICE OF AVAILABILITY OF  
A DRAFT ENVIRONMENTAL IMPACT REPORT (EIR)  
AND PUBLIC COMMENT PERIOD**

**Project Description:** A Planned Development Rezoning of the southern 61.5-acre portion of the Flea Market site from the A(PD) Planned Development Zoning District to a new A(PD) Planned Development Zoning District. The Draft EIR analyzes two development scenarios. Option 1 is the Applicant's proposed development project and Option 2 is the City's preferred development scenario. Option 1 includes up to 3,450 residential units and up to 2.2 million square feet of commercial space. Option 2 includes up to 3,450 residential units and up to 3.4 million square feet of commercial space.

Development Scenarios		
	Option 1 (Proposed Project)	Option 2 (City's Preferred)
Residential	3,450 units	3,450 units

**Location:** The 61.5-gross acre project site is located on the San José Flea Market property, south of Berryessa Road, east of Coyote Creek, west of the Berryessa Bay Area Rapid Transit (BART) Station and track alignment, and north of Mabury Road in the City of San José. APNs: 254-17-007, 254-17-052, 254-17-053, and 254-17-095.

**Council District:** 4

**File No:** PDC17-051

The proposed project will have potentially significant environmental effects with regard to Air Quality, Biological, Cultural, Hazardous Materials, and Noise. The California Environmental Quality Act (CEQA) requires this notice to disclose whether any listed toxic sites are present at the project location. The project location is contained in the Cortese List of toxic sites.

The Draft EIR and documents referenced in the Draft EIR are available for review online at the City of San José's "Active EIRs" website at [www.sanjoseca.gov/activeeirs](http://www.sanjoseca.gov/activeeirs)

Usually hard copies would be available at City Hall and Dr. Martin Luther King Jr. Main Library in Downtown and the local library branch. **However, in response to the COVID-19 and Shelter-In-Place policy, hard copies are no longer available at these typical locations. Therefore, if requested, a hard copy will be mailed to you. Please allow time for printing and delivery.**

The public review period for this Draft EIR begins on **October 2, 2020** and ends on **November 16, 2020**. Written comments must be received at the Planning Department by **5:00 p.m. on November 16, 2020**, in order to be addressed as part of the formal EIR review process. Comments and questions should be referred to Cassandra van der Zweep in the Department of Planning, Building and Code Enforcement at e-mail: [Cassandra.vanderZweep@sanjoseca.gov](mailto:Cassandra.vanderZweep@sanjoseca.gov), or by regular mail at the mailing address listed for the Department of Planning, Building, and Code Enforcement, above (send to the attention of Cassandra van der Zweep). For the official record, please your written comment letter and reference **File No PDC17-051**.



Following the close of the public review period, the Director of Planning, Building, and Code Enforcement will prepare a Final Environmental Impact Report that will include responses to comments received during the review period. At least ten days prior to the public hearing on the EIR, the City's responses to comments received during the public review period will be available for review and will be sent to those who have commented in writing on the EIR during the public review period.

Rosalynn Hughey, Director  
Planning, Building and Code Enforcement

Date

And 28  
Deputy

9/30/2020



## TABLE OF CONTENTS

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Summary .....	v
Section 1.0 Introduction.....	1
1.1 Purpose of the Environmental Impact Report .....	1
1.2 EIR Process.....	1
1.3 Final EIR/Responses to Comments .....	3
Section 2.0 Project Information and Description.....	4
2.1 Project Location and Existing Development .....	4
2.2 Project Description .....	4
2.3 Project Objectives.....	20
2.4 Uses of the EIR.....	20
Section 3.0 Environmental Setting, Impacts, and Mitigation .....	22
3.1 Aesthetics.....	25
3.2 Agricultural and Forestry Resources .....	38
3.3 Air Quality .....	41
3.4 Biological Resources .....	66
3.5 Cultural Resources.....	101
3.6 Energy.....	116
3.7 Geology and Soils.....	124
3.8 Greenhouse Gas Emissions.....	133
3.9 Hazards and Hazardous Materials .....	144
3.10 Hydrology and Water Quality .....	161
3.11 Land Use and Planning.....	175
3.12 Mineral Resources .....	181
3.13 Noise and Vibration.....	183
3.14 Population and Housing.....	208
3.15 Public Services .....	213
3.16 Recreation.....	224
3.17 Transportation.....	228
3.18 Tribal Cultural Resources .....	255
3.19 Utilities and Service Systems .....	259
3.20 Wildfire.....	269
Section 4.0 Growth-Inducing Impacts .....	270
Section 5.0 Significant and Irreversible Environmental Changes .....	271



5.1	Use of Nonrenewable Resources .....	271
5.2	Commitment of Future Generations to Similar Use .....	271
5.3	Irreversible Damage Resulting from Environmental Accidents Associated with the Project .....	272
Section 6.0	Significant and Unavoidable Impacts .....	273
Section 7.0	Alternatives .....	274
7.1	Significant Impacts of the Project.....	274
7.2	Project Objectives.....	275
7.3	Feasibility of Alternatives.....	275
7.4	Selection of Alternatives.....	276
7.5	Project Alternatives .....	278
Section 8.0	References.....	283
Section 9.0	Lead Agency and Consultants.....	287
9.1	Lead Agency.....	287
9.2	Consultants .....	287
Section 10.0	Acronyms and Abbreviations.....	288

## **Figures**

Figure 2.1-1: Regional Map .....	5
Figure 2.1-2: Vicinity Map .....	6
Figure 2.1-3: Aerial Photograph .....	7
Figure 2.2-1: 2007 Approved Land Use Plan (PDC03-108) .....	8
Figure 2.2-2: Proposed Land Use Plan .....	9
Figure 2.2-3: Berryessa BART Urban Village Plan Area.....	12
Figure 2.2-4: Conceptual Site Plan .....	14
Figure 2.2-5: Elevation Plan .....	15
Figure 2.2-6: Creek Corridor Dedication.....	17
Figure 2.2-7: Dimensioned Site Plan .....	19
Figure 3.3-1: Locations of Off-Site Sensitive Receptors.....	58
Figure 3.3-2: Existing and Project TAC Sources.....	63
Figure 3.4-1: Project Area with Existing Habitats.....	72
Figure 3.5-1: Surrounding Land Uses.....	108
Figure 3.9-1: Hazardous Materials Storage and Use .....	149



Figure 3.10-1: LOMR Revised Floodplain.....	168
Figure 3.13-1: Noise Measurement Locations.....	190
Figure 3.13-2: Future DNL Noise Contours .....	202
Figure 3.13-3: Noise Reduction Measures.....	204
Figure 3.17-1: Existing Pedestrian Facilities .....	235
Figure 3.17-2: Existing Bicycle Facilities.....	236
Figure 3.17-3: Existing Transit Services.....	238

## Tables

Summary of Significant Impacts and Mitigation Measures.....	vi
Table 1.2-1: Summaries of Comments Received on NOP.....	1
Table 2.2-1: Flea Market Existing Entitlement.....	4
Table 2.2-2: Development Options .....	10
Table 2.2-3: Urban Village Plan Capacities.....	11
Table 3.0-1: Cumulative Projects List .....	23
Table 3.3-1: Health Effects of Air Pollutants .....	41
Table 3.3-2: BAAQMD Air Quality Significance Thresholds .....	46
Table 3.3-3: Applicable Control Measures .....	47
Table 3.3-4: Construction Period Emissions for Options 1 and 2.....	50
Table 3.3-5: Operational Period Emissions – Option 1 .....	53
Table 3.3-6: Operational Period Emissions – Option 2 .....	54
Table 3.3-7: Comparison of Project Emissions to Bay Area Air Basin Emissions .....	56
Table 3.3-8: Project (Option 1 and Option 2) Construction Risk Impacts at the Offsite MEI .....	59
Table 3.3-9: Project (Option 1 and Option 2) Construction Risk Impacts at Learning Center and Daycare .....	59
Table 3.3-10: Construction and Operation Risk Impacts at the Offsite MEI .....	60
Table 3.3-11: Construction and Operation Risk Impacts at the Learning Center and Daycare.....	61
Table 3.3-12: Impacts from Cumulative TAC Sources at the Offsite MEI .....	64
Table 3.3-13: Impacts from Cumulative TAC Sources at the Project Site .....	65
Table 3.4-1: Tree Replacement Ratios.....	97
Table 3.5-1: Surrounding Uses Inventory.....	109
Table 3.6-1: Estimated Annual Energy Use of Proposed Project .....	122
Table 3.13-1: Groundborne Vibration Impact Criteria .....	184
Table 3.13-2: General Plan Land Use Compatibility Guidelines .....	185

Table 3.13-3: Summary of Long-Term Noise Measurements near Project Site.....	191
Table 3.13-4: Calculated Exterior Noise Levels at Proposed Park and Residential Open Space Areas .....	201
Table 3.13-5: Calculated Exterior Noise Levels at Building Facades .....	206
Table 3.14-1: Population and Employment in San José .....	210
Table 3.17-1: Existing Transit Service .....	237
Table 3.17-2: VMT Evaluation Summary .....	242
Table 3.17-3: Project Trip Generation Estimates.....	246
Table 3.17-4: Option 1 Intersection Levels of Service .....	247
Table 3.17-5: Option 2 Intersection Levels of Service .....	249
Table 3.19-1: Net Potable Water Demand Estimated for Option 1 and Option 2 .....	265
Table 7.5-1: Summary of Project and Project Alternative Impacts .....	282

## **Photos**

Photos 3.1-1 & 3.1-2.....	29
Photos 3.1-3 & 3.1-4.....	30
Photos 3.1-5 & 3.1-6.....	31
Photos 3.1-7 & 3.1-8.....	32
Photos 3.1-9 & 3.1-10.....	33

## **Appendices**

Appendix A: Notice of Preparation and Comment Letters
Appendix B: Air Quality, Community Risk, and Greenhouse Gas Assessment
Appendix C: Biological Resources Report
Appendix D: Historic Resources Assessment
Appendix E: Phase I Environmental Site Assessment Update
Appendix F: Flooding and Drainage Evaluation
Appendix G: Noise and Vibration Assessment
Appendix H: Transportation Analysis
Appendix I: Water Supply Assessment



## SUMMARY

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The City of San José, as the Lead Agency, has prepared this Draft Environmental Impact Report (EIR) for the San José Flea Market Planned Development (PD) Rezoning Project in compliance with the California Environmental Quality Act (CEQA) and the CEQA Guidelines.

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

### Summary of the Project

The approximately 120-acre Flea Market site is located at 1590 Berryessa Road in the City of San José. The project proposes to redevelop the 61.5-acre portion of the Flea Market site south of Berryessa Road (project site). The project site is bounded by Upper Penitencia Creek and Berryessa Road to the north, Coyote Creek to the west, Mabury Road to the south, and the Berryessa Bay Area Rapid Transit (BART) Station and tracks to the east.

The project proposes to rezone the site to allow construction of high-density commercial office, multi-family residential, and park and open space uses on the project site. The project would result in the demolition and removal of the existing San José Flea Market development. The physical improvements proposed to the project site south of Berryessa Road include:

- Up to 3,450 multi-family residential units
- 2.2 to 3.4 million square feet of commercial office uses
- Three parking garages with a total of up to 14,250 vehicle parking spaces
- A plaza adjacent to the BART station with a performance stage and ‘pop-up’ retail
- A garden plaza with an urban garden and play area
- A 1.4-acre recreation area
- Open space areas along Upper Penitencia and Coyote Creeks with riparian plantings, picnic areas, and multi-use paths
- Two vehicular bridges spanning Upper Penitencia Creek
- Modification or reconstruction of two stormwater outfalls
- Public roadways throughout the site, with connections to Berryessa Road and Mabury Road

The EIR includes analysis of two development options, which differ in the amount of commercial office space included. The applicant proposes to construct up to 2.2 million square feet of office uses (Option 1), while maximum development option being considered for recommendation to City Council includes up to 3.4 million square feet of office uses (Option 2). The maximum building heights (270 feet), residential and park uses, and site circulation for the two development options would be the same.

## Summary of Significant Impacts and Mitigation Measures

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

Summary of Significant Impacts and Mitigation Measures	
Impact	Mitigation Measure
<b>Air Quality</b>	
<b>Impact AIR-1:</b> Construction period emissions would exceed Bay Area Air Quality Management District (BAAQMD) thresholds for reactive organic gases (ROG) and nitrogen oxide (NO <sub>x</sub> ) exhaust. <b>(Less than Significant Impact with Mitigation Incorporated)</b>	<p><b>MM AIR-1.1:</b> The following best management practices shall be implemented by the project applicant prior to issuance of any demolition or grading permits and/or during construction activities to reduce diesel particulate matter (DPM) and coarse particulate matter (PM<sub>10</sub>) to avoid short-term health impacts to nearby sensitive receptors during construction.</p> <ol style="list-style-type: none"> <li>1. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered at a frequency adequate to maintain minimum soil moisture of 12 percent. Moisture content can be verified by lab samples or moisture probe.</li> <li>2. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.</li> <li>3. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.</li> <li>4. All vehicle speeds on unpaved roads shall be limited to 15 miles per hour (mph).</li> <li>5. Exposed stockpiles (dirt, sand, etc.) shall be enclosed, covered, watered twice daily, or applied with non-toxic soil binders.</li> <li>6. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.</li> <li>7. Idling times shall be minimized either by shutting equipment off when not in use</li> </ol>



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or reducing the maximum idling time to five minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of the California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.

8. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
9. Post a publicly visible sign with the telephone number and person to contact at the City of San José regarding dust complaints. This person shall respond and take corrective action within 48 hours. The BAAQMD's phone number shall also be visible to ensure compliance with applicable regulations.
10. All excavation, grading, and/or demolition activities shall be suspended when average wind speeds exceed 20 mph and visible dust extends beyond site boundaries.
11. Wind breaks (e.g., trees, fences) shall be installed on the windward side(s) of actively disturbed areas of construction adjacent to sensitive receptors. Wind breaks shall have at maximum 50 percent air porosity.
12. Vegetative ground cover (e.g., fast-germinating native grass seed) shall be planted in disturbed areas as soon as possible and watered appropriately until vegetation is established.
13. The simultaneous occurrence of excavation, grading, and ground-disturbing construction activities on the same area at any one time shall be limited. Activities shall be phased to reduce the number of disturbed surfaces at any one time.
14. Avoid tracking of visible soil material onto public roadways by employing the following measures if necessary: 1) Site accesses to a distance of 100 feet from public paved roads shall be treated with a 0.5- to one-foot compacted layer of wood chips, mulch, or gravel; and 2) wash

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truck tires and construction equipment prior to leaving the site.

15. Sandbags or other erosion control measures shall be installed to prevent silt runoff to public roadways from sites with a slope greater than one percent.

**MM AIR-1.2:** Prior to the issuance of any demolition or grading permits, the project applicant shall utilize construction equipment that has low DPM exhaust and NO<sub>x</sub> emissions, according to the following criteria:

1. All construction equipment larger than 25 horsepower used at the site for more than two continuous days or 20 hours total shall meet Environmental Protection Agency (EPA) Tier 4 emission standards for NO<sub>x</sub> and particulate matter (PM<sub>10</sub> and PM<sub>2.5</sub> [fine particulate matter]), if feasible, otherwise:
    - a. If use of Tier 4 equipment is not available, alternatively use equipment that meets EPA emissions standards for Tier 3 engines and include particulate matter emissions control equivalent to California Air Resources Board (CARB) Level 3 verifiable diesel emission control devices that altogether achieve an 85 percent reduction in particulate matter exhaust in comparison to uncontrolled equipment; or,
    - b. Use alternatively fueled equipment with lower NO<sub>x</sub> emissions that meet the NO<sub>x</sub> and PM reduction requirements above.
  2. Diesel engines, whether for off-road equipment or on-road vehicles, shall not be left idling for more than two minutes, except as provided in exceptions to the applicable state regulations (e.g., traffic conditions, safe operating conditions). The construction sites shall have posted legible and visible signs in designated queuing areas and at the construction site to clearly notify operators of the idling limit.
  3. All on-road heavy-duty diesel trucks with a gross vehicle weight rating of 33,000
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	<p>pounds or greater used at the project site (such as haul trucks, water trucks, dump trucks, and concrete trucks) shall be model year 2014 or newer.</p> <p>4. Provide line power to the site during the early phases of construction to minimize the use of diesel-powered stationary equipment, such as generators.</p>
	<p><b>MM AIR-1.3:</b> At least 80 percent of the residential and non-residential buildings constructed shall use low-volatile organic compound (VOC; i.e., ROG) exterior paints that are below current BAAQMD requirements (Regulation 8, Rule 3: Architectural Coatings). This includes all architectural coatings applied during both construction and reapplication throughout the project's operational lifetime. At least 80 percent of coatings applied must meet a "super-compliant" VOC standard of less than 10 grams of VOC per liter of paint. For reapplication of coatings during the project's operational lifetime, the Declaration of Covenants, Conditions, and Restrictions shall contain a stipulation for low-VOC coatings to be used.</p>
<p><b>Impact AIR-2:</b> Operational period emissions would exceed BAAQMD thresholds for ROG (Option 1 and Option 2), NO<sub>x</sub> (Option 1 and Option 2), and PM<sub>10</sub> (Option 2 only). (Significant and Unavoidable Impact)</p>	<p><b>MM AIR-2.1:</b> Prior to any approval of a Planned Development Permit for the construction of the residential and/or commercial buildings and structures, the project applicant shall implement a Transportation Demand Management (TDM) plan consistent with City requirements.</p> <p>A traffic engineer shall prepare and submit the TDM plan for review and approval to the Director of Planning, Building and Code Enforcement or the Director's designee and the Director of Public Works or the Director's designee. Trips shall be reduced by at least 48 percent for Option 1 and at least 53 percent for Option 2, as compared to unmitigated conditions.</p>
<b>Biological Resources</b>	
<p><b>Impact BIO-1:</b> Dewatering and the modification or reconstruction of outfalls on the creeks during project construction could result in the loss of individual special-status fish. (Less than Significant Impact with Mitigation Incorporated)</p>	<p><b>MM BIO-1.1:</b> Dewatering of Upper Penitencia Creek and Coyote Creek shall occur only during the period of June 15 through October 15 (or as otherwise specified by resource agency permits for the project) when special-status fish are least likely to be present. Prior to dewatering activities, the project applicant shall hire a qualified biologist who will use block nets to exclude fish from the reach of Upper Penitencia Creek to be dewatered during removal of the existing bridges (and, if necessary, from the segment of Upper Penitencia Creek and/or Coyote Creek that would</p>



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be dewatered for outfall modification or construction). If the entire reach is going to be dewatered, such as for bridge removal, a block net will be placed at the upper end of the reach to be dewatered. Subsequently, qualified biologists will walk from the upper to lower end of the reach with a seine stretched across the channel to encourage fish to move out of the construction area. When the lower end of the construction area is reached, a second block net will be installed to isolate the construction reach. This procedure will be repeated a minimum of three times on each dewatered reach to ensure that no fish remain in the construction area. The coffer dam used for dewatering will then be constructed within the limits delineated by the two block nets.

If only a small portion of one side of the channel needs to be dewatered, such as for outfall construction, a block net shall be used to encourage fish to move out of the dewatering area by expanding the net from the shoreline where outfall construction will occur outward into the channel. Both ends of the net shall be anchored to the shoreline, and the weighted net bottom shall be moved outward until it reaches the limits of dewatering. This shall be repeated a minimum of three times to ensure that no fish remain in the area to be dewatered. The coffer dam used for dewatering shall then be constructed within the area delineated by the block net.

In each case, a qualified biologist shall inspect the area within the block nets thoroughly to ensure that no fish are present prior to coffer dam construction and dewatering.

**MM BIO-1.2:** In determining whether modification or reconstruction of the existing outfalls is necessary in coordination with the Santa Clara Valley Water District (Valley Water), and designing new outfalls, the applicant's design team shall avoid and minimize any impacts to aquatic and riparian habitat. If complete avoidance of impacts to these sensitive habitats is determined to be infeasible by the applicant, the City will review the outfall designs and work with the applicant to ensure that no further avoidance or minimization of impacts to aquatic and riparian habitat can be achieved. In particular, permanent impacts, such as placement of hardened structures such as concrete or riprap,

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	<p>in the channel shall be avoided or minimized. If concrete is placed in an area where it will come into contact with the creek, it shall be allowed to cure before it comes into contact with creek waters. Energy dissipation shall be provided to minimize erosion and scour from water emanating from the outfall, but the amount of riprap or other hardened structures placed in aquatic habitat for energy dissipation shall be minimized with respect to the volume or cross-sectional area of the channel occupied by such structures.</p>
<p><b>Impact BIO-2:</b> Project development under both Option 1 and Option 2 would encroach into and impact the minimum 35-foot Habitat Plan allowable setback of the Coyote Creek and Upper Penitencia Creek riparian corridors. <b>(Less than Significant Impact with Mitigation Incorporated)</b></p>	<p><b>MM BIO-2.1:</b> Prior to issuance of a Planned Development permit for the construction of any non-exempt uses (i.e., the recreational area, arterial roadway, and non-native landscaping) within the City’s 100-foot setback and the Santa Clara Valley Habitat Plan’s 35-foot setback (Santa Clara Valley Habitat Plan, Condition 11), the project applicant shall request and obtain a riparian setback exception in accordance with City Council Policy 6-34 and the outlined factors of the Habitat Plan. As part of the exception review process and prior to a determination of the setback exception request, the Director of Planning, Building and Code Enforcement or the Director’s designee shall provide the exception request and proposed decision to the Wildlife Agencies for review and comment.</p> <p><b>MM BIO-2.2:</b> To compensate for the degradation of setback functions in this area, the project applicant shall restore native habitat at a two to one (restored area to impacted area) ratio, on an acreage basis, within other planned open space areas in the 100-foot riparian setbacks on the site (e.g., within portions of the setback where hardscape will be removed). Native trees and shrubs appropriate to this area, such as coast live oak and coyote brush, shall be planted and maintained to provide additional wildlife habitat adjacent to the creeks. A qualified restoration ecologist shall develop a Riparian Setback Enhancement and Monitoring Plan, which shall contain the following components (or as otherwise modified by regulatory agency permitting conditions):</p> <ol style="list-style-type: none"> <li>1. Goal of the restoration to achieve no net loss of habitat functions and values.</li> <li>2. Restoration design: <ul style="list-style-type: none"> <li>• Planting plan</li> </ul> </li> </ol>

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- Soil amendments and other site preparation elements as appropriate
  - Maintenance plan
  - Remedial measures/adaptive management
3. Monitoring plan (including final and performance criteria, monitoring methods, data analysis, reporting requirements, monitoring schedule, etc.). At a minimum, success criteria will include elimination of non-native woody species from the enhancement area and establishment of a native tree and shrub canopy providing at least 50 percent canopy coverage of the mitigation area within 10 years of mitigation implementation.
  4. Contingency plan for mitigation elements that do not meet performance or final success criteria.

The Riparian Setback Enhancement and Monitoring Plan must be approved by the Director of Planning, Building and Code Enforcement or the Director's designee prior to issuance of any ground disturbing permits (tree removal, demolition, or grading permit, whichever occurs first) within the currently undeveloped habitat within the riparian corridor.

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**Impact BIO-3:** Project construction (both Option 1 and Option 2) could result in the spread of invasive plant species already present on the project site or introduce new invasive plant species to the site, which would adversely impact the on-site riparian habitat. **(Less than Significant Impact with Mitigation Incorporated)**

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**MM BIO-3.1:** The project applicant shall employ the following best management practices for weed control to avoid and minimize the spread of invasive plant species:

- Prior to grading or soil disturbance, infestations of Algerian ivy and giant reed within areas of direct permanent or temporary disturbance will be removed and all vegetative material will be incinerated off-site or disposed of in a high-temperature composting facility that can compost using methods known to kill weed seeds, taking care to prevent any seed dispersal during the process by bagging material or covering trucks transporting such material from the site.
  - All ground disturbing equipment used adjacent to the riparian corridors will be washed (including wheels, tracks, and undercarriages) at a legally operating
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equipment yard both before and after being used at the site.

- All applicable construction materials used on site, such as straw wattles, mulch, and fill material, will be certified weed free.
- The project will follow a Stormwater Pollution Prevention Plan as per the National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (Construction General Permit; Water Board Order No. 2009-0009-DWQ).
- All disturbed soils will be stabilized and planted with a native seed mix from a local source following construction.
- If excavating, soil and vegetation removed from weed-infested areas will not be used in general soil stockpiles and will not be redistributed as topsoil cover for the newly filled areas. All weed-infested soil will be disposed of off-site at a landfill or buried at least 2.5 feet below final grade.

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**Impact BIO-4:** The proposed buildings along Coyote Creek and Upper Penitencia Creek, which would include glass facades and interior and exterior lighting, could result in bird strikes. **(Less than Significant Impact with Mitigation Incorporated)**

**MM BIO-4.1:** Due to the potential for the proposed buildings to result in high numbers of bird collisions, the project applicant shall implement the following bird-safe design considerations, which shall be reviewed and approved for effectiveness by a qualified ornithologist:

- On the buildings that front on Coyote Creek or Upper Penitencia Creek, no more than 10 percent of the surface area of the exterior building facades facing either creek will have untreated glazing between the ground and 60 feet above ground. Bird-safe glazing treatments may include fritting, netting, permanent stencils, frosted glass, exterior screens, and/or physical grids placed on the exterior of glazing or ultraviolet patterns visible to birds. Vertical elements of the window patterns shall be at least 0.25 inch wide at a maximum spacing of four inches or have horizontal elements at least 1/8-inch wide at a maximum spacing of two inches.

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- All glazing panels at corners of facades facing Coyote Creek or Upper Penitencia Creek between the ground and 60 feet above ground will be 100 percent treated.
  - For the residential building H5, located on the southwest side of the proposed arterial road, the requirements in the two previous bullets will be implemented for all facades of the building, from the ground to the top floor.
  - Any free-standing glass walls, wind barriers, skywalks, balconies, greenhouses, or similar structures that are included as part of the project design and that have unbroken glazed segments 24 square feet or larger in size will be 100 percent treated with bird-safe features, regardless of their location on the project site.
  - Exterior lighting on the northern and western perimeters of the development footprint will be minimized to the extent feasible, except as needed for safety. All exterior lights will be directed toward facilities on the project site (e.g., rather than directed upward or outward) and shielded to ensure that light is not directed outward toward Coyote Creek or Upper Penitencia Creek.
  - Exterior up-lighting will be avoided.
  - Occupancy sensors or other switch control devices will be installed on interior lights of office buildings, with the exception of emergency lights or lights needed for safety purposes. These lights will be programmed to shut off during non-work hours and between 10:00 PM and sunrise.

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**Impact BIO-5:** Implementation of the project (both Option 1 and Option 2) would require tree removal, in conflict with the City of San José Municipal Code. **(Less than Significant Impact with Mitigation Incorporated)**

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**MM BIO-5.1:** Prior to issuance of any ground disturbing permits (tree removal, demolition, or grading permit, whichever occurs first), the project applicant shall ensure trees that are intended to remain on the project site are protected during project construction. Protection shall include the establishment of Tree Protection Zones (TPZs), which at a minimum shall include the installation of a fence around the drip line of ordinance-sized trees, restricted construction activity within the dripline, and the posting of appropriate signage on the fence. These measures create an area of protection around the trees and

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	<p>reduce the threat of damage. Trees that are subject to ground-disturbing construction activities within any portion of their dripline shall be considered lost, unless a certified arborist determines that the tree is unlikely to be severely damaged or killed by such activities.</p> <p><b>MM BIO-5.2:</b> Prior to issuance of any ground disturbing permits (tree removal, demolition, or grading permit, whichever occurs first), the project applicant shall depict all trees to be removed, avoided, or protected on project plans. A Tree Protection Plan (TPP) shall be generated by a certified arborist to include all trees that are to be avoided or protected on the project site. The project applicant shall submit the TPP to the Director of Planning, Building and Code Enforcement or the Director's designee for approval.</p>
<p><b>Impact BIO-6:</b> Both Option 1 and Option 2 project construction and tree removal during the avian breeding season could result in direct or indirect impacts to eggs and nestlings. <b>(Less than Significant Impact with Mitigation Incorporated)</b></p>	<p><b>MM BIO-6.1:</b> Avoidance. To the extent feasible, construction activities shall be scheduled to avoid the nesting season. If construction activities are scheduled to take place outside the nesting season, all impacts to nesting birds protected under the Migratory Bird Treaty Act (MBTA) and California Fish and Game Code will be avoided. The nesting season for most birds in Santa Clara County extends from February 1 through August 31, inclusive.</p> <p><b>MM BIO-6.2:</b> Preconstruction Surveys. If construction activities and/or tree removal cannot be scheduled to occur between September 1 and January 31, preconstruction surveys for nesting birds shall be conducted by a qualified ornithologist to ensure that no nests will be disturbed during project implementation. These surveys will be conducted no more than seven days prior to the initiation of demolition or construction activities including tree removal and pruning. During this survey, the ornithologist will inspect all trees and other potential nesting habitats (e.g., trees, shrubs, ruderal grasslands, buildings) in and immediately adjacent to the impact areas for nests. If an active nest is found sufficiently close to work areas to be disturbed by these activities, the ornithologist will determine the extent of a construction-free buffer zone to be established around the nest (typically 300 feet for raptors and 100 feet for other species), to ensure that no nests of species protected by the MBTA and California Fish and Game Code will be disturbed during project implementation.</p>



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**MM BIO-6.3: Reporting.** Prior to issuance of any grading or building permit, the project applicant shall submit to the Director of Planning, Building and Code Enforcement or the Director's designee, a plan prepared by a qualified biologist for completing the preconstruction surveys to meet the requirements set out above. Subsequent to the preconstruction surveys, and prior to ground disturbance, the qualified biologist or ornithologist shall submit a written report indicating the results of the survey, a map of identified active nests, and any designated buffer zones or other protective measures to the Director of Planning, Building and Code Enforcement or the Director's designee.

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### **Cultural Resources**

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**Impact CUL-1:** The project would demolish the Flea Market structures and open space, which are eligible for listing in the California Register of Historical Resources (CRHR) and eligible for local listing as a City Landmark. **(Significant and Unavoidable Impact)**

**MM CUL-1.1:** Prior to the issuance of demolition permits, the project applicant shall develop a Mitigation Implementation Program to the satisfaction of the Director of Planning, Building and Code Enforcement. The program shall specifically focus on the significant historical patterns of development and important personages and include public outreach, and could include the following:

- Document the culture and use of the site, not solely the structures on the site, according to the Level III procedures outlined in the National Park Service Standards and Guidelines for Architectural and Engineering Documentation, including the updated Historic American Building Survey/Historic American Engineering Record (HABS/HAER) Guidelines, which could include using a combination of photos, video, and oral interviews.
  - Incorporate physical attributes of the Flea Market into the proposed project, such as signs and logos.
  - Incorporate historic names (e.g., Bumb) and other exhibits into the new buildings on the project site.
  - Based on additional historical research and personal interviews, develop a public exhibit/education program to present interpretive information on the historic patterns of development in the area.
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**Impact CUL-2:** Subsurface archaeological resources could be encountered during project construction. **(Less than Significant Impact with Mitigation Incorporated)**

**MM CUL-2.1:** Once the site has been cleared, a qualified archaeologist shall complete mechanical trenching to explore for buried historical and Native American resources. Trenching shall be completed for the lands surrounding the location where two early 20<sup>th</sup> century houses were in the northern half of the project site. Exploration shall focus on the “artifact scatter” area east of Coyote Creek to determine if it is a meaningful archaeological deposit that could be eligible for listing on the CRHR. Additionally, trenching shall be completed throughout the project site because of its high sensitivity for prehistoric deposits and cultural materials. Subsurface exploration shall be completed by an archaeologist trained in current California methods for prehistoric and historic archaeological resources. Narrow, deep trenches shall be created to search for Native American use of this site, and shallower, wide trenches employed near the potentially sensitive historic areas.

This investigation shall be completed prior to any construction or other ground disturbing activities required as part of the project. The results of the presence/absence exploration shall be submitted to the Director of Planning, Building and Code Enforcement or the Director’s designee and the City’s Historic Preservation Officer for review and approval prior to issuance of any grading permit. Based on the findings of the presence/absence exploration, an archaeological resources treatment plan (as described in MM CUL-2.2) shall be prepared by a qualified archaeologist, if necessary.

**MM CUL-2.2:** If required by MM CUL-2.1, the project applicant shall retain a qualified archaeologist to prepare a treatment plan that reflects the permit-level detail pertaining to depths and locations of all ground disturbing activities. The treatment plan shall be prepared and submitted to the Director of Planning, Building and Code Enforcement or the Director’s designee and the City’s Historic Preservation Officer prior to approval of any grading permit. The treatment plan shall contain, at a minimum:

- Identification of the scope of work and range of subsurface effects (including location map and development plan),
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including requirements for preliminary field investigations.

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

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

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#### **Hazards and Hazardous Materials**

**Impact HAZ-1:** Redevelopment of the project site would require removal of the existing dual compartment underground storage tank (UST). Hazardous materials concentrations in soil and groundwater, resulting from USTs and aboveground storage tanks (ASTs) previously located on the site, may be encountered during construction. **(Less than Significant Impact with Mitigation Incorporated)**

**MM HAZ-1.1:** The project applicant shall obtain proper permits from the Santa Clara County Department of Environmental Health (SCCDEH) and San José Fire Department (SJFD) prior to removal of the existing UST. Collect and analyze soil and groundwater (if encountered) beneath the UST after the removal under the direction of the SCCDEH. If the SCCDEH has determined the UST has leaked, perform all subsequent investigation and remediation as required under SCCDEH oversight.

During removal of the existing UST, underlying soil and groundwater samples shall be collected in the vicinity of the UST. The results of soil and groundwater sampling and testing shall be provided to the Director of Planning, Building and Code Enforcement or the Director's designee and the Environmental Compliance Officer of the City of San José for review.

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**MM HAZ-1.2:** In areas of residual contamination from the previous UST and AST, prepare a Site Management Plan (SMP) or similar document to manage the cleanup of potential contamination to ensure there are no health risks to construction workers and future residences and site workers. Contact the SCCDEH to determine if the applicant needs to enter into the SCCDEH's Site Cleanup Program for oversight.

The SMP shall be prepared prior to construction to establish appropriate management practices for handling impacted soil, soil vapor, and groundwater, and shall include the following at a minimum:

- A detailed discussion of the site background;
- Management of stockpiles, including sampling, disposal, and dust and runoff control including implementation of a stormwater pollution prevention program;
- Procedures to follow if evidence of an unknown historic release of hazardous materials is discovered during excavation or demolition; and
- A health and safety plan (HSP) for each contractor working at the site, in an area below grade, that addresses the safety and health hazards of each site operation phase, including the requirements and procedures for employee protection. The HSP shall outline proper soil handling procedures and health and safety requirements to minimize work and public exposure to hazardous materials during construction.

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**Impact HAZ-2:** To avoid impacts related to disposal of hazardous materials, the project would be required to implement a facility closure plan, including removal of existing hydraulic lifts. **(Less than Significant Impact with Mitigation Incorporated)**

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**MM HAZ-2.1:** Prior to issuance of a grading permit, the project applicant shall coordinate facility closure with the SJFD and SCCDEH to ensure that required closure activities are completed.

**MM HAZ-2.2:** The two subgrade hydraulic lifts in the corporate yard, including associated piping and hydraulic fluid reservoirs, shall be appropriately removed prior to issuance of a grading permit. Following removal of the lifts, verification soil samples shall be collected to

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	<p>document soil quality. Additional soil samples shall be collected at the locations of the trains associated with the two steam cleaning areas. Removal and sampling activities shall be observed and documented by an Environmental Professional. Remediation shall be completed to applicable regulatory standards, if necessary, to the satisfaction of the Director of Planning, Building and Code Enforcement or the Director's designee and the Environmental Compliance Officer of the City of San José.</p>
<p><b>Impact HAZ-3:</b> Soil imported to the project site for grading activities may result in contamination of the site. <b>(Less than Significant Impact with Mitigation Incorporated)</b></p>	<p><b>MM HAZ-3.1:</b> If the project requires importing soil for site grading, the project applicant shall evaluate the source and quality of imported soil consistent with the recommendations in the Department of Toxic Substances Control (DTSC)'s October 2001 Clean Imported Fill Material Information Advisory. Evaluation of imported fill includes, but is not limited to, sourcing fill material from non-industrial sites, collection and analysis of fill samples, and documentation of the site selection and testing results. This documentation shall be provided to and approved by the Director of Planning, Building and Code Enforcement and the Environmental Compliance Officer of the City of San José prior to issuance of a grading permit.</p>
<p><b>Impact HAZ-4:</b> Project implementation may encounter residual concentrations of chemicals, including total petroleum hydrocarbons as diesel (TPHd), total petroleum hydrocarbons as oil (TPHo), benzene, lead, pesticides, and pesticide-related metals, that could expose construction workers, neighboring uses, and the environment to hazardous materials. <b>(Less than Significant Impact with Mitigation Incorporated)</b></p>	<p><b>MM HAZ-4.1:</b> Prior to the issuance of any demolition or grading permits, the project applicant shall enter into an agreement with the SCCDEH's Site Cleanup Program to provide regulatory oversight. The applicant shall meet with the SCCDEH and perform additional soil and groundwater sampling and testing to adequately define the known and suspected contamination. A Remedial Action Work Plan and/or Soil Management Plan shall be prepared and submitted to the agency for their approval to demonstrate that cleanup standards will be met for the development of the site. All measures identified in the plan(s) shall be implemented during all phases of construction, as applicable.</p> <p>Additional sampling and remediation shall include, at a minimum, the following areas: 1) TPHd, TPHo, and benzene groundwater sampling in the vicinity of the former feed lot/meat packing facility; 2) lead sampling in shallow soil surrounding former on-site structures; 3) shallow soil sampling near wood framed structures for organochlorine pesticides and pesticide-related metals (arsenic, lead, and mercury); 4) shallow soil sampling on parcel 254-17-007 to define the</p>

	<p>extent of elevated dieldrin concentrations; and 5) soil sampling at planned earthwork locations within the fill area near Coyote Creek.</p> <p>Evidence of regulatory oversight and approved plan(s) shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee and the Environmental Compliance Officer of the City of San José for approval prior to the issuance of any grading permits.</p>
<p><b>Impact HAZ-5:</b> Groundwater monitoring wells, historic water supply wells, and septic systems associated with previous development may remain on the site, and could be encountered during or after project construction. If encountered, these structures could expose construction workers, neighboring uses, and the environment to hazardous materials. <b>(Less than Significant Impact with Mitigation Incorporated)</b></p>	<p><b>MM HAZ-5.1:</b> Prior to issuance of a grading permit, the project applicant shall research well records from Valley Water and attempt to locate abandoned wells at the site. If the wells are identified, or subsequently encountered during earthwork activities, the wells shall be properly destroyed in accordance with Valley Water Ordinance 90-1. If septic systems are encountered during earthwork activities, those systems shall be abandoned in accordance with SCCDEH requirements.</p>
<b>Noise and Vibration</b>	
<p><b>Impact NOI-1:</b> Redevelopment of the project site would result in elevated noise levels at nearby residences for a period exceeding one year. <b>(Less than Significant Impact with Mitigation Incorporated)</b></p>	<p><b>MM NOI-1.1:</b> An acoustic engineer shall prepare and implement a construction noise logistics plan, in accordance with General Plan Policy EC-1.7, prior to issuance of any demolition or grading permits. A typical construction noise logistics plan will include, but not be limited to, the following measures to reduce construction noise levels:</p> <ul style="list-style-type: none"> <li>• Utilize “quiet” models of air compressors and other stationary noise sources where technology exists.</li> <li>• Equip all internal combustion engine-driven equipment with mufflers that are in good condition and appropriate for the equipment.</li> <li>• Construct temporary noise barriers, where feasible, to screen stationary noise-generating equipment when located within 200 feet of adjoining sensitive land uses. Temporary noise barrier fences will provide a five decibel (dBA) noise reduction if the noise barrier interrupts the line-of-sight between the noise source and receptor and if the barrier is constructed in a manner that eliminates any cracks or gaps.</li> <li>• If stationary noise-generating equipment must be located near receptors, adequate muffling (with enclosures where feasible</li> </ul>



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and appropriate) shall be used. Any enclosure openings or venting shall face away from sensitive receptors.

- Ensure that generators, compressors, and pumps are housed in acoustical enclosures.
- Locate cranes as far from adjoining noise-sensitive receptors as possible.
- During final grading, substitute graders for bulldozers, where feasible. Wheeled heavy equipment are quieter than track equipment and shall be used where feasible.
- Substitute nail guns for manual hammering, where feasible.
- Substitute electrically powered tools for noisier pneumatic tools, where feasible.
- The project applicant shall prepare a detailed construction plan identifying the schedule for major noise-generating construction activities. The construction plan shall identify a procedure for coordination with adjacent residential land uses so that construction activities can be scheduled to minimize noise disturbance.

A copy of the construction noise logistics plan shall be submitted to the Director of Planning, Building and Code Enforcement prior to issuance of any demolition or grading permits.

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### **Summary of Alternatives to the Proposed Project**

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

#### **Alternatives Considered but Rejected**

The following alternatives were considered but rejected and described in detail in Section 7.4.1 Alternatives Considered but Rejected:

- Diridon Station Area Location Alternative – development of the project on an alternative site in the Diridon Station area.
- Berryessa BART Urban Village Location Alternative – development of the project on an alternative site within the Berryessa BART Urban Village.

- Design Alternative – redesigning the project to avoid construction within the riparian corridor.

### Analyzed Alternatives

The following were evaluated as alternatives to the project and described in detail in Section 7.5 Project Alternatives:

- No Project Alternative as required by CEQA – no new development, with continued operation of the Flea Market on the project site.
- Existing Entitlement Alternative – development of the remaining growth permitted on the site under the existing A(PD) Zoning District.
- Reduced Footprint Alternative – preservation of the existing Flea Market buildings, with project development limited to the areas currently used as surface parking lots.

The CEQA Guidelines state that an EIR shall identify an environmentally superior alternative. The environmentally superior alternatives to the proposed project are the No Project Alternative and the Reduced Footprint Alternative, as further detailed in Section 7 Alternatives.

## SECTION 1.0 INTRODUCTION

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### 1.1 PURPOSE OF THE ENVIRONMENTAL IMPACT REPORT

The City of San José, as the Lead Agency, has prepared this Draft Environmental Impact Report (EIR) for the San José Flea Market Planned Development (PD) Rezoning Project in compliance with the California Environmental Quality Act (CEQA) and the CEQA Guidelines.

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

### 1.2 EIR PROCESS

#### 1.2.1 Notice of Preparation and Scoping

In accordance with Sections 15063 and 15082 of the CEQA Guidelines, the City of San José prepared a Notice of Preparation (NOP) for this EIR. The NOP was circulated to local, state, and federal agencies on July 25, 2018. The standard 30-day comment period concluded on August 24, 2018. The NOP provided a general description of the proposed project and identified possible environmental impacts that could result from implementation of the project. The City of San José also held a public scoping meeting on August 16, 2018 to discuss the project and solicit public input as to the scope and contents of this EIR. The meeting was held at Educational Park Branch Library in San José. Appendix A of this EIR includes the NOP and comments received on the NOP. See Table 1.2-1 for summaries of NOP comments.

Table 1.2-1: Summaries of Comments Received on NOP	
Commenter	Summary of Comment
George Simmel	<ul style="list-style-type: none"><li>• Air quality degradation due to increased traffic</li><li>• Biology: impacts to creek from construction; recommends removal of invasive species to promote growth of native species</li><li>• Cultural resources: project is opportunity for improvement since resources are limited in the area</li><li>• Hazardous materials from previous activity (spilled chemicals and contamination from automotive oils)</li><li>• Land use: areas that are not part of the rezoning need to be included in the general plan and rezoning discussions</li><li>• Noise mitigation</li></ul>

Katherine Perez of Northern Valley of Yokut/Ohlone/Bay Miwuke Tribe (NVYT)	Request consultation of the proposed project along with a qualified archeological firm. NVYT expects this project to yield burials, as they have been involved in burial recovery just south of the project site.
Ed Ketchum	Suggests consultation with the Muwekma Tribal Band.
Santa Clara Valley Transportation Authority	<ul style="list-style-type: none"> <li>• Biology: recommends coordination with regulatory agencies due to proximity of development to creeks</li> <li>• Cultural resources: Upper Penitencia Creek is a sensitive area for buried prehistoric resources</li> <li>• Transportation: <ul style="list-style-type: none"> <li>○ Strengthen Bay Area Rapid Transit (BART) station as a focal point with comprehensive approach to access between the station and the project</li> <li>○ Incorporate trip reduction strategies into project design</li> <li>○ Consider congestion impacts to transit travel times on Mabury Road, King Road, Berryessa Road, McKee Road, and surrounding vicinity</li> <li>○ Transportation Impact Analysis required if project expected to generate 100+ net new peak-hour trips</li> <li>○ Analyze freeway segments that may be impacted</li> </ul> </li> </ul>
San José Parks, Recreation, and Neighborhood Services	<ul style="list-style-type: none"> <li>• Biology: minimize habitat destruction to nearby creeks</li> <li>• Parks and recreation: <ul style="list-style-type: none"> <li>○ Project subject to compliance with City's Park Impact Ordinance or Parkland Dedication Ordinance, which require new residential developments to offset impacts by dedicating parkland to the City for public/recreational purposes</li> <li>○ Provide a central park of two to four acres connecting Coyote Creek Trail to Berryessa BART Station</li> <li>○ Project must provide for construction of Coyote Creek and Penitencia Creek Trail segments, which cannot be fully designed until Santa Clara Valley Water District and U.S. Army Corps of Engineers flood control is designed and built, and development of nearby undeveloped city parklands</li> </ul> </li> <li>• Population and housing: include affordable/low income units that meet City's Affordable Housing Criteria</li> <li>• Transportation: evaluate applicable vehicle miles traveled (VMT) reduction and calculate reduction in traffic mitigation fees proportional to trail impact</li> </ul>

### **1.2.2 Draft EIR Public Review and Comment Period**

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

City of San José  
Department of Planning, Building and Code Enforcement  
Attn: Cassandra van der Zweep, Supervising Planner

200 East Santa Clara Street, 3rd Floor Tower  
San José CA 95113-1905  
Phone: (408) 535-7659, Email: [Cassandra.VanDerZweep@sanjoseca.gov](mailto:Cassandra.VanDerZweep@sanjoseca.gov)

### **1.3 FINAL EIR/RESPONSES TO COMMENTS**

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

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

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

#### **1.3.1 Notice of Determination**

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

## SECTION 2.0 PROJECT INFORMATION AND DESCRIPTION

### 2.1 PROJECT LOCATION AND EXISTING DEVELOPMENT

The project site is located on the San José Flea Market property, south of Berryessa Road, east of Coyote Creek, west of the Berryessa Bay Area Rapid Transit (BART) Station and track alignment, and north of Mabury Road in the City of San José. The project site encompasses a total of 61.5 gross acres, and the current development consists of one-story commercial buildings, vendor booths, and surface parking associated with the San José Flea Market. See Figure 2.1-1: Regional Map, Figure 2.1-2: Vicinity Map, and Figure 2.1-3: Aerial Photograph.

### 2.2 PROJECT DESCRIPTION

In 2007, the City of San José approved a General Plan land use designation of Urban Village (UV) and a Planned Development Zoning District (PDC03-108) on a 120-acre property<sup>1</sup>, including the project site, allowing a total of 2,818 dwelling units and 365,622 square feet of commercial uses. The approved General Plan Land Use Map for the Planned Development Zoning District is shown on Figure 2.2-1. Since the 2007 approval, the property north of Berryessa Road has been developed with 1,000 dwelling units and 118,580 square feet of commercial uses.<sup>2</sup> Development of the Flea Market site north of Berryessa Road is included in the baseline conditions of the current project. The approved, constructed, and remaining development for the 120-acre Flea Market property are summarized in Table 2.2-1 below.

<b>Table 2.2-1: Flea Market Existing Entitlement</b>		
	<b>Residential</b>	<b>Commercial</b>
<b>2007 Approved PD Zoning</b>	2,818 units	365,622 square feet
<b>Constructed on North Side</b>	1,000 units	118,580 square feet
<b>Remaining Capacity for South Side</b>	1,818 units	247,042 square feet

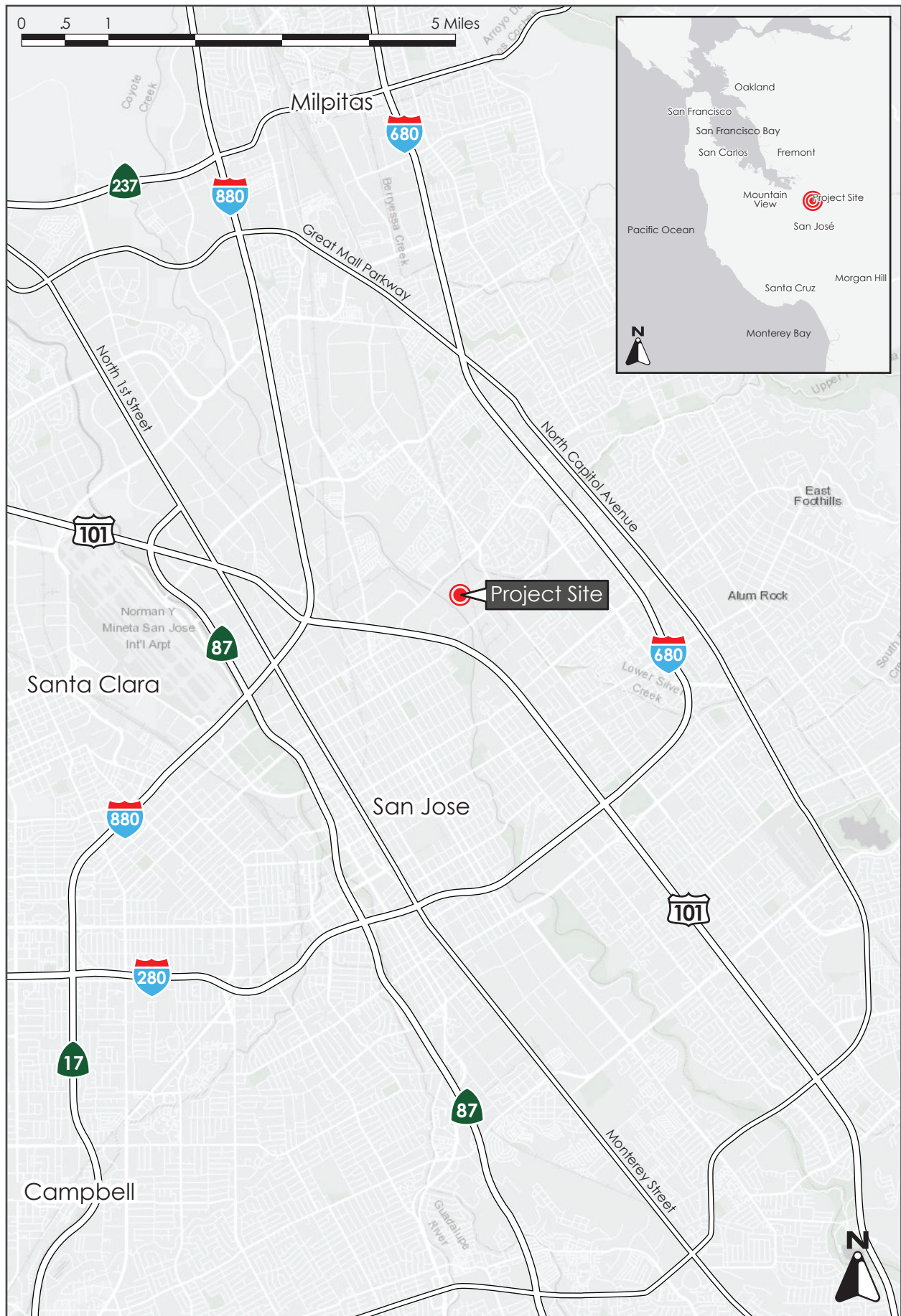
The 61.5-acre project site, located south of Berryessa Road and currently occupied by The Flea Market offices and vendor booths, has a development capacity of 1,818 residential units and 247,042 square feet of commercial uses per the existing Planned Development Zoning District. This Environmental Impact Report (EIR) focuses on the development of the area south of Berryessa Road with additional development beyond what is currently allowed under the 2007 Planned Development Zoning (PDC03-108), but that is consistent with the site's Urban Village land use designation (refer to Figure 2.2-2: Proposed Land Use Plan).

For the purposes of this EIR, the 'project' refers to the new development rezoning proposed south of Berryessa Road, and 'site' refers to the 61.5 acres south of Berryessa Road, given the development on the north side of Berryessa Road is expected to be fully implemented in 2020 and is not proposed to change as part of the subject application being evaluated in this EIR.

<sup>1</sup> Includes the properties both north and south of Berryessa Road.

<sup>2</sup> Portions of the commercial development north of Berryessa Road are currently under construction, and the residential development is complete and occupied. Construction is expected to be completed in 2020.

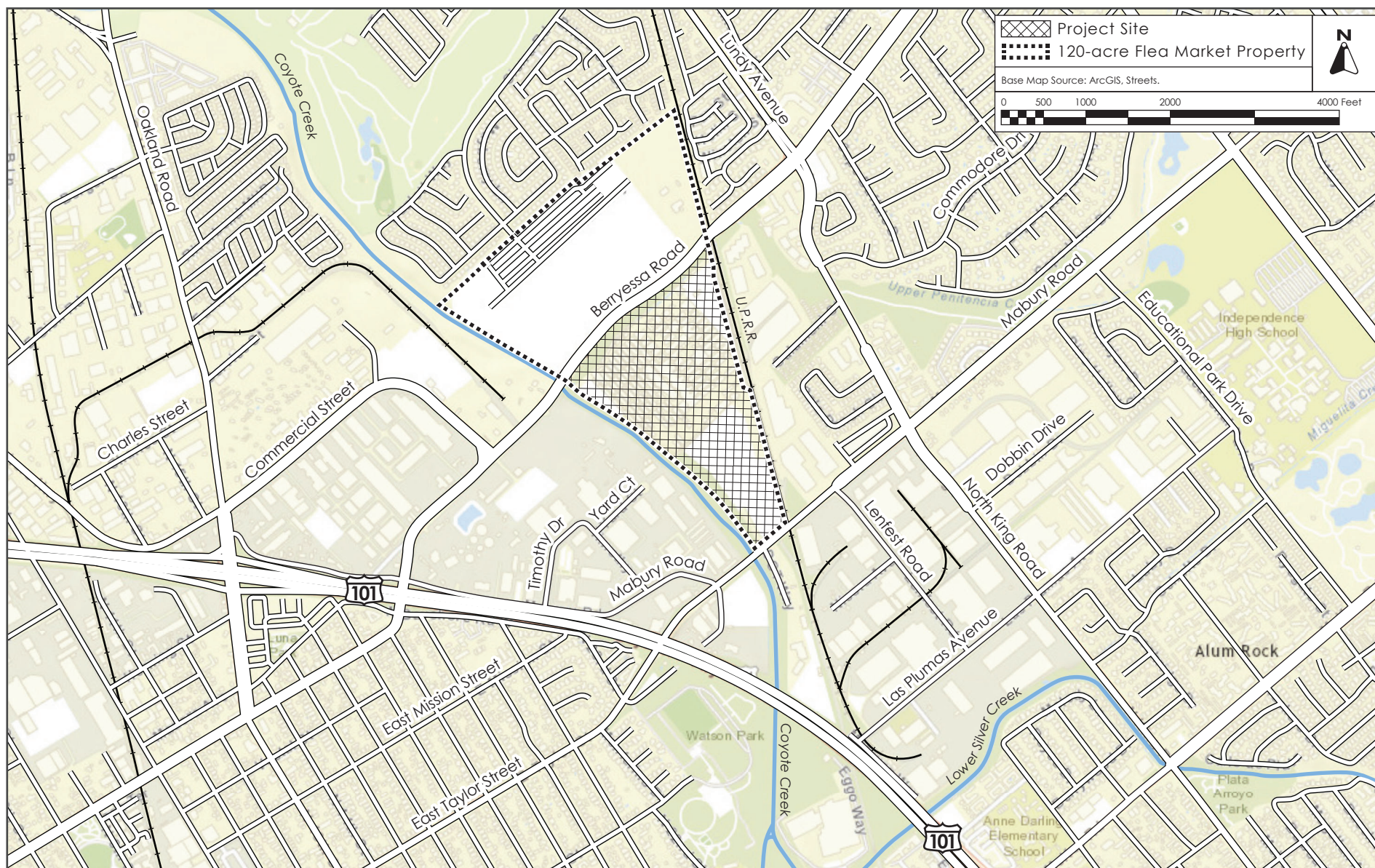




REGIONAL MAP

FIGURE 2.1-1





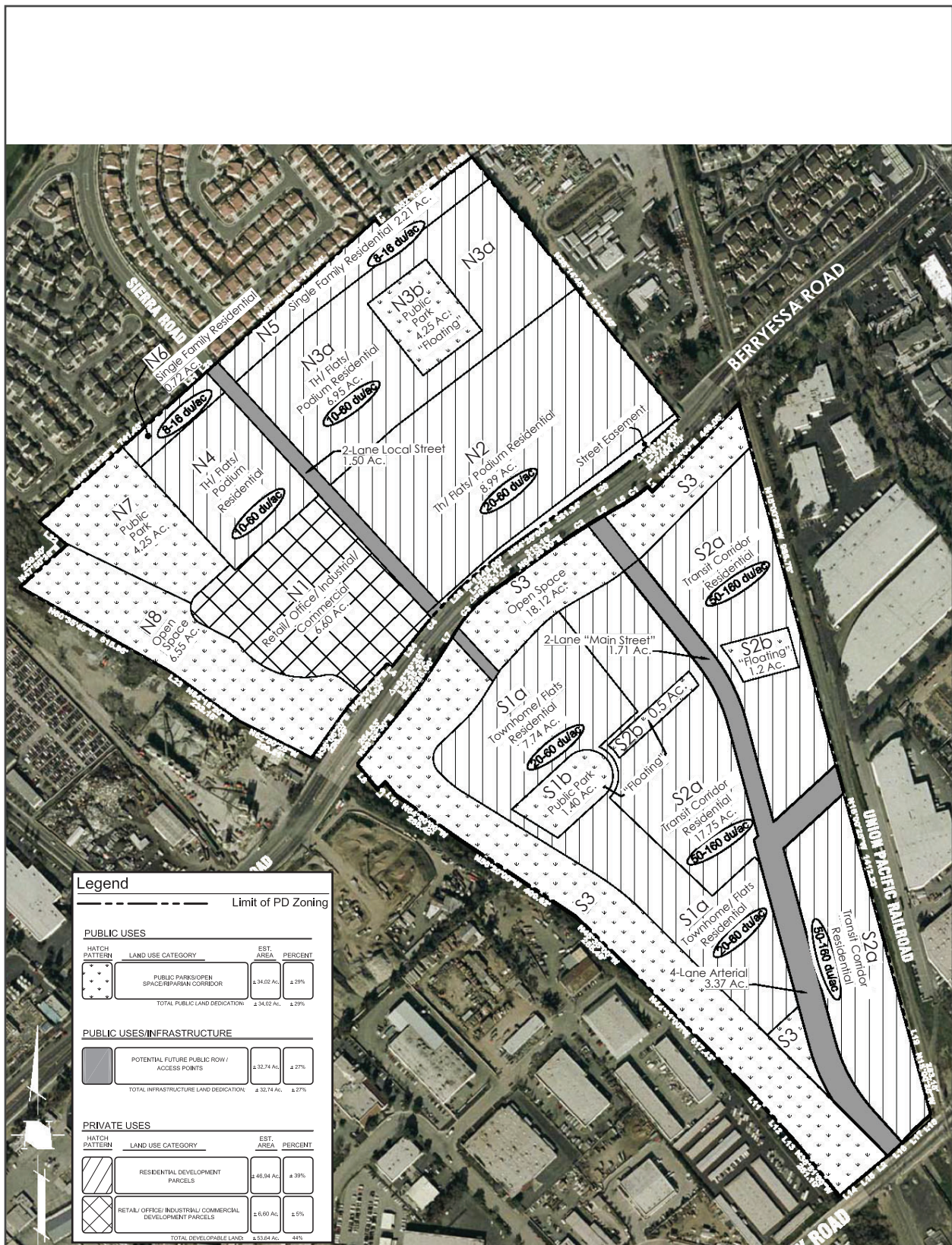
VICINITY MAP

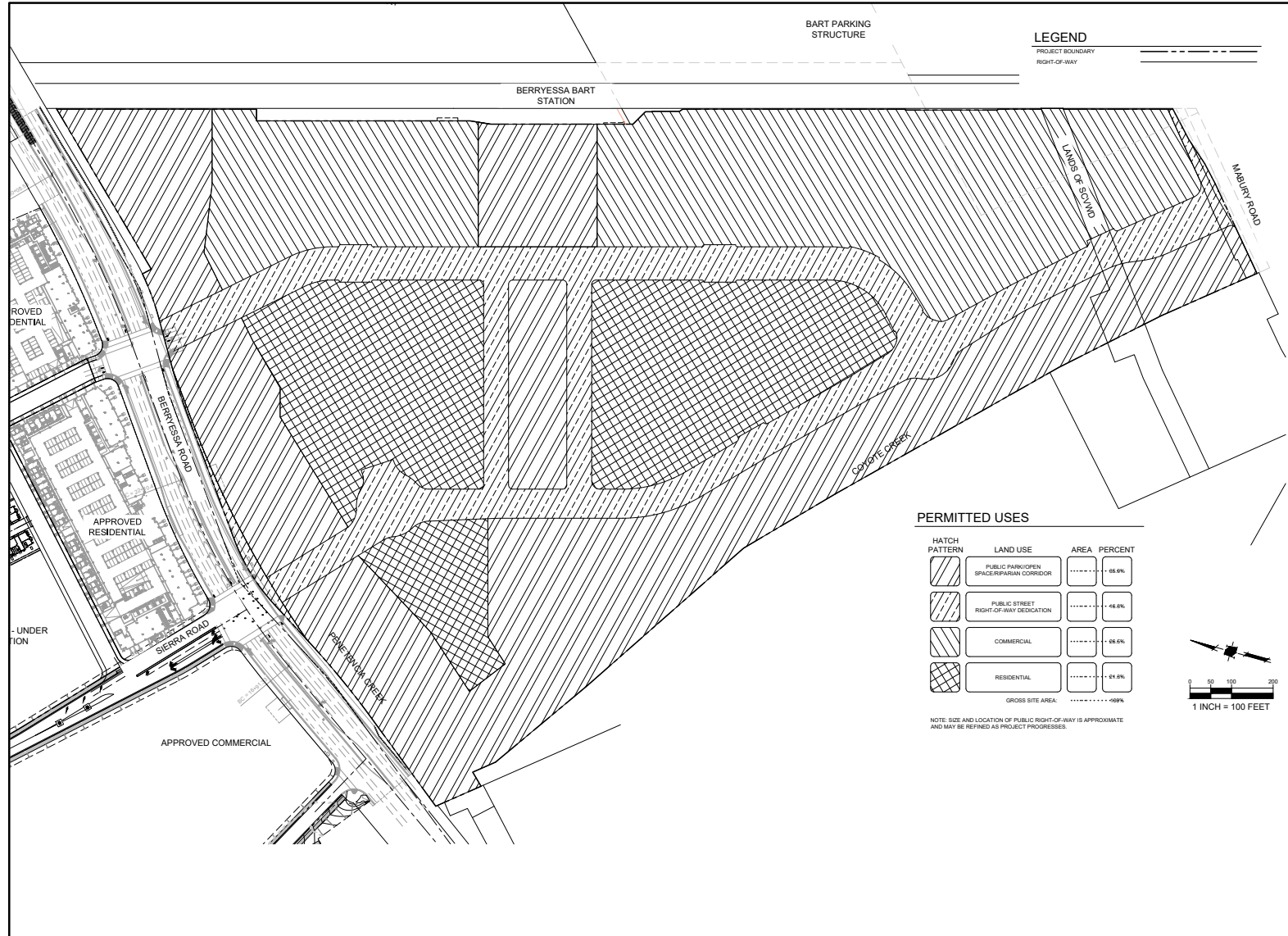
FIGURE 2.1-2











Source: HMM Engineers, March 2, 2020.

## PROPOSED LAND USE PLAN

FIGURE 2.2-2

Two development options are evaluated in this EIR: Option 1 is the applicant’s proposed development project presented in the Planned Development Rezoning application submitted to the City (File No. PDC17-051). Option 2 is the maximum development option that City staff would consider recommending to the City Council. The two options are summarized in Table 2.2-2 below.

<b>Table 2.2-2: Development Options</b>		
	<b>Option 1 (Applicant Proposed)</b>	<b>Option 2 (City Proposed)</b>
<b>Residential</b>	3,450 units	3,450 units
<b>Commercial<sup>3</sup></b>	2.2 million square feet	3.4 million square feet

The proposed project (Option 1) includes up to 3,450 residential units and up to 2.2 million square feet of commercial space. The additional development option (Option 2) is the maximum development that City staff would consider recommending to the City Council, and includes up to 3,450 residential units and up to 3.4 million square feet of commercial space.

## **2.2.1            General Plan and Zoning**

### **2.2.1.1           *General Plan***

Most of the project site, with the exception of the creek corridors, is designated as Urban Village (UV) in the Envision San José 2040 General Plan. This land use designation is applied within the Urban Village areas that are planned to accommodate higher density housing growth along with a significant amount of job growth. This designation supports a wide variety of commercial, residential, institutional, and other land uses with an emphasis on establishing an attractive urban form in keeping with the Urban Village concept. Development within the Urban Village designation should conform to land use and design standards established with an adopted Urban Village Plan (discussed below). Prior to preparation of an Urban Village Plan, this designation supports uses consistent with those of the Neighborhood Community Commercial designation. Following preparation of an Urban Village Plan, the appropriate use for a site would be commercial, residential, mixed-use, public facility, or other use as indicated within the Urban Village Plan as well as those uses supported by the Neighborhood/Community Commercial designation.

The Coyote Creek and Upper Penitencia Creek corridors, located along the project site’s western and northern boundaries, respectively, are designated Open Space, Parklands and Habitat (OSPH) in the Envision San José 2040 General Plan. This land designation is intended for low intensity uses, including open space, parks, recreation areas, trails, habitat buffers, nature preserves, and other permanent open space areas. This land use designation also supports private buffer lands such as riparian setbacks.

### **2.2.1.2           *Urban Village Plan***

The 61.5-acre project site is located within the Berryessa BART Urban Village, which surrounds the Berryessa/North San José BART Station. This is the first BART station in the City of San José and is

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<sup>3</sup> Most of the commercial development under both options would consist of office uses, with up to 150,000 square feet of ground floor local-serving commercial space.



expected to host 25,000 riders daily by 2030. The boundaries of the urban village are generally Shore Drive to the north, Lundy Avenue to the east, Coyote Creek to the west, and Mabury Road to the south (refer to Figure 2.2-3: Berryessa BART Urban Village Plan Area). The Berryessa BART Urban Village Plan encompasses 270 acres. The draft Berryessa BART Urban Village Plan adjusts the area's planned growth set in the Envision San José 2040 General Plan, and includes an employment capacity of 4.2 million square feet of commercial uses (14,000 jobs) and a residential capacity of 5,100 dwelling units. Under the draft Berryessa BART Urban Village Plan, the commercial capacity is reduced from 6.63 million square feet of commercial uses (21,100 jobs) to 4.2 million square feet of commercial uses; the additional 2.28 million square feet of planned job capacity is reallocated to other General Plan growth areas in the City. The residential capacity is increased from the General Plan allocation of 4,814 dwelling units to 5,100 dwelling units by shifting planned housing capacity from other urban villages to the Berryessa BART Urban Village. General Plan and Urban Village Plan capacities are shown in Table 2.2-3 below.

<b>Table 2.2-3: Urban Village Plan Capacities</b>		
	<b>Envision San José 2040 General Plan</b>	<b>Berryessa BART Urban Village Plan</b>
<b>Residential</b>	4,814 units	5,100 units
<b>Commercial</b>	6.63 million square feet (21,100 jobs)	4.2 million square feet (14,000 jobs)

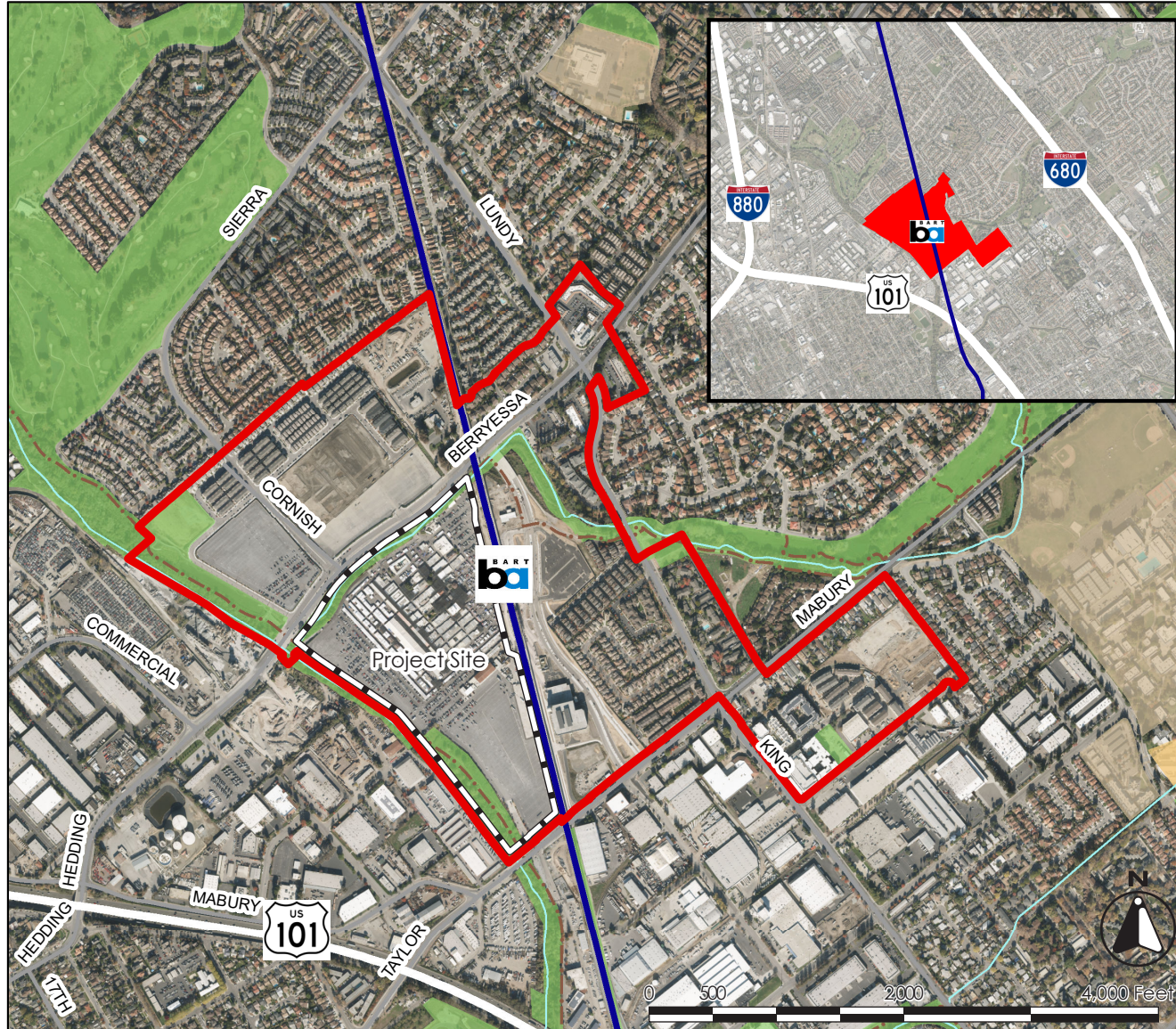
The Berryessa BART Urban Village Plan is undergoing planning and California Environmental Quality Act (CEQA) evaluation and is expected to be considered for adoption in 2020. Development of the Urban Village area surrounding the project site is included in the cumulative analysis of this EIR.

The City of San José envisions the Berryessa BART Urban Village would be developed with mixed-use commercial and residential development, including high-density residential projects. The Urban Village Plan will include General Plan Smart Growth strategies and Transit Oriented Development (TOD) initiatives to create pedestrian-oriented development. The guiding principles of the Urban Village Plan, which help shape the plan and represent the community's preferred vision for the Berryessa BART Urban Village, include:

1. Prioritize connectivity and accessibility
2. Foster alternative forms of transportation
3. Sustainability as an overarching principle
4. Open space enhancement and protection
5. A mixed-use, mixed-income urban village

The draft Urban Village Plan designates the western portion of the project site for mid-rise and high-rise residential development, with buildings stepped down to maximize views of the Coyote Creek corridor. The eastern portion of the site is designated for mid-rise office buildings and office towers. Towers adjacent to the Berryessa BART Station should include ground-floor retail uses.





BERRYESSA BART URBAN VILLAGE PLAN AREA

FIGURE 2.2-3

The draft Urban Village Plan includes a recommended open space system consisting of: 1) open space along the Upper Penitencia Creek and Coyote Creek corridors; 2) public parks in the central portion of the project site, 3) a greenway across the site connecting the creek corridors; 4) private open space and roof gardens; 4) bicycle lanes on routes connecting Berryessa Road, Mabury Road, and the BART station; and 6) promenades providing links for pedestrian routes.

### **2.2.1.3      *Zoning***

The project site has a Planned Development (PD) Zoning District (established per File No. PDC03-108). This Zoning District encompasses 120 acres on both the north and south sides of Berryessa Road. The proposed project is a Planned Development Rezoning for the 61.5-acre site south of Berryessa Road to accommodate both the Option 1 and Option 2 development proposal. The existing PD Zoning District on the portion of the Flea Market site north of Berryessa Road would be unaffected, and that portion of the Flea Market would continue to be regulated according to its current Zoning District.

The current PD Zoning District on-site permits 1,818 residential units and 247,042 square feet of commercial uses on the project site. The applicant's proposed development rezoning project (Option 1) would result in a net increase of 1,632 residential units and 1.95 million square feet in commercial space over the existing PD Zoning District. Option 2 is the maximum rezoning development option that City staff would consider recommending to City Council, and would result in a net increase of 1,632 residential units and 3.15 million square feet of commercial space over the existing PD Zoning District. Neither option would allow buildings within the 100-foot riparian setback area.

### **2.2.2      Residential Development**

Both development options would allow the development of up to 3,450 residential units. Residential units would be constructed in nine buildings located in the central and western portions of the site. Buildings would be modern in appearance, with glass and metal facades. Residential parking would be provided at street level and up to two levels below grade. The residential density would be up to 280 dwelling units per acre. The project proposes a zoning district with a maximum building height of 270 feet, although the current site plan shows a maximum height of 200 feet (refer to Figure 2.2-4: Conceptual Site Plan and Figure 2.2-5: Elevation Plan).

### **2.2.3      Commercial Development**

The proposed project (Option 1) includes up to 2.2 million square feet of commercial office uses. The maximum development option City staff would consider recommending to the City Council (Option 2) includes up to 3.4 million square feet of commercial office space. Seven commercial office buildings, along with three associated parking structures, would be concentrated near the site's eastern boundary under both development options.

Consistent with the Urban Village land use designation, both Option 1 and Option 2 would allow up to 150,000 square feet of ground floor local-serving commercial retail space as part of the commercial square footage. Retail uses would be located on the ground floor of office buildings, and in standalone single-story buildings near the planned Berryessa BART Station and the garden plaza located in the center of the site (refer to Figure 2.2-4: Conceptual Site Plan). Uses within these ground-floor commercial areas would support the surrounding residences and Berryessa BART

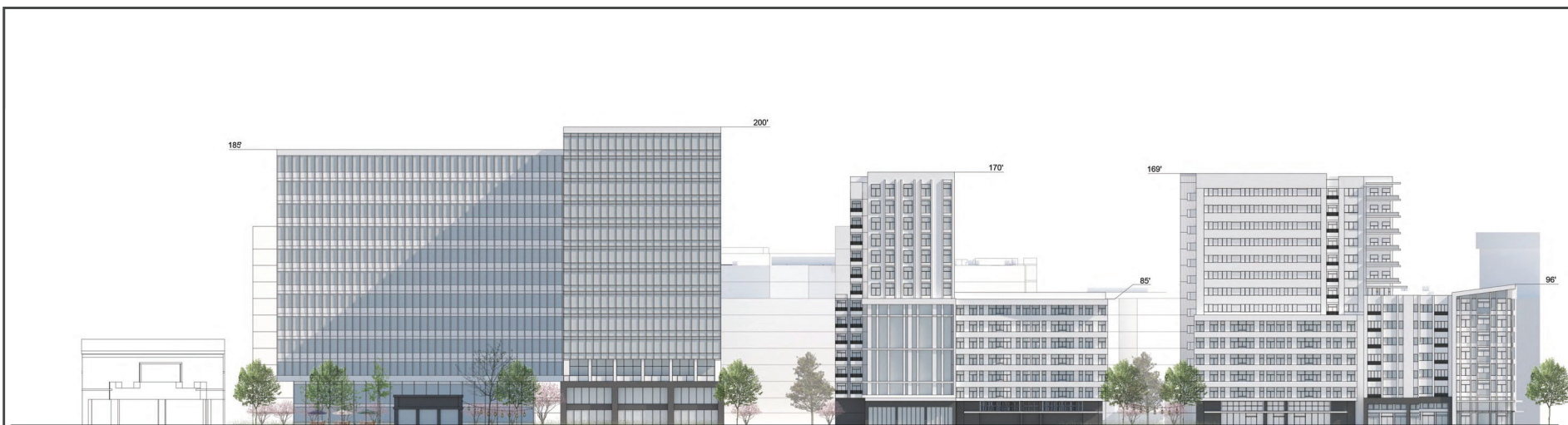




CONCEPTUAL SITE PLAN

FIGURE 2.2-4





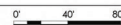
STREET ELEVATION - 1

1' = 30'-0"



STREET ELEVATION - 2

1' = 40'-0"



Station and could include neighborhood retail commercial uses and services such as dry cleaners, tailors, salons, and restaurants.

#### **2.2.4      Public Park/Open Space**

The project proposes approximately 17 acres of public park/open space uses on the project site south of Berryessa Road. The public park/open space uses would be located within the proposed 100-foot setbacks from the edge of the Upper Penitencia Creek and Coyote Creek riparian corridors and would generally surround the project site. Consistent with the City of San José Riparian Corridor Policy Study, the setbacks would be used as passive recreation areas (e.g., bike and pedestrian trails, park benches, and riparian landscaping) in a manner that would not impact the riparian habitat (e.g., outdoor lighting would not shine into the riparian habitat). The project proposes to dedicate approximately 16 acres of the open space along Upper Penitencia and Coyote Creeks to the Santa Clara Valley Water District (Valley Water). The proposed dedication is shown on Figure 2.2-6: Creek Corridor Dedication.

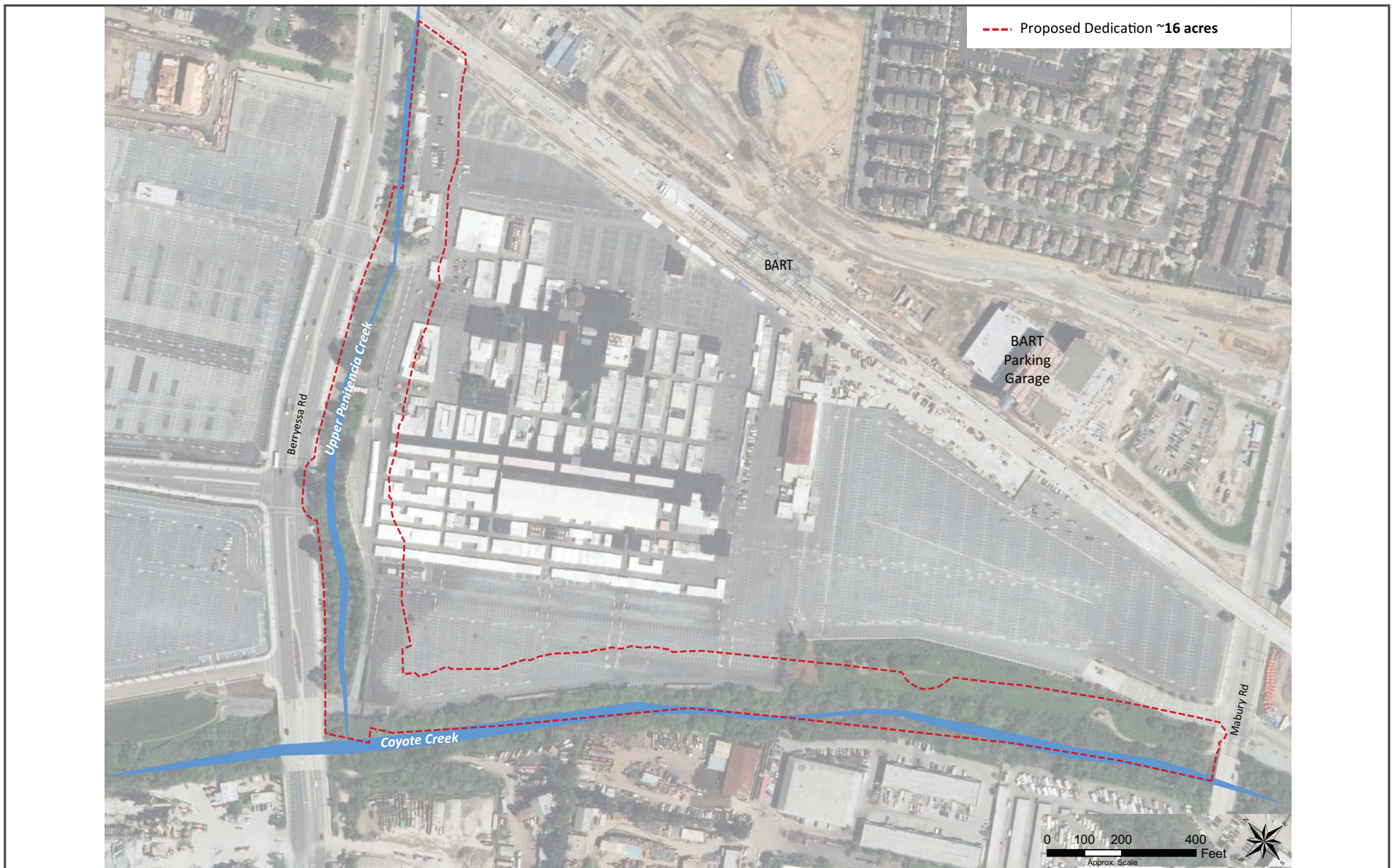
Improvements within the riparian corridor include a stormwater outfall to Coyote Creek and two bridges over and one stormwater outfall to Upper Penitencia Creek. A riparian pedestrian trail is proposed along Upper Penitencia Creek and Coyote Creek. Improvements along the riparian trail would include an overlook, riparian plantings, creek walk, and a picnic area (refer to Figure 2.2-4: Conceptual Site Plan). The project would reduce spillover of lighting into riparian corridors by the use of low-intensity lighting or other appropriate low-dispersion lighting technology, orientation of lights so they are placed on the perimeter of the project site and directed inward and downward toward the ground, and shielding of lights from behind.

In addition to the open space along the riparian corridors, the project also includes three parks located in the interior of the project site that would each range in size from 1.4 to 1.9 acres, for a total of 4.9 acres. These parks would include a BART plaza, garden plaza, and recreation area. The BART plaza, located adjacent to the BART station, would contain a small performance stage and pop-up retail uses. The garden plaza in the center of the site would contain an urban garden and play area. A recreation area with tennis courts and mini baseball field would be located near the site's western corner.

#### **2.2.5      Parking**

The project proposes a range of parking spaces from 7,960 spaces for Option 1 to 14,250 spaces for Option 2. The project includes a minimum 15 percent reduction in spaces due to the proximity of the proposed project to the Berryessa BART Station. The on-site parking provided by the project would be located in a combination of structured and surface parking. Up to two levels of below-grade parking would be provided beneath the residential uses, and three standalone parking structures would be provided for the commercial and office uses.





CREEK CORRIDOR DEDICATION

FIGURE 2.2-6

## **2.2.6            Site Access**

### **2.2.6.1        *Automobile Access***

Primary points of access to the project site would be from Berryessa Road and Mabury Road, as shown on Figure 2.2-7: Dimensioned Site Plan. Sierra Road, an existing 60-foot-wide, north-south arterial, would be extended through the project site to connect with Mabury Road. This extension would connect both Berryessa and Mabury Roads to the Berryessa BART Station.

The project proposes the construction of two clear span vehicle bridges (i.e., no structures placed within the creek bank or channel) over Upper Penitencia Creek to provide vehicular, bicyclist, and pedestrian access from Berryessa Road through the site. The approximate locations of the proposed bridges are shown on Figure 2.2-7.

The first vehicle bridge would be located along the proposed Sierra Road extension, replacing an existing pedestrian bridge at that location. A second bridge would be installed east of the proposed Sierra Road extension, replacing an existing vehicle bridge. This is the location of the current main vehicle entrance to the Flea Market. Construction within the creek would be limited to removal of footings for the two existing bridges and potential replacement/modification of stormwater outfalls.

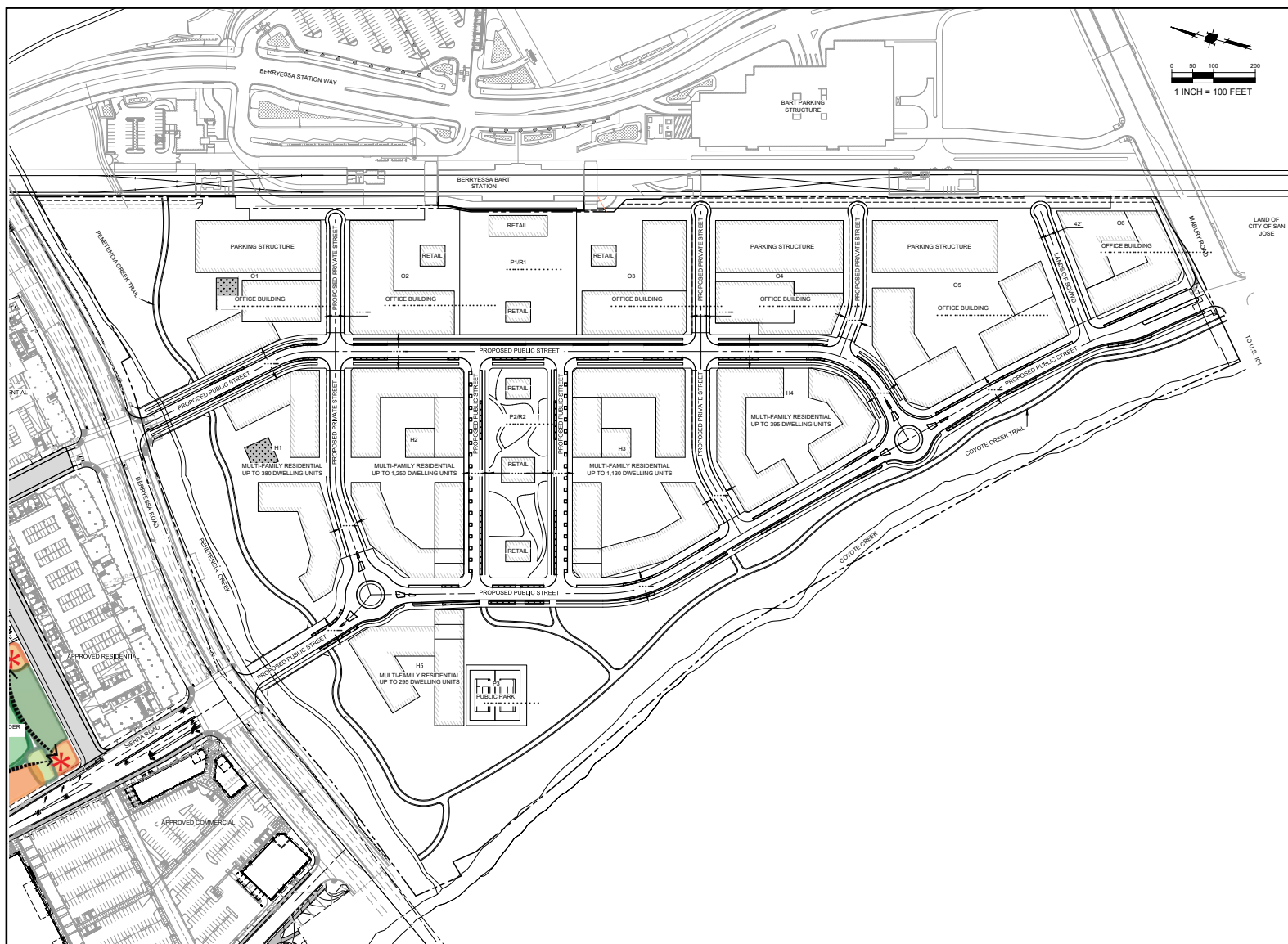
### **2.2.6.2        *Bicycle and Pedestrian Access***

Pedestrian access to the site from Berryessa Road is currently provided via a pedestrian bridge and an underpass crossing Upper Penitencia Creek adjacent to Coyote Creek. The project would remove the existing pedestrian bridge and replace it with a vehicle bridge (see discussion above). The pedestrian underpass would not be altered by the project.

As shown on Figure 2.2-7, pedestrian connections and pathways are planned throughout the project site and to connect with adjacent uses. Public streets throughout the site would include bicycle lanes and sidewalks, providing bicycle and pedestrian connections to Berryessa Road, Mabury Road, and the Berryessa BART Station. The project also proposes a multi-use path along the site's northern and western boundaries, adjacent to the Upper Penitencia Creek and Coyote Creek corridors.

## **2.2.7            Santa Clara Valley Water District Easement**

A linear, east-west oriented Valley Water easement crosses the site approximately 350 feet north of Mabury Road. The easement accommodates the Central Pipeline, a belowground 66-inch raw water pipeline. Under development of the proposed project, the pipeline would be located beneath Private Street 4, which would connect to the proposed Sierra Road extension to the west and end in a cul-de-sac at the eastern property boundary (refer to Figure 2.2-7).



Source: HMM Engineers, March 3, 2020.

DIMENSIONED SITE PLAN

FIGURE 2.2-7



## **2.3 PROJECT OBJECTIVES**

The applicant's objectives for the project (Option 1) are:

1. Construct residential development with connections to public transit, open space and creeks, and existing neighborhoods;
2. Utilize the area adjacent to the Berryessa BART Station for Transit Oriented Development;
3. Provide accessibility to alternative forms of transportation including public transit, walking, and cycling;
4. Enhance pedestrian-oriented design and urban design by providing residential uses proximate to commercial development;
5. Achieve sustainability policies, goals, and standards of the Berryessa BART Urban Village Plan;
6. Enhance, protect, and preserve habitat along Upper Penitencia and Coyote Creeks; and
7. Increase access to local and regional trail systems.

The City's objectives for Option 2 include objectives 1 through 7 above, and also consider additional office square footage compared to the applicant's development objectives, consistent with the Berryessa BART Urban Village Plan density goals. The City's additional objective for Option 2 is listed below.

8. Provide for enhanced opportunities for job creation via additional commercial development as identified and consistent in the Berryessa BART Urban Village Plan requirements.

## **2.4 USES OF THE EIR**

The EIR provides decision makers in the City with environmental information to use in considering the proposed project. It is intended that this Draft EIR be used for the discretionary approvals necessary to implement the project, as proposed. The Santa Clara Valley Water District is a Responsible Agency for the project, and will also consider discretionary actions. These discretionary actions include, but are not limited to, the following:

City of San José

- Planned Development (PD) Rezoning
- Planned Development (PD) Permit
- Subdivision Map(s)
- Tree Removal Permits
- Development Agreement
- Public Works clearances including grading

Santa Clara Valley Water District

- Acceptance of creek corridor dedication
- Encroachment Permit

U.S. Army Corps of Engineers

- Section 404 Nationwide Permit

California Department of Fish and Wildlife

- Streambed Alteration Agreement

San Francisco Regional Water Quality Control Board

- Clean Water Act Section 401 Permit

Santa Clara County Department of Environmental Health

- Approval of Remedial Action Work Plan and Soil Management Plan

Ministerial permits from the City, such as building permits, would also be required.

## SECTION 3.0 ENVIRONMENTAL SETTING, IMPACTS, AND MITIGATION

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

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

The discussion for each environmental subject includes the following subsections:

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

**Impact Discussion** – This subsection includes the recommended checklist questions from Appendix G of the California Environmental Quality Act (CEQA) Guidelines to assess impacts.

- **Project Impacts** – This subsection discusses the project’s impact on the environmental subject as related to the checklist questions. For significant impacts, feasible mitigation measures are identified. “Mitigation measures” are measures that will minimize, avoid, or eliminate a significant impact (CEQA Guidelines Section 15370).
- **Cumulative Impacts** – This subsection discusses the project’s cumulative impact on the environmental subject. Cumulative impacts, as defined by CEQA, refer to two or more individual effects, which when combined, compound or increase other environmental impacts. Cumulative impacts may result from individually minor, but collectively significant effects taking place over a period of time. CEQA Guideline Section 15130 states that an Environmental Impact Report (EIR) should discuss cumulative impacts “when the project’s incremental effect is cumulatively considerable.” The discussion does not need to be in as great detail as is necessary for project impacts, but is to be “guided by the standards of practicality and reasonableness.” The purpose of the cumulative analysis is to allow decision makers to better understand the impacts that might result from approval of past, present, and reasonably foreseeable future projects, in conjunction with the proposed project addressed in this EIR.

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

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

Table 3.0-1 identifies the approved (but not yet constructed or occupied) and pending projects in the project vicinity that are evaluated in the cumulative analysis in addition to the Berryessa BART Urban Village Plan, as discussed in Section 2.2.1.2 above. These projects are located within a one-mile radius of the project site. Completed development of the Flea Market site north of Berryessa Road is included in the baseline conditions of the current project.

<b>Table 3.0-1: Cumulative Projects List</b>		
<b>Project Name</b>	<b>Location</b>	<b>Description</b>
<b>Approved but Not Yet Constructed/Occupied</b>		
Horning Street Gas Station, Food, and Storage	645 Horning Street	3,800-square foot convenience store, six fueling stations, automatic car wash, and fast food restaurant
Oakland Road Car Wash and Hotel	995 Oakland Road	Drive-through car wash and 65,000-square foot hotel
Araujo Street Subdivision	West side of Araujo Street, north of Sierra Road	Subdivision with nine single-family detached residences
Old Bayshore Highway Warehouse Project	1420 Old Bayshore Highway	One-story, 69,000-square foot warehouse and parking
Rotten Robbie #67	1202 Oakland Road	3,800-square foot convenience store
Market Park Commercial Center	1411-1499 Berryessa Road	Commercial shopping center with 101,000 square feet of retail

<b>Pending</b>		
Berryessa Road Residential and Office Project	1655 Berryessa Road	Up to 910 high-density dwelling units and 658,000 square feet of commercial office
Berryessa/Jackson Commercial Project	2002 Berryessa Road	Retail center with up to 47,000 square feet of retail

For each environmental issue, cumulative impacts may occur within different geographic areas. For example, the project effects on air quality would combine with the effects of projects in the entire air basin, whereas noise impacts would primarily be localized to the surrounding area.

### **3.1 AESTHETICS**

#### **3.1.1 Environmental Setting**

##### **3.1.1.1 *Regulatory Framework***

#### **State**

##### **Senate Bill 743**

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

- The project is a residential, mixed-use residential, or employment center project, and
- The project is located on an infill site within a transit priority area.<sup>4</sup>

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

##### **Streets and Highway Code Sections 260 through 263**

The California Scenic Highway Program (Streets and Highway Code, Sections 260 through 263) is managed by the California Department of Transportation (Caltrans). The program is intended to protect and enhance the natural scenic beauty of California highways and adjacent corridors through special conservation treatment. There are no state-designated scenic highways in San José. Interstate 280 from the San Mateo County line to State Route (SR) 17, which includes segments in San José, is an eligible, but not officially designated, State Scenic Highway.<sup>5</sup>

In Santa Clara County, the one state-designated scenic highway is SR 9 from the Santa Cruz County line to the Los Gatos City Limit. Eligible State Scenic Highways (not officially designated) include: SR 17 from the Santa Cruz County line to SR 9, SR 35 from Santa Cruz County line to SR 9,

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<sup>4</sup> An "infill site" is defined as "a lot located within an urban area that has been previously developed, or on a vacant site where at least 75 percent of the perimeter of the site adjoins, or is separated only by an improved public right-of-way from, parcels that are developed with qualified urban uses."

A "transit priority area" is defined as "an area within 0.5 mile of a major transit stop that is existing or planned, if the planned stop is scheduled to be completed within the planning horizon included in a Transportation Improvement Program adopted pursuant to Section 450.216 or 450.322 of Title 23 of the Code of Federal Regulations."

A "major transit stop" means "a site containing an existing rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods." Source: Office of Planning and Research. "Changes to CEQA for Transit Oriented Development – FAQ." October 14, 2014. Accessed April 26, 2019.

<http://www.opr.ca.gov/ceqa/updates/sb-743/transit-oriented.html>.

<sup>5</sup> California Department of Transportation. "Scenic Highways." Accessed April 26, 2019.

<https://dot.ca.gov/programs/design/lap-landscape-architecture-and-community-livability/lap-liv-i-scenic-highways>.

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

## **Regional and Local**

### San José Municipal Code

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

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

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

### City Design Guidelines and Design Review Process

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

### City Council Policy 4-2: Lighting

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

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

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

### Envision San José 2040 General Plan

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

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

<b>General Plan Policies – Aesthetics</b>	
<b>Attractive City</b>	
Policy CD-1.1	Require the highest standards of architectural and site design, and apply strong design controls for all development projects, both public and private, for the enhancement and development of community character and for the proper transition between areas with different types of land uses.
Policy CD-1.2	Install and maintain attractive, durable, and fiscally- and environmentally-sustainable urban infrastructure to promote the enjoyment of space developed for public use. Include attractive landscaping, public art, lighting, civic landmarks, sidewalk cafes, gateways, water features, interpretive/way-finding signage, farmers markets, festivals, outdoor entertainment, pocket parks, street furniture, plazas, squares, or other amenities in spaces for public use. When resources are available, seek to enliven the public right-of-way with attractive street furniture, art, landscaping and other amenities.
Policy CD-1.8	Create an attractive street presence with pedestrian-scaled building and landscaping elements that provide an engaging, safe, and diverse walking environment. Encourage compact, urban design, including use of smaller building footprints, to promote pedestrian activity throughout the City.
Policy CD-1.9	Give the greatest priority to developing high-quality pedestrian facilities in areas that will most promote transit use and bicycle and pedestrian activity. In pedestrian-oriented areas such as Downtown, Villages, Corridors, or along Main Streets, commercial and mixed-use building frontages should be placed at or near the street-facing property line with entrances directly to the public sidewalk. In these areas, strongly discourage parking areas located between the front of buildings and the street to promote a safe and attractive street façade and pedestrian access to buildings.
Policy CD-1.23	Further the Community Forest Goals and Policies in this Plan by requiring new development to plant and maintain trees at appropriate locations on private property and along public street frontages. Use trees to help soften the appearance of the built environment, help provide transitions between land uses, and shade pedestrian and bicycle areas.
<b>Lighting</b>	
Policy CD-5.6	Design lighting locations and levels to enhance the public realm, promote safety and comfort, and create engaging public spaces. Seek to balance minimum energy use of outdoor lighting with goal of providing safe and pleasing well-lit spaces. Consider the City's outdoor lighting policies in development review processes.
<b>Urban Villages Design</b>	
Policy CD-7.3	Review development proposed within an Urban Village Area prior to approval of an Urban Village Plan for consistency with any applicable design policies pertaining to the proposed use. Review proposed mixed-use projects that include



<b>General Plan Policies – Aesthetics</b>	
	residential units for consistency with the Design Policies for Urban Villages. Following adoption of an Urban Village Plan, review new development for consistency with design policies included within the Urban Village Plan as well as for consistency with any other applicable design policies.
<b>Community Empowerment</b>	
Policy VN-2.3	Ensure that community members have the opportunity to provide input on the design of public and private development within their community.

### Berryessa BART Urban Village Plan

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

<b>Urban Village Plan Policies – Aesthetics</b>	
Policy LU-4.2	Allow new commercial and residential infill projects within the existing neighborhoods on a parcel-by-parcel basis, if project scale, building massing, and land uses are comparable with those of adjacent properties. Residential densities and commercial intensities similar to those of adjacent properties shall apply.

#### **3.1.1.2 Existing Conditions**

##### **Project Site**

The 61.5-acre project site is a commercial property currently operating as the San José Flea Market. Development on the site consists of a variety of small permanent structures, converted shipping containers, and temporary sales areas comprised of open-air fabric awnings supported on metal frames (see Photos 3.1-1 and 3.1-2). A centrally located corporation yard/facility maintenance structure includes multiple structures, canopy-covered areas, and exterior storage areas. Asphalt-paved surface parking lots are located on the southern and western portions of the site (see Photo 3.1-3). The Flea Market security and administrative offices are located in a one-story wooden building in the northeast area of the site, along with associated covered and surface parking (see Photo 3.1-4).

The only undeveloped and unpaved portions areas, comprising approximately seven acres, are along the creek corridors at the site's northern and western boundaries (see Photos 3.1-5 and 3.1-6). Vehicle access to the site from Berryessa Road is provided via a vehicle bridge at the main entrance near the site's northeastern corner (see Photos 3.1-7 and 3.1-8). There is also a pedestrian bridge over Upper Penitencia Creek (see Photo 3.1-9) and a pedestrian undercrossing of Berryessa Road west of the main entrance (see Photo 3.1-10).

The project site and vicinity are flat, and as a result, the site is only visible from the immediately surrounding area. The riparian vegetation along Coyote and Upper Penitencia Creeks limits views of the project site from the west and north. During the winter months, however, the visual effect of the riparian corridor is diminished when the riparian vegetation loses its leaves. There are no designated scenic corridors in the project area. The Coyote Creek and Upper Penitencia Creek riparian corridors provide the only natural habitat in the vicinity.



**Photo 3.1-1:** Vendor booths and structures.



**Photo 3.1-2:** Commercial buildings and vendor booths.





**Photo 3.1-3:** Surface parking, looking east toward Berryessa BART Station.



**Photo 3.1-4:** The Flea Market offices.





**Photo 3.1-5:** Vegetation along Upper Penitencia Creek, looking south.



**Photo 3.1-6:** View of Coyote Creek from Berryessa Road.





**Photo 3.1-7:** Vehicle bridge at Flea Market main entrance, looking south.



**Photo 3.1-8:** Signage at Flea Market main entrance.





**Photo 3.1-9:** Upper Penitencia Creek pedestrian bridge, looking south.



**Photo 3.1-10:** Pedestrian undercrossing, looking southeast across Flea Market site.

## Surrounding Land Uses

Development in the project area is a mix of commercial, residential, and industrial land uses. Building heights vary by land use from one to six stories. The project site is bounded by Upper Penitencia Creek and Berryessa Road to the north, Coyote Creek to the west, Mabury Road to the south, and the Berryessa BART Station and tracks to the east. The BART tracks are elevated along the project site boundary. A six-story parking structure is adjacent to the BART station.

North of Berryessa Road, the Flea Market North Side development (i.e., the northern portion of the 120-acre Flea Market site under the approved Planned Development Zoning [PDC03-108]) is currently under construction. Development includes modern multi-family residential buildings up to five stories tall, along with commercial retail uses and parks. Industrial development in the project area is located west of Coyote Creek and south of Mabury Road, and is characterized by large industrial outdoor activity areas and very large equipment structures. A temporary homeless housing (Bridge Housing) development with single-story emergency sleeping cabins and modular buildings is located directly south of Mabury Road. Single-family residential neighborhoods up to three stories tall are located east of the project site, beyond the Berryessa BART Station.

### 3.1.2 Impact Discussion

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

- a) Have a substantial adverse effect on a scenic vista?
- b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?
- c) In non-urbanized areas, substantially degrade the existing visual character or quality of public views<sup>6</sup> of the site and its surroundings? If the project is in an urbanized area, would the project conflict with applicable zoning and other regulations governing scenic quality?
- d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?

Note: Certain projects within transit priority areas, such as the subject site and proposed development, need not evaluate aesthetics (Public Resources Code Section 21099).

#### 3.1.2.1 *Project Effects*

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

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<sup>3</sup> Public views are those that are experienced from publicly accessible vantage points.

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

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**Option 1 and Option 2**

There are no City-designated scenic corridors in the project area. The Coyote Creek and Upper Penitencia Creek riparian corridors provide the only natural habitat in the project area. The topography of the project site and vicinity is relatively flat and prominent viewpoints of the mountains are limited, as buildings, trees, and infrastructure (e.g., overhead utility lines, elevated roadways, etc.) obscure viewpoints.

Views of the Diablo Range foothills and mountains to the east are only visible from roadways, which provide a break in the built environment. Existing development west of the project site is industrial. Therefore, the proposed construction of residential and commercial development up to 270 feet in height would not block existing residential views of the Diablo Range foothills and mountains to the east of the project site.

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

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**Option 1 and Option 2**

The project site is not located along a state scenic highway. No scenic rock outcroppings are located on or in the vicinity of the site. Impacts to trees and historic buildings outside a state scenic highway are discussed in Section 3.4 Biological Resources and Section 3.5 Cultural Resources, respectively. The proposed project (both Option 1 and Option 2) would not damage scenic resources within a designated state scenic highway.

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

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**Option 1 and Option 2**

The proposed project would change the visual conditions of the project site, which is currently developed with commercial buildings, vendor booths, and surface parking lots that comprise the San José Flea Market. Development of the 61.5-acre project site with residential and commercial office uses up to 270 feet in height, along with the addition of on-site parks, would substantially change the appearance of the site due to the large size of the site and intensity of proposed development.

Although the maximum building height for both Option 1 and Option 2 is 270 feet, it is anticipated that Option 2's additional 1.2 million square feet of commercial development would require commercial buildings to have a greater average height and/or larger building footprints than those proposed by Option 1. Under both options, the commercial buildings would be taller than the residential buildings. Because commercial uses are proposed only in the eastern area of the site under



both development options, these visual differences would be most apparent in that area. Residential capacity, parks, and open space would be identical under the two options.

The project site is surrounded by a mix of industrial, commercial, and single-family and multi-family residential development. The nearest residential development east of the site is located at a distance of approximately 270 feet and consists of two- to three-story single- and multi-family residences. This residential development is visually separated from the site by elevated BART tracks and Berryessa BART Station, including a six-story parking garage. Residential uses included as part of the 2007 Flea Market project are also located north of Berryessa Road, at a distance of approximately 150 feet and separated from the site by the vegetated Upper Penitencia Creek riparian corridor.

Replacement of the existing Flea Market buildings, large expanses of paved parking, and minimal landscaping with new development designed in conformance with the City's adopted Design Guidelines and applicable General Plan policies would not significantly degrade the existing visual character of the site or its surroundings.

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

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**Option 1 and Option 2**

The project site is currently developed with commercial buildings, vendor booths, and surface parking. The site is located in an urban area with industrial, commercial, and residential development.

Both project options would allow the construction of residential and commercial office buildings up to 270 feet in height. The proposed project would include outdoor security night lighting along walkways, in public areas, and in entrance areas, and would also include standard pole lighting along the public street system. San José City Council Policy 4-3 calls for private development to use energy-efficient outdoor lighting that is fully shielded and not directed skyward. All lighting installed by the project would be full-cutoff lighting, designed in conformance with City Council Policy 4-3. Design and construction of the project in conformance with General Plan design and lighting policies would not adversely affect views.

The design of the proposed project (both Option 1 and Option 2) would also be subject to the City's design review process and would be required to use exterior materials that do not result in daytime glare, consistent with General Plan policies, applicable Urban Village design policies, Residential Design Guidelines, and Commercial Design Guidelines. As a result, the project would not significantly impact adjacent uses with daytime glare from building materials.

### 3.1.2.2 *Cumulative Impacts*

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

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##### **Option 1 and Option 2**

##### Scenic Vistas

Due to the site's relatively flat topography and limited views, the geographic area for cumulative aesthetics impacts is the immediate project vicinity. As discussed under checklist question a) above, scenic vistas are not located near the project site (or within the immediate project vicinity). The project and cumulative projects are not located near any City-designated scenic corridor. For these reasons, the cumulative projects (including the proposed project) would not significantly impact a scenic vista.

##### Scenic Resources

The proposed project would not impact scenic resources within a state scenic highway. For this reason, the project would not contribute to a significant cumulative impact to scenic resources within a state scenic highway.

##### Visual Character and Scenic Quality

The proposed project (both Option 1 and Option 2) and cumulative projects would change the visual character of the immediate area. Given the existing mix of industrial, commercial, and residential uses in the area, and the projects' consistency with General Plan policies, Residential Design Guidelines, and Commercial Design Guidelines, as applicable, the cumulative projects would not substantially degrade the visual character or quality of public views.

##### Light and Glare

The cumulative projects in the site vicinity would create new sources of light for nighttime security. The new sources of light would not, however, create substantial light or glare because all of the cumulative projects (including the proposed project) are required to comply with City Council Policy 4-2 to provide dimmable, programmable lighting to control the amount and color of light shining on streets and sidewalks. Furthermore, private cumulative development projects (including the proposed project) would be required to comply with City Council Policy 4-3 Outdoor Lighting on Private Developments to reduce light pollution and sky glow. The proposed project (both Option 1 and Option 2) would design lighting to be directed downwards, control glare, and prevent spill light. For these reasons, the cumulative projects would not result in a significant cumulative light or glare impact.

## 3.2 AGRICULTURAL AND FORESTRY RESOURCES

### 3.2.1 Environmental Setting

#### 3.2.1.1 *Regulatory Framework*

##### State

##### Farmland Mapping and Monitoring Program

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

##### California Land Conservation Act

The California Land Conservation Act (Williamson Act) enables local governments to enter into contracts with private landowners to restrict parcels of land to agricultural or related open space uses. In return, landowners receive lower property tax assessments. In CEQA analyses, identification of properties that are under a Williamson Act contract is used to also identify sites that may contain agricultural resources or are zoned for agricultural uses.<sup>7</sup>

##### Fire and Resource Assessment Program

The California Department of Forestry and Fire Protection (CAL FIRE) identifies forest land, timberland, and lands zoned for timberland production that can (or do) support forestry resources.<sup>8</sup> Programs such as CAL FIRE's Fire and Resource Assessment Program and are used to identify whether forest land, timberland, or timberland production areas that could be affected are located on or adjacent to a project site.<sup>9</sup>

#### 3.2.1.2 *Existing Conditions*

The City of San José General Plan Land Use Diagram designates the project site as Urban Village (UV), and the site has an A(PD) Planned Development Zoning District.

The project site is located within an existing developed area. The site currently operates as the San José Flea Market and is developed with one-story commercial buildings, vendor booths, and surface parking. The site is not zoned or used for agricultural purposes. The site is not designated by the

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<sup>7</sup> California Department of Conservation. "Williamson Act." <http://www.conservation.ca.gov/dlrp/lca>.

<sup>8</sup> Forest Land is land that can support 10 percent native tree cover and allows for management of forest resources (California Public Resources Code Section 12220(g)); Timberland is land not owned by the federal government or designated as experimental forest land that is available for, and capable of, growing trees to produce lumber and other products, including Christmas trees (California Public Resources Code Section 4526); and Timberland Production is land used for growing and harvesting timber and compatible uses (Government Code Section 51104(g)).

<sup>9</sup> California Department of Forestry and Fire Protection. "Fire and Resource Assessment Program." Accessed April 26, 2019. <http://frap.fire.ca.gov/>.

California Department of Conservation as farmland of any type<sup>10</sup>, and is not the subject of a Williamson Act contract. None of the properties adjacent to the project site are used for agriculture, nor are any designated as forest land.

### **3.2.2            Impact Discussion**

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

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

#### **3.2.2.1            *Project Impacts***

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

#### **Option 1 and Option 2**

The project site and surrounding properties are not used, zoned, or designated for agricultural purposes. The site is designated by the California Department of Conservation as Urban and Built-Up Land. For these reasons, implementation of the proposed project (both Option 1 and Option 2) would not convert Prime Farmland, Unique Farmland or Farmland of Statewide Importance to a non-agricultural use. **(No Impact)**

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

#### **Option 1 and Option 2**

The project site has a Planned Development (PD) Zoning District and is not zoned for agricultural use. The project site is not the subject of a Williamson Act contract. The proposed project (both

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<sup>10</sup> California Department of Conservation. "Farmland Mapping and Monitoring Program." Accessed April 26, 2019. <http://www.conservation.ca.gov/dlrp/fmmp/Pages/Index.aspx>.

Option 1 and Option 2) would not, therefore, conflict with existing zoning for agricultural use or a Williamson Act contract. **(No Impact)**

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

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**Option 1 and Option 2**

The project site and surrounding properties are not used or zoned for forestry or timberland purposes. For these reasons, implementation of the proposed project (both Option 1 and Option 2) would not conflict with zoning of forest land or timberland. **(No Impact)**

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

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**Option 1 and Option 2**

The project site and surrounding properties are not designated as forest land. Therefore, the proposed project (both Option 1 and Option 2) would not result in a loss of forest land or conversion of forest land to a non-forest use. **(No Impact)**

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

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**Option 1 and Option 2**

As described above, the project site does not contain farmland or forest land and is not located within the vicinity of farmland or forest land. Implementation of the proposed project (both Option 1 and Option 2), therefore, would not result in the conversion of farmland to non-agricultural use or forest land to non-forest use. **(No Impact)**

### **3.2.2.2 Cumulative Impacts**

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

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**Option 1 and Option 2**

As discussed above, implementation the proposed project (both Option 1 and Option 2) would not impact agricultural, forestry, or timberland resources. Therefore, the proposed project would not contribute to a significant impact to these resources. **(No Cumulative Impact)**

### 3.3 AIR QUALITY

The following discussion is based upon an Air Quality, Community Risk, and Greenhouse Gas Assessment prepared by Illingworth & Rodkin, Inc. on July 7, 2020 and updated on September 17, 2020. A copy of this report is included in Appendix B of this document.

#### 3.3.1 Environmental Setting

##### 3.3.1.1 *Background Information*

#### Criteria Pollutants

Air quality in the Bay Area is assessed related to six common air pollutants (referred to as criteria pollutants), including ground-level ozone (O<sub>3</sub>), nitrogen oxides (NO<sub>x</sub>), particulate matter (PM), carbon monoxide (CO), sulfur oxides (SO<sub>x</sub>), and lead.<sup>11</sup> Criteria pollutants are regulated because they result in health effects. An overview of the sources of criteria pollutants and their associated health are summarized in Table 3.3-1. The most commonly regulated criteria pollutants in the Bay Area are discussed further below.

Table 3.3-1: Health Effects of Air Pollutants		
Pollutants	Sources	Primary Effects
Ground-Level Ozone (O <sub>3</sub> )	Atmospheric reaction of organic gases with nitrogen oxides in sunlight	<ul style="list-style-type: none"><li>• Aggravation of respiratory and cardiovascular diseases</li><li>• Irritation of eyes</li><li>• Cardiopulmonary function impairment</li></ul>
Nitrogen Dioxide (NO <sub>2</sub> )	Motor vehicle exhaust, high temperature stationary combustion, atmospheric reactions	<ul style="list-style-type: none"><li>• Aggravation of respiratory illness</li><li>• Reduced visibility</li></ul>
Fine Particulate Matter (PM <sub>2.5</sub> ) and Coarse Particulate Matter (PM <sub>10</sub> )	Stationary combustion of solid fuels, construction activities, industrial processes, atmospheric chemical reactions	<ul style="list-style-type: none"><li>• Reduced lung function, especially in children</li><li>• Aggravation of respiratory and cardiorespiratory diseases</li><li>• Increased cough and chest discomfort</li><li>• Reduced visibility</li></ul>
Toxic Air Contaminants (TACs)	Cars and trucks, especially diesel-fueled; industrial sources, such as chrome platers; dry cleaners and service stations; building materials and products	<ul style="list-style-type: none"><li>• Cancer</li><li>• Chronic eye, lung, or skin irritation</li><li>• Neurological and reproductive disorders</li></ul>

High O<sub>3</sub> levels are caused by the cumulative emissions of reactive organic gases (ROG) and NO<sub>x</sub>. These precursor pollutants react under certain meteorological conditions to form high O<sub>3</sub> levels. Controlling the emissions of these precursor pollutants is the focus of the Bay Area's attempts to

<sup>11</sup> The Bay Area has attained both state and federal ambient air quality standards for CO. The project does not include substantial new emissions of sulfur dioxide or lead. These criteria pollutants are not discussed further.

reduce O<sub>3</sub> levels. The highest O<sub>3</sub> levels in the Bay Area occur in the eastern and southern inland valleys that are downwind of air pollutant sources.

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

### **Toxic Air Contaminants**

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

Diesel exhaust is the predominant TAC in urban air and is estimated to represent about three-quarters of the cancer risk from TACs. Diesel exhaust is a complex mixture of gases, vapors, and fine particles. Medium- and heavy-duty diesel trucks represent the bulk of DPM emissions from California highways. The majority of DPM is small enough to be inhaled into the lungs. Most inhaled particles are subsequently exhaled, but some deposit on the lung surface or are deposited in the deepest regions of the lungs (most susceptible to injury).<sup>12</sup> Chemicals in diesel exhaust, such as benzene and formaldehyde, have been previously identified as TACs by the California Air Resources Board (CARB).

### **Sensitive Receptors**

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

#### **3.3.1.2 *Regulatory Framework***

##### **Federal and State**

###### **Clean Air Act**

At the federal level, the United States Environmental Protection Agency (EPA) is responsible for overseeing implementation of the Clean Air Act and its subsequent amendments. The federal Clean Air Act requires the EPA to set national ambient air quality standards for the six common criteria pollutants (discussed previously), including PM, O<sub>3</sub>, CO, SO<sub>x</sub>, NO<sub>x</sub>, and lead.

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<sup>12</sup> California Air Resources Board. "Overview: Diesel Exhaust and Health." Accessed July 14, 2020. <https://www.arb.ca.gov/research/diesel/diesel-health.htm>.

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

### Risk Reduction Plan

To address the issue of diesel emissions in the state, CARB developed the Risk Reduction Plan to Reduce Particulate Matter Emissions from Diesel-Fueled Engines and Vehicles. In addition to requiring more stringent emission standards for new on-road and off-road mobile sources and stationary diesel-fueled engines to reduce particulate matter emissions by 90 percent, the plan involves application of emission control strategies to existing diesel vehicles and equipment to reduce DPM (in addition to other pollutants). Implementation of this plan, in conjunction with stringent federal and CARB-adopted emission limits for diesel-fueled vehicles and equipment (including off-road equipment), will significantly reduce emissions of DPM and NO<sub>x</sub>.

## **Regional and Local**

### 2017 Clean Air Plan

The Bay Area Air Quality Management District (BAAQMD) is the agency primarily responsible for assuring that the federal and state ambient air quality standards are maintained in the San Francisco Bay Area. Regional air quality management districts, such as BAAQMD, must prepare air quality plans specifying how state and federal air quality standards will be met. BAAQMD's most recently adopted plan is the Bay Area 2017 Clean Air Plan (2017 CAP). The 2017 CAP focuses on two related BAAQMD goals: protecting public health and protecting the climate. To protect public health, the 2017 CAP describes how BAAQMD will continue its progress toward attaining state and federal air quality standards and eliminating health risk disparities from exposure to air pollution among Bay Area communities. To protect the climate, the 2017 CAP includes control measures designed to reduce emissions of methane and other super-greenhouse gases (GHGs) that are potent climate pollutants in the near-term, and to decrease emissions of carbon dioxide by reducing fossil fuel combustion.<sup>13</sup>

### CEQA Air Quality Guidelines

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

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<sup>13</sup> Bay Area Air Quality Management District. *Final 2017 Clean Air Plan*. April 19, 2017. <http://www.baaqmd.gov/plans-and-climate/air-quality-plans/current-plans>.



## Community Air Risk Evaluation Program

Under the Community Air Risk Evaluation (CARE) program, BAAQMD has identified areas with high TAC emissions, and sensitive populations that could be affected by them, and uses this information to establish policies and programs to reduce TAC emissions and exposures. Impacted communities identified to date are located in Concord, Richmond/San Pablo, San José, eastern San Francisco, western Alameda County, Vallejo, San Rafael, and Pittsburg/Antioch. The main objectives of the program are to:

- Evaluate health risks associated with exposure to TACs from stationary and mobile sources;
- Assess potential exposures to sensitive receptors and identify impacted communities;
- Prioritize TAC reduction measures for significant sources in impacted communities; and
- Develop and implement mitigation measures to improve air quality in impacted communities.

## Envision San José 2040 General Plan

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

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

<b>General Plan Policies – Air Quality</b>	
	sources of TACs to be located an adequate distance from residential areas and other sensitive receptors.
<b>Construction Air Emission Minimization Policies</b>	
Policy MS-13.1	Include dust, particulate matter, and construction equipment exhaust control measures as conditions of approval for subdivision maps, site development and planned development permits, grading permits, and demolition permits. At a minimum, conditions shall conform to construction mitigation measures recommended in the current BAAQMD CEQA Guidelines for the relevant project size and type.
Policy MS-13.2	Construction and/or demolition projects that have the potential to disturb asbestos (from soil or building material) shall comply with all the requirements of the California Air Resources Board’s air toxic control measures (ATCMs) for Construction, Grading, Quarrying, and Surface Mining Operations.

### **3.3.1.3      *Existing Conditions***

The Bay Area is considered a non-attainment area for ground-level O<sub>3</sub> and PM<sub>2.5</sub> under both the federal Clean Air Act and state Clean Air Act. The area is also considered non-attainment for PM<sub>10</sub> under the state Clean Air Act, but not the federal Clean Air Act. The area has attained both state and federal ambient air quality standards for CO. As part of an effort to attain and maintain ambient air quality standards for O<sub>3</sub> and PM<sub>10</sub>, BAAQMD has established thresholds of significance for these air pollutants and their precursors. These thresholds are for O<sub>3</sub> precursor pollutants (ROG and NO<sub>x</sub>), PM<sub>10</sub>, and PM<sub>2.5</sub>, and apply to both construction period and operational period impacts.

The closest sensitive receptors to the project site are the residences approximately 200 feet north of the site and 310 feet east of the site. Some portions of the development to the north are still under construction and expected to be completed by the end of 2020, and therefore it is assumed that all residences would be constructed and occupied by the time the project is under construction. In addition, a temporary homeless housing (Bridge Housing) development is located approximately 120 feet south of the project site, at the intersection of Mabury Road and DOT Way.<sup>14</sup> The Bridge Housing site is available for adults only.

### **3.3.2      Impact Discussion**

For the purposes of determining the significance of the project’s impact on air quality, would the project:

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

<sup>14</sup> The Ordinance for Bridge Housing (Municipal Code Section 5.09.300) establishes an operative period for temporary homeless housing through January 1, 2022. Because the operative period could be extended, the analysis in this EIR conservatively assumes the Bridge Housing site would be present throughout construction and operation of the proposed project.

- b) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard?
- c) Expose sensitive receptors to substantial pollutant concentrations?
- d) Result in substantial emissions (such as those leading to odors) adversely affecting a substantial number of people?

### 3.3.2.1 *Thresholds of Significance*

As discussed in CEQA Guidelines Section 15064(b), the determination of whether a project may have a significant effect on the environment calls for judgment on the part of the lead agency and must be based to the extent possible on scientific and factual data. The City of San José has considered the air quality thresholds updated by BAAQMD in May 2017 and regards these thresholds to be based on the best information available for the San Francisco Bay Area Air Basin and conservative in terms of the assessment of health effects associated with TACs and PM<sub>2.5</sub>. The BAAQMD CEQA Air Quality thresholds used in this analysis are identified in Table 3.3-2 below.

Table 3.3-2: BAAQMD Air Quality Significance Thresholds			
Pollutant	Construction Thresholds	Operation Thresholds	
	Average Daily Emissions (pounds/day)	Average Daily Emissions (pounds/day)	Annual Average Emissions (tons/year)
Criteria Air Pollutants			
ROG, NO <sub>x</sub>	54	54	10
PM <sub>10</sub>	82 (exhaust)	82	15
PM <sub>2.5</sub>	54 (exhaust)	54	10
CO	Not Applicable	9.0 ppm (eight-hour) or 20.0 ppm (one-hour)	
Fugitive Dust	Dust Control Measures/Best Management Practices	Not Applicable	
Health Risks and Hazards for New Sources (within a 1,000-foot Zone of Influence)			
Health Hazard	Single Source	Combined Cumulative Sources	
Excess Cancer Risk	10 per one million	100 per one million	
Hazard Index	1.0	10.0	
Incremental Annual PM <sub>2.5</sub>	0.3 µg/m <sup>3</sup>	0.8 µg/m <sup>3</sup> (average)	
Notes: ppm = parts per million. µg/m <sup>3</sup> = micrograms per cubic meter.			

### 3.3.2.2 *Project Impacts*

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

#### **Option 1 and Option 2**

The BAAQMD CEQA Air Quality Guidelines set forth criteria for determining consistency with the 2017 CAP. In general, a project is considered consistent if it a) supports the primary goals of the Clean Air Plan; b) includes relevant control measures; and c) does not interfere with implementation of CAP control measures. As shown in Table 3.3-3 below, the proposed project would generally be consistent with the intent of 2017 CAP measures intended to reduce automobile trips, as well as energy and water use.

<b>Table 3.3-3: Applicable Control Measures</b>	
<b>Control Measure</b>	<b>Project Consistency with Measure Intent</b>
<i><b>Transportation Measures</b></i>	
<b>TR2 - Trip Reduction Programs:</b> Implement the regional Commuter Benefits Program (Rule 14-1) that requires employers with 50 or more Bay Area employees to provide commuter benefits. Encourage trip reduction policies and programs in local plans, e.g., general and specific plans while providing grants to support trip reduction efforts. Encourage local governments to require mitigation of vehicle travel as part of new development approval, to adopt transit benefits ordinances in order to reduce transit costs to employees, and to develop innovative ways to encourage rideshare, transit, cycling, and walking for work trips. Fund various employer-based trip reduction programs.	The project proposes Transit Oriented Development including multi-family residential and commercial office development at an infill, urban location adjacent to the Berryessa BART Station. Employers would be required to comply with the Commuter Benefits Program. The project, therefore, is consistent with this measure.
<b>TR9 - Bicycle and Pedestrian Access and Facilities:</b> Encourage planning for bicycle and pedestrian facilities in local plans, e.g., general and specific plans, fund bike lanes, routes, paths and bicycle parking facilities.	The project would create a dense, walkable environment with pedestrian-oriented design, bicycle lanes, and trails along Upper Penitencia and Coyote Creeks. The project would comply with the existing Master Plan for the Coyote Creek Trail. The project, therefore, is consistent with this measure.
<b>TR13 - Parking Policies:</b> Encourage parking policies and programs in local plans, e.g., reduce minimum parking requirements; limit the supply of off-street parking in transit-oriented areas; unbundle the price of parking spaces; support	Consistent with the parking reduction goals of the draft Berryessa BART Urban Village Plan, the project proposes a minimum 15 percent reduction in spaces due to the proximity of the proposed project to the Berryessa BART Station. The project, therefore, is consistent with this measure.

<b>Table 3.3-3: Applicable Control Measures</b>	
<b>Control Measure</b>	<b>Project Consistency with Measure Intent</b>
implementation of demand-based pricing in high-traffic areas.	
<b><i>Energy Measures</i></b>	
<b>BL2 - Decarbonize Buildings:</b> Explore potential Air District rulemaking options regarding the sale of fossil fuel-based space and water heating systems for both residential and commercial use. Explore incentives for property owners to replace their furnace, water heater or natural-gas powered appliances with zero-carbon alternatives. Update Air District guidance documents to recommend that commercial and multi-family developments install ground source heat pumps and solar hot water heaters.	Electricity is provided to the site by San José Clean Energy (SJCE). SJCE customers are automatically enrolled in the GreenSource program, which provides 80 percent GHG emission-free electricity, and SJCE will provide 100-percent carbon-free base power by 2021. The project, therefore, is consistent with this measure.
<b>BL4 - Urban Heat Island Mitigation:</b> Develop and urge adoption of a model ordinance for “cool parking” that promotes the use of cool surface treatments for new parking facilities, as well existing surface lots undergoing resurfacing. Develop and promote adoption of model building code requirements for new construction or reroofing/roofing upgrades for commercial and residential multifamily housing.	The proposed project would reduce the urban heat island effect by replacing the predominantly paved parking lot on the existing site with roof gardens on residential buildings, as well as landscaping and trees to provide well-shaded areas. The project, therefore, is consistent with this measure.
<b><i>Natural and Working Lands Measures</i></b>	
<b>NW2 - Urban Tree Planting:</b> Develop or identify an existing model municipal tree planting ordinance and encourage local governments to adopt such an ordinance. Include tree planting recommendations, BAAQMD’s technical guidance, best management practices for local plans, and CEQA review.	The project would comply with the City of San José Tree Removal Ordinance by retaining trees when possible and providing replacement planting for removed trees. The project would protect existing trees in the Upper Penitencia and Coyote Creek corridors and plant landscape trees throughout the site. The project, therefore, is consistent with this measure.
<b><i>Water Measures</i></b>	
<b>WR2 - Support Water Conservation:</b> Develop a list of best practices that reduce water consumption and increase on-site water recycling in new and existing buildings; incorporate into local planning guidance.	The project would construct two bioretention basins and implementation of post-construction measures for stormwater treatment. The project, therefore, is consistent with this measure.



As shown in Table 3.3-3, the proposed project (both Option 1 and Option 2) would include implementation of policies and measures that are consistent with the applicable 2017 CAP control measures. With implementation of these policies and measures, the proposed project (both Option 1 and Option 2) would not conflict with the 2017 CAP. **(Less than Significant Impact)**

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

### **Option 1 and Option 2**

The Bay Area is considered a non-attainment area for ground-level ozone and PM<sub>2.5</sub> under both the Federal Clean Air Act and the California Clean Air Act. The area is also considered non-attainment for PM<sub>10</sub> under the California Clean Air Act, but not the federal act. The area has attained both state and federal ambient air quality standards for carbon monoxide. As part of an effort to attain and maintain ambient air quality standards for ozone and PM<sub>10</sub>, BAAQMD has established thresholds of significance for these air pollutants and their precursors. These thresholds are for ozone precursor pollutants (ROG and NO<sub>x</sub>), PM<sub>10</sub>, and PM<sub>2.5</sub> and apply to both construction period and operational period emissions.

#### Construction Period Emissions

The California Emissions Estimator Model (CalEEMod) was used to estimate emissions from construction and operation of the project assuming full build-out conditions. The CARB Emissions Factors 2017 model (EMFAC2017) was used to predict emissions from construction truck traffic and trips. See Appendix B for the project land use types, size, and other CalEEMod and EMFAC2017 inputs. Average daily emissions were calculated by dividing the total construction emissions by the total number of construction days. Project construction (for both Option 1 and Option 2) was estimated to last approximately six years or 1,410 workdays. Although the construction timeframe would be the same for both options, Option 2 would be relatively more intensive because it would include 1.2 million square feet of additional office development.

Table 3.3-4 below shows daily construction emissions of ROG, NO<sub>x</sub>, PM<sub>10</sub> exhaust, and PM<sub>2.5</sub> exhaust during construction of the project. As shown in Table 3.3-4, without mitigation measures, the predicted construction period emissions would exceed BAAQMD significance thresholds for both Option 1 and Option 2.

Table 3.3-4: Construction Period Emissions for Options 1 and 2								
Scenario	ROG		NO <sub>x</sub>		PM <sub>10</sub> Exhaust		PM <sub>2.5</sub> Exhaust	
	Option 1	Option 2	Option 1	Option 2	Option 1	Option 2	Option 1	Option 2
Unmitigated total construction emissions (tons)	42.7	48.9	56.0	56.0	5.3	5.3	4.0	4.0
Mitigated total construction emissions (tons)	21.3 <sup>1</sup>	24.7 <sup>1</sup>	35.6 <sup>2</sup>	35.6 <sup>2</sup>	4.9	4.9	3.6	3.6
Unmitigated average daily emissions (pounds per day) <sup>3</sup>	<b>60.5</b>	<b>69.4</b>	<b>79.5</b>	<b>79.5</b>	7.5	7.5	5.6	5.6
Mitigated average daily emissions (pounds per day) <sup>3</sup>	30.1	35.0	50.4	50.4	7.0	7.0	5.1	5.1
BAAQMD thresholds (pounds per day)	54		54		82		54	
Exceed threshold?								
Unmitigated	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	No	No	No	No
Mitigated	No	No	No	No	No	No	No	No
<sup>1</sup> Includes low-volatile organic compound (VOC) coating reduction for exterior and interior paints. <sup>2</sup> Includes truck hauling reduction with all trucks being 2014 or newer models. <sup>3</sup> Assumes 1,410 construction workdays. <b>Bold</b> values exceed BAAQMD thresholds.								

**Impact AIR-1:** Construction period emissions would exceed BAAQMD thresholds for ROG and NO<sub>x</sub> exhaust. **(Significant Impact)**

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

**MM AIR-1.1:** The following best management practices shall be implemented by the project applicant prior to issuance of any demolition or grading permits and/or during construction activities to reduce DPM and PM<sub>10</sub> to avoid short-term health impacts to nearby sensitive receptors during construction.

1. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered at a frequency adequate to maintain minimum soil moisture of 12 percent. Moisture content can be verified by lab samples or moisture probe.
2. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
3. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
4. All vehicle speeds on unpaved roads shall be limited to 15 miles per hour (mph).

5. Exposed stockpiles (dirt, sand, etc.) shall be enclosed, covered, watered twice daily, or applied with non-toxic soil binders.
6. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
7. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to five minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of the California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
8. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
9. Post a publicly visible sign with the telephone number and person to contact at the City of San José regarding dust complaints. This person shall respond and take corrective action within 48 hours. The BAAQMD's phone number shall also be visible to ensure compliance with applicable regulations.
10. All excavation, grading, and/or demolition activities shall be suspended when average wind speeds exceed 20 mph and visible dust extends beyond site boundaries.
11. Wind breaks (e.g., trees, fences) shall be installed on the windward side(s) of actively disturbed areas of construction adjacent to sensitive receptors. Wind breaks shall have at maximum 50 percent air porosity.
12. Vegetative ground cover (e.g., fast-germinating native grass seed) shall be planted in disturbed areas as soon as possible and watered appropriately until vegetation is established.
13. The simultaneous occurrence of excavation, grading, and ground-disturbing construction activities on the same area at any one time shall be limited. Activities shall be phased to reduce the number of disturbed surfaces at any one time.
14. Avoid tracking of visible soil material onto public roadways by employing the following measures if necessary: 1) Site accesses to a distance of 100 feet from public paved roads shall be treated with a 0.5- to one-foot compacted layer of wood chips, mulch, or gravel; and 2) wash truck tires and construction equipment prior to leaving the site.
15. Sandbags or other erosion control measures shall be installed to prevent silt runoff to public roadways from sites with a slope greater than one percent.

- MM AIR-1.2:** Prior to the issuance of any demolition or grading permits, the project applicant shall utilize construction equipment that has low DPM exhaust and NO<sub>x</sub> emissions, according to the following criteria:
1. All construction equipment larger than 25 horsepower used at the site for more than two continuous days or 20 hours total shall meet EPA Tier 4 emission standards for NO<sub>x</sub> and PM (PM<sub>10</sub> and PM<sub>2.5</sub>), if feasible, otherwise:
    - a. If use of Tier 4 equipment is not available, alternatively use equipment that meets EPA emissions standards for Tier 3 engines and include particulate matter emissions control equivalent to CARB Level 3 verifiable diesel emission control devices that altogether achieve an 85 percent reduction in particulate matter exhaust in comparison to uncontrolled equipment; or,
    - b. Use alternatively fueled equipment with lower NO<sub>x</sub> emissions that meet the NO<sub>x</sub> and PM reduction requirements above.
  2. Diesel engines, whether for off-road equipment or on-road vehicles, shall not be left idling for more than two minutes, except as provided in exceptions to the applicable state regulations (e.g., traffic conditions, safe operating conditions). The construction sites shall have posted legible and visible signs in designated queuing areas and at the construction site to clearly notify operators of the idling limit.
  3. All on-road heavy-duty diesel trucks with a gross vehicle weight rating of 33,000 pounds or greater used at the project site (such as haul trucks, water trucks, dump trucks, and concrete trucks) shall be model year 2014 or newer.
  4. Provide line power to the site during the early phases of construction to minimize the use of diesel-powered stationary equipment, such as generators.

**MM AIR-1.3:** At least 80 percent of the residential and non-residential buildings constructed shall use low-VOC (i.e., ROG) exterior paints that are below current BAAQMD requirements (Regulation 8, Rule 3: Architectural Coatings). This includes all architectural coatings applied during both construction and reapplication throughout the project's operational lifetime. At least 80 percent of coatings applied must meet a "super-compliant" VOC standard of less than 10 grams of VOC per liter of paint. For reapplication of coatings during the project's operational lifetime, the Declaration of Covenants, Conditions, and Restrictions shall contain a stipulation for low-VOC coatings to be used.

With implementation of MM AIR-1.1 through MM AIR-1.3 above, on-site NO<sub>x</sub> emission would be reduced by 80 percent, and ROG emissions would be reduced by 55 percent. ROG construction emissions from architectural coatings, which make up approximately 86 percent of total construction ROG emissions, would be reduced by 55 percent with MM AIR-1.3. With these mitigation measures, the project (both Option 1 and Option 2) construction emissions would be reduced to less-than-significant levels. **(Less than Significant Impact with Mitigation Incorporated)**

## Operational Period Emissions

Operational air emissions would be generated primarily from vehicles driven by future residents, employees, customers, and vendors. Evaporative emissions from architectural coatings and maintenance products (classified as consumer products) would also be generated under the operational phase of the project. CalEEMod and Emissions Factors (EMFAC) modeling inputs for operational emissions were based upon project-specific trip generation rates and are described in Appendix B.

As shown in Table 3.3-5 below, Option 1 operational emissions would exceed the BAAQMD significance thresholds for ROG and NO<sub>x</sub>.

<b>Table 3.3-5: Operational Period Emissions – Option 1</b>				
<b>Scenario</b>	<b>ROG</b>	<b>NO<sub>x</sub></b>	<b>PM<sub>10</sub></b>	<b>PM<sub>2.5</sub></b>
Unmitigated 2029 annual Option 1 operational emissions (tons per year)	<b>35.3</b>	<b>17.2</b>	14.2	4.4
Mitigated 2029 annual Option 1 operational emissions (tons per year)	<b>29.9</b>	<b>&gt;10</b>	<14.2	<4.4
<i>BAAQMD thresholds (tons per year)</i>	<i>10</i>	<i>10</i>	<i>15</i>	<i>10</i>
Exceed threshold?				
Unmitigated Option 1	<b>Yes</b>	<b>Yes</b>	No	No
Mitigated Option 1	<b>Yes</b>	<b>Yes</b>	No	No
Unmitigated 2029 daily Option 1 operational emissions (pounds per day) <sup>1</sup>	<b>193.3</b>	<b>94.5</b>	77.5	24.1
Mitigated 2029 daily Option 1 operational emissions (pounds per day) <sup>1</sup>	<b>163.9</b>	<b>&gt;54</b>	<77.5	<24.1
<i>BAAQMD thresholds (pounds per day)</i>	<i>54</i>	<i>54</i>	<i>82</i>	<i>54</i>
Exceed threshold?				
Unmitigated Option 1	<b>Yes</b>	<b>Yes</b>	No	No
Mitigated Option 1	<b>Yes</b>	<b>Yes</b>	No	No
<sup>1</sup> Assumes 365-day operation. <b>Bold</b> values exceed BAAQMD thresholds.				

As shown in Table 3.3-6 below, Option 2 operational emissions would exceed the BAAQMD significance thresholds for ROG, NO<sub>x</sub>, and PM<sub>10</sub>.



<b>Table 3.3-6: Operational Period Emissions – Option 2</b>				
<b>Scenario</b>	<b>ROG</b>	<b>NO<sub>x</sub></b>	<b>PM<sub>10</sub></b>	<b>PM<sub>2.5</sub></b>
Unmitigated 2029 annual Option 2 operational emissions (tons per year)	<b>42.5</b>	<b>21.3</b>	<b>17.4</b>	5.4
Mitigated 2029 annual Option 2 operational emissions (tons per year)	<b>41.6</b>	<b>&gt;10</b>	<b>&gt;15</b>	<5.4
<i>BAAQMD thresholds (tons per year)</i>	<i>10</i>	<i>10</i>	<i>15</i>	<i>10</i>
Exceed threshold?				
Unmitigated Option 2	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	No
Mitigated Option 2	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	No
Unmitigated 2029 daily Option 2 operational emissions (pounds per day) <sup>1</sup>	<b>232.7</b>	<b>116.5</b>	<b>95.3</b>	29.5
Mitigated 2029 daily Option 2 operational emissions (pounds per day) <sup>1</sup>	<b>228.1</b>	<b>&gt;54</b>	<b>&gt;82</b>	<29.5
<i>BAAQMD thresholds (pounds per day)</i>	<i>54</i>	<i>54</i>	<i>82</i>	<i>54</i>
Exceed threshold?				
Unmitigated Option 2	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	No
Mitigated Option 2	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	No
<sup>1</sup> Assumes 365-day operation. <b>Bold</b> values exceed BAAQMD thresholds.				

**Impact AIR-2:** Operational period emissions would exceed BAAQMD thresholds for ROG (Option 1 and Option 2), NO<sub>x</sub> (Option 1 and Option 2), and PM<sub>10</sub> (Option 2 only). **(Significant Impact)**

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

**MM AIR-2.1:** Prior to any approval of a Planned Development Permit for the construction of the residential and/or commercial buildings and structures, the project applicant shall implement a Transportation Demand Management (TDM) plan consistent with City requirements.

A traffic engineer shall prepare and submit the TDM plan for review and approval to the Director of Planning, Building and Code Enforcement or the Director's designee and the Director of Public Works or the Director's designee. Trips shall be reduced by at least 48 percent for Option 1 and at least 53 percent for Option 2, as compared to unmitigated conditions.

Implementation of a TDM plan would reduce project traffic; however, there is no singular reduction percentage that would reduce NO<sub>x</sub> and PM<sub>10</sub> emissions (where mobile emissions are the main contributor) to a level below the BAAQMD thresholds of 54 and 83 pounds per day, respectively. Trips would need to be reduced by at least 48 percent for Option 1, while trips would need to be reduced by at least 53 percent for Option 2 to reduce NO<sub>x</sub> emissions. For Option 2 PM<sub>10</sub> emissions, trips would need to be reduced by 14 percent.

The project would also implement MM AIR-1.3 above, reducing Option 1 ROG emissions by 15 percent and Option 2 ROG emissions by two percent. It is assumed that only exterior paint

applications could feasibly be controlled through this mitigation measure, as residential and office occupants would likely independently choose their own architectural coatings. Operational ROG emissions would still exceed the BAAQMD threshold of 54 pounds per day even with mitigation.

While implementation of the proposed mitigation measures described above could reduce operational emissions, the measures would not reduce the impact to a less-than-significant level. **(Significant and Unavoidable Impact)**

#### Significant and Unavoidable Criteria Pollutant Emissions

As stated above, with the implementation of mitigation measures MM AIR-1.3 through MM AIR-2.1, operational emissions would continue to exceed the BAAQMD thresholds of significance for ROG (Option 1 and Option 2), NO<sub>x</sub> (Option 1 and Option 2), and PM<sub>10</sub> (Option 2 only).

Ozone is an oxidant that is harmful to public health at high concentrations. Ozone, at high levels, can damage the tissues of the lungs and respiratory tract. High concentrations of ozone irritate the nose, throat, and respiratory system and constrict the airways. Ozone can also aggravate other respiratory conditions such as asthma, bronchitis, and emphysema, causing increased hospital admissions. Repeated exposure to high ozone levels can make people more susceptible to respiratory infection and lung inflammation and permanently damage lung tissue. Ozone can also have negative cardiovascular impacts, including chronic hardening of the arteries and acute triggering of heart attacks. Children are most at risk, as they tend to be active and outdoors in the summer, when ozone levels are highest. Seniors and people with respiratory illnesses are also especially sensitive to ozone's effects. Healthy adults, working or exercising outdoors during high ozone levels, can be affected.

Emissions of ROG and NO<sub>x</sub> throughout the Bay Area contribute to ozone formation. Because emissions in one part of the region can impact air quality miles downwind, efforts to reduce ozone levels focus on reducing emissions of ROG and NO<sub>x</sub> throughout the region. The relationship between ROG and NO<sub>x</sub> in ozone formation is complex; the ratio between the precursor pollutants influences how ozone forms. Modeling suggests that large reductions in ROG and NO<sub>x</sub> will be needed to achieve the ozone reductions required to attain the current health-based ozone standards. A certain amount of ozone formation occurs naturally, even in the absence of anthropogenic emissions of ROG and NO<sub>x</sub>.

PM<sub>10</sub> are particles that make up particulate matter, which is also a regional pollutant. Both short-term and long-term exposure to particulate matter can cause a wide range of health effects including aggravated asthma and bronchitis; hospital visits for respiratory and cardiovascular symptoms; and strokes and heart attacks, some of which result in premature deaths. Evidence shows that reducing PM emissions can reduce mortality and average life span. PM emissions cause a wide range of health effects by increasing blood pressure and causing inflammation that can stiffen and damage blood vessels. Exposure to PM may damage cells or tissue via oxidative stress and contribute to diabetes.

The project ROG, NO<sub>x</sub>, and PM<sub>10</sub> emissions from operations are compared against regional emissions in Table 3.3-7.

<b>Table 3.3-7: Comparison of Project Emissions to Bay Area Air Basin Emissions</b>			
<b>Scenario</b>	<b>ROG</b>	<b>NO<sub>x</sub></b>	<b>PM<sub>10</sub></b>
Bay Area Air Basin in 2015 <sup>1</sup>	259 tons/day	298 tons/day	109 tons/day
Mitigated Project Operation (Option 1)	0.082 tons/day	0.047 tons/day	0.039 tons/day
Mitigated Project Operation (Option 2)	0.114 tons/day	0.058 tons/day	0.048 tons/day
Percentage of Basin (Option 1)	0.03 percent	0.02 percent	0.04 percent
Percentage of Basin (Option 2)	0.04 percent	0.02 percent	0.04 percent
<sup>1</sup> Bay Area Air Quality Management District. 2017 Clean Air Plan. <a href="https://www.baaqmd.gov/~/media/files/planning-and-research/plans/2017-clean-air-plan/attachment-a-proposed-final-cap-vol-1-pdf.pdf?la=en">https://www.baaqmd.gov/~/media/files/planning-and-research/plans/2017-clean-air-plan/attachment-a-proposed-final-cap-vol-1-pdf.pdf?la=en</a> .			

Project emissions in comparison to regional emissions are such a small portion of the regional inventory (i.e., less than 0.1 percent, see analysis in Appendix B) that the effect of the project would not cause regional pollutant levels to measurably change. As a result, the project would not measurably increase ozone levels nor PM<sub>10</sub> levels air basin-wide. Therefore, the health effects associated with the project ROG, NO<sub>x</sub>, and PM<sub>10</sub> emissions are not measurable and no direct link can be drawn between the project's ozone precursor and particulate matter emissions and health effects predicted for the region by BAAQMD resulting from elevated ozone levels.

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

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**Option 1 and Option 2**

Project impacts related to increased community risk would occur by introducing new sources of TAC emissions with the potential to adversely affect existing sensitive receptors in the project vicinity. This project would introduce new sources of TACs during construction (i.e. on-site construction activity and truck hauling emissions) and operation (i.e. emergency diesel generators<sup>15</sup> and project traffic).

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

Community risk impacts were addressed by predicting increased cancer risk, the increase in annual PM<sub>2.5</sub> concentrations, and the Hazard Index (HI) for non-cancer health risks. The risk impacts from the project are the combination of construction and operation sources, as noted above. These sources include on-site construction activity, construction truck hauling, project generators, and increased operational traffic to the project site.

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<sup>15</sup> This analysis assumes seven 1,000-kilowatt (kW) emergency diesel generators, one per office building. The generators were conservatively modeled in the middle of each office building at ground level. No residential generators are included in the project.

To evaluate the increased cancer risks from the project, a 30-year exposure period was assumed with the sensitive receptors being exposed to project both construction and operation during this timeframe. Sensitive receptors include locations where sensitive populations would be present for extended periods of time. This includes existing residences to the north and east of the project site, as well as the Bridge Housing site to the south, as shown in Figure 3.3-1. Residential receptors are assumed to include all receptor types with almost continuous exposure to site emissions. At the Bridge Housing location, only adult receptors are assumed.

The project's maximally exposed individual (MEI) is identified as the sensitive receptor that is most impacted by the project's construction and operation. The location of maximum increased cancer risk concentration, shown in Figure 3.3-1, is a residence located approximately 310 feet east of the project site. The maximum annual PM<sub>2.5</sub> concentration was identified at the Bridge Housing location. The receptors at these locations are identified as the MEIs for construction activities.

### Construction Emissions – Residential Sensitive Receptors

Construction equipment and associated heavy-duty truck traffic generates diesel exhaust, which is a known TAC. Construction exhaust emissions may pose health risks for sensitive receptors such as surrounding residents. The primary community risk impact issues associated with construction emissions are cancer risk and exposure to PM<sub>2.5</sub>. A community risk assessment of the project's construction activities, which includes on-site construction and hauling activity, was completed for the project by Illingworth & Rodkin, Inc (see Appendix B). The assessment evaluated potential health effects to nearby sensitive receptors from construction emissions of PM<sub>10</sub> and PM<sub>2.5</sub>.

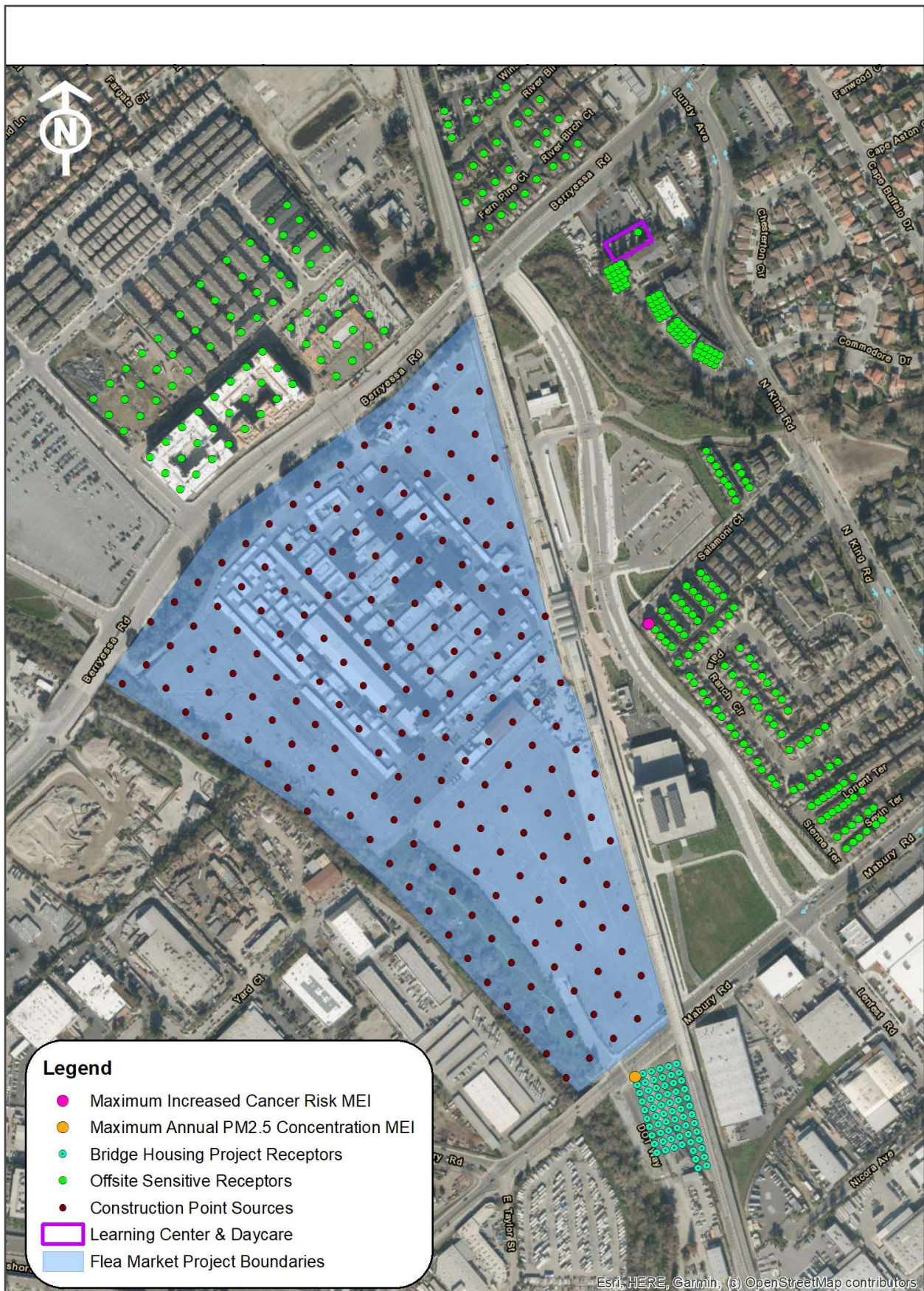
The CalEEMod model provided Option 1 and Option 2 total annual PM<sub>10</sub> exhaust emissions (assumed to be DPM) for the off-road construction equipment and for exhaust emissions from on-road construction worker, vendor, and hauling vehicles (see Appendix B).<sup>16</sup> Figure 3.3-1 shows the locations where the maximum modeled DPM and PM<sub>2.5</sub> concentrations from construction activities would occur. The maximum concentrations from project emissions would occur at the MEI located east of the project site, across Berryessa Station Way.

The maximum increased cancer risk calculations at the location of the MEI were based on applying the BAAQMD-recommended age sensitivity factors to the TAC concentrations. Age sensitivity factors reflect the greater sensitivity of infants and small children to cancer causing TACs. The maximum modeled annual PM<sub>2.5</sub> concentration was calculated based on combined exhaust and fugitive concentrations. The maximum computed HI value was based on the ratio of the maximum DPM concentration and the chronic inhalation reference exposure level (see analysis in Appendix B). Table 3.3-8 lists the community risks from construction at the location of the offsite MEI. Neither the unmitigated nor mitigated risk values exceed the BAAQMD single-source thresholds. However, mitigated values are shown because the project would be required to implement measures to reduce NO<sub>x</sub> and ROG emissions (see checklist question b) above).

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<sup>16</sup> Although Option 2 includes an additional 1.2 million square feet of commercial office development as compared to Option 1, construction health risks and hazards rounded to the same values for both options. CalEEMod estimates default construction activity based on land use size; however, due to the large size of the project, the model "capped out" and did not show any construction difference between the project options.





LOCATIONS OF OFF-SITE SENSITIVE RECEPTORS

FIGURE 3.3-1



Implementation of mitigation measures MM AIR-1.1 and MM AIR-1.2 further would reduce cancer risk and annual PM<sub>2.5</sub> impacts, which are already at a less-than-significant level. The computed maximum increased residential cancer risk from construction would be 4.6 in one million or less, the maximum annual PM<sub>2.5</sub> concentration would be 0.02 µg/m<sup>3</sup>, and the HI value would be less than 0.01; all of these values are below BAAQMD single-source thresholds. **(Less than Significant Impact)**

<b>Table 3.3-8: Project (Option 1 and Option 2) Construction Risk Impacts at the Offsite MEI</b>			
<b>Source</b>	<b>Cancer Risk (per million)</b>	<b>Annual PM<sub>2.5</sub> (µg/m<sup>3</sup>)</b>	<b>Hazard Index</b>
Project construction			
Unmitigated	9.2 (infant)	0.13	0.01
Mitigated	4.6 (infant)	0.09	<0.01
<i>BAAQMD Single-Source Threshold</i>	<i>&gt;10.0</i>	<i>&gt;0.3</i>	<i>&gt;1.0</i>
Exceed threshold?			
Unmitigated	No	No	No
Mitigated	No	No	No
Note: The risks and hazards from Option 1 and Option 2 round to the same values as the same construction scenario was assumed for both options. See analysis in Appendix B.			

#### Construction Emissions – Learning Center and Daycare Sensitive Receptors

Construction modeling and risk predictions were conducted for two schools/daycares in proximity to the project site: Genius Kids Berryessa, located at 1682 Berryessa Road, and Best Brains of Berryessa, located at 1672 Berryessa Road. Both facilities provide learning programs and/or daycare services and are located approximately 700 feet northeast of the project site. Genius Kids Berryessa provides learning programs and camps for infants and children between the ages of two months and 12 years. Best Brains of Berryessa provides tutoring services for children between the ages of three and 14 years. Table 3.3-9 lists the project construction risk and hazards at both facilities. As shown in Table 3.3-9, the construction risk impacts for Option 1 and Option 2 round to the same values, and do not exceed BAAQMD single-source thresholds. **(Less than Significant Impact)**

<b>Table 3.3-9: Project (Option 1 and Option 2) Construction Risk Impacts at Learning Center and Daycare</b>			
<b>Source</b>	<b>Cancer Risk (per million)</b>	<b>Annual PM<sub>2.5</sub> (µg/m<sup>3</sup>)</b>	<b>Hazard Index</b>
Project construction			
Genius Kids Berryessa (two months – 12 years old)	5.1 (infant)	0.01	<0.01
Best Brains of Berryessa (three – 12 years old)	0.4 (child)	0.01	<0.01
<i>BAAQMD Single-Source Threshold</i>	<i>&gt;10.0</i>	<i>&gt;0.3</i>	<i>&gt;1.0</i>
Exceed threshold?			
Genius Kids Berryessa (two months – 12 years old)	No	No	No
Best Brains of Berryessa (three – 12 years old)	No	No	No
Note: The risks and hazards from Option 1 and Option 2 round to the same values.			

#### Operational Emissions – Residential Sensitive Receptors

Operation of the project would have long-term emissions from mobile sources (i.e., traffic) and stationary sources (i.e., generators). While these emissions would not be as intensive as construction

activities, they would contribute to the long-term effects on sensitive receptors. See Appendix B for the operational emission modeling inputs for both residential and learning center/daycare sensitive receptors. For residential sensitive receptors, a 30-year exposure period was assumed: six years of construction and 24 years of project operation. For students (infants and children) at the learning center/daycare facilities, an exposure period of 12 years was assumed, representing the longest period an infant/child would be present at the daycare and school.

For this project, the sensitive receptor identified on Figure 3.3-1 as the increased cancer risk MEI is also the operational MEI. As shown in Table 3.3-10 below, the unmitigated cancer risks from construction and operation would exceed the BAAQMD single-source significance threshold. However, with implementation of MM AIR-1.1 through MM AIR-2.1 above, the mitigated increased cancer risk would not exceed the BAAQMD single-source significance threshold. PM<sub>2.5</sub> and HI values from construction and operational activities would not exceed the single-source significance threshold. **(Less than Significant Impact with Mitigation Incorporated)**

<b>Table 3.3-10: Construction and Operation Risk Impacts at the Offsite MEI</b>			
<b>Source</b>	<b>Cancer Risk (per million)</b>	<b>Annual PM<sub>2.5</sub> (µg/m<sup>3</sup>)</b>	<b>Hazard Index</b>
Option 1 and Option 2 unmitigated total/maximum project (years 0-30)	<b>10.9</b>	0.06	0.01
Option 1 and Option 2 mitigated total/maximum project (years 0-30)	6.3	0.02	0.01
<i>BAAQMD Single-Source Threshold</i>	<i>&gt;10.0</i>	<i>&gt;0.3</i>	<i>&gt;1.0</i>
Exceed threshold?			
Unmitigated	<b>Yes</b>	No	No
Mitigated	No	No	No
Note: The risks and hazards from Option 1 and Option 2 round to the same values.			

#### Operational Emissions – Learning Center and Daycare Sensitive Receptors

Table 3.3-11 lists the increased cancer risk, PM<sub>2.5</sub> concentration, and HI value from construction and operation of the project. Infant exposure was assumed for the Genius Kids Berryessa day care/preschool and daycare, while child exposure was assumed for the Best Brains of Berryessa learning center. None of the predicted risks or hazards would exceed the BAAQMD single-source thresholds. Therefore, the project would not have an incremental risk impact at either facility during construction or operation. **(Less than Significant Impact)**

<b>Table 3.3-11: Construction and Operation Risk Impacts at the Learning Center and Daycare</b>			
<b>Source</b>	<b>Cancer Risk (per million)</b>	<b>Annual PM<sub>2.5</sub> (µg/m<sup>3</sup>)</b>	<b>Hazard Index</b>
Genius Kids Berryessa (years one – 12) Infant exposure	8.1	0.03	<0.01
Best Brains of Berryessa (years one – 12) Child exposure	0.7	0.03	<0.01
<i>BAAQMD Single-Source Threshold</i>	<i>&gt;10.0</i>	<i>&gt;0.3</i>	<i>&gt;1.0</i>
Exceed threshold?			
Genius Kids Berryessa	No	No	No
Best Brains of Berryessa	No	No	No
Note: The risks and hazards from Option 1 and Option 2 round to the same values.			

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

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**Option 1 and Option 2**

Odors are generally considered an annoyance rather than a health hazard. During construction, the various diesel-powered equipment and vehicles on-site would create localized odors, but these odors would be temporary and not likely to be noticeable for extended periods of time outside the site boundaries. Land uses that have the potential to be sources of operational odors that generate complaints include, but are not limited to, wastewater treatment plants, landfills, composting operations, and food manufacturing facilities. Residential and commercial developments, such as the proposed project (both Option 1 and Option 2), do not typically generate objectionable odors. **(Less than Significant Impact)**

**3.3.2.3 Cumulative Impacts**

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

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**Option 1 and Option 2**

Cumulative Criteria Pollutant Emissions

When evaluated using the thresholds in the 2017 BAAQMD CEQA Air Quality Guidelines, the project would have significant emissions of ozone precursor pollutants, ROG, and NO<sub>x</sub> during construction and operation. Significant emissions of these pollutants result in a cumulatively considerable net increase of criteria pollutants for which the project region is non-attainment under the applicable ambient air quality standard. Because the project would have emissions of ROG and NO<sub>x</sub> that would exceed emission-based significance thresholds, the project would result in a cumulatively considerable net increase in pollutant emissions that contribute to elevated ozone concentrations that exceed ambient air quality standards. The project would also result in a cumulatively considerable net increase in PM<sub>10</sub> emissions that exceed ambient air quality standards.

As stated in the BAAQMD CEQA Air Quality Guidelines, air pollution by its nature is largely a cumulative impact. No single project is sufficient in size to, by itself, result in non-attainment of ambient air quality standards. Instead, a project's individual emissions contribute to existing cumulatively significant adverse air quality impacts. If a project's contribution to the cumulative impact is considerable, then the project's impact on air quality is considered significant. In developing thresholds of significance for air pollutants, BAAQMD considered the emission levels for which a project's individual emissions would be cumulatively considerable. If a project exceeds the identified significance thresholds, its emissions would be cumulatively considerable, resulting in significant adverse air quality impacts to the region's existing air quality conditions.

As discussed above under checklist question b) and shown in Table 3.3-7, project emissions would be less than 0.1 percent of the regional inventory, and the project would not cause regional pollutant levels to measurably change. As a result, the project would not measurably increase ozone levels nor PM<sub>10</sub> levels.

However, even with incorporation of mitigation measures MM AIR-1.1 through MM AIR-2.1, both project options would increase emissions above BAAQMD thresholds of 54 pounds per day (for ROG and NO<sub>x</sub>) and 82 pounds per day (for PM<sub>10</sub>). Option 1 would result in ROG and NO<sub>x</sub> emissions of 163.9 pounds and 94.5 pounds per day, respectively. Option 2 would result in ROG, NO<sub>x</sub>, and PM<sub>10</sub> emissions of 228.1 pounds, 116.5 pounds, and 95.3 pounds per day, respectively.

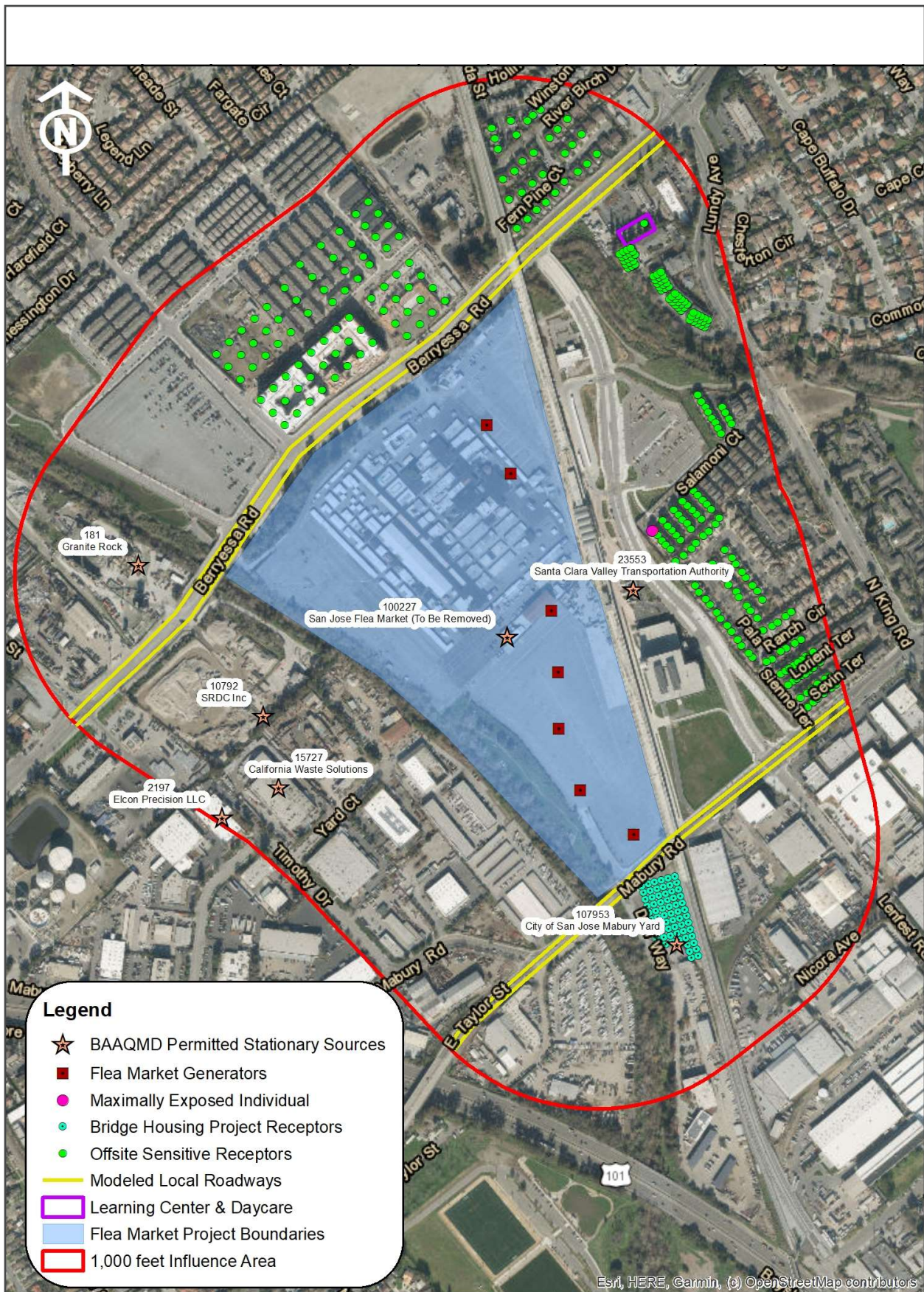
Therefore, emissions would be cumulatively considerable, resulting in significant adverse air quality impacts to the region's existing air quality conditions. **(Significant and Unavoidable Cumulative Impact)**

#### Cumulative Impact of All TAC Sources

Community health risk assessments typically look at all substantial sources of TACs that can affect sensitive receptors that are located within 1,000 feet of a project site. These sources include rail lines, freeways or highways, busy surface streets, and stationary sources identified by BAAQMD. A review of the project area indicates that traffic on Berryessa Road and Mabury Road exceeds 10,000 vehicles per day, and also identified stationary sources with the potential to affect the project MEI. Figure 3.3-2 shows the location of the sources affecting the MEI. Community risk impacts from these sources upon the MEI are identified in Table 3.3-12 below; see Appendix B for modeling inputs.

Seven permitted stationary sources of air pollution were identified in the project vicinity: one concrete/asphalt facility (Granite Rock), two waste management/recycling facilities (California Waste Solutions and SRDC Inc.), a metal finisher (Elcon Precision LLC), one diesel generator (the Santa Clara Valley Transportation Authority [VTA]), and two gas dispensing facilities (Flea Market and City of San José Mabury Yard). One of the gas dispensing facilities is part of the existing Flea Market project site and would be removed by the project. The risks and hazards from the Flea Market gas dispensing facility would not be included in the project's cumulative risks and hazards.





EXISTING AND PROJECT TAC SOURCES

FIGURE 3.3-2



Table 3.3-12 reports the cumulative community risk impacts of the project and surrounding TAC sources. The combined cancer risk, annual PM<sub>2.5</sub> concentration, and HI values (unmitigated or mitigated) would not exceed the BAAQMD cumulative source thresholds. Therefore, the project (both Option 1 and Option 2) would not contribute to a cumulative increase in TAC emissions within the local area. **(Less than Significant Cumulative Impact)**

<b>Table 3.3-12: Impacts from Cumulative TAC Sources at the Offsite MEI</b>			
<b>Source</b>	<b>Cancer Risk (per million)</b>	<b>Annual PM<sub>2.5</sub> (µg/m<sup>3</sup>)</b>	<b>Hazard Index</b>
Option 1 and Option 2 unmitigated total	10.9	0.06	0.01
Option 1 and Option 2 mitigated total	6.3	0.02	0.01
Option 1 cumulative project traffic Berryessa Road and Mabury Road	1.1	0.09	<0.01
Option 2 cumulative project traffic Berryessa Road and Mabury Road	1.0	0.08	<0.01
Granite Rock (Plant #181) MEI distance: >1,000 feet east	--	0.02	--
Elcon Precision LLC (Plant #2197) MEI distance: >1,000 feet east	--	--	<0.01
California Waste Solution (Plant #13727) MEI distance: >1,000 feet east	--	0.03	--
VTa (Plant #23553) MEI distance: 240 feet northeast	0.1	<0.01	<0.01
SRDC Inc. (Plant #10792) MEI distance: >1,000 feet east	--	<0.01	--
City of San José Mabury Yard (Plant #107953) MEI distance: >1,000 feet northeast	<0.1	--	--
<i>Remove TAC Source: Flea Market (Plant #100227)</i>	<i>-0.1</i>	--	--
Option 1 cumulative total			
Unmitigated	12.1	0.22	<0.04
Mitigated	7.5	0.18	<0.04
Option 2 cumulative total			
Unmitigated	12.0	0.21	<0.04
Mitigated	7.4	0.17	<0.04
<i>BAAQMD Cumulative Source Threshold</i>	<i>&gt;100</i>	<i>&gt;0.8</i>	<i>&gt;10.0</i>
Exceed threshold?			
Unmitigated	No	No	No
Mitigated	No	No	No

### Cumulative Odor Impacts

The proposed project (both Option 1 and Option 2) would not be expected to generate objectionable odors during operation. There are no significant sources of odors (e.g., wastewater treatment plants, landfills, composting operations, and food manufacturing facilities) in the project vicinity; therefore, there would be no significant cumulative operational odor impact. During construction, diesel-powered vehicles and equipment could result in localized odors; however, these odors would not be noticeable for extended periods of time beyond the site boundaries and would not be cumulatively significant. **(Less than Significant Cumulative Impact)**

### 3.3.3 Non-CEQA Effects

Illingworth & Rodkin, Inc. completed a health risk assessment to analyze the impact that existing TAC sources would have on the project's proposed sensitive receptors (i.e., residents). Lead agencies are not required to analyze the impacts of existing conditions on a project's future residents; however, the community risk assessment is provided for informational purposes. A 30-year operational exposure period was assumed for future residents.

Community risk effects from the existing TAC sources and new TAC sources introduced by the project (under both Option 1 and Option 2) are reported in Table 3.3-13. The risks from the singular TAC sources are compared against the BAAQMD single-source threshold. The risks from all of the sources are then combined and compared against the BAAQMD cumulative source threshold. As shown in Table 3.3-13, none of the sources would exceed the single-source or cumulative source thresholds.

<b>Table 3.3-13: Impacts from Cumulative TAC Sources at the Project Site</b>			
<b>Source</b>	<b>Cancer Risk (per million)</b>	<b>Annual PM<sub>2.5</sub> (µg/m<sup>3</sup>)</b>	<b>Hazard Index</b>
Option 1 cumulative project traffic Berryessa Road and Mabury Road	2.8	0.26	<0.01
Option 2 cumulative project traffic Berryessa Road and Mabury Road	3.1	0.23	<0.01
Granite Rock (Plant #181) MEI distance: >1,000 feet east	--	0.04	--
Elcon Precision LLC (Plant #2197) MEI distance: >1,000 feet east	--	--	<0.01
California Waste Solution (Plant #13727) MEI distance: >1,000 feet east	--	0.04	--
VTA (Plant #23553) MEI distance: 240 feet northeast	<0.1	<0.01	<0.01
SRDC Inc. (Plant #10792) MEI distance: >1,000 feet east	--	0.01	--
City of San José Mabury Yard (Plant #107953) MEI distance: >1,000 feet northeast	<0.1	--	--
<i>BAAQMD Single-Source Threshold</i>	<i>&gt;10.0</i>	<i>&gt;0.3</i>	<i>&gt;0.1</i>
Option 1 Cumulative Total	3.0	0.36	<0.03
Option 2 Cumulative Total	3.3	0.33	<0.03
<i>BAAQMD Cumulative Source Threshold</i>	<i>&gt;100</i>	<i>&gt;0.8</i>	<i>&gt;10.0</i>
Exceed threshold?			
Unmitigated	No	No	No
Mitigated	No	No	No

### 3.4 BIOLOGICAL RESOURCES

The following discussion is based upon the Biological Resources Report prepared by H.T. Harvey & Associates on September 23, 2020. A copy of this report is included in Appendix C of this document.

As shown in Table 1.2-1, Notice of Preparation (NOP) comments on the subject of biological resources were received from the Santa Clara Valley Transportation Authority (VTA), City of San José Parks, Recreation, and Neighborhood Service Department (PRNS), and George Simmel. These comments addressed coordination with regulatory agencies (see checklist question c)), minimizing habitat destruction to creeks (see checklist questions a), b), c), and d)), construction impacts to creeks (see checklist questions a), b), c), and e)), and removal of invasive species (see checklist question b)).

#### 3.4.1 **Environmental Setting**

##### 3.4.1.1 ***Regulatory Framework***

#### **Federal and State**

##### **Endangered Species Act**

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

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

##### **Migratory Bird Treaty Act**

The federal Migratory Bird Treaty Act (MBTA) prohibits killing, capture, possession, or trade of migratory birds except in accordance with regulations prescribed by the Secretary of the Interior. Hunting and poaching are also prohibited. The taking and killing of birds resulting from an activity is not prohibited by the MBTA when the underlying purpose of that activity is not to take birds.<sup>17</sup> Nesting birds are considered special-status species and are protected by the USFWS. The CDFW also protects migratory and nesting birds under California Fish and Game Code Sections 3503, 3503.5,

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<sup>17</sup> United States Department of the Interior. “Memorandum M-37050. The Migratory Bird Treaty Act Does Not Prohibit Incidental Take.” Accessed March 28, 2019. <https://www.doi.gov/sites/doi.gov/files/uploads/m-37050.pdf>.

and 3800. The CDFW defines taking as causing abandonment and/or loss of reproductive efforts through disturbance.

### Sensitive Habitat Regulations

The CDFW ranks certain rare or threatened plant communities, such as wetlands, meadows, and riparian forest and scrub, as ‘threatened’ or ‘very threatened.’ Impacts on CDFW sensitive plant communities, or any such community identified in local or regional plans, policies, and regulations, must be considered and evaluated under CEQA.

Aquatic, wetland, and riparian habitats that are considered jurisdictional waters are also afforded protection under applicable federal, state, or local regulations. Jurisdictional waters include rivers, creeks, and drainages that have a defined streambed and bank and that carry at least ephemeral flows, as well as lakes, ponds, and reservoirs. Such waters are generally subject to regulation, protection, or consideration by the U.S. Army Corps of Engineers (USACE) under Section 404 of the Clean Water Act (CWA) (waters of the U.S.), the Regional Water Quality Control Board (RWQCB) under Section 401 of the CWA and the Porter-Cologne Water Quality Control Act (waters of the state), and the CDFW under Sections 1601–1603 of the Fish and Game Code, and/or the USFWS.

## **Regional and Local**

### Santa Clara Valley Habitat Plan/Natural Community Conservation Plan

The Santa Clara Valley Habitat Plan/Natural Community Conservation Plan (Habitat Plan) covers approximately 520,000 acres, or approximately 62 percent of Santa Clara County. It was developed and adopted through a partnership between Santa Clara County, the Cities of San José, Morgan Hill, and Gilroy, Santa Clara Valley Water District (Valley Water), VTA, USFWS, and CDFW. In 2013, the Habitat was adopted by all local participating agencies, and permits were issued from the USFWS and CDFW. It is both a habitat conservation plan and natural community conservation plan.

The Habitat Plan is intended to promote the recovery of endangered species and enhance ecological diversity and function, while accommodating planned growth in southern Santa Clara County. The Habitat Plan identifies regional lands (called reserves) to be preserved or restored to benefit at-risk species, and describes how reserves would be managed and monitored to ensure that they benefit those species. The Habitat Plan defines measures to avoid, minimize, and mitigate impacts to covered species and their habitats while allowing for the implementation of covered projects.

### San José Tree Removal Ordinance

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

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

#### Riparian Corridor and Bird-Safe Building Policy 6-34

The City of San José's Riparian Corridor and Bird Safe Building Policy, adopted in September 2016, provides guidance consistent with the goals, policies, and actions of the Envision San José 2040 General Plan for: 1) protecting, preserving, or restoring riparian habitat; 2) limiting the creation of new impervious surface within Riparian Corridor setbacks to minimize flooding from urban runoff and control erosion; and 3) encouraging bird-safe design in baylands and riparian habitats of lower Coyote

Creek, north of State Route 237. It supplements the regulations for riparian corridor protection in the Council-adopted Santa Clara Valley Habitat Plan, the Zoning Code (Title 20 of the San José Municipal Code), and other existing City policies that may provide for riparian protection and bird-safe design. The general guidelines for setbacks and lighting apply to development projects within 300 feet of riparian corridors. Bird-safe design guidance for buildings and structures includes avoidance of large areas of reflective glass, transparent building corners, up-lighting, and spotlights.

#### Envision San José 2040 General Plan

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

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



<b>General Plan Policies – Biological Resources</b>	
<b>Special Status Plants and Animals</b>	
Policy ER-4.1	Preserve and restore habitat areas that support special-status species. Avoid development in such habitats unless no feasible alternatives exist and mitigation is provided of equivalent value.
Policy ER-4.3	Prohibit planting of invasive non-native plant species in natural habitats that support special-status species.
Policy ER-4.4	Require that development projects incorporate mitigation measures to avoid and minimize impacts to individuals of special-status species.
<b>Migratory Birds</b>	
Policy ER-5.1	Avoid implementing activities that result in the loss of active native birds' nests, including both direct loss and indirect loss through abandonment, of native birds. Avoidance activities that could result in impacts to nests during the breeding season or maintenance of buffers between such activities and active nests would avoid such impacts.
Policy ER-5.2	Require that development projects incorporate measures to avoid impacts to nesting migratory birds.
<b>Urban Natural Interface</b>	
Policy ER-6.3	Employ low-glaring lighting in areas developed adjacent to natural areas, including riparian woodlands. Any high-intensity lighting used near natural areas will be placed as close to the ground as possible and directed downward or away from natural areas.
Policy ER-6.5	Prohibit use of invasive species, citywide, in required landscaping as part of the discretionary review of proposed development.
Policy ER-6.7	Include barriers to animal movement within new development and, when possible, within existing development, to prevent movement of animals (e.g., pets and wildlife) between developed areas and natural habitat areas where such barriers will help to protect sensitive species.
<b>Sustainable Parks and Recreation</b>	
Policy PR-6.5	Design and maintain park and recreation facilities to minimize water, energy and chemical (e.g., pesticides and fertilizer) use. Incorporate native and/or drought-resistant vegetation and ground cover where appropriate.
<b>Community Forest</b>	
Policy MS-21.3	Ensure that San José's Community Forest is comprised of species that have low water requirements and are well adapted to its Mediterranean climate. Select and plant diverse species to prevent monocultures that are vulnerable to pest invasions. Furthermore, consider the appropriate placement of tree species and their lifespan to ensure the perpetuation of the Community Forest.
Policy MS-21.4	Encourage the maintenance of mature trees, especially natives, on public and private property as an integral part of the community forest. Prior to allowing the removal of any mature tree, pursue all reasonable measures to preserve it.

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

#### **3.4.1.2      *Existing Conditions***

The approximately 61.5-acre project site is located at the confluence of Coyote Creek and Upper Penitencia Creek, south of Berryessa Road and north of Mabury Road in San José. The site currently operates as the San José Flea Market and consists primarily of impervious surfaces (e.g., parking lots). Pervious surfaces on the site are limited to approximately seven acres along the Coyote and Upper Penitencia Creek corridors. The northern portion of the project site has served the same purpose since the 1960s, while the southern portion was used for agricultural purposes or maintained as fields prior to 2002. The project site is bounded by Coyote and Upper Penitencia Creeks, roads, residential communities, and industrial operations.

The confluence of Upper Penitencia Creek with Coyote Creek is located in the northwest corner of the site, immediately southeast of Berryessa Road. With the exception of the creek banks, the project site is nearly level, ranging from approximately 80 to 90 feet above mean sea level (msl) in elevation. The banks of Upper Penitencia and Coyote Creeks are relatively steep and elevation drops to approximately 65 feet msl at the creek beds. Coyote Creek and Upper Penitencia Creek are naturally occurring streams that drain nearly 350 square miles of Santa Clara County and eventually drain into the San Francisco Bay. The riparian habitats of both creeks in the vicinity of the project site is of moderate to low quality due to debris, disturbance, and litter associated with the urban setting and proximity to the Flea Market, and the predominance of non-native trees and understory species.

There is currently one pedestrian pathway crossing under Berryessa Road and over Upper Penitencia Creek (via a culvert bridge) in the northwest corner of the site (refer to Photo 3.1-10) and two bridges that cross over Upper Penitencia Creek and connect to Berryessa Road on the north side of the site (refer to Photos 3.1-7 through 3.1-9). The downstream Upper Penitencia Creek bridge is a clear span bridge with no footings, and the upstream bridge has large concrete footings in the stream channel.

## **General Habitat Conditions and Wildlife Use**

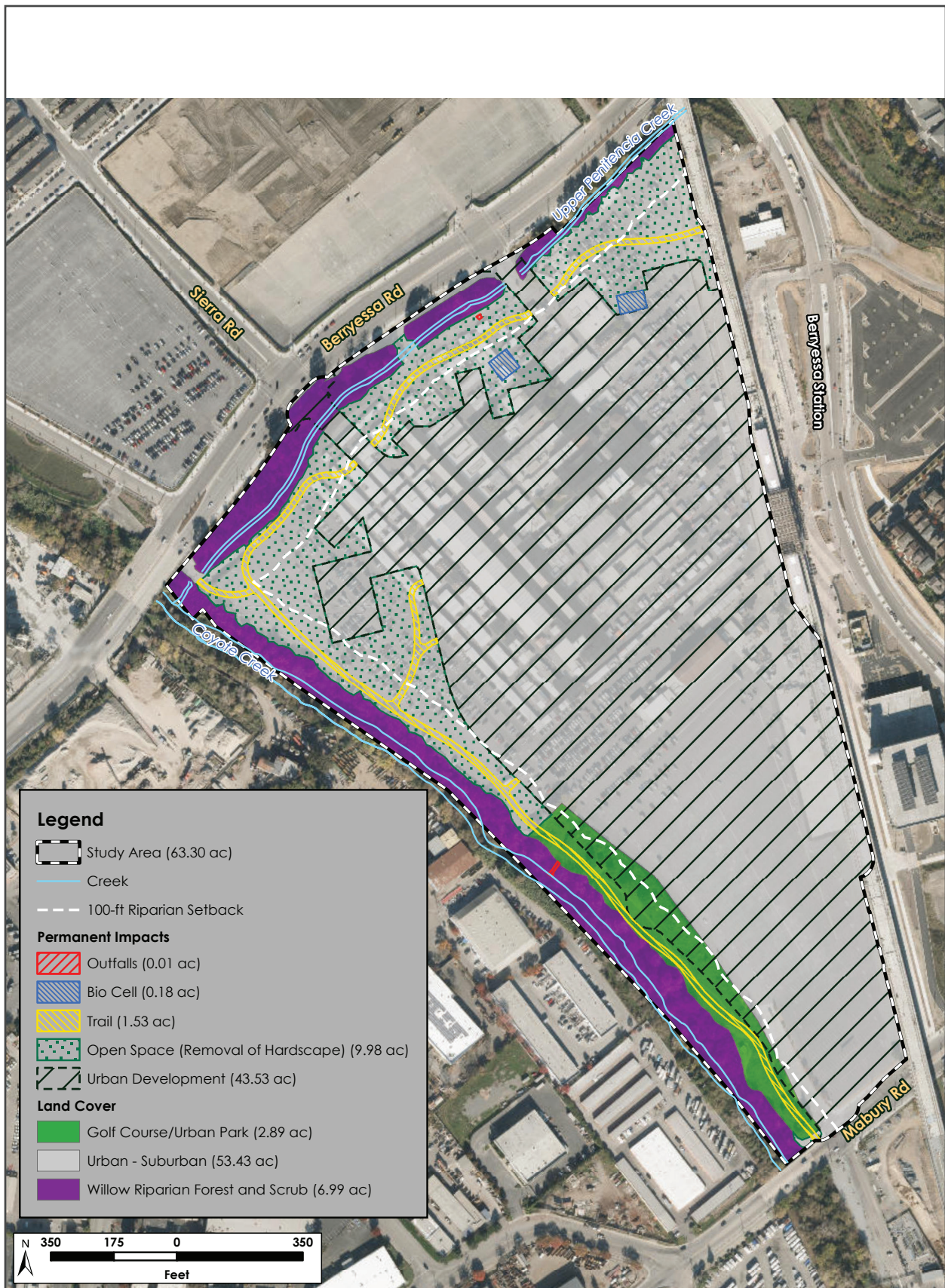
The project site is located within the Santa Clara Valley Habitat Plan (Habitat Plan) permit area. Habitat and land cover types on the project site are based upon Habitat Plan mapping with modifications based upon site conditions observed during a 2018 field survey by H.T. Harvey & Associates (see Appendix C). The reconnaissance-level field survey identified three general biotic habitat/land use types, as defined by the Habitat Plan: urban-suburban, comprising 53.43 acres of the site; willow riparian forest and scrub, comprising 6.99 acres along the Coyote Creek and Upper Penitencia Creek riparian corridors; and golf course/urban park, comprising 2.89 acres. The project area, overlaid on existing habitats, is shown on Figure 3.4-1.

### **Urban-Suburban**

The urban-suburban land use area is occupied by numerous permanent buildings and temporary structures. It supports little vegetation and is dominated by asphalt pavement. A small number of landscaped areas support shrubs and a few mature trees, such as non-native Peruvian peppertree and native coast live oak. Along Berryessa Road, between the riparian corridor and the street, the urban-suburban land use type supports a few trees, patches of non-native Algerian ivy, and lawn.

Due to the scarcity of vegetation, the urban-suburban portions of the project site provide relatively low-quality habitat for wildlife species. The wildlife most often associated with urban-suburban areas are those that are tolerant of periodic human disturbances, including introduced species such as the European starling, rock pigeon, house mouse, and Norway rat. Several common native species are also able to use this habitat, including the American crow (which was observed during the reconnaissance survey), black phoebe, northern mockingbird, house finch, California towhee, and raccoon. Few birds are likely to nest on the site due to the sparseness of trees, but species such as the mourning dove and Anna's hummingbird may nest in the few trees present. The eaves of the buildings on the project site may be attractive to other nesting and/or roosting birds such as the native barn swallow and non-native European starling, and an old black phoebe nest was found underneath the clear span bridge over the downstream portion of Upper Penitencia Creek. A focused survey detected no evidence of raptors having previously nested in the few trees within the urban-suburban area.

No burrows of small mammals, such as the California ground squirrel or Botta's pocket gopher, were observed in the developed portion of the project site during the reconnaissance survey. A focused survey of the exterior of the buildings and the trees in the urban-suburban area detected no large cavities that might provide suitable bat roosting habitat. Further, an examination of the bridges within the project site, as well as the nearby Berryessa Road bridge over Coyote Creek, detected no evidence of bat activity.



Source: H.T. Harvey & Associates, 4/2020.

PROJECT AREA WITH EXISTING HABITATS

FIGURE 3.4-1



## Willow Riparian Forest and Scrub

Within the project site, willow riparian forest and scrub habitat is located at and below the top of bank of Coyote Creek and Upper Penitencia Creek. This habitat is well developed, has an intermittent to closed canopy, and contains a mixture of mature trees and an understory of smaller stature trees and saplings. Native riparian trees present include willow, coast live oak, California buckeye, blue elderberry, and Fremont cottonwood. Non-native species include eucalyptus, date palm, Mexican fan palm, and bottlebrush. The herbaceous layer in the understory contains an abundance of Algerian ivy and giant reed. These species are both non-native and ranked as highly invasive by the California Invasive Plant Council.

In the riparian corridors there is evidence of some homeless encampment presence (e.g., tents and piles of clothing and materials). Additionally, there is a moderate amount of anthropogenic debris that is indicative of the flood stage remnants that were accumulated and left behind during the 2017 flood flows. Based on the abundance of non-native species that occur in this habitat, and because the riparian corridors are situated in a highly urbanized setting, the riparian habitat is considered to be of moderate to low quality.

The riparian forest and scrub habitat on the project site includes perennial stream up to the ordinary high water marks (OHWMs) of Coyote and Upper Penitencia Creeks. Some transitory, channel-associated wetlands may also occur in areas of intermittent canopy in Coyote Creek or at the confluence of Upper Penitencia Creek, but the closed canopy setting generally limits wetland vegetation establishment along upstream areas of Upper Penitencia Creek. The creek channels contained flowing water at the time of the survey and the streambeds were relatively level and low gradient with cobble beds and steeply sloped banks.

The willow riparian forest and scrub habitat that is found along the banks of Coyote and Upper Penitencia Creeks within the project site provides suitable nesting habitat for a variety of common bird species such as the California scrub-jay, American robin, American crow, lesser goldfinch, Bewick's wren, and bushtit. The red-shouldered hawk and Cooper's hawk may use larger trees along the riparian forest corridors for nesting. However, no old raptor nests were detected within the riparian forest habitat during a focused survey. Other birds that may forage in this habitat, include the belted kingfisher, mallard, green heron, great blue heron, great egret, and snowy egret, one of which was observed foraging in Upper Penitencia Creek during the reconnaissance survey.

Additional wildlife species that are common within riparian forested areas in urban settings in the area include the native striped skunk and raccoon and the nonnative Virginia opossum and eastern gray squirrel, all of which may use the trees for roosting, foraging, and nesting. No nests of the San Francisco dusky-footed woodrat were detected during a focused survey of the project site; this species has been largely eliminated from the most densely urban areas of the Santa Clara Valley floor, and this species is determined to be absent from the project site. Individual bats may roost in riparian trees on the project site, but an examination of the trees along the banks of both Coyote and Upper Penitencia Creeks detected no large cavities that might provide suitable habitat for a large roosting or maternity colony of bats.

Several species of reptiles, including western pond turtle, and amphibians also occur in riparian corridors. Leaf litter, downed tree branches, and fallen logs provide cover for the arboreal



salamander, California slender salamander, western toad, and Pacific treefrog. In addition, the open water reaches of Coyote and Upper Penitencia Creeks provide habitat for a variety of native fish species such as the Central California Coast (CCC) steelhead, Chinook salmon, Pacific lamprey, prickly sculpin, California roach, and Sacramento sucker, and non-native species including the white catfish, largemouth bass, brown bullhead, mosquitofish, and sunfish.

### Golf Course/Urban Park

The golf course/urban park habitat on the project site primarily consists of weedy, non-native grasses, such as Smilo grass, and native coyote brush shrubs that grow in the upland area between the riparian corridor along Coyote Creek and the existing parking lot. The area has an existing dirt or gravel path that is located parallel to the adjacent riparian corridor. There is evidence of a current or recent homeless encampment (e.g., tents and piles of clothes and other materials). Large portions of the area support vegetation and can be considered to be a medium to low quality grassland with coyote brush establishing. This area is not a typical urban park with well-manicured lawns or landscaping but rather an area of semi-natural habitat that has not been developed extensively and functions as a buffer between the riparian corridor and surrounding urban development.

Wildlife use of the golf course/urban park habitat on the project site is limited by human disturbance, the small extent of low-quality grassland areas, and the isolation of these habitat remnants from more extensive grassland-like habitats. As a result, some of the wildlife species associated with extensive grasslands in the South Bay, such as the Bryant's savannah sparrow, are absent from the patches of grassland on the project site. Many of the species that occur in this habitat are found primarily in the adjacent urban-suburban and riparian habitats and use this area for foraging. Such species include the house finch, bushtit, and lesser goldfinch, which forage on seeds in weedy/grassy areas, and the black phoebe, barn swallow, and Mexican free-tailed bat, which forage aerially over this habitat for insects. In addition, the California towhee may use the coyote shrubs for nesting.

No burrows of small mammals, such as the California ground squirrel or Botta's pocket gopher, were observed in the golf course/urban park portion of the project site during the reconnaissance survey, but mammals such as the striped skunk, raccoon, and nonnative Virginia opossum may use this habitat for foraging. Reptiles such as the western fence lizard and western terrestrial garter snake frequent such habitats and may occur on the project site.

### **Special-Status Plants**

A list of 75 plant species thought to have some potential for occurrence in the project vicinity was compiled using California Natural Diversity Database (CNDDB) and California Native Plant Society (CNPS) records. Analysis of the documented habitat requirements and occurrence records associated with these species allowed H.T. Harvey & Associates to reject all 75 species as not having a reasonable potential to occur on the project site for at least one of the following reasons: (1) lack of suitable habitat types; (2) absence of specific microhabitat or edaphic requirements, such as serpentine soils; (3) the elevation range of the species is outside of the range on the site; (4) the site is too disturbed and urbanized to be expected to support the species, and/or (5) the species is presumed extirpated from the project vicinity (see Appendix C). In addition, the Habitat Plan does not indicate that any covered plant species potentially occur on the project site and does not require special-status

plant surveys for the site. Therefore, no special-status plant species are expected to occur on the project site, and no focused rare plant surveys were required.

### **Special-Status Animals**

The Biological Resources Report identified several special-status animal species as potentially occurring in the project vicinity. However, most of these species were determined to be absent from the project site. Species considered for occurrence but rejected include the California tiger salamander, peregrine falcon, yellow warbler, burrowing owl, special-status bat species, San Francisco dusky-footed woodrat, merlin, Cooper's hawk, and sharp-shinned hawk. These species are discussed in Appendix C.

Six special-status species with potential to occur on or immediately adjacent to the project site and thus to be impacted by the project are the CCC steelhead, federally listed as threatened; and the Central Valley fall-run Chinook salmon, Central California roach, Sacramento hitch, Pacific lamprey, and western pond turtle, which are California species of special concern.

#### **Central California Coast Steelhead**

Critical habitat for the CCC steelhead includes the reaches of Coyote Creek and Upper Penitencia Creek within the project site. The steelhead is a type of rainbow trout that migrates upstream from the ocean to spawn. All CCC steelhead are winter-run, and enter rivers and streams in the late fall and winter months. Spawning usually occurs between December and June in gravel substrates in clear, cool, perennial sections of relatively undisturbed streams. In addition, preferred streams typically support dense canopy cover that provides shade, woody debris, and organic matter, and are usually free of rooted or aquatic vegetation. Steelhead can only spawn in tributaries that maintain suitable temperature and other water quality parameters year-round.

Relatively low numbers of steelhead occur in both Coyote Creek and Upper Penitencia Creek. However, in the Coyote Creek system, Anderson Dam blocks steelhead access to upper reaches of the watershed that likely provided spawning habitat historically. As a result, most steelhead spawning within the Coyote Creek watershed is thought to occur along Upper Penitencia Creek upstream to the natural waterfall. Thus, most of the Upper Penitencia Creek steelhead population has to migrate through the site between marine areas and spawning/rearing areas upstream. Although the portions of these creeks adjacent to the project site are likely used primarily as rearing habitat for juveniles and as migration routes for adults spawning farther upstream, a steelhead redd (nest) was found near the confluence of Coyote Creek and Upper Penitencia Creek in 1990.

#### **Central Valley Fall-Run Chinook Salmon**

Adult Central Valley fall-run Chinook salmon migrate from the ocean to spawning streams in fall and begin spawning in beds of coarse river gravels between October and December. Chinook salmon generally spawn in cool waters providing incubation temperatures no warmer than 55 degrees Fahrenheit. Compared to steelhead, Chinook salmon are more likely to spawn in coarse gravels and lower in the watershed.

Chinook salmon may not have historically spawned in streams flowing into South San Francisco Bay. Since the mid-1980s, however, small numbers of fall-run Chinook salmon have been found in

several such streams, including Coyote Creek, Los Gatos Creek, and the Guadalupe River, and the species has recently been recorded along lower Alameda Creek as well. However, data suggests that these fish are derived from Central Valley fall-run stock, possibly hatchery releases. Conditions for successful spawning in the project area are marginal at best, since these fish spawn during fall when streamflow is at its lowest. Chinook salmon are known to spawn in lower parts of the Coyote Creek watershed, but it is not known whether spawning occurs along the reach of Coyote Creek on the project site. Chinook salmon have similar spawning substrate requirements to steelhead, and thus could potentially spawn in or near the project reaches. It is also possible that small numbers of salmon will use the project site during migration between the ocean and upstream spawning and rearing areas.

### Pacific Lamprey

Pacific lampreys are fish that spawn in freshwater, non-tidal streams. They are parasitic and attach themselves to larger fish, often steelhead and salmon, feeding on body fluids of the host fish. They typically spend one to two years in the ocean before returning to freshwater streams to spawn; upstream spawning migration typically occurs in March through June. Pacific lampreys are typically found in streams that are suitable for their host species: medium and large, low-gradient cold rivers and streams with a wide range of habitats. The Pacific lamprey is known to be present in Coyote Creek, where it spawns primarily in cooler, upstream waters. Waters on the project site, in both Coyote Creek and Upper Penitencia Creek, are warmer waters that would not be suitable for spawning lampreys, and it is likely that lampreys are present in the reaches on the site only for relatively brief periods during migration.

### Central California Roach

Central California roach are opportunistic, widespread fish that occur in a wide variety of streams. This species is most abundant in warm streams, where it grazes on filamentous algae, but it also feeds on invertebrates. Roach are well adapted to intermittent watercourses, as they are tolerant of high temperatures and low oxygen levels. This species is known to be present in Coyote Creek. It occurs widely, often in unshaded pools with warm temperatures, and it is expected to occur within Coyote Creek and the reach of Upper Penitencia Creek on the project site.

### Sacramento Hitch

Sacramento hitch occur in a wide variety of waterbodies, including clear streams, turbid sloughs, lakes, and reservoirs. It has a high tolerance for varying stream conditions and water temperature, being able to withstand water temperatures higher than those tolerated by most other native fish in the South Bay. This species is known to be present in Coyote Creek. It has been recorded upstream nearly to Anderson Dam, and with its high tolerance of stream conditions and water temperatures it is expected to occur within Coyote Creek and the reach of Upper Penitencia Creek on the project site.

### Western Pond Turtle

The western pond turtle occurs in ponds, streams, and other wetland habitats in the Pacific Slope drainages of California and northern Baja, Mexico. Adult western pond turtles occur in a variety of aquatic habitats, including streams and ponds. Ponds or slack-water pools with suitable basking sites (such as logs) are an important habitat component, and western pond turtles do not occur commonly

along high-gradient streams. Breeding occurs in late spring or early summer. Females lay eggs in upland habitats, in clay or silty soils in unshaded areas. Juveniles feed and grow in shallow aquatic habitats with emergent vegetation and ample invertebrate prey.

Although pond turtles typically occur in ponds, they may also occur in perennial streams and could occur in Coyote Creek and Upper Penitencia Creek within the project site. The Habitat Plan maps both Coyote and Upper Penitencia Creeks within the project site as primary habitat for the western pond turtle. Pond turtles have been documented less than one mile east of the site, off McKee Road, and have been found at two locations in Coyote Creek, one upstream of the project site and one downstream, and both less than five miles from the project site. Within the project site, habitat along Upper Penitencia Creek is too narrow and impacted by human use to allow for turtle nesting and there is a very low probability that turtles could nest within the riparian corridor of Coyote Creek due to its highly disturbed nature.

### **Sensitive and Regulated Habitats**

A query of sensitive habitats in the CNDDDB identified no communities of special concern as occurring in the project vicinity or in the United States Geological Survey (USGS) quadrangle in which the project site is located. The CDFW also maintains a list of vegetation alliances and associations within the state of California. This list includes global and state rarity ranks for associations and alliances. Urban-suburban land uses, such as that present on the project site, have relatively little vegetation, do not conform to a defined, native-dominated CDFW alliance or association, nor do they have an associated rarity rank. The willow riparian forest and scrub habitat on the project site is highly altered by the surrounding urbanization with an abundance of non-native trees present in the overstory layer and thus is not considered to conform to native willow alliances. The golf courses/urban parks area is a non-native grassland and is not considered a sensitive alliance.

Nevertheless, riparian habitat under the jurisdiction of the CDFW is present on the project site along Coyote Creek and Upper Penitencia Creek in areas mapped as willow riparian forest and scrub. Impacts on riparian habitats along stream and drainage corridors are typically regulated by CDFW because these habitats offer such valuable resources for wildlife. Section 1602 of the Fish and Game Code establishes jurisdiction over the bed, channel, or bank of any river, stream, or lake. For the two streams on the project site, CDFW riparian jurisdiction extends from the channel to top of bank or the outer extent of riparian tree or shrub canopy, whichever is greater.

The aquatic habitat and in-channel wetlands in Coyote Creek and Upper Penitencia Creek are considered wetlands and waters of the U.S. under the CWA. The aquatic, wetland, and riparian habitat (extending up to the top of bank or outer edge of riparian canopy) associated with Coyote Creek and Upper Penitencia Creek is considered waters of the state under the Porter-Cologne Water Quality Control Act.

#### **3.4.2 Impact Discussion**

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

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

### 3.4.2.1 *Project Impacts*

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

#### **Option 1 and Option 2**

##### Special-Status Fish

The reaches of Coyote Creek and Upper Penitencia Creek on the project site have been designated as critical habitat for the CCC steelhead, a federally threatened species and California species of special concern. Although the portions of these creeks on the project site are likely used primarily as rearing habitat for juvenile steelhead and as migration routes for adults spawning further upstream, a steelhead redd (nest) was found near the confluence of Coyote Creek and Upper Penitencia Creek in 1990.

Central Valley fall-run Chinook salmon are known to spawn in lower parts of the Coyote Creek watershed, but conditions for successful spawning in the project area are low, since these fish spawn during fall when streamflow is at its lowest. Nevertheless, small numbers of Chinook salmon could occur in the reaches of Coyote Creek and Upper Penitencia Creek on and adjacent to the project site. In addition, Pacific lamprey occur in the reaches of Coyote Creek and Upper Penitencia Creek on the project site during migration, and both the Central California roach and Sacramento hitch could be present in these stream reaches year-round.

If lighting associated with the proposed project, including construction of new bridges, were to result in an increase in light levels in Coyote Creek or Upper Penitencia Creek, the vulnerability to predation special-status fish could be significantly increased, and increased lighting could potentially result in changes in fish behavior. However, during and after project construction, the project



proposes to minimize the spillover of lighting into the adjacent riparian corridors by the use of low-intensity lighting or other appropriate low-dispersion lighting technology, orientation of lights so they are placed on the perimeter of the project site and directed inward (rather than directing any lighting toward the riparian corridors adjacent to the site) and downward toward the ground, and shielding of lights from behind. Thus, changes in lighting as a result of the proposed project are not expected to result in a significant impact on steelhead, Chinook salmon, or their habitat.

Upon its completion, the project would improve fish passage through the project site. Currently, the footings of the upstream bridge over Upper Penitencia Creek encroach into the channel. This narrowing of the channel at the bridge crossing constricts the channel flow and fish passage through the site. The project would remove the existing footings and place all new bridge structures outside of the active channel facilitating fish movement through the site, a long-term beneficial change for special-status fish.

The only project activity that could potentially result in the permanent loss of aquatic habitat for special-status fish is the modification or construction of stormwater outfalls (one along each of the two creeks). Whether or not the project could tie into the two existing outfalls, or whether modification or reconstruction of the outfalls would be necessary, would be determined in coordination with Valley Water. Modification or reconstruction of outfalls could potentially necessitate the placement of outfall structures, as well as riprap, within the low-flow channel, resulting in the loss of aquatic habitat and natural substrate within a limited portion of the creek. If it occurs, the extent of this habitat loss is unlikely to exceed 0.01 acre (i.e., less than 500 square feet) for both outfalls combined. It is also unknown due to a lack of sufficiently detailed plans at this level of the project entitlements and design whether dewatering would be necessary for outfall construction. If required, dewatering could potentially result in stranding, injury, or mortality of special-status fish in the absence of mitigation measures.

The proposed removal of two existing bridges over Upper Penitencia Creek, construction of two new vehicle bridges over Upper Penitencia Creek, and modification or replacement of two stormwater outfalls could result in short-term impacts to special-status fish species and their habitat. During project construction, activities such as removal of the in-stream bridge footings, grading, and other soil disturbances would increase the potential for soil erosion on-site. In the absence of adherence to Habitat Plan conditions discussed below, these construction activities could increase the amount of soils and sediments entering Coyote and Upper Penitencia Creeks. Increases in turbidity and sediment input may cause stress on special-status fish because of feeding difficulties or displacement, and increases in sedimentation may have adverse effects on habitat for steelhead and Chinook salmon by filling in spaces between gravel. Further, removal of the upstream bridge over Upper Penitencia Creek may require temporary dewatering of the affected portion of the channel.

In-channel construction activities, including channel dewatering, would be limited to the dry season (i.e., June 15 through October 15; see Condition of Approval under checklist question b) below) to reduce the potential for steelhead, Chinook salmon, and Pacific lampreys to be present in the project area when these activities are undertaken. However, in the absence of adherence to Habitat Plan conditions discussed below, dewatering could result in injury or mortality of individuals due to degraded water quality, temporary blockage of migration, stranding in isolated pools, and desiccation. Construction activities may also necessitate the operation of heavy equipment within the streambed (after dewatering). Movement of heavy equipment may compact the substrate, potentially

killing lamprey larvae and benthic invertebrates (which may serve as prey for steelhead and Chinook salmon), embedding gravel within finer sediments, and otherwise altering habitat for special-status fish and their prey. Further, removal of the upstream bridge's in-channel footings and loss of vegetation on channel banks may result in an increase in erosion and sedimentation. Minor spills of petrochemicals, hydraulic fluids, and solvents may occur during vehicle and equipment refueling or because of leaks, adversely affecting water quality and potentially killing or injuring special-status fish.

The project would comply with the requirements of the Habitat Plan, including Conditions 3 and 4. Condition 3 requires that development projects avoid or minimize water quality impacts, consistent with existing National Pollutant Discharge Elimination System (NPDES) Permit standards required by the San Francisco and Central Coast RWQCBs. It identifies a set of programmatic best management practices (BMPs), performance standards, and control measures to minimize increases of peak discharge of stormwater and to reduce runoff of pollutants to protect water quality, including during project construction. These requirements include preconstruction site design approaches, construction site conditions including source and treatment control measures, and post-construction measures for stormwater treatment and flow control. Habitat Plan Condition 4 requires in-stream projects (including bridge construction and outfall modification/reconstruction) to be designed to minimize adverse impacts on stream morphology, aquatic and riparian habitat, and flow conditions by implementing construction and avoidance measures.

The project would also be required to comply with the conditions of any permits from the USACE, RWQCB, and/or CDFW necessary to impact stream and riparian habitats along Upper Penitencia Creek and Coyote Creek, as well as any biological opinion from the National Marine Fisheries Service, if one is required/issued during USACE permitting.

**Project Condition of Approval:** The project would comply with applicable Habitat Plan conditions and fees prior to issuance of any grading permits. The project applicant is required to submit the Santa Clara Valley Habitat Plan Coverage Screening Form to the Director of Planning, Building and Code Enforcement or the Director's designee for approval and payment of applicable fees prior to the issuance of a grading permit. The Habitat Plan and supporting materials can be viewed at [www.scv-habitatagency.org](http://www.scv-habitatagency.org). Habitat Plan conditions applicable to the project include:

- Condition 1, Avoid Direct Impacts on Legally Protected Plant and Wildlife Species
- Condition 3, Maintain Hydrologic Conditions and Water Quality
- Condition 4, Avoidance and Minimization for In-Stream Projects
- Condition 11, Stream and Riparian Setbacks
- Condition 12, Wetland and Pond Avoidance and Minimization

The proposed project (both Option 1 and Option 2) could result in residual impacts on special-status fish because complete avoidance of individuals may not be accomplished while still meeting the proposed project goals, and because outfall modification or reconstruction could potentially result in the loss of some aquatic habitat. As a result, impacts to special-status fish are considered significant.

**Impact BIO-1:** Dewatering and the modification or reconstruction of outfalls on the creeks during project construction could result in the loss of individual special-status fish. **(Significant Impact)**

**Mitigation Measures:** The project would implement the following mitigation measures to reduce impacts to special-status fish.

**MM BIO-1.1:** Dewatering of Upper Penitencia Creek and Coyote Creek shall occur only during the period of June 15 through October 15 (or as otherwise specified by resource agency permits for the project) when special-status fish are least likely to be present. Prior to dewatering activities, the project applicant shall hire a qualified biologist who will use block nets to exclude fish from the reach of Upper Penitencia Creek to be dewatered during removal of the existing bridges (and, if necessary, from the segment of Upper Penitencia Creek and/or Coyote Creek that would be dewatered for outfall modification or construction). If the entire reach is going to be dewatered, such as for bridge removal, a block net will be placed at the upper end of the reach to be dewatered. Subsequently, qualified biologists will walk from the upper to lower end of the reach with a seine stretched across the channel to encourage fish to move out of the construction area. When the lower end of the construction area is reached, a second block net will be installed to isolate the construction reach. This procedure will be repeated a minimum of three times on each dewatered reach to ensure that no fish remain in the construction area. The coffer dam used for dewatering will then be constructed within the limits delineated by the two block nets.

If only a small portion of one side of the channel needs to be dewatered, such as for outfall construction, a block net shall be used to encourage fish to move out of the dewatering area by expanding the net from the shoreline where outfall construction will occur outward into the channel. Both ends of the net shall be anchored to the shoreline, and the weighted net bottom shall be moved outward until it reaches the limits of dewatering. This shall be repeated a minimum of three times to ensure that no fish remain in the area to be dewatered. The coffer dam used for dewatering shall then be constructed within the area delineated by the block net.

In each case, a qualified biologist shall inspect the area within the block nets thoroughly to ensure that no fish are present prior to coffer dam construction and dewatering.

**MM BIO-1.2:** In determining whether modification or reconstruction of the existing outfalls is necessary in coordination with Valley Water, and designing new outfalls, the applicant's design team shall avoid and minimize any impacts to aquatic and riparian habitat. If complete avoidance of impacts to these sensitive habitats is determined to be infeasible by the applicant, the City will review the outfall designs and work with the applicant to ensure that no further avoidance or minimization of impacts to aquatic and riparian habitat can be achieved. In particular, permanent impacts, such as placement of hardened structures such as

concrete or riprap, in the channel shall be avoided or minimized. If concrete is placed in an area where it will come into contact with the creek, it shall be allowed to cure before it comes into contact with creek waters. Energy dissipation shall be provided to minimize erosion and scour from water emanating from the outfall, but the amount of riprap or other hardened structures placed in aquatic habitat for energy dissipation shall be minimized with respect to the volume or cross-sectional area of the channel occupied by such structures.

With implementation of mitigation measures MM BIO-1.1 and MM BIO-1.2 and the Condition of Approval above, the proposed project (both Option 1 and Option 2) would not result in significant impacts to special-status fish. **(Less than Significant Impact with Mitigation Incorporated)**

### Western Pond Turtle

Both Coyote and Upper Penitencia Creeks are mapped by the Habitat Plan as primary habitat for the western pond turtle, and individual turtles have been found less than one mile east of the site and in Coyote Creek within five miles upstream and downstream of the site. Western pond turtles are unlikely to nest on the project site due to its highly disturbed nature. However, without adherence to Habitat Plan conditions, the proposed project construction activities could degrade the habitat and affect water quality which would impact the western pond turtle. In addition, proposed project construction activities within the riparian corridor (i.e., bridge demolition and construction, and outfall modification/construction) could also result in the injury or mortality of individual western pond turtles. Due to the regional rarity of this species, the injury or mortality of western pond turtles would be a potentially significant impact.

The Habitat Plan does not provide species-level avoidance and minimization measures for the western pond turtle. However, the project would adhere to general requirements of the Habitat Plan, which would help to reduce the proposed project impacts on the western pond turtle and its habitats. For example, Habitat Plan Condition 3 requires implementation of numerous measures that would avoid and minimize impacts on aquatic habitat for this species. Measures include diversion of flowing streams during construction work; coffer dam and berm installation; and potential capture and relocation of aquatic vertebrate individuals, as appropriate. Condition 3 also requires that stream beds be returned to pre-project conditions following construction activities. Habitat Plan Condition 4 requires that in-stream projects (including bridge construction and outfall modification/construction) be designed to minimize adverse impacts on stream morphology, aquatic and riparian habitat, and flow conditions. In addition, the project applicant would be required to pay Habitat Plan impact fees, which contribute to the Habitat Plan's conservation program including habitat acquisition, restoration, preservation, and management targeted at the western pond turtle.

Compliance with Habitat Plan conditions would minimize potential impacts on western pond turtles and their habitat, and payment of Habitat Plan impact fees would help to compensate for any residual impacts through conservation of this species' populations and habitats. As a result, with implementation of the above Condition of Approval, project impacts to the western pond turtle would be less than significant. **(Less than Significant Impact)**

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

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**Option 1 and Option 2**

Willow Riparian Forest and Scrub

Because riparian communities are considered sensitive habitats and provide a wide range of biological functions for wildlife, such as nesting habitat for birds, any loss of riparian trees and shrubs may be considered significant. Without adherence to Habitat Plan conditions, the removal of riparian trees along Upper Penitencia Creek (for construction of new bridges, and possible outfall modification/reconstruction) and Coyote Creek (for possible outfall modification/reconstruction) could result in a significant impact to wildlife because the trees include mature native species in an extensive riparian setting, and because riparian habitat along these creeks is known to support moderate densities of nesting, wintering, and migratory birds.

Project activities that have the potential to permanently impact existing willow riparian forest and scrub habitat include the demolition of the two existing bridges, the construction of the two new bridges over Upper Penitencia Creek, and the possible outfall modification/reconstruction along both creeks (see Figure 3.4-1). Although the footprint of these improvements within the willow riparian forest and scrub habitat totals 0.32 acre, construction would likely require some tree and shrub removal, and the canopies of those trees and shrubs would extend beyond the immediate footprint of these impact areas. The proposed trails along Upper Penitencia and Coyote Creeks would be located on currently developed lands, completely outside the riparian habitat, and therefore would not directly impact riparian habitat.<sup>18</sup>

The proposed project would be required to comply with the requirements of the Habitat Plan, including Conditions 3 and 4, as described above. The project would also be subject to the applicable Habitat Plan impact avoidance conditions and design criteria, as listed below, and incorporated into the project as a Condition of Approval.

**Project Condition of Approval:**

- The removal of riparian vegetation and trees shall be limited to the minimum extent required to construct the project.
- The project will comply with all conditions required by the project-specific Lake and Streambed Alteration Agreement (LSAA) issued by the CDFW.
- Seed mixtures, and if needed, shrubs and trees used for revegetation of the impacted riparian habitat will not contain invasive non-native species but will be composed of native or sterile non-native species. If sterile non-native mixtures must be used for temporary erosion control, native seed mixtures will be used in subsequent treatments to provide long-term erosion control and prevent colonization by invasive non-native species.

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<sup>18</sup> Trail alignments adjacent to (1) the Upper Penitencia Creek and Coyote Creek confluence and (2) Mabury Road have not been fully developed.



- The project will prepare and implement sediment erosion control plans to prevent erosion or other disturbance-related impacts within the riparian corridor.
- All construction within the riparian habitat will take place during the dry season from June 15 to October 15.
- Immediately after completion of project components located in the riparian habitat, and before close of the seasonal work window, all exposed soil will be stabilized with mulch, seeding, and/or placement of erosion control blankets.

The project applicant would compensate for the permanent loss of willow riparian forest and scrub habitat through the payment of Habitat Plan riparian impact fees. With implementation of and the above Condition of Approval, including payment of Habitat Plan fees, the proposed project (both Option 1 and Option 2) would not result in significant impacts to willow riparian forest and scrub habitat. **(Less than Significant Impact)**

#### Encroachment into the Riparian Setback

City policies and regulations, including the Envision San José 2040 General Plan, the Zoning Code, and the City Council-adopted Habitat Plan include measures to limit development and protect sensitive riparian resources. City Council Policy 6-34 provides guidance on the implementation of riparian corridor protection consistent with all City policies and requirements that provide for riparian protection. The policy indicates that riparian setbacks should be measured from the outside edges of riparian habitat or the top of bank, whichever is greater, and that development of new buildings and roads generally should be set back 100 feet from the riparian corridor defined by the outer edge of riparian vegetation.

On the project site, the City's riparian setback extends 100 feet landward from the outer edge of the riparian canopies of Coyote Creek and Upper Penitencia Creek. The setback is applicable to all proposed development with the exception of the proposed bridge crossings over Upper Penitencia Creek, which are required to cross the riparian corridor; the stormwater outfalls, which need to be located within the setback; and the trails, which are allowable uses in a riparian setback. These project features are exempt from the riparian setback requirements. In contrast, urban development, including new hardscape and landscaping associated with the proposed recreation area and arterial road that parallels Coyote Creek along the southwestern edge of the site, is not exempt from riparian setback requirements.

Under both the Option 1 and Option 2 proposed site plans, the entire 100-foot riparian setback (10.08 acres) would be modified in some way. Currently, this area is composed of urban-suburban (i.e., asphalt; 7.52 acres) and golf course/urban park (2.56 acres) habitats that are highly disturbed by human activity. Most of the 100-foot riparian setback would be used as open space (including trails) under both project options, but a total of 1.36 acres of other urban uses are also proposed in the setback along Coyote Creek. These urban uses, which include a small portion of a recreation area and an arterial road that parallels Coyote Creek along the southwestern edge of the site, would consist of 1.02 acres of new hardscape and 0.34 acres of landscaping.

Project implementation (both Option 1 and Option 2) would result in the construction of 1.42 acres of new hardscape within the 100-foot setback. Of this acreage, 0.40 acre of new hardscape would result

from trail construction in areas that are not currently hardscaped, and 1.02 acre would result from other urban development and would require a riparian setback exception. However, the project would also remove 5.52 acres of existing hardscape (i.e., asphalt) from within the 100-foot riparian buffer and replace it with vegetated open space, resulting in a substantial net decrease (4.10 acres) in impervious surface within the setback, a beneficial impact. In addition, construction of two bioretention basins which would implement post-construction measures for stormwater treatment, consistent with the requirements for an NPDES Permit (see Section 3.10 Hydrology and Water Quality), would improve the quality of runoff entering the creeks from the project site over existing conditions. The replacement of hardscape with vegetated open space would also improve the quality of the habitat within the setback for use by wildlife.

Despite these potentially beneficial effects, encroachment into the riparian setback under both Option 1 and Option 2 would conflict with the City's riparian policy and the Habitat Plan by constructing 1.36 acres of surfacing and non-structural improvements. These 1.36 acres of encroachment from uses that are not considered allowable within riparian setbacks include 1.02 acres of new hardscape and 0.34 acres of landscaping, all associated with the proposed recreation area and an arterial road that parallels Coyote Creek along the southwestern edge of the site. In contrast, the proposed bridge crossings, stormwater outfalls, and trails are allowable uses in riparian setbacks and are exempt from setback requirements. The minimum setback between the edge of the riparian canopy and the closest proposed non-exempt use would be 18 feet, located at the arterial road in the southwestern part of the site (see Figure 3.4-1). Encroachment so close to Coyote Creek would be a significant impact under CEQA.

According to the Habitat Plan, riparian setback exceptions for development adjacent to Category 1 streams should not reduce the setback to less than 35 feet from the top of bank for previously developed areas. According to City Council Policy 6-34, the City would consider a reduction in the riparian setback requirement under specific circumstances, including the following that apply to the project site:

- Sites that are being redeveloped with uses that are similar to the existing uses or are more compatible with the Riparian Corridor than the existing use, and where the intensity of the new development will have significantly less environmental impacts on the Riparian Corridor than the existing development.
- The existence of legal uses within the minimum setback.

In considering whether to grant a setback reduction, the City considers whether a project meets some or all of the following conditions. In the list below, the text in *italics* indicates the conditions, and non-italicized text indicates how the proposed project would meet these conditions:

- *There is no reasonable alternative for the proposed riparian project that avoids or reduces the encroachment into the setback area.* This would be determined by the City based on the overall project design, objectives, and analysis of alternatives. The City would consider whether relocation of the arterial road and recreation area is feasible while maintaining appropriate circulation, land massing/land uses, and other factors.

- *The reduced setback will not significantly reduce or adversely impact the riparian corridor.* In limited areas along Coyote Creek, the project would reduce the riparian setback compared to existing conditions by constructing the arterial road and associated landscaping in areas that are currently unpaved. This encroachment of hardscape and landscaping may adversely affect a portion of the Coyote Creek corridor by removing habitat that could be used by riparian-associated species and introducing vehicle traffic closer to the riparian corridor. This encroachment would not result in any direct loss of riparian habitat. A proposed recreation area near the confluence of Coyote Creek and Upper Penitencia Creek would encroach a short distance into the riparian setback; however, this limited encroachment would not result in substantial adverse effects to the riparian corridor. No buildings are proposed within the riparian setback.

The project would improve habitat conditions within the riparian setback along the remainder of the Coyote Creek and Upper Penitencia Creek segments at the site. Under existing conditions, asphalt extends to the edge of the riparian corridor along the entire segment of Upper Penitencia Creek, and approximately half of the segment of Coyote Creek (see Appendix C). The project proposes to remove asphalt and restore vegetation in most of the area within the riparian setback, resulting in a 4.10-acre net decrease in impervious surface and increase in vegetated area within the setback. As required by MM BIO-2.2 below, native trees and shrubs would be planted within the areas where asphalt is converted to vegetated habitat, which would improve habitat conditions and benefit the riparian animal communities by providing additional foraging, breeding, and roosting habitat. The net result of the project, when considering both the riparian setback encroachment along portions of Coyote Creek and habitat enhancement along the remainder of Coyote Creek and Upper Penitencia Creek, would be a substantial benefit to the riparian corridor.

- *The proposed uses are not fundamentally incompatible with riparian habitats.* Under existing conditions, animals make some use of the golf course/urban park area along Coyote Creek, where project construction of the arterial road and associated landscaping would encroach into the riparian setback. However, the value to riparian plant and animal communities of the golf course/urban park area where encroachment would occur is low due to the absence of trees, scarcity of shrubs, dominance by non-native vegetation, and intensity of disturbance. Although the replacement of portions of this golf course/urban park area with hardscape and landscaping would reduce the ability of riparian animals to use that habitat, the effect of such encroachment on any one species or community would be low. A recreation area near the confluence of Coyote Creek and Upper Penitencia Creek would encroach a short distance into the riparian setback; however, this encroachment would occur in an area that is currently paved and therefore provides no benefit to riparian plants and animals under existing conditions. No buildings are proposed within the riparian setback.

The benefits to riparian communities from the removal of asphalt and revegetation with native species throughout most of the riparian setback would be substantial, as discussed above. Overall, considering both the encroachment and enhancement, the proposed land uses within the setback would be more compatible with riparian habitats than the existing

conditions. The proposed uses would collectively benefit the riparian corridor and would not be fundamentally incompatible with riparian habitats.

- *There is no evidence of stream bank erosion or previous attempts to stabilize the stream banks that could be negatively affected by the proposed development within the setback area.* During site surveys (as described in Appendix C), no evidence was observed of substantial stream bank erosion on or immediately downstream from the project site. Encroachment into the riparian corridor is not expected to cause or exacerbate any erosion, as the encroachment along Coyote Creek would occur on a flat site well above the elevation of the creek, in an area that is currently exposed to creek flow very infrequently. Therefore, no adverse impacts of the features that would encroach within the setback area on stream bank erosion or previous attempts to stabilize the stream banks are anticipated.
- *The granting of the exception will not be detrimental or injurious to adjacent and/or downstream properties.* Although the project would reduce the setback along a segment of Coyote Creek, this setback reduction would not affect adjacent properties. Even when reduced, the setback on the project site would still be greater than the setback immediately upstream from the site along Coyote Creek, where industrial land uses encroach to the edge of the riparian corridor. The project site is also separated from upstream properties by Mabury Road. The project would not result in flow-related impacts to properties upstream from the project site.

Granting a riparian setback exception would not be detrimental or injurious to adjacent properties across Coyote Creek. The physical separation of the setback encroachment area from these properties by the creek and its riparian corridor would prevent any direct or indirect adverse effect of the riparian setback exception on properties across the creek.

Similarly, the riparian setback exception would not be detrimental or injurious to downstream properties. The area in which the setback encroachment would occur is separated from downstream properties by an area of proposed asphalt removal and revegetation on the project site, and by Berryessa Road. The project would implement Conditions of Approval (see discussion under Biological Resources checklist question a) and Hydrology and Water Quality checklist question a)) to avoid and minimize impacts to water quality. In addition, the proposed construction of two bioretention basins would benefit the riparian corridors by improving the quality of runoff entering the creeks from the project site, as compared to existing conditions.

In general, the project is anticipated to improve habitats within much of the Habitat Plan-required riparian setback areas, and most impacts would be less than significant due to payment of Habitat Plan riparian impact fees and compliance with Habitat Plan conditions (required as a Condition of Approval for the project). However, the encroachment of new urban development into a currently non-hardscaped setback area would require compensatory mitigation to offset the impacts on the riparian corridor.

**Impact BIO-2:** Project development under both Option 1 and Option 2 would encroach into and impact the minimum 35-foot Habitat Plan allowable setback of the Coyote Creek and Upper Penitencia Creek riparian corridors. **(Significant Impact)**

**Mitigation Measures:** The project would implement the following mitigation measures to reduce impacts related to riparian encroachment.

**MM BIO-2.1:** Prior to issuance of a Planned Development permit for the construction of any non-exempt uses (i.e., the recreational area, arterial roadway, and non-native landscaping) within the City's 100-foot setback and the Santa Clara Valley Habitat Plan's 35-foot setback (Santa Clara Valley Habitat Plan, Condition 11), the project applicant shall request and obtain a riparian setback exception in accordance with City Council Policy 6-34 and the outlined factors of the Habitat Plan. As part of the exception review process and prior to a determination of the setback exception request, the Director of Planning, Building and Code Enforcement or the Director's designee shall provide the exception request and proposed decision to the Wildlife Agencies for review and comment.

**MM BIO-2.2:** To compensate for the degradation of setback functions in this area, the project applicant shall restore native habitat at a two to one (restored area to impacted area) ratio, on an acreage basis, within other planned open space areas in the 100-foot riparian setbacks on the site (e.g., within portions of the setback where hardscape will be removed). Native trees and shrubs appropriate to this area, such as coast live oak and coyote brush, shall be planted and maintained to provide additional wildlife habitat adjacent to the creeks. A qualified restoration ecologist shall develop a Riparian Setback Enhancement and Monitoring Plan, which shall contain the following components (or as otherwise modified by regulatory agency permitting conditions):

1. Goal of the restoration to achieve no net loss of habitat functions and values.
2. Restoration design:
  - Planting plan
  - Soil amendments and other site preparation elements as appropriate
  - Maintenance plan
  - Remedial measures/adaptive management
3. Monitoring plan (including final and performance criteria, monitoring methods, data analysis, reporting requirements, monitoring schedule, etc.). At a minimum, success criteria will include elimination of non-native woody species from the enhancement area and establishment of a native tree and shrub canopy providing at least 50 percent canopy coverage of the mitigation area within 10 years of mitigation implementation.
4. Contingency plan for mitigation elements that do not meet performance or final success criteria.



The Riparian Setback Enhancement and Monitoring Plan must be approved by the Director of Planning, Building and Code Enforcement or the Director's designee prior to issuance of any ground disturbing permits (tree removal, demolition, or grading permit, whichever occurs first) within the currently undeveloped habitat within the riparian corridor.

With implementation of mitigation measure MM BIO-2.1 and MM BIO-2.2, the proposed project (both Option 1 and Option 2) would not result in significant impacts related to riparian encroachment. **(Less than Significant Impact with Mitigation Incorporated)**

#### Non-Native and Invasive Species

Many non-native, invasive plant species produce seeds that germinate readily following disturbance. Further, disturbed areas are highly susceptible to colonization by non-native, invasive species that occur locally, or that are transported by personnel, vehicles, and other equipment. Activities such as trampling, equipment staging, and vegetation removal would contribute to disturbance. Areas of disturbance could serve as the source for promoting the spread of non-native species, which could degrade the ecological value of riparian and wetland habitat and adversely affect native plants and wildlife that occur there.

The project site contains invasive species, such as giant reed and Algerian ivy, that have the potential to spread in the sensitive riparian corridors. Ground disturbing activities within areas with existing weed cover during proposed project construction could result in the unintentional spread of these weed species into additional areas of the riparian corridors. In addition, project construction activities (both Option 1 and Option 2) could potentially introduce new weeds that could spread to the sensitive riparian corridor. Introduction or spread of invasive weeds would be considered a significant impact due to potential adverse effects on native species.

**Impact BIO-3:** Project construction (both Option 1 and Option 2) could result in the spread of invasive plant species already present on the project site or introduce new invasive plant species to the site, which would adversely impact the on-site riparian habitat. **(Significant Impact)**

**Mitigation Measures:** The project would implement the following mitigation measures to prevent the spread of weeds and invasive species.

**MM BIO-3.1:** The project applicant shall employ the following best management practices for weed control to avoid and minimize the spread of invasive plant species:

- Prior to grading or soil disturbance, infestations of Algerian ivy and giant reed within areas of direct permanent or temporary disturbance will be removed and all vegetative material will be incinerated off-site or disposed of in a high-temperature composting facility that can compost using methods known to kill weed seeds, taking care to prevent any seed dispersal during the process by bagging material or covering trucks transporting such material from the site.

- All ground disturbing equipment used adjacent to the riparian corridors will be washed (including wheels, tracks, and undercarriages) at a legally operating equipment yard both before and after being used at the site.
- All applicable construction materials used on site, such as straw wattles, mulch, and fill material, will be certified weed free.
- The project will follow a Stormwater Pollution Prevention Plan as per the NPDES General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (Construction General Permit; Water Board Order No. 2009-0009-DWQ).
- All disturbed soils will be stabilized and planted with a native seed mix from a local source following construction.
- If excavating, soil and vegetation removed from weed-infested areas will not be used in general soil stockpiles and will not be redistributed as topsoil cover for the newly filled areas. All weed-infested soil will be disposed of off-site at a landfill or buried at least 2.5 feet below final grade.

With implementation of mitigation measure MM BIO-3.1, the proposed project (both Option 1 and Option 2) would not result in significant impacts related to non-native and invasive species. **(Less than Significant Impact with Mitigation Incorporated)**

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

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**Option 1 and Option 2**

Project construction activities may result in permanent impacts to jurisdictional waters of the U.S. or state if modification or reconstruction of outfalls to Coyote Creek and/or Upper Penitencia Creek necessitates placement of concrete, rock, or other hardened structures within jurisdictional habitats. Modification or construction of outfalls could potentially result in the permanent loss of up to 0.01 acre (500 square feet) of jurisdictional aquatic habitat.

Additionally, the project would result in temporary disturbance of the aquatic community in Coyote Creek (e.g., during outfall work) and in Upper Penitencia Creek during removal of existing bridges and associated dewatering, if required. Proposed in-channel activities would result in the direct modification of aquatic communities on the project site, as well as potential indirect impacts to downstream aquatic communities due to mobilization of sediment. In addition, riparian habitat, which is considered waters of the state, may be impacted by vegetation removal, placement of abutments, and/or bridge deck construction over the creek. Contamination of these habitats with pollutants and sediment can adversely affect ecosystem health and reduce habitat quality for plant and animal species. As a result, direct and indirect project impacts to the perennial streams and direct impacts to willow riparian forest and scrub would constitute a significant impact, in the absence of compliance with Habitat Plan conditions, and with any necessary federal and state permit requirements as discussed below.

Construction projects in California causing land disturbances that are equal to 1.0 acre or greater must comply with state requirements to control the discharge of stormwater pollutants under the NPDES Construction General Permit. Prior to the start of construction/demolition, a Notice of Intent must be filed with the State Water Resources Control Board (SWRCB) describing the project. A Stormwater Pollution Prevention Plan (SWPPP) must be developed and maintained during the project and it must include the use of BMPs to protect water quality until the site is stabilized. Standard permit conditions under the Construction General Permit require that the applicant utilize various measures including on-site sediment control BMPs, damp street sweeping, temporary cover of disturbed land surfaces to control erosion during construction, and utilization of stabilized construction entrances and/or wash racks, among other factors.

Additionally, in many Bay Area counties, including Santa Clara County, projects must also comply with the Municipal Regional Stormwater NPDES Permit. This permit requires that all projects implement BMPs and incorporate Low Impact Development practices into the design that prevents stormwater runoff pollution, promotes infiltration, and holds/slows down the volume of water coming from a site. In order to meet these permit and policy requirements, projects must incorporate the use of green roofs, pervious surfaces, tree planters, grassy swales, bioretention and/or detention basins, among other factors. Compliance with both of these permits, which are discussed in Section 4.10 Hydrology and Water Quality of this EIR, would prevent water quality impacts due to project implementation.

In addition, the project would comply with the requirements of Habitat Plan Conditions 3 and 4 as conditions of approval. As described above, Condition 3 requires implementation of design phase, construction phase, and post-construction phase measures, including programmatic BMPs, performance standards, and control measures, to minimize increases of peak discharge of stormwater and to reduce runoff of pollutants. Condition 4 requires in-stream projects (including bridge construction and outfall modification/reconstruction) to be designed to minimize adverse impacts on stream morphology, aquatic and riparian habitat, and flow conditions by implementing construction and avoidance measures. Compliance with Habitat Plan Conditions 3 and 4, requirements to control the discharge of stormwater pollutants during and following construction under the NPDES Construction General Permit and Municipal Regional Stormwater NPDES Permit, and the RWQCB-required SWPPP would reduce the project's potential water quality impact to a less-than-significant level.

The project applicant would compensate for permanent and temporary impacts to jurisdictional waters and riparian habitat through the payment of Habitat Plan stream and willow riparian forest and scrub impact fees, which are intended to fund the restoration, creation, or protection and enhancement of these habitats within the Habitat Plan preserve system.<sup>19</sup> The project applicant would also be required to comply with the conditions of any permits from the USACE, RWQCB, and/or CDFW necessary to impact stream and riparian habitats along Upper Penitencia Creek and Coyote Creek. Compliance with relevant Habitat Plan conditions and payment of Habitat Plan fees, required as a Condition of Approval for the project, would minimize and compensate for impacts to jurisdictional waters (i.e., Upper Penitencia Creek and Coyote Creek). Mitigation measure MM BIO-1.2 would be implemented to avoid and minimize impacts from outfall modification/reconstruction to

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<sup>19</sup> Habitat Plan wetland mitigation fees are \$160,273 per acre for willow riparian forest.

the extent feasible, collectively reducing project impacts to these waters to less-than-significant levels. **(Less than Significant Impact with Mitigation Incorporated)**

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- d) Would the project interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?**
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### **Option 1 and Option 2**

For many species, the landscape is a mosaic of suitable and unsuitable habitat types. Environmental corridors are segments of land that provide a link between these different habitats while also providing cover. Development that fragments natural habitats (i.e., breaks them into smaller, disjointed pieces) can have a twofold impact on wildlife: first, as habitat patches become smaller they are unable to support as many individuals (patch size); and second, the area between habitat patches may be unsuitable for wildlife species to traverse (connectivity).

The riparian habitats of both Coyote Creek and Upper Penitencia Creek provide important movement corridors, connecting the upper reaches of both creeks and their collective watershed to the open waters of the southern San Francisco Bay. Fish, as well as several species of reptiles, amphibians, birds, and mammals use aquatic habitat in both creeks for dispersal, and terrestrial reptiles, birds, and mammals use upland areas along the creek banks for dispersal.

Demolition of two existing bridges and construction of two new bridges over Upper Penitencia Creek, as well as possible outfall modification/reconstruction along both creeks, may temporarily limit fish and amphibian movement within the channel due to dewatering. However, the project would result in only very limited permanent loss of aquatic and riparian habitat, if any, from outfall modification/reconstruction, and thus outfall modification/reconstruction would result in only minor long-term impacts (e.g., loss of habitat for dispersing animals) to the associated riparian corridor. Aquatic and terrestrial species would continue to be able to move along both creeks following project development.

Upon its completion, the project (both Option 1 and Option 2) would improve fish passage through the project site. Currently, the upstream bridge footings encroach into the channel. This narrowing of the channel at the bridge crossing constricts the channel flow and fish passage through the site. The project would remove the existing footings and place all new bridge structures outside of the active channel, facilitating fish movement through the site. Mitigation measure MM BIO-1.2 above would be implemented under either project option to avoid and minimize impacts from outfall modification/reconstruction to the extent feasible, including avoidance of creating fish passage impediments.

The project would create an estimated 9.98 acres of additional open space adjacent to the existing riparian habitat of Coyote and Upper Penitencia Creeks through removal of existing hardscape. The additional open space would benefit wildlife movement along the northern and western boundary of the project site by providing an additional vegetated buffer between the riparian corridors and areas of more intensive human use. In addition, the project applicant would compensate for impacts to stream habitat and willow riparian forest and scrub habitat through the payment of Habitat Plan impact fees (see Condition of Approval under checklist question a) above), which are intended to

fund the restoration, creation, or protection and enhancement of these habitat types within the Habitat Plan preserve system.<sup>20</sup>

Because the reaches of Coyote Creek and Upper Penitencia Creek near the project site are lined on both sides by dense urban-suburban land uses, overland wildlife movement between the riparian corridors is limited. Species that move through this developed habitat are all regionally abundant, common species that are expected to continue to use the developed portions of the site for movement after project construction is complete.

Once the proposed residential and commercial buildings are constructed, they would increase the risk of avian mortality due to collisions, as they would occupy airspace that birds can currently use to fly through the site. Most avian collisions with buildings occur within the first 60 feet of the ground, where birds spend the majority of their time engaged in foraging, territorial defense, nesting, and roosting activities, and where vegetation is most likely to be reflected in glazed surfaces. However, very tall buildings (e.g., buildings 500 feet or higher) may pose a threat to birds that are migrating through the area, particularly to nocturnal migrants that may not see the buildings or that may be attracted to lights on the buildings.

Maximum heights for the new buildings under both the Option 1 and Option 2 project would be capped at 270 feet, which is much lower than the heights at which most bird migration occurs. However, the first 60 feet above the ground would still be subject to avian collisions. The species that would be most affected, if building facades consist of reflective glass, include the common, urban-adapted species that currently use the developed portions of the site, as these are the species that would spend the most time in the vicinity of the new buildings. However, a wide variety of migrant birds may also be affected.

Riparian habitats in California, such as the habitat along Coyote Creek and Upper Penitencia Creek, generally support exceptionally rich bird communities and contribute a disproportionately high amount to landscape-level species diversity. Due to the higher quality of habitat along Coyote Creek and Upper Penitencia Creek compared to habitats in surrounding urban areas, songbirds that migrate along the Pacific Flyway disperse and forage along these creeks in relatively large numbers. Resident birds that are present in the vicinity year-round are similarly attracted to this riparian habitat in relatively large numbers for foraging and nesting opportunities. However, due to the absence of particularly high-quality native habitat, more sensitive or rarer bird species are not expected to nest on the project site or to occur frequently or in large numbers.

Birds using riparian habitat along the creeks, such as migrants that are initially attracted to the vicinity of the project site as a migratory stopover location due to the abundance of riparian vegetation, may then disperse outward from the creeks into vegetated areas. If the newly constructed buildings have extensive glass facades, birds are likely to collide with these facades for the following reasons:

- Vegetation adjacent to buildings could reflect in the glass of the building's facades, potentially causing birds to attempt to fly in to the reflected "vegetation" and strike the glass.

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<sup>20</sup> Habitat Plan wetland mitigation fees are \$160,273 per acre for willow riparian forest and \$675 per linear foot for streams.



As a result, some birds that are attracted to the trees and other landscaping that is adjacent to the glass facades are expected to collide with the glass.

- Night lighting associated with new buildings has some potential to disorient birds, especially during inclement weather when night migrating birds descend to lower altitudes. As a result, some birds moving through the area at night may be disoriented by night lighting and potentially collide with buildings.

The proposed site plan (for both Option 1 and Option 2) would increase the width of the vegetated corridors along Coyote Creek and Upper Penitencia Creek. In most areas, the width of these vegetated corridors would provide sufficient space for birds to use when flying along Coyote Creek and Upper Penitencia Creek. However, one proposed residential building (building H5 as shown on Figure 2.2-4) would be located immediately adjacent to the confluence of the two creeks, and birds flying along one creek and then turning to follow the other would be particularly susceptible to collision with this building.

Birds that are vulnerable to collisions with low-rise buildings include migrants that move through during the spring and fall, as well as hummingbirds, swifts, waxwings, warblers, nuthatches, tits, and creepers, all of which occur in the moderate-quality riparian habitat on the project site. As a result, construction of the project (both Option 1 and Option 2) could potentially result in the mortality of large numbers of birds relative to the size of regional populations, and enough individuals of common bird species could potentially strike the buildings over the long term to result in a significant impact under CEQA.

**Impact BIO-4:** The proposed buildings along Coyote Creek and Upper Penitencia Creek, which would include glass facades and interior and exterior lighting, could result in bird strikes. **(Significant Impact)**

**Mitigation Measures:** The project (both Option 1 and Option 2) would implement the following mitigation measure to reduce bird strikes on the site.

**MM BIO-4.1:** Due to the potential for the proposed buildings to result in high numbers of bird collisions, the project applicant shall implement the following bird-safe design considerations, which shall be reviewed and approved for effectiveness by a qualified ornithologist:

- On the buildings that front on Coyote Creek or Upper Penitencia Creek, no more than 10 percent of the surface area of the exterior building facades facing either creek will have untreated glazing between the ground and 60 feet above ground. Bird-safe glazing treatments may include fritting, netting, permanent stencils, frosted glass, exterior screens, and/or physical grids placed on the exterior of glazing or ultraviolet patterns visible to birds. Vertical elements of the window patterns shall be at least 0.25 inch wide at a maximum spacing of four inches or have horizontal elements at least 1/8-inch wide at a maximum spacing of two inches.

- All glazing panels at corners of facades facing Coyote Creek or Upper Penitencia Creek between the ground and 60 feet above ground will be 100 percent treated.
- For the residential building H5, located on the southwest side of the proposed arterial road, the requirements in the two previous bullets will be implemented for all facades of the building, from the ground to the top floor.
- Any free-standing glass walls, wind barriers, skywalks, balconies, greenhouses, or similar structures that are included as part of the project design and that have unbroken glazed segments 24 square feet or larger in size will be 100 percent treated with bird-safe features, regardless of their location on the project site.
- Exterior lighting on the northern and western perimeters of the development footprint will be minimized to the extent feasible, except as needed for safety. All exterior lights will be directed toward facilities on the project site (e.g., rather than directed upward or outward) and shielded to ensure that light is not directed outward toward Coyote Creek or Upper Penitencia Creek.
- Exterior up-lighting will be avoided.
- Occupancy sensors or other switch control devices will be installed on interior lights of office buildings, with the exception of emergency lights or lights needed for safety purposes. These lights will be programmed to shut off during non-work hours and between 10:00 PM and sunrise.

With implementation of mitigation measure MM BIO-4.1, as well as adherence to the conditions of approval and MM BIO-1.2 discussed above, the proposed project (both Option 1 and Option 2) would not result in significant impacts related to wildlife movement. **(Less than Significant Impact with Mitigation Incorporated)**

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

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### **Option 1 and Option 2**

Implementation of the proposed project (both Option 1 and Option 2) would remove the few ordinance-sized trees that occur in the urban-suburban land cover type. The removal of ordinance-sized trees and non-ordinance-sized trees in the urban-suburban land cover would not have a significant impact to wildlife because they include many non-native species, and the wildlife supported by these species are not regionally limited.

Implementation of the project (both Option 1 and Option 2), specifically construction of the two new bridges, may require removal of a small number of trees in the riparian portion of the project site. These trees include native species that are more valuable to wildlife. Trees that are to remain on the site following construction could be impacted indirectly if impacts to root zones occur, potentially degrading these trees' health and eventually necessitating their removal.

Because removal of ordinance-sized trees in both urban-suburban and riparian land cover types is governed by the City of San José Municipal Code, such tree removal would be considered a significant impact under CEQA in the absence of mitigation measures.

**Impact BIO-5:** Implementation of the project (both Option 1 and Option 2) would require tree removal, in conflict with the City of San José Municipal Code. **(Significant Impact)**

**Mitigation Measures:** The project would implement the following mitigation measures to reduce impacts to trees and ensure compliance with the Municipal Code.

**MM BIO-5.1:** Prior to issuance of any ground disturbing permits (tree removal, demolition, or grading permit, whichever occurs first), the project applicant shall ensure trees that are intended to remain on the project site are protected during project construction. Protection shall include the establishment of Tree Protection Zones (TPZs), which at a minimum shall include the installation of a fence around the drip line of ordinance-sized trees, restricted construction activity within the dripline, and the posting of appropriate signage on the fence. These measures create an area of protection around the trees and reduce the threat of damage. Trees that are subject to ground-disturbing construction activities within any portion of their dripline shall be considered lost, unless a certified arborist determines that the tree is unlikely to be severely damaged or killed by such activities.

**MM BIO-5.2:** Prior to issuance of any ground disturbing permits (tree removal, demolition, or grading permit, whichever occurs first), the project applicant shall depict all trees to be removed, avoided, or protected on project plans. A Tree Protection Plan (TPP) shall be generated by a certified arborist to include all trees that are to be avoided or protected on the project site. The project applicant shall submit the TPP to the Director of Planning, Building and Code Enforcement or the Director's designee for approval.

In addition, the project applicant would be required to implement the following standard permit condition as a Condition of Approval.

**Standard Permit Condition:** The removed trees would be replaced according to tree replacement ratios required by the City, as provided in Table 3.4-1 below. The total number and species of replacement trees to be planted would be determined in consultation with the City Arborist and the Department of Planning, Building and Code Enforcement. In the event that the project site does not have sufficient area to accommodate the required tree mitigation, one or more of the following measures will be implemented, to the satisfaction of the Director of Planning, Building and Code Enforcement, at the development permit stage:

- The size of a 15-gallon replacement tree may be increased to a 24-inch box and count as two replacement trees to be planted on the project site, at the development permit stage.

- Pay off-site tree replacement fee(s) to the City, prior to the issuance of Public Works grading permit(s), in accordance to the City Council-approved Fee Resolution. The City will use the off-site tree replacement fee(s) to plant trees at alternative sites.

<b>Table 3.4-1: Tree Replacement Ratios</b>				
<b>Circumference of Tree to be Removed</b>	<b>Type of Tree to be Removed</b>			<b>Minimum Size of Each Replacement Tree</b>
	<b>Native</b>	<b>Non-Native</b>	<b>Orchard</b>	
38 inches or more	5:1	4:1	3:1	15-gallon
19 to 38 inches	3:1	2:1	None	15-gallon
Less than 19 inches	1:1	1:1	None	15-gallon
<sup>2</sup> x:x = tree replacement to tree loss ratio Notes: Trees greater than or equal to 38 inches in circumference shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees. For multi-family residential, commercial, and industrial properties, a Tree Removal Permit is required for removal of trees of any size. A 38-inch tree equals 12.1 inches in diameter. One 24-inch box tree = two 15-gallon trees.				

With implementation of mitigation measures MM BIO-5.1 through MM BIO-5.2 and the standard permit condition above, the proposed project (both Option 1 and Option 2) would not conflict with any policies or ordinances protecting biological resources. **(Less than Significant Impact with Mitigation Incorporated)**

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

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### **Option 1 and Option 2**

Both the applicant's proposed Option 1 and the maximum development Option 2 are considered covered projects under the Habitat Plan and are therefore required to comply with all applicable Habitat Plan conditions (see Condition of Approval under checklist question a) above). Conditions applicable to the proposed project (both Option 1 and Option 2) include Conditions 1 (avoid direct impacts to legally protected plant and wildlife species), 3 (maintain hydrologic conditions and protect water quality), 4 (design and construction requirements for in-stream projects), 11 (stream and riparian setbacks), and 12 (wetland and pond avoidance and minimization). Habitat Plan Condition 11 requires new covered projects to adhere to setbacks from creeks and streams and associated riparian vegetation to minimize and avoid impacts to aquatic and riparian land cover types, covered species, and wildlife corridors. The standard required setback for the reach of Coyote Creek and Upper Penitencia Creek adjacent to the project site is 100 feet from top of bank and 35 feet from the edge of riparian vegetation, whichever is greater.

The project (both Option 1 and Option 2) would result in encroachment on the standard Habitat Plan stream setback, as described under checklist question b) above. However, implementation of mitigation measures MM BIO-2.1 and MM BIO-2.2, including payment of Habitat Plan fees for riparian encroachment, would reduce this impact to a less-than-significant level. Further, the project proposes to remove asphalt and restore vegetation in most of the area within the riparian setback, resulting in a substantial net decrease (4.10 acres) in impervious surface and increase in vegetated

area within the setback. As discussed in MM BIO-2.2, native trees and shrubs (including oaks and other site-appropriate species that would complement the adjacent riparian habitat) would be planted within the areas where asphalt is converted to vegetated habitat. The net result of the project would be a substantial benefit to the riparian corridor. Although the areas of habitat enhancement would not become part of the Habitat Plan's Reserve System, this revegetation would contribute to the following Habitat Plan goals and objectives related to habitats and communities within the Reserve System:

- Goal 3, enhancement or restoration of representative natural and semi-natural landscapes to maintain or increase native biological diversity;
- Objective 3.1, enhancement of terrestrial, aquatic, and stream habitat (includes riparian habitat);
- Goal 6, maintenance and enhancement of functional oak woodland communities;
- Goal 8, improving the quality of streams and riparian communities;
- Objective 8.3, enhancement of streams;
- Goal 9, maintaining a functional riparian forest and scrub community; and
- Objective 9.1, protection of existing riparian habitat and maximizing the width of native vegetation.

Construction disturbance and project tree removal during the avian breeding season (February 1 through August 31 inclusive, for most species) could result in the incidental loss of eggs or nestlings, either directly through the destruction or disturbance of active nests or indirectly by causing the abandonment of nests. Because the project could disturb nesting activity during construction, it would be considered a significant impact under CEQA.

**Impact BIO-6:** Both Option 1 and Option 2 project construction and tree removal during the avian breeding season could result in direct or indirect impacts to eggs and nestlings. **(Significant Impact)**

**Mitigation Measures:** The project would implement the following mitigation measures to reduce impacts to nesting activity.

**MM BIO-6.1:** Avoidance. To the extent feasible, construction activities shall be scheduled to avoid the nesting season. If construction activities are scheduled to take place outside the nesting season, all impacts to nesting birds protected under the MBTA and California Fish and Game Code will be avoided. The nesting season for most birds in Santa Clara County extends from February 1 through August 31, inclusive.

**MM BIO-6.2:** Preconstruction Surveys. If construction activities and/or tree removal cannot be scheduled to occur between September 1 and January 31, preconstruction surveys for nesting birds shall be conducted by a qualified ornithologist to ensure that no nests will be disturbed during project implementation. These surveys will be conducted no more than seven days prior to the initiation of demolition or construction activities including tree removal and pruning. During this survey, the



ornithologist will inspect all trees and other potential nesting habitats (e.g., trees, shrubs, ruderal grasslands, buildings) in and immediately adjacent to the impact areas for nests. If an active nest is found sufficiently close to work areas to be disturbed by these activities, the ornithologist will determine the extent of a construction-free buffer zone to be established around the nest (typically 300 feet for raptors and 100 feet for other species), to ensure that no nests of species protected by the MBTA and California Fish and Game Code will be disturbed during project implementation.

**MM BIO-6.3:** Reporting. Prior to issuance of any grading or building permit, the project applicant shall submit to the Director of Planning, Building and Code Enforcement or the Director's designee, a plan prepared by a qualified biologist for completing the preconstruction surveys to meet the requirements set out above. Subsequent to the preconstruction surveys, and prior to ground disturbance, the qualified biologist or ornithologist shall submit a written report indicating the results of the survey, a map of identified active nests, and any designated buffer zones or other protective measures to the Director of Planning, Building and Code Enforcement or the Director's designee.

With implementation of mitigation measures MM BIO-6.1 and MM BIO-6.3, the proposed project (both Option 1 and Option 2) would not conflict with the Habitat Plan. **(Less than Significant Impact with Mitigation Incorporated)**

### 3.4.2.2 *Cumulative Impacts*

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

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#### **Option 1 and Option 2**

Future development projects in the City of San José, development activities under the Berryessa Urban Village Plan, and development activities covered by the Habitat Plan would result in impacts to the same habitat types and species that would be affected by the proposed project. The project, in combination with other projects in the area, could contribute to cumulative effects to special-status species. Other projects in the area include both development and maintenance projects that could adversely affect these species and restoration projects that would benefit these species.

The cumulative impact to biological resources resulting from implementation of the proposed project, in combination with other projects in the region, would be dependent on the relative magnitude of adverse effects of these projects on biological resources compared to the relative benefit of impact avoidance and minimization efforts prescribed by planning documents, CEQA mitigation measures, and permit requirements for each project; compensatory mitigation and proactive conservation measures associated with each project; and the benefits to biological resources accruing from the Habitat Plan. In the absence of such avoidance, minimization, compensatory mitigation, and conservation measures, cumulatively significant impacts to biological resources would occur.

However, the Envision San José 2040 General Plan contains conservation measures that would benefit biological resources, as well as measures to avoid, minimize, and mitigate impacts to these resources, and the Habitat Plan includes numerous conservation measures to offset adverse effects on covered activities. Many projects in the region that impact resources similar to those impacted by the proposed project would be covered activities under the Habitat Plan, and would mitigate impacts to sensitive habitats and special-status species through the Habitat Plan, which would require payment of fees for habitat restoration.

In addition, the project would implement standard permit conditions, conditions of approval, and mitigation measures (as listed above) to reduce impacts to both common and special-status species, as described above. Therefore, with the implementation of mitigation measures MM BIO-1.1 through MM BIO-6.3 and adherence to the above conditions of approval, the proposed project (both Option 1 and Option 2) would not result in a cumulatively significant impact to biological resources. **(Less than Significant Cumulative Impact with Mitigation Incorporated)**

### 3.5 CULTURAL RESOURCES

The discussion of archaeological resources in this section is based in part on the Results of a CEQA Archaeological Literature Search prepared by Holman & Associates on February 7, 2020, which is on file with the City of San José Department of Planning, Building and Code Enforcement. The discussion of historical resources in this section is based in part on the Historic Resources Assessment prepared by Archives & Architecture on July 21, 2006.<sup>21</sup> A copy of this report is included in Appendix D of this document.

As shown in Table 1.2-1, two comments were received on the Notice of Preparation (NOP) regarding cultural resources. George Simmel commented that the project provides an opportunity for improvement since cultural resources are limited in the area. Additionally, the Santa Clara Valley Transportation Authority (VTA) noted that the Upper Penitencia Creek is a sensitive area for buried prehistoric resources. These comments are discussed under checklist question b) below.

#### 3.5.1 Environmental Setting

##### 3.5.1.1 *Regulatory Framework*

#### **Federal and State**

##### National Historic Preservation Act

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

The NRHP is the nation's master inventory of historic resources that are considered significant at the national, state, or local level. The minimum criteria for determining NRHP eligibility include:

- The property is at least 50 years old (properties under 50 years of age that are of exceptional importance or are contributors to a district can also be included in the NRHP);
- It retains integrity of location, design, setting, materials, workmanship, feeling, and associations; and
- It possesses at least one of the following characteristics:
  - Association with events that have made a significant contribution to the broad patterns of history;
  - Association with the lives of persons significant in the past;

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<sup>21</sup> The Historic Resources Assessment was prepared for the 2007 PD zoning project [PDC03-108] and included the entire 120-acre Flea Market site.

- Distinctive characteristics of a type, period, or method of construction, or represents the work of a master, or possesses high artistic values, or represents a significant, distinguishable entity whose components may lack individual distinction; or
- Has yielded, or may yield, information important to prehistory or history.

Under the NRHP, the Secretary of the Interior is responsible for establishing professional standards and providing guidance on the preservation of historic properties. The Secretary of the Interior's Standards for the Treatment of Historic Properties (36 CFR Part 68) contain regulations for projects receiving Historic Preservation Fund grant assistance, but also provide general guidance for work on historic properties. The standards apply to a wide variety of resource types including buildings, sites, structures, objects, and districts. Four treatment approaches are provided: preservation, rehabilitation, restoration, and reconstruction, with accompanying standards and guidelines for each approach.

### California Register of Historical Resources

The California Register of Historical Resources (CRHR) is administered by the State Office of Historic Preservation and encourages protection of resources of architectural, historical, archeological, and cultural significance. The CRHR identifies historic resources for state and local planning purposes and affords protections under CEQA. Under Public Resources Code Section 5024.1(c), a resource may be eligible for listing in the CRHR if it meets any of the NRHP criteria.<sup>22</sup>

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

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

### California Native American Historical, Cultural, and Sacred Sites Act

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

### Public Resources Code Sections 5097 and 5097.98

Section 15064.5 of the CEQA Guidelines specifies procedures to be used in the event of an unexpected discovery of Native American human remains on non-federal land. These procedures are

<sup>22</sup> California Office of Historic Preservation. “CEQA Guidelines Section 15064.5(a)(3) and California Office of Historic Preservation Technical Assistance Series #6.” March 14, 2006.

outlined in Public Resources Code Sections 5097 and 5097.98. These codes protect such remains from disturbance, vandalism, and inadvertent destruction, establish procedures to be implemented if Native American skeletal remains are discovered during construction of a project, and establish the Native American Heritage Commission (NAHC) as the authority to resolve disputes regarding disposition of such remains.

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

## **Regional and Local**

### San José Historic Preservation Ordinance

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

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

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

### Envision San José 2040 General Plan

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

<b>General Plan Policies – Cultural Resources</b>	
<b>Landmarks and Districts</b>	
Policy LU-13.2	Preserve candidate or designated landmark buildings, structures and historic objects, with first priority given to preserving and rehabilitating them for their historic use, second to preserving and rehabilitating them for a new use, or third to rehabilitation and relocation on-site. If the City concurs that no other option is feasible, candidate



<b>General Plan Policies – Cultural Resources</b>	
	or designated landmark structures should be rehabilitated and relocated to a new site in an appropriate setting.
Policy LU-13.4	Require public and private development projects to conform to the adopted City Council Policy on the Preservation of Historic Landmarks.
Policy LU-13.9	Promote the preservation, conservation, rehabilitation, restoration, reuse, and/or reconstruction, as appropriate, of contextual elements (e.g., structures, landscapes, street lamps, street trees, sidewalk design, signs) related to candidate and/or landmark buildings, structures, districts, or areas.
Policy LU-13.15	Implement City, State, and Federal historic preservation laws, regulations, and codes to ensure the adequate protection of historic resources.
<b>Historic Structures of Lesser Significance</b>	
Policy LU-14.1	Preserve the integrity and enhance the fabric of areas or neighborhoods with a cohesive historic character as a means to maintain a connection between the various structures in the area.
Policy LU-14.4	Discourage demolition of any building or structure listed on or eligible for the Historic Resources Inventory as a Structure of Merit by pursuing the alternatives of rehabilitation, re-use on the subject site, and/or relocation of the resource.
<b>Archaeology and Paleontology</b>	
Policy ER-10.1	For proposed development sites that have been identified as archaeologically or paleontologically sensitive, require investigation during the planning process in order to determine whether potentially significant archeological or paleontological information may be affected by the project and then require, if needed, that appropriate mitigation measures be incorporated into the project design.
Policy ER-10.2	Recognizing that Native American human remains may be encountered at unexpected locations, impose a requirement on all development permits and tentative subdivision maps that upon their discovery during construction, development activity will cease until professional archaeological examination confirms whether the burial is human. If the remains are determined to be Native American, applicable state laws shall be enforced.
Policy ER-10.3	Ensure that City, State, and Federal historic preservation laws, regulations, and codes are enforced, including laws related to archaeological and paleontological resources, to ensure the adequate protection of historic and pre-historic resources.

### Berryessa BART Urban Village Plan

The following policy within the draft Berryessa BART Urban Village Plan pertains to the purposes of reducing or avoiding impacts related to cultural resources.

Urban Village Plan Policies – Cultural Resources	
Policy LU-2.6	Allow the current operation of the existing San José Flea Market in the present site as an existing interim use in the Flea Market South District. Support the relocation of the San José Flea Market operation in the Transit Employment Center land use designation as a new interim use in the Flea Market South District.

### 3.5.1.2 *Existing Conditions*

#### **Project Site**

The project site is located within an area of high archaeological sensitivity at depth.<sup>23</sup> In this area of San José, Native American sites have been identified adjacent to springs or within a half mile of the two major waterways: Coyote Creek and the Guadalupe River, and their major tributaries. The project site is located at the confluence of Coyote Creek and Upper Penitencia Creek, with Coyote Creek located along the western site boundary and Upper Penitencia Creek along the northern site boundary.

The site is located on part of a large valley terrace. The geology is mapped as Holocene-age alluvial fan levee deposits, a stable alluvial formation where archaeological deposits were often preserved. The potential for accidental discovery of archaeological materials, including Native American resources, is considered high due to the site's proximity to a major waterway.

#### Historic Uses of the Site

Holman & Associates completed a records search of the project site and surrounding area, and reviewed archaeological resources reports for projects within 165 feet of the project area. Two cultural resources were identified within the project site. The oldest of these two resources contains the remains of a late 1800s to 1915 farming complex with remnant structures and a historic scatter located east of Coyote Creek and facing Mabury Road. Structures associated with the farming complex included a barn and tank house. No archaeological deposits associated with this resource were identified during a 2014 trenching investigation on the north side of Mabury Road.

#### Flea Market Operation

The 120-acre Flea Market site (both north and south of Berryessa Road) is designated as the second cultural resource. The Historic Resources Assessment (see Appendix D) documented the historical development of the project area, which was predominantly residential, industrial, and agricultural in use. As discussed in Appendix D, these uses were also located on the project site, which contains a small number of buildings that predate the establishment of the Flea Market. However, the related historical uses have changed over time and the vernacular construction of the buildings does not represent important patterns of development that occurred on the site prior to 1960.

The Flea Market began operations in 1960 and is a major cultural and economic phenomenon within the region. The San José Flea Market serves as an alternative city center for a large portion of the citizens of San José and adjacent cities. The site acts as a major regional commercial destination, providing shopping, entertainment, and exterior gathering places. The provision of physical service

<sup>23</sup> City of San José. *Envision San José 2040 General Plan FEIR, Appendix J*. Page 22. July 2009.

buildings (e.g., concession stands, bathrooms, and carousels) and the maintenance of an open physical space have provided a framework that allows a distinctive economic and social culture to flourish in San José. Although the site buildings and structures are mostly temporary in nature and secondary to the site's significance, the original Flea Market site reflects a unique pattern of development in Santa Clara Valley that has made a significant contribution to the broad patterns of local and regional history through the maintenance of a successful commercial culture outside the mainstream venues.

### *San José Historic Resources Inventory*

The Flea Market is not listed in the San José Historic Resources Inventory. The Flea Market is associated with eras and events of cultural interest and value that contribute to local and regional history, heritage, and culture in a distinctive, significant, and important way. The Historic Resources Assessment (see Appendix D) concluded that the Flea Market is eligible for listing as a San José Historic Landmark site.

### *California Register of Historical Resources*

The San José Flea Market is associated with patterns of events that have made a significant contribution to the broad patterns of the history and cultural heritage of California, and is therefore considered a historic resource of “exceptional importance” in California. Although the site has limited physical character other than its open space and vernacular support structure, the Flea Market is over 50 years old and retains sufficient historic and cultural character for listing in the CRHR (see Appendix D). Additional studies<sup>24</sup> completed after the Historic Resources Assessment supported its findings that the Flea Market site is eligible for listing in the CRHR because of its contribution to the local economy and significant cultural patterns.

### *National Register of Historic Places*

Within the criteria for the NRHP, the San José Flea Market has exceptional importance within the context of local and regional history. However, physical changes to the site have resulted in reduced integrity to its period of significance (1960-1980). As a result, the Flea Market does not qualify for listing in the NRHP (see Appendix D).

### On-Site Bridges

A review of historic aerial site photographs, taken between 1931 and 1968, determined that access to the site was historically provided via bridges across both Coyote Creek (at the western boundary of the site) and Upper Penitencia Creek (at the site's northern boundary). However, these bridges are no longer present on the site. The two existing bridges crossing Upper Penitencia Creek were

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<sup>24</sup> Kusz, Jessica, and Sarah Winder. “Primary Form for P-43-3130.” On file at the Northwest Information Center. File No. S-44036. 2011.

Maggi, Franklin, and Sarah Winder. “Primary Record for P-43-3130.” On file at the Northwest Information Center. 2011.

constructed after 1968 and are not eligible for listing on the NRHP, CRHR, or Historic Resources Inventory.<sup>25</sup>

### Surrounding Area

Four cultural resources were recorded in the vicinity of the project site:

- 1) One resource is an archaeological site located northeast of the project site. Human remains were unearthed in previous years during excavations for a petroleum pipeline associated with the Silicon Valley BART Extension project. A Late Period/Early Ethnographic Period habitation site was determined to contain two burials 50 to 110 centimeters below the ground surface, along with numerous artifacts.<sup>26</sup>
- 2) Another documented resource is located along the eastern boundary of the project site, and includes a portion of the Western Pacific Railroad tracks spanning between Santa Clara and Alameda Counties. Railroad construction began in 1917, with the section east of the project site completed in 1921.<sup>27</sup> This section does not appear to be eligible for listing in the NRHP or CRHR, and was not evaluated in the City's Historic Resources Inventory.
- 3-4) Two additional documented cultural resources in the project area are the 983 Taylor/Mabury Road/Coyote Creek Bridge and the 1966 Mabury Road Service Yard. Both resources were considered ineligible for the NRHP and CRHR.<sup>28</sup>

No other historic resources or properties are listed on federal, state, or local inventories within or adjacent to the project site.

In addition to records searches identifying previously recorded cultural resources, a reconnaissance survey was carried out to identify properties located within 200 feet of the project site. The area surrounding the project site consists of a mix of commercial, residential, and industrial land uses, as shown on Table 3.5-1 and Figure 3.5-1. The residential uses within 200 feet of the site are primarily new construction with the earliest buildings developed in the mid-1980s. The industrial/commercial uses consist of a concrete recycling plant, a recycling center, a mini storage facility, a concrete batch plant, trucking services, and an auto repair facility. These businesses were constructed between 1950 and 1975 and primarily consist of single-story buildings, industrial equipment, and storage. None of the properties located within 200 feet of the project site appear eligible for listing on the City's Historic Resources Inventory or the CRHR.

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<sup>25</sup> Peak, Dana, City of San José. "Re: Flea Market – Valley Water Questions regarding history of bridges." Email. September 17, 2020.

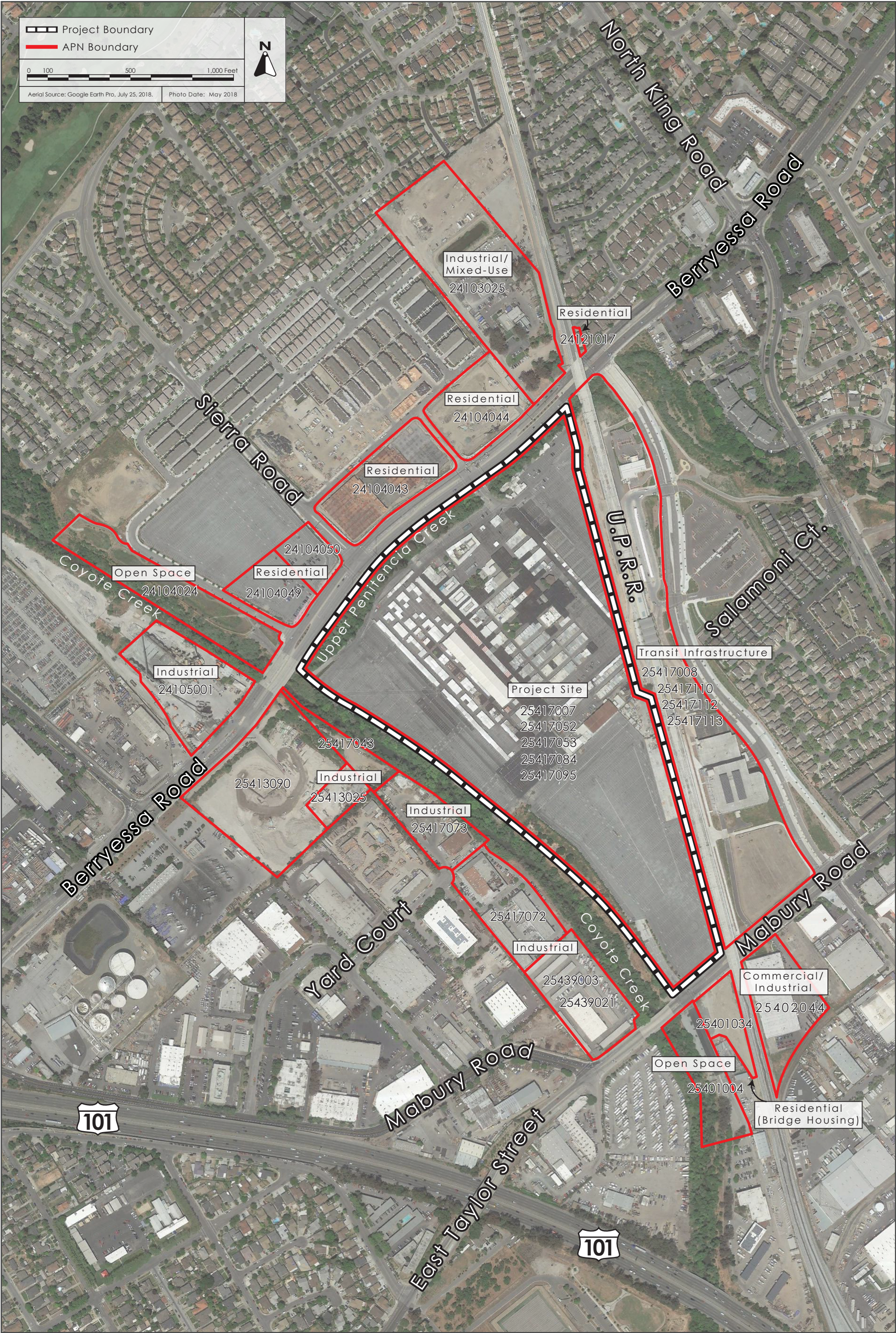
<sup>26</sup> Kaijankoski, Philip. "Archaeological Site Record for CA-SCL-919 (P-43-2704)." On file at the Northwest Information Center. 2006.

<sup>27</sup> McMorris, Christopher, and Amanda Blosser. "Primary Record for P-43-2654/P-1-2190." On file at the Northwest Information Center. 2002.

<sup>28</sup> Carlos, Philip. "GIS Recording of 427D-005." On file at the Northwest Information Center. 2018.

--. "GIS Recording of 427D-006." On file at the Northwest Information Center. 2018.





SURROUNDING LAND USES

FIGURE 3.5-1



<b>Table 3.5-1: Surrounding Uses Inventory</b>				
<b>APN<sup>1</sup></b>	<b>Address</b>	<b>Year Built</b>	<b>Use</b>	<b>Direction from Site</b>
25417072	1240 Yard Court	1962	Industrial	West
25417073	1255 Yard Court	1968	Industrial	West
25417043	1300 Berryessa Road	N/A (parking)	Industrial	West
25413025	11740 Berryessa Road	1950	Industrial	West
25413090	1300 Berryessa Road	Unknown, earliest building permit 1975	Industrial	West
25439003, 25439021	1395 Mabury Road	1981	Industrial	West
24105001	11711 Berryessa Road	1971	Industrial	North
24104024	Coyote Creek	N/A	Open space (creek)	North
24104049	None	Under construction	Residential	North
24104050	None	Under construction	Residential	North
24104043	1501 Berryessa Road	Recently constructed	Residential	North
24103025	1655 Berryessa Road	1975	Industrial, mixed-use development under planning review	North
24104044	None	Under construction	Residential	North
24121017	1636 Fern Pine Court	1985	Residential	North
25417110, 25417008, 25417112, 25417113	None	Recently constructed	Berryessa Station Way and transit infrastructure	East
25401034	None	Recently constructed	Residential (Bridge Housing)	South
25402044	1460 Mabury Road	1971	Commercial/ industrial	South
25401004	Coyote Creek	N/A	Open space (creek)	South
<sup>1</sup> APN = Assessor's Parcel Number.				

### 3.5.2 Impact Discussion

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

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



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

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**Option 1 and Option 2**

Although the Flea Market site is not listed on the San José Historic Resources Inventory, previous studies indicated that it is eligible for listing in the CRHR and eligible for local listing as a City Historic Landmark. Although the Flea Market buildings and structures are mostly temporary in nature and only of secondary historic significance, the surrounding open areas of the site comprise the primary historic resource and their alteration would result in a significant impact.

The Flea Market is 60 years old, has sufficient integrity (despite the redevelopment of the Flea Market site north of Berryessa Road), and is a cultural resource of exceptional importance to the City because of its association with eras and events of cultural interest and value that contribute to local and regional history, heritage, and culture in a distinctive, significant, and important way. Additionally, the Flea Market has important associations with community identity, and preservation of at least a portion of the site would promote a greater sense of historic awareness. Since the proposed project (both Option 1 and Option 2) would result in the total loss of the San José Flea Market, it would constitute a significant and unavoidable impact.

**Impact CUL-1:** The project would demolish the Flea Market structures and open space, which are eligible for listing in the CRHR and eligible for local listing as a City Landmark.  
**(Significant Impact)**

**Mitigation Measures:** The following measures would partially mitigate the loss of the San José Flea Market.

**MM CUL-1.1:** Prior to the issuance of demolition permits, the project applicant shall develop a Mitigation Implementation Program to the satisfaction of the Director of Planning, Building and Code Enforcement. The program shall specifically focus on the significant historical patterns of development and important personages and include public outreach, and could include the following:

- Document the culture and use of the site, not solely the structures on the site, according to the Level III procedures outlined in the National Park Service Standards and Guidelines for Architectural and Engineering Documentation, including the updated Historic American Building Survey/Historic American Engineering Record (HABS/HAER) Guidelines, which could include using a combination of photos, video, and oral interviews.
- Incorporate physical attributes of the Flea Market into the proposed project, such as signs and logos.
- Incorporate historic names (e.g., Bumb) and other exhibits into the new buildings on the project site.

- Based on additional historical research and personal interviews, develop a public exhibit/education program to present interpretive information on the historic patterns of development in the area.

The San José Flea Market, even when considering the remaining portion south of Berryessa Road, is historically significant and eligible for listing in the CRHR and local listing as a City Historic Landmark. While implementation of the proposed mitigation measure described above in MM CUL-1.1 could minimize the loss of the San José Flea Market, the measures would not reduce the impact to a less-than-significant level. **(Significant and Unavoidable Impact)**

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

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**Option 1 and Option 2**

Both Option 1 and Option 2 would require similar construction activities such as grading and excavation, which may result in the accidental destruction or disturbance of archaeological sites that could convey important information about San José's history. As noted in the public comments (refer to Table 1.2-1), Upper Penitencia Creek is a sensitive area for buried prehistoric resources. Due to the project site's proximity to the Upper Penitencia Creek, as well as Coyote Creek, there is a moderate to high potential for archaeological resources to be unearthed during construction.

**Impact CUL-2:** Subsurface archaeological resources could be encountered during project construction. **(Significant Impact)**

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

**MM CUL-2.1:** Once the site has been cleared, a qualified archaeologist shall complete mechanical trenching to explore for buried historical and Native American resources. Trenching shall be completed for the lands surrounding the location where two early 20<sup>th</sup> century houses were in the northern half of the project site. Exploration shall focus on the "artifact scatter" area east of Coyote Creek to determine if it is a meaningful archaeological deposit that could be eligible for listing on the CRHR. Additionally, trenching shall be completed throughout the project site because of its high sensitivity for prehistoric deposits and cultural materials. Subsurface exploration shall be completed by an archaeologist trained in current California methods for prehistoric and historic archaeological resources. Narrow, deep trenches shall be created to search for Native American use of this site, and shallower, wide trenches employed near the potentially sensitive historic areas.

This investigation shall be completed prior to any construction or other ground disturbing activities required as part of the project. The results of the presence/absence exploration shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee and the City's

Historic Preservation Officer for review and approval prior to issuance of any grading permit. Based on the findings of the presence/absence exploration, an archaeological resources treatment plan (as described in MM CUL-2.2) shall be prepared by a qualified archaeologist, if necessary.

**MM CUL-2.2:** If required by MM CUL-2.1, the project applicant shall retain a qualified archaeologist to prepare a treatment plan that reflects the permit-level detail pertaining to depths and locations of all ground disturbing activities. The treatment plan shall be prepared and submitted to the Director of Planning, Building and Code Enforcement or the Director's designee and the City's Historic Preservation Officer prior to approval of any grading permit. The treatment plan shall contain, at a minimum:

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

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

In addition, the project applicant would be required to implement the following standard permit condition as a Condition of Approval.

**Standard Permit Condition:** The project shall implement the following condition to reduce the impacts to 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 or the Director's designee and the City's Historic

Preservation Officer shall be notified, and a qualified archaeologist shall examine the find. The archaeologist shall 1) evaluate the find(s) to determine if they meet the definition of a historical or archaeological resource; and 2) make appropriate recommendations regarding the disposition of such finds prior to issuance of building permits. Recommendations could include collection, recordation, and analysis of any significant cultural materials. A report of findings documenting any data recovery shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee and the City's Historic Preservation Officer and the Northwest Information Center (if applicable). Project personnel shall not collect or move any cultural materials. The project applicant shall implement the recommendations of the qualified archaeologist.

Implementation of mitigation measures MM CUL-2.1 and MM CUL-2.2 and standard permit conditions above would reduce impacts to unknown buried archaeological resources (if present on-site) to a less than significant level. **(Less than Significant Impact with Mitigation Incorporated)**

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

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**Option 1 and Option 2**

Buried human remains have previously been encountered in the project vicinity. Although the likelihood of encountering remains is low due to previous development of the project site, the disturbance of these remains, if they are encountered during construction, could result in an impact. Consistent with the General Plan, if human remains are found on-site, the project would be required to implement the standard permit condition below.

**Standard Permit Condition:** The following measures shall be applied to the project to reduce and/or avoid impacts to 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 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:

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

Implementation of the above standard permit condition would reduce and/or avoid impacts to unknown human remains to a less-than-significant level. **(Less than Significant Impact)**

### 3.5.2.2 *Cumulative Impacts*

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

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#### **Archaeological Resources and Human Remains**

##### Option 1 and Option 2

The geographic area for cumulative impacts to archaeological resources is defined as all locations within 1,000 feet of the project site. It is assumed that the surrounding projects would affect similar cultural resources. The development of cumulative projects in the vicinity of the project site, including the proposed project (both Option 1 and Option 2) could significantly impact unknown buried archaeological resources. The cumulative projects are required to comply with the federal, state, and local regulations put in place to protect cultural resources.

The project would comply with applicable regulations, and redevelopment of the site would implement MM CUL-2.1 and MM CUL-2.2 to avoid and/or minimize impacts to buried cultural resources to a less-than-significant level. For this reason, the proposed project (both Option 1 and Option 2) would not have a cumulatively considerable contribution to a significant cumulative cultural resources impact. **(Less than Significant Cumulative Impact with Mitigation Incorporated)**

#### **Historic Resources**

##### Option 1 and Option 2

The cumulative historic resource impact area is the Berryessa BART Urban Village Plan area. As discussed under checklist question a) above, the San José Flea Market site is a historic resource. The project proposes to redevelop the project site with residential and commercial uses and would result in the loss of the remaining San José Flea Market, a significant unavoidable cultural resources impact.

The closure of the San José Flea Market at this location and demolition of the buildings and structures would not have a significant cumulative impact, because the San José Flea Market is not part of a larger context of similar historically associated resources; therefore, project would not have effects that would combine with other developments to create a cumulative impact. Additionally, the



Berryessa BART Urban Village Plan includes policies to support the relocation of the San José Flea Market operation in the Transit Employment Center land use designation as a new interim use in the Flea Market South District. **(Less than Significant Cumulative Impact)**

## 3.6 ENERGY

The following discussion is based upon an Air Quality, Community Risk, and Greenhouse Gas Assessment prepared by Illingworth & Rodkin, Inc. on July 7, 2020 and updated on September 17, 2020. A copy of this report is included in Appendix B of this document.

### 3.6.1 Environmental Setting

#### 3.6.1.1 *Regulatory Framework*

##### **Federal and State**

##### Energy Star and Fuel Efficiency

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

##### Renewables Portfolio Standard Program

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

##### Executive Order B-55-18 To Achieve Carbon Neutrality

In September 2018, Governor Brown issued an executive order, EO-B-55-18 To Achieve Carbon Neutrality, setting a statewide goal "to achieve carbon neutrality as soon as possible, and no later than 2045, and achieve and maintain net negative emissions thereafter." The executive order requires the California Air Resources Board (CARB) to "ensure future Scoping Plans identify and recommend measures to achieve the carbon neutrality goal." EO-B-55-18 supplements EO S-3-05 by requiring not only emissions reductions, but also that, by no later than 2045, the remaining emissions be offset by equivalent net removals of CO<sub>2</sub> from the atmosphere through sequestration.

##### California Building Standards Code

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

every three years.<sup>29</sup> Compliance with Title 24 is mandatory at the time new building permits are issued by city and county governments.<sup>30</sup>

### California Green Building Standards Code

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

### Advanced Clean Cars Program

CARB adopted the Advanced Clean Cars program in 2012 in coordination with the EPA and National Highway Traffic Safety Administration. The program combines the control of smog-causing pollutants and greenhouse gas (GHG) emissions into a single coordinated set of requirements for vehicle model years 2015 through 2025. The program promotes development of environmentally superior passenger cars and other vehicles, as well as saving the consumer money through fuel savings.<sup>31</sup>

## **Regional and Local**

### Climate Smart San José

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

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

### Sustainable City Strategy

The Sustainable City Strategy is a statement of the City's commitment to becoming an environmentally and economically sustainable city by ensuring that development is designed and

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<sup>29</sup> California Building Standards Commission. "California Building Standards Code." Accessed January 21, 2020. <https://www.dgs.ca.gov/BSC/Codes#@ViewBag.JumpTo>.

<sup>30</sup> California Energy Commission. "2019 Building Energy Efficiency Standards." Accessed January 21, 2020. <https://www.energy.ca.gov/programs-and-topics/programs/building-energy-efficiency-standards/2019-building-energy-efficiency>.

<sup>31</sup> California Air Resources Board. "The Advanced Clean Cars Program." Accessed January 21, 2020. <https://www.arb.ca.gov/msprog/acc/acc.htm>.

built in a manner consistent with the efficient use of resources and environmental protection. Programs promoted under this strategy include recycling, waste disposal, water conservation, transportation demand management and energy efficiency.

### Municipal Code

The City's Municipal Code includes regulations associated with energy efficiency and energy use. City regulations include a Green Building Ordinance (Chapter 17.84) to foster practices to minimize the use and waste of energy, water and other resources in the City of San José, Water Efficient Landscape Standards for New and Rehabilitated Landscaping (Chapter 15.10), requirements for Transportation Demand Programs for employers with more than 100 employees (Chapter 11.105), and a Construction and Demolition Diversion Deposit Program that fosters recycling of construction and demolition materials (Chapter 9.10).

### Envision San José 2040 General Plan

The Envision San José 2040 General Plan includes the following policies for the purpose of reducing or avoiding impacts related to energy.

<b>General Plan Policies - Energy</b>	
<b>Energy Conservation and Renewable Energy Use</b>	
Policy MS-2.3	Utilize solar orientation, (i.e., building placement), landscaping, design, and construction techniques for new construction to minimize energy consumption.
Policy MS-2.11	Require new development to incorporate green building practices, including those required by the Green Building Ordinance. Specifically target reduced energy use through construction techniques (e.g., design of building envelopes and systems to maximize energy performance), through architectural design (e.g. design to maximize cross ventilation and interior daylight) and through site design techniques (e.g. orienting buildings on sites to maximize the effectiveness of passive solar design).
<b>Water Conservation and Quality</b>	
Policy MS-3.1	Require water-efficient landscaping, which conforms to the state's Model Water Efficient Landscape Ordinance, for all new commercial, institutional, industrial, and developer-installed residential development unless for recreation or other area functions.
<b>Waste Diversion</b>	
Policy MS-5.5	Maximize recycling and composting from all residents, businesses, and institutions in the City.
<b>Waste Reduction</b>	
Policy MS-6.5	Reduce the amount of waste disposed in landfills through waste prevention, reuse, and recycling of materials at venues, facilities, and special events.
Policy MS-6.8	Maximize reuse, recycling, and composting citywide.

<b>General Plan Policies - Energy</b>	
<b>Water Conservation</b>	
Policy MS-18.6	Achieve by 2040, 50 million gallons per day of water conservation savings in San José, by reducing water use and increasing water use efficiency.
<b>Water Recycling</b>	
Policy MS-19.1	Require new development to contribute to the cost-effective expansion of the recycled water system in proportion to the extent that it receives benefit from the development of a fiscally and environmentally sustainable local water supply.
Policy MS-19.4	Require the use of recycled water wherever feasible and cost-effective to serve existing and new development.
<b>Transportation</b>	
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. In addition, require that new development is designed to accommodate and to provide direct access to transit facilities.

### Reach Building Code

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

#### **3.6.1.2 Existing Conditions**

Total energy usage in California was approximately 7,881 trillion British thermal units (Btu) in the year 2017, the most recent year for which this data was available.<sup>32</sup> Out of the 50 states, California is ranked second in total energy consumption and 48<sup>th</sup> in energy consumption per capita. The breakdown by sector was approximately 18 percent (1,416 trillion Btu) for residential uses, 19 percent (1,473 trillion Btu) for commercial uses, 23 percent (1,818 trillion Btu) for industrial uses, and 40 percent (3,175 trillion Btu) for transportation. This energy is primarily supplied in the form of natural gas, petroleum, nuclear electric power, and hydroelectric power.

<sup>32</sup> United States Energy Information Administration. “State Profile and Energy Estimates, 2017.” Accessed August 1, 2019. <https://www.eia.gov/state/?sid=CA#tabs-2>.



## Electricity

Electricity in Santa Clara County in 2018 was consumed primarily by the commercial sector (77 percent), followed by the residential sector consuming 23 percent. In 2018, a total of approximately 16,668 gigawatt hours (GWh) of electricity was consumed in Santa Clara County.<sup>33</sup>

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

## Natural Gas

PG&E provides natural gas services within the City of San José. In 2018, approximately one percent of California's natural gas supply came from in-state production, while the remaining supply was imported from other western states and Canada.<sup>34</sup> In 2018, residential and commercial customers in California used 34 percent of the state's natural gas, power plants used 35 percent, the industrial sector used 21 percent, and other uses used 10 percent. Transportation accounted for one percent of natural gas use in California. In 2018, Santa Clara County used approximately 3.5 percent of the state's total consumption of natural gas.<sup>35</sup>

## Fuel for Motor Vehicles

In 2018, 15.5 billion gallons of gasoline were sold in California.<sup>36</sup> The average fuel economy for light-duty vehicles (autos, pickups, vans, and sport utility vehicles) in the United States has steadily increased from about 13.1 miles per gallon (mpg) in the mid-1970s to 24.9 mpg in 2018.<sup>37</sup> Federal fuel economy standards have changed substantially since the Energy Independence and Security Act was passed in 2007. That standard, which originally mandated a national fuel economy standard of 35 miles per gallon by the year 2020, was subsequently revised to apply to cars and light trucks model years 2011 through 2020.<sup>38,39</sup>

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<sup>33</sup> California Energy Commission. Energy Consumption Data Management System. "Electricity Consumption by County." Accessed March 15, 2019. <http://ecdms.energy.ca.gov/electbycounty.aspx>.

<sup>34</sup> California Gas and Electric Utilities. 2019 *California Gas Report*. Accessed August 27, 2019. [https://www.socalgas.com/regulatory/documents/cgr/2019\\_CGR\\_Supplement\\_7-1-19.pdf](https://www.socalgas.com/regulatory/documents/cgr/2019_CGR_Supplement_7-1-19.pdf).

<sup>35</sup> California Energy Commission. "Natural Gas Consumption by County." Accessed February 21, 2019. <http://ecdms.energy.ca.gov/gasbycounty.aspx>.

<sup>36</sup> California Department of Tax and Fee Administration. "Net Taxable Gasoline Gallons." Accessed February 11, 2020. <https://www.cdtfa.ca.gov/dataportal/dataset.htm?url=VehicleTaxableFuelDist>.

<sup>37</sup> United States Environmental Protection Agency. "The 2018 EPA Automotive Trends Report: Greenhouse Gas Emissions, Fuel Economy, and Technology since 1975." March 2019.

<sup>38</sup> United States Department of Energy. *Energy Independence & Security Act of 2007*. Accessed January 21, 2020. <http://www.afdc.energy.gov/laws/eisa>.

<sup>39</sup> Public Law 110-140—December 19, 2007. *Energy Independence & Security Act of 2007*. Accessed January 21, 2020. <http://www.gpo.gov/fdsys/pkg/PLAW-110publ140/pdf/PLAW-110publ140.pdf>.

### 3.6.2 Impact Discussion

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

- a) Result in a potentially significant environmental impact due to wasteful, inefficient, or unnecessary consumption of energy, or unnecessary consumption of energy resources, during project construction or operation?
- b) Conflict with or obstruct a state or local plan for renewable energy or energy efficiency?

#### 3.6.2.1 *Project Impacts*

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

#### **Option 1 and Option 2**

Energy would be consumed during the construction and operational phases of the proposed project. The construction phase would require energy for the manufacture and transportation of building materials, preparation of the site for grading, and the actual construction of the buildings. Petroleum-based fuels such as diesel fuel and gasoline would be the primary sources of energy for these tasks. Implementation of the proposed development would consume energy (in the form of electricity and natural gas) during operation, primarily from building heating and cooling, lighting, and water heating, as well as gasoline for vehicle trips to and from the site.

#### Construction Energy Use

The anticipated construction schedule assumes both project options would be built over a period of six years. The project would require demolition of the existing uses, site preparation, grading and excavation, trenching, paving, and construction of the proposed buildings. Energy would not be wasted or used inefficiently by construction equipment, as the proposed project would include measures to improve efficiency of the construction process. For example, as discussed in Section 3.3 Air Quality, the project would implement standard permit conditions to minimize the idling of construction equipment and reduce the potential for energy waste. For these reasons, construction of the proposed project (both Option 1 and Option 2) would not use energy in a wasteful manner. **(Less than Significant Impact)**

#### Operational Energy Use

Compared to existing conditions, both Option 1 and Option 2 would substantially increase on-site electricity and natural gas use. However, the project would be built in accordance with the current CALGreen requirements and Title 24 energy efficiency standards, which would improve the efficiency of the overall project and reduce impacts. In compliance with the San José Reach Code, the project's residential developments would not use natural gas.

Table 3.6-1 below summarizes the estimated energy use of the applicant's proposed project (Option 1) and the maximum development option City staff would consider for recommendation to City Council (Option 2).

<b>Table 3.6-1: Estimated Annual Energy Use of Proposed Project</b>				
<b>Land Use</b>	<b>Option 1</b>		<b>Option 2</b>	
	Electricity Use (kWh/yr)	Natural Gas Use (kBTU/yr)	Electricity Use (kWh/yr)	Natural Gas Use (kBTU/yr)
Apartments Mid Rise	14,242,800	0	14,242,800	0
City Park	0	0	0	0
Enclosed Parking with Elevator	18,658,200	0	18,658,200	0
General Office Building	39,226,000	36,014,000	60,622,000	55,658,000
Strip Mall <sup>1</sup>	286,492	63,516	286,492	63,516
<b>Total</b>	<b>72,413,492</b>	<b>36,077,516</b>	<b>93,809,492</b>	<b>55,721,516</b>
<sup>1</sup> The strip mall land use encompasses general single-story commercial retail uses. Note: kWh = kilowatt-hour. Source: Illingworth & Rodkin, Inc. <i>Flea Market AQ-GHG CalEEMod Model</i> . May 28, 2020.				

Based on the California Emissions Estimator Model (CalEEMod) results, the total annual vehicle miles traveled (VMT) for Option 1 would be approximately 67,667,899 miles. Using the EPA fuel economy estimates (22.0 mpg), Option 1 would result in consumption of approximately 3,075,814 gallons of gasoline used per year.<sup>40</sup> Comparatively, the total annual VMT for Option 2 would be approximately 83,178,760 miles, resulting in consumption of approximately 3,780,853 gallons of gasoline used per year.<sup>41</sup> New automobiles purchased by future occupants of the proposed project would be subject to fuel economy and efficiency standards applied throughout the State of California, which means that over time the fuel efficiency of vehicles associated with the project site would improve. Further, the site's location adjacent to the Berryessa BART Station would encourage the use of alternative modes of transportation and reduce reliance on vehicle travel.

The project would not use energy or fuel in a wasteful manner, given the project features that reduce energy use, including the following:

- The project is located adjacent to a major transit center, the Berryessa BART Station.
- Bicycle parking would be provided on-site.
- The proposed buildings would meet or exceed the requirements of the California Building Energy Efficiency Standards.
- The proposed buildings would include water conserving fixtures.

<sup>40</sup> 67,667,899 VMT / 22 mpg = 3,075,814 gallons of gasoline

<sup>41</sup> 83,178,760 VMT / 22 mpg = 3,780,853 gallons of gasoline

- The project would implement construction waste management methods during construction to reduce the amount of construction waste.

Implementation of the proposed project (both Option 1 and Option 2) would not result in a wasteful, inefficient, or unnecessary consumption of energy resources during operation. **(Less than Significant Impact)**

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

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**Option 1 and Option 2**

The project (both Option 1 and Option 2) would consume energy for multiple purposes including, but not limited to, building heating and cooling, lighting, appliances, and electronics. Energy would also be consumed during vehicle trips generated by future employees and residents. The proposed project would comply with the requirements of the California Building Energy Efficiency Standards. Additionally, in compliance with the San José Reach Code, the project's residential developments would not use natural gas.

Electricity for the proposed project would be provided by San José Clean Energy, which provides 80 percent GHG emission-free electricity. Although the project would increase the project site's energy use, the proposed development would be completed in compliance with the current energy efficiency standards set forth in Title 24, CALGreen, and the City's Municipal Code. Therefore, the project (both Option 1 and Option 2) would comply with state and local plans for energy efficiency. **(Less than Significant Impact)**

**3.6.2.2 Cumulative Impacts**

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

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**Option 1 and Option 2**

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

### **3.7 GEOLOGY AND SOILS**

#### **3.7.1 Environmental Setting**

##### **3.7.1.1 *Regulatory Framework***

#### **State**

##### **Alquist-Priolo Earthquake Fault Zoning Act**

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

##### **Seismic Hazards Mapping Act**

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

##### **California Building Standards Code**

The California Building Standards Code (CBC) prescribes standards for constructing safe buildings. The CBC contains provisions for earthquake safety based on factors including occupancy type, soil and rock profile, ground strength, and distance to seismic sources. The CBC requires that a site-specific geotechnical investigation report be prepared for most development projects to evaluate seismic and geologic conditions such as surface fault ruptures, ground shaking, liquefaction, differential settlement, lateral spreading, expansive soils, and slope stability. The CBC is updated every three years; the current version is the 2019 CBC.

##### **California Division of Occupational Safety and Health Regulations**

Excavation, shoring, and trenching activities during construction are subject to occupational safety standards for stabilization by the California Department of Industrial Relations, Division of Occupational Safety and Health (Cal/OSHA) under Title 8 of the California Code of Regulations and Excavation Rules. These regulations minimize the potential for instability and collapse that could injure construction workers on the site.



## Paleontological Resources Regulations, Public Resources Code Section 5097.5

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

### **Regional and Local**

#### City of San José Municipal Code

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

#### Envision San José 2040 General Plan

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

<b>General Plan Policies - Geology, Soils, and Seismic Hazards</b>	
<b>Seismic Hazards</b>	
Policy EC-3.1	Design all new or remodeled habitable structures in accordance with the most recent California Building Code and California Fire Code as amended locally and adopted by the City of San José, including provisions regarding lateral forces.
Policy EC-3.2	Within seismic hazard zones identified under the Alquist-Priolo Fault Zoning Act, California Seismic Hazards Mapping Act and/or by the City of San José, complete geotechnical and geological investigations and approve development proposals only when the severity of seismic hazards have been evaluated and appropriate mitigation measures are provided as reviewed and approved by the City of San José Geologist. State guidelines for evaluating and mitigating seismic hazards and the City-adopted California Building Code will be followed.
<b>Geologic and Soil Hazards</b>	
Policy EC-4.1	Design and build all new or remodeled habitable structures in accordance with the most recent California Building Code and municipal code requirements as amended and adopted by the City of San José, including provisions for expansive soil, and grading and storm water controls.

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

### **3.7.1.2      *Existing Conditions***

#### **Regional Geology**

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

#### **Site Geology**

##### **Topography and Groundwater**

The project site is located on the floor of the Santa Clara Valley. The project site slopes gently north toward the San Francisco Bay, with an average elevation of approximately 82 feet above mean sea level (msl). Because the project site and surrounding area are relatively flat, the possibility for landslides and erosion to occur on the site is low.

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

### Earthquakes, Fault Rupture, and Seismic Ground Failure

The San Francisco Bay Area is classified as the most seismically active region in the United States. The significant earthquakes that occur in the Bay Area are generally associated with crustal movement along well-defined active fault zones of the San Andreas Fault System, which regionally trends in a northwesterly direction. The United States Geological Survey (USGS) estimates that there is a 72 percent chance of at least one magnitude 6.7 earthquake occurring in the Bay Area by 2043.<sup>42</sup> The Hayward Fault is the most likely to generate an earthquake of this magnitude in the next 30 years.

The site is not located within a designated Alquist-Priolo Earthquake Fault Zone<sup>43</sup> or in a Santa Clara County Fault Hazard Zone<sup>44</sup> and no active faults have been mapped on-site. Therefore, the risk of fault rupture at the site is low. The site is not within a landslide hazard zone. Faults in the region are, however, capable of generating earthquakes of magnitude 7.0 or higher, and strong to very strong ground shaking would be expected to occur at the project site during a major earthquake on one of the nearby faults.

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

Liquefaction is the result of seismic activity and is characterized as the transformation of loose water-saturated soils from a solid state to a liquid state during ground shaking. During ground shaking, such as during earthquakes, cyclically induced stresses may cause increased pore water pressures within the soil voids, resulting in liquefaction. The project site is located within a state-designated and Santa Clara County liquefaction hazard zone.

### Lateral Spreading

Lateral spreading typically occurs as a form of horizontal displacement of relatively level alluvial material toward an open face such as a body of water, channel, or excavation, and is commonly associated with liquefaction. Coyote and Upper Penitencia Creeks are located adjacent to the project site, and there is potential for lateral spreading to occur at the site. In the project area, it is documented that lateral spreading towards Coyote Creek occurred during the 1906 earthquake.

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<sup>42</sup> United States Geological Survey. "Earthquake Outlook for the San Francisco Bay Region 2014 – 2043." August 2016. <https://pubs.usgs.gov/fs/2016/3020/fs20163020.pdf>.

<sup>43</sup> California Geological Survey. "Earthquake Zones of Required Investigation: San José West Quadrangle." Accessed March 19, 2020. <https://maps.conservation.ca.gov/cgs/EQZApp/app/>.

<sup>44</sup> Santa Clara County. "Geologic Hazard Zones." Accessed March 19, 2020. <https://sccplanning.maps.arcgis.com/apps/webappviewer/index.html?id=5ef8100336234fbdafc5769494cfe373>.

## Soils

Soils on the project site have moderate to high shrink/swell potential.<sup>45</sup> Soil shrinking and swelling is the result of the soil absorbing water in the winter and drying in the summer. Shrink/swell potential is directly correlated to the clay content of the soil. The shrinking and swelling action can damage improperly designed and/or constructed improvements.

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

### **Paleontological Resources**

Geologic units of Holocene age are generally not considered sensitive for paleontological resources, because biological remains younger than 10,000 years are not usually considered fossils. These sediments have low potential to yield fossil resources or to contain significant nonrenewable paleontological resources. These recent sediments, however, may overlie older Pleistocene sediments with high potential to contain paleontological resources. Pleistocene sediments, often found at depths of greater than 10 feet below the ground surface, have yielded the fossil remains of plants and extinct terrestrial vertebrates. Based on the underlying geologic formation of the project site, the Envision San José 2040 General Plan EIR found the project site to have a high sensitivity (at depth) for paleontological resources.

### **3.7.2 Impact Discussion**

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

- a) Directly or indirectly cause potential substantial adverse effects, including the risk of loss, injury, or death involving:
  - Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault (refer to Division of Mines and Geology Special Publication 42)?
  - Strong seismic ground shaking?
  - Seismic-related ground failure, including liquefaction?
  - Landslides?
- b) Result in substantial soil erosion or the loss of topsoil?
- c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?
- d) Be located on expansive soil, as defined in the current California Building Code, creating substantial direct or indirect risks to life or property?
- e) Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water?

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<sup>45</sup> United States Department of Agriculture. *Soils of Santa Clara County*. June 1968.

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

### 3.7.2.1 *Project Impacts*

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

#### **Option 1 and Option 2**

The proposed project is located within a State of California Liquefaction Hazard Zone and near existing active faults that can cause substantial ground shaking. The project would be required to implement the standard permit condition listed below, consistent with the General Plan and current standard practices in the City of San José, to ensure substantial adverse impacts would not occur.

#### **Standard Permit Condition:**

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

With implementation of the above standard permit condition, seismic and seismic-related impacts would be less than significant and the proposed project (both Option 1 and Option 2) would not exacerbate existing geologic conditions on adjacent sites. **(Less than Significant Impact)**

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

#### **Option 1 and Option 2**

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

The City's National Pollutant Discharge Elimination System (NPDES) Permit, urban runoff policies, and the Municipal Code are the primary means of enforcing erosion control measures through the grading and building permit process. The Envision San José 2040 General Plan EIR concluded that



with the regulatory programs currently in place, the possible impacts of accelerated erosion during construction would be less than significant. The project is required to comply with applicable City regulatory programs pertaining to construction-related erosion. Because the project would comply with the regulations identified in the Envision San José 2040 General Plan EIR, it would have a less than significant soil erosion impact. Further, the project would be required to implement the standard permit conditions, listed below, during construction.

**Standard Permit Conditions:**

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

With implementation of the above standard permit conditions, and compliance with applicable regulations and City policies, construction of the proposed project (both Option 1 and Option 2) would have a less than significant impact due to erosion. **(Less than Significant Impact)**

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

**Option 1 and Option 2**

The project site is located in an area of moderate expansion potential and very strong ground shaking during an earthquake. As discussed under checklist question a) above, the proposed project (both Option 1 and Option 2) would be constructed in compliance with the CBC to address soil instability and development of the project site would not change or exacerbate the geologic conditions of the project area and would not result in a significant geology hazards impact. The project would also be subject to the standard permit condition listed under checklist question a) above, which requires compliance with recommendations of the Geotechnical Investigation and review and approval by the Department of Public Works. **(Less than Significant Impact)**

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

**Option 1 and Option 2**

The project site is located on expansive soil as defined in Section 1803.5.3 of the CBC. Development of the proposed project, however, would be required to implement the Condition of Approval below, in conformance with the General Plan and current practices in the City of San José, to lessen impacts from expansive soils to a less than significant level.

### **Project Condition of Approval:**

- The project applicant shall retain a qualified professional to prepare a design-level geotechnical investigation for the project and submit to the City of San José Public Works Department for review and approval as part of the building permit review and issuance process. The project shall implement the recommendations in the investigation to minimize impacts from expansive soils. Options to address these conditions may range from removal of the problematic soils and replacement, as needed, with properly conditioned and compacted fill, lime treat soils, and to design and construct improvements to withstand the forces exerted during the expected shrink-swell cycles and settlements.

With implementation of the above Condition of Approval, the proposed project (both Option 1 and Option 2) would result in a less than significant impact due to expansive soils. **(Less than Significant Impact)**

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

#### **Option 1 and Option 2**

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

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

#### **Option 1 and Option 2**

Excavation on-site would extend to approximately 25 feet below grade, and could potentially expose Pleistocene sediments. As a result, paleontological resources could be discovered during project excavation and grading. The project would implement the standard permit conditions below to reduce potential impacts to paleontological resources.

### **Standard Permit Conditions:**

- The project applicant shall ensure all construction personnel receive paleontological awareness training that includes information on the possibility of encountering fossils during construction, the types of fossils likely to be seen, based on past finds in the project area and proper procedures in the event fossils are encountered. Worker training shall be prepared and presented by a qualified paleontologist.
- If vertebrate fossils are discovered during construction, all work on the site shall stop immediately until a qualified professional paleontologist can 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 Director of Planning, Building and Code Enforcement or Director's designee shall be responsible for ensuring that the project applicant implements the recommendations of the paleontological monitor regarding treatment and reporting.

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

### **3.7.2.2      *Cumulative Impacts***

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

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#### **Option 1 and Option 2**

The cumulative projects in the project vicinity would be subject to similar geology, soils, and seismicity conditions as the proposed project. All cumulative projects occurring within San José would implement standard permit conditions related to geologic hazards and would be constructed consistent with the CBC and design-level geotechnical recommendations in order to avoid impacts from seismicity and geologic and soils hazards, and/or reduce impacts to a less than significant level. The cumulative projects would also be subject to similar CEQA requirements and standard permit conditions as the proposed project with regard to avoidance and lessening of paleontological impacts. For these reasons, the cumulative projects, combined with the proposed project (both Option 1 and Option 2), would not result in significant cumulative geology and soils impacts. **(Less than Significant Cumulative Impact)**

### **3.7.3      Non-CEQA Effects**

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

Because the proposed project (both Option 1 and Option 2) would be required to comply with the geotechnical report, CBC, and regulations identified in the Envision San José 2040 General Plan that ensure geologic hazards are adequately addressed, the project would comply with General Plan policies EC-4.2 and EC-4.4.

### 3.8 GREENHOUSE GAS EMISSIONS

The following discussion is based upon an Air Quality, Community Risk, and Greenhouse Gas Assessment prepared by Illingworth & Rodkin, Inc. on July 7, 2020 and updated on September 17, 2020. A copy of this report is included in Appendix B of this document.

#### 3.8.1 Environmental Setting

##### 3.8.1.1 *Background Information*

Gases that trap heat in the atmosphere, greenhouse gases (GHGs), regulate the earth's temperature. This phenomenon, known as the greenhouse effect, is responsible for maintaining a habitable climate. In GHG emission inventories, the weight of each gas is multiplied by its Global Warming Potential (GWP) and is measured in units of CO<sub>2</sub> equivalents (CO<sub>2</sub>e). The most common GHGs are carbon dioxide (CO<sub>2</sub>) and water vapor but there are also several others, most importantly methane (CH<sub>4</sub>), nitrous oxide (N<sub>2</sub>O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF<sub>6</sub>). These are released into the earth's atmosphere through a variety of natural processes and human activities. Sources of GHGs are generally as follows:

- CO<sub>2</sub> and N<sub>2</sub>O are byproducts of fossil fuel combustion.
- N<sub>2</sub>O is associated with agricultural operations such as fertilization of crops.
- CH<sub>4</sub> is commonly created by off-gassing from agricultural practices (e.g., keeping livestock) and landfill operations.
- Chlorofluorocarbons (CFCs) were widely used as refrigerants, propellants, and cleaning solvents, but their production has been stopped by international treaty.
- HFCs are now used as a substitute for CFCs in refrigeration and cooling.
- PFCs and SF<sub>6</sub> emissions are commonly created by industries such as aluminum production and semiconductor manufacturing.

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

### **3.8.1.2      *Regulatory Framework***

#### **Federal and State**

##### Clean Air Act

The Environmental Protection Agency (EPA) is responsible for overseeing implementation of the Clean Air Act and its subsequent amendments. In 2009, the EPA issued the “Endangerment Finding,” which found that emissions of six GHGs threaten the health and welfare of current and future generations. As a result of the Endangerment Finding, GHGs are considered air pollutants regulated under the Clean Air Act. The EPA began regulating GHGs under the Clean Air Act from mobile and stationary sources of air pollution in 2011.

##### Assembly Bill 32

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

In 2016, Senate Bill (SB 32) was signed into law, amending the California Global Warming Solution Act. SB 32, and accompanying Executive Order B-30-15, require CARB to ensure that statewide GHG emissions are reduced to 40 percent below the 1990 level by 2030. CARB updated its Climate Change Scoping Plan in December of 2017 to express the 2030 statewide target in terms of million metric tons of CO<sub>2</sub>e (MMTCO<sub>2</sub>e). Based on the emissions reductions directed by SB 32, the annual 2030 statewide target emissions level for California is 260 MMTCO<sub>2</sub>e.

##### Senate Bill 375

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

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

## **Regional and Local**

### 2017 Clean Air Plan

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

### CEQA Air Quality Guidelines

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

### City of San José Municipal Code

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

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

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

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

### San José Greenhouse Gas Reduction Strategy

The City's GHG Reduction Strategy includes strategies, policies, and action items to help reduce GHG emissions. The GHG Reduction Strategy is intended to meet the mandates outlined in the CEQA Air Quality Guidelines, as well as the BAAQMD requirements for Qualified GHG Reduction Strategies.

The City's GHG Reduction Strategy identifies GHG emissions reduction measures to be implemented by development projects as part of three categories: built environment and energy, land use and transportation, and recycling and waste reduction. Some measures are mandatory for all



proposed development projects and others are voluntary and could be incorporated as mitigation measures for proposed projects, at the City's discretion.

### Envision San José 2040 General Plan

Various policies in the Envision San José 2040 General Plan have been adopted for the purpose of reducing or avoiding impacts related to air quality, as listed in the following table. In addition, goals and policies throughout the General Plan encourage a reduction in vehicle miles traveled through land use, pedestrian, bicycle, and access to transit improvements, parking strategies that reduce automobile travel through parking supply and pricing management, and requirements for Transportation Demand Management programs for large employers. Additional policies have been adopted to reduce energy use (and thus emissions from fuel use). Refer to Sections 3.3 Air Quality, 3.6 Energy, and 3.16 Transportation for these policies.

<b>General Plan Policies - GHG Emissions</b>	
<b>Measurable Environmental Sustainability</b>	
Policy MS-1.1	Demonstrate leadership in the development and implementation of green building policies and practices. Ensure that all projects are consistent with or exceed the City's Green Building Ordinance and City Council Policies as well as State and/or regional policies which require that projects incorporate various green building principles into their design and construction.
Policy MS-1.2	Continually increase the number and proportion of buildings within San José that make use of green building practices by incorporating those practices into both new construction and retrofit of existing structures.
Policy MS-1.4	Foster awareness of San José's business and residential communities of the economic and environmental benefits of green building practices. Encourage design and construction of environmentally responsible commercial and residential buildings that are also operated and maintained to reduce waste, conserve water, and meet other environmental objectives.
Policy MS-2.3	Utilize solar orientation (i.e., building placement), landscaping, design, and construction techniques for new construction to minimize energy consumption.
Policy MS-2.6	Promote roofing design and surface treatments that reduce the heat island effect of new and existing development and support reduced energy use, reduced air pollution, and a healthy urban forest. Connect businesses and residents with cool roof rebate programs through City outreach efforts.
Policy MS-2.11	Require new development to incorporate green building policies, including those required by the Green Building Ordinance. Specifically, target reduced energy use through construction techniques (e.g., design of building envelopes and systems to maximize energy performance), through architectural design (e.g., design to maximize cross ventilation and interior daylight) and through site design techniques (e.g., orienting buildings on sites to maximize effectiveness of passive solar design.).
Policy MS-5.5	Maximize recycling and composting from all residents, businesses, and institutions in the City.
Policy MS-6.8	Maximize reuse, recycling, and composting citywide.

<b>General Plan Policies - GHG Emissions</b>	
Policy MS-14.4	Implement the City's Green Building Policies so that new construction and rehabilitation of existing buildings fully implements industry best practices, including the use of optimized energy systems, selection of materials and resources, water efficiency, sustainable site selection, passive solar building design, and planting of trees and other landscape materials to reduce energy consumption.
Policy MS-17.2	Ensure that development within San José is planned and built in a manner consistent with sustainable use of current and future water supplies by encouraging sustainable development practices, including low-impact development, water-efficient development and green building techniques. Support the location of new development within the vicinity of the recycled water system and promote expansion of the SBWR system to areas planned for new development. Residential development outside of the Urban Service Area will only be approved at minimal levels and only allowed to use non-recycled water at urban intensities. For residential development outside of the Urban Service Area, restrict water usage to well water, rainwater collection or other similar sustainable practice. Non-residential development may use the same sources and potentially make use of recycled water, provided that its use will not result in conflicts with other General Plan policies, including geologic or habitat impacts. To maximize the efficient and environmentally beneficial use of water, outside of the Urban Service Area, limit water consumption for new development so that it does not diminish the water supply available for projected development within San José's urbanized areas.
Policy MS-21.1	Manage the Community Forest to achieve San José's environmental goals for water and energy conservation, wildlife habitat preservation, stormwater retention, heat reduction in urban areas, energy conservation, and the removal of carbon dioxide from the atmosphere.
Policy MS-21.3	Ensure that San José's Community Forest is comprised of species that have low water requirements and are well adapted to its Mediterranean climate. Select and plant diverse species to prevent monocultures that are vulnerable to pest invasions. Furthermore, consider the appropriate placement of tree species and their lifespan to ensure the perpetuation of the Community Forest.
<b>Transportation</b>	
Policy TR-1.16	Develop a strategy to construct a network of public and private alternative fuel vehicle charging/fueling stations city wide. Revise parking standards to require the installation of electric charging infrastructure at new large employment sites and large, multiple family residential developments.
Policy TR-7.1	Require large employers to develop and maintain TDM programs to reduce the vehicle trips and vehicle miles generated by their employees through the use of shuttles, provision for car-sharing, bicycle sharing, carpool, parking strategies and other measures.
<b>Compact Development</b>	
Policy CD-2.5	Integrate Green Building Goals and Policies of this Plan into site design to create healthful environments. Consider factors such as shaded parking areas, pedestrian

<b>General Plan Policies - GHG Emissions</b>	
	connections, minimization of impervious surfaces, incorporation of stormwater treatment measures, appropriate building orientations, etc.
Policy CD-3.3	Within new development, create 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 and other site features and adjacent public streets.
Policy CD-5.1	Design areas to promote pedestrian and bicycle movements and to facilitate interaction between community members and to strengthen the sense of community.

### Climate Smart San José

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

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

### Reach Building Code

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

#### **3.8.1.3      *Existing Conditions***

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

#### **3.8.2      Impact Discussion**

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

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

### **3.8.2.1      *Thresholds of Significance***

As described previously, BAAQMD adopted GHG emissions thresholds of significance to assist in the review of projects under CEQA. These thresholds were designed to establish the level at which BAAQMD has determined that GHG emissions would cause significant environmental impacts. The GHG emissions thresholds identified by BAAQMD are 1,100 metric tons (MT) of CO<sub>2</sub>e per year or 4.6 MT CO<sub>2</sub>e per service population per year. A project that is in compliance with the City's Climate Action Plan (a qualified GHG Reduction Strategy) is considered to have a less than significant GHG impact regardless of its emissions.

The numeric thresholds set by BAAQMD and included within the City's Climate Action Plan were calculated to achieve the state's 2020 target set by AB 32 for GHG emissions levels (and not the SB 32 specified target for 2030 of 40 percent below the 1990/2020 GHG emissions level). The project would be constructed over a period of six years. The project, therefore, would not be fully constructed and occupied until after December 31, 2020. Because the project would be completed in the post-2020 timeframe, the project would not be covered under the City's Climate Action Plan.

CARB has completed a Scoping Plan to implement SB 32, which will be utilized by BAAQMD to establish the 2030 GHG efficiency threshold. BAAQMD has yet to publish a quantified GHG efficiency threshold for 2030. The use of the 2020 "bright line" thresholds of 1,100 MT of CO<sub>2</sub>e per year or an adjusted value for 2030 is not meaningful for a project of this size and scale. For the purposes of this analysis, a "Substantial Progress" efficiency metric of 2.6 MT CO<sub>2</sub>e per service population per year has been calculated for 2030 based on the GHG reduction goals of SB 32 and Executive Order B-30-15, taking into account the 1990 inventory and the projected 2030 statewide population and employment levels.

### **3.8.2.2      *Project Impacts***

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

#### **Option 1 and Option 2**

GHG emissions associated with development of the proposed project would occur over the short-term from construction activities, consisting primarily of emissions from equipment exhaust and vehicle trips. There would also be long-term operational emissions associated with vehicular traffic within the project vicinity, energy and water usage, and solid waste disposal. Emissions for the proposed project were analyzed using the California Emissions Estimator Model (CalEEMod) and the methodology recommended in the BAAQMD CEQA Air Quality Guidelines as discussed below.

## Construction Emissions

Construction activity of both project options would generate an estimated 33,927 MT CO<sub>2</sub>e of GHG emissions over six years of construction (see Appendix B). These are the emissions from on-site operation of construction equipment, vendor and hauling truck trips, and worker trips. Neither the City nor BAAQMD have an adopted threshold of significance for construction-related GHG emissions, though BAAQMD recommends quantifying emissions and disclosing that GHG emissions would occur during construction. Construction-related GHG emissions vary depending on the level of activity, length of the construction period, specific construction operations, types of equipment, and number of personnel. Because construction of both options would last approximately six years and would not result in a permanent increase in emissions, the project would not interfere with the implementation of AB 32 or SB 32 in 2030. **(Less than Significant Impact)**

## Operational Emissions

Table 3.8-1 shows the annual emissions of each project option. Option 1 would generate an estimated 24,345 MT CO<sub>2</sub>e of annual GHG emissions under operations in 2029, and 23,934 MT CO<sub>2</sub>e in 2030. Option 2 would generate 30,754 MT CO<sub>2</sub>e in 2029, and 30,249 MT CO<sub>2</sub>e in 2030. The total service population would be approximately 18,339 persons for Option 1, and 22,339 persons for Option 2.<sup>46</sup> See Appendix B for emissions calculations.

To be considered an exceedance, the project must exceed the GHG service population threshold in the year 2030. As shown in Table 3.8-1 below, the per capita emissions from Options 1 and 2 would not exceed the threshold of 2.6 MT CO<sub>2</sub>e/year/service population in 2030. Therefore, the proposed project (both Option 1 and Option 2) would not be in exceedance of the applicable GHG emissions efficiency metric and the project would have a less-than-significant impact. **(Less than Significant Impact)**

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<sup>46</sup> The service population includes both residents and employees projected for the project site.

<b>Table 3.8-1: Annual Project GHG Emissions (CO<sub>2</sub>e) in Metric Tons and Per Capita</b>		
<b>Source Category</b>	<b>Proposed Project in 2029</b>	<b>Proposed Project in 2030</b>
<b>Option 1</b>		
Area	43	43
Energy Consumption	1,937	1,937
Mobile	19,686	19,275
Solid Waste Generation	1,842	1,842
Water Usage	837	837
Total (MT CO <sub>2</sub> e/year)	24,345	23,934
Service Population Emissions (MT CO <sub>2</sub> e/year/service population)	1.33	1.31
<b>Option 2</b>		
Area	43	43
Energy Consumption	2,991	2,991
Mobile	24,193	23,689
Solid Waste Generation	2,403	2,403
Water Usage	1,123	1,123
Total (MT CO <sub>2</sub> e/year)	30,754	30,249
Service Population Emissions (MT CO <sub>2</sub> e/year/service population)	1.38	1.35
<i>Service Population Significance Threshold</i>		<i>2.6 MT CO<sub>2</sub>e/year/service population in 2030</i>
<b>Exceeds threshold?</b>		
Option 1	--	No
Option 2	--	No

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

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**Option 1 and Option 2**

City of San José Greenhouse Gas Reduction Strategy

While the construction and operation of the proposed project would not be completed prior to December 31, 2020, the project would comply with all applicable mandatory measures and voluntary measures required by the City to ensure its consistency with the City's Greenhouse Gas Reduction Strategy (GHGRS).

The City of San José's GHGRS is the primary benchmark used for assessing whether the proposed project would contribute significantly to GHG emissions in the region. The GHGRS was developed



in accordance with the BAAQMD CEQA Guidelines and with CEQA Guidelines Section 15183.5, where GHG Reduction Plans are specifically addressed.

The proposed project would contribute to regional GHG emissions, both through construction and operational emissions. Consistency with the Land Use/Transportation Diagram in the General Plan (General Plan Goals/Policies IP-1, LU-10), along with conformance to the City's Green Building Measures (General Plan Goals MS-1, MS-14) would ensure that the project complies with the City's GHGRS. The GHGRS lists mandatory criteria that development projects must satisfy in order to be consistent with City goals and policies. The mandatory criteria for development projects are listed below.

1. Consistency with the Land Use/Transportation Diagram (General Plan Goals/Policies IP-1, LU-10);
2. Implementation of Green Building Measures (General Plan Goals MS-1, MS-14)
  - a. Solar site orientation
  - b. Site design
  - c. Architectural design
  - d. Construction techniques
  - e. Consistency with City Green Building Ordinances and Policies
  - f. Consistency with GHGRS Policies MS-1.1, MS-1.2, MS-2.3, MS-2.11, and MS-14.4;
3. Pedestrian/Bicycle Site Design Measures
  - a. Consistency with Zoning Ordinance
  - b. Consistency with GHGRS Policies CD-2.1, CD-3.2, CD-3.3, CD-3.4, CD-3.6, CD-3.8, CD-3.10, CD-5.1, LU-5.4, LU-5.5, LU-9.1, TR-2.8, TR-2.18, TR-3.3, and TR-6.7;
4. Salvage building materials and architectural elements from historic structures to be demolished to allow reuse (General Plan Policy LU-16.4), if applicable;
5. Complete an evaluation of operational energy efficiency and design measures for energy-intensive industries (e.g., data centers; General Plan Policy MS-2.8), if applicable;
6. Preparation and implementation of the Transportation Demand Management Program at large employers (General Plan Policy TR-7.1), if applicable; and
7. Limits on drive-through and vehicle serving uses, if applicable. All new uses that serve the occupants of vehicles (e.g., drive-through windows, car washes, service stations) must not disrupt pedestrian flow (General Plan Policy LU-3.6).

The proposed project (both Option 1 and Option 2) is consistent with the General Plan land use for the site (refer to Section 3.11, Land Use and Planning). The project would be constructed in compliance with the San José Green Building Ordinance and California Building Standards Code (CBC) requirements and would include bicycle parking consistent with the City's bicycle parking requirement. Because the project is consistent with planned growth in the General Plan and would comply with Policy 6-32 and CBC requirements, the project would be consistent with Mandatory Criteria 1, 2, and 3. The project would include mitigation measures to incorporate physical attributes and recognition of the Flea Market (MM CUL-1.1) and implement a Transportation Demand Management (TDM) plan (MM AIR-2.1) and, therefore, would be consistent with Mandatory Criteria 4 and 6. Criteria 5 and 7 are not applicable to the proposed project because the project does

not include a data center or other energy-intensive use, or drive-through or vehicle serving uses. The proposed project is consistent with the mandatory GHGRS goals and policies intended to reduce GHG emissions. Therefore, the project (both Option 1 and Option 2) would have a less-than-significant impact. **(Less than Significant Impact)**

### **3.8.2.3**      *Cumulative Impacts*

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

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Development under the Berryessa BART Urban Village Plan, including the proposed project, was evaluated in the Envision San José 2040 General Plan EIR and the Envision San José 2040 General Plan Supplemental Program EIR (2015 SEIR). The 2015 SEIR included Citywide measures and policy changes to reduce GHG emissions consistent with Executive Order S-3-05. The project would be consistent with applicable GHG regulations, including the General Plan and GHGRS, to reduce emissions and would not result in the exceedance of the GHG emissions efficiency metric. As discussed in Section 3.8.1, GHG emissions have a broader, global impact; therefore, the project's cumulative GHG impacts are discussed in greater detail above. **(Less than Significant Cumulative Impact)**

### **3.9 HAZARDS AND HAZARDOUS MATERIALS**

The following discussion is based upon a Phase I Environmental Site Assessment (ESA) Update prepared by Cornerstone Earth Group on March 28, 2018. The ESA Update was prepared to supplement a Phase I ESA report prepared by Lowney Associates on March 30, 2005. A copy of the ESA Update is included in Appendix E of this document.

As shown in Table 1.2-1, a comment from George Simmel was received on the Notice of Preparation (NOP). The comment requested that the EIR address existing site contamination from previous chemical spills and automotive oils. Mitigation measures to reduce and/or avoid impacts related to potential site contamination are discussed under checklist question a) below.

#### **3.9.1 Environmental Setting**

##### **3.9.1.1 *Regulatory Framework***

###### **Overview**

The storage, use, generation, transport, and disposal of hazardous materials and waste are highly regulated under federal and state laws. Federal regulations and policies related to development include the Comprehensive Environmental Response, Compensation, and Liability Act, commonly known as Superfund, and the Resource Conservation and Recovery Act. In California, the Environmental Protection Agency (EPA) has granted most enforcement authority over federal hazardous materials regulations to the California Environmental Protection Agency (CalEPA). In turn, local agencies have been granted responsibility for implementation and enforcement of many hazardous materials regulations under the Certified Unified Program Agency (CUPA) program.

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

###### **Federal and State**

###### **Federal Aviation Regulations Part 77**

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

### Government Code Section 65962.5

Section 65962.5 of the Government Code requires CalEPA to develop and update a list of hazardous waste and substances sites, known as the Cortese List. The Cortese List is used by state and local agencies and developers to comply with CEQA requirements. The Cortese List includes hazardous substance release sites identified by the Department of Toxic Substances Control (DTSC), State Water Resources Control Board (SWRCB), and Santa Clara County. The project site is on the Cortese List.<sup>47</sup>

### California Accidental Release Prevention Program

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

### Asbestos-Containing Materials

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

### California Code of Regulations Title 8, Section 1532.1

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

## **Regional and Local**

### Municipal Regional Permit Provision C.12.f

Polychlorinated biphenyls (PCBs) were produced in the United States between 1955 and 1978 and used in hundreds of industrial and commercial applications, including building and structure materials such as plasticizers, paints, sealants, caulk, and wood floor finishes. In 1979, the EPA banned the production and use of PCBs due to their potential harmful health effects and persistence

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<sup>47</sup> California Environmental Protection Agency. "Cortese List Data Resources." Accessed September 26, 2019. <https://calepa.ca.gov/sitecleanup/corteselist>.

in the environment. PCBs can still be released to the environment today during demolition of buildings that contain legacy caulks, sealants, or other PCB-containing materials.

With the adoption of the San Francisco Bay Region Municipal Regional Stormwater National Pollutant Discharge Elimination System (NPDES) Permit (MRP) by the San Francisco Bay Regional Water Quality Control Board on November 19, 2015, Provision C.12.f requires that permittees develop an assessment protocol methodology for managing materials with PCBs in applicable structures planned for demolition to ensure PCBs do not enter municipal storm drain systems.<sup>48</sup> Municipalities throughout the Bay Area are currently modifying demolition permit processes and implementing PCB screening protocols to comply with Provision C.12.f. As of July 1, 2019, buildings constructed between 1955 and 1978 that are proposed for demolition must be screened for the presence of PCBs prior to the issuance of a demolition permit.

#### Envision San José 2040 General Plan

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

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

<sup>48</sup> California Regional Water Quality Control Board. *San Francisco Bay Region Municipal Regional Stormwater NPDES Permit*. November 2015.

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

### **3.9.1.2      *Existing Conditions***

#### **Site History and Current Uses**

In 1939, a portion of the 61.5-acre project site was developed with a feed lot/meat packing plant, and other areas of the site were used for agricultural purposes, including orchards and row crops. Several residential and/or agricultural structures were also present. By the mid-1950s, the feed lot/meat packing plant had expanded to include most of the northern portion of the site. The San José Flea Market began operation in 1960 on the northern portion of the project site, which was previously occupied by the feed lot/meat packing plant. The southernmost site parcel (Assessor's Parcel Number



[APN] 254-17-095) remained as agricultural land with a residence and associated outbuildings until it was converted to a paved parking lot during the late 1990s.

Operations at the Flea Market include a centrally located corporation yard/facility maintenance area with a machine shop, automotive maintenance shop, welding and woodworking shops, a printing shop, and a sign fabrication shop. A hazardous materials storage shed, two emergency generators, a paint shop, and two PG&E-owned electrical transformers are located on the site. Locations of these operations are shown on Figure 3.9-1.

### **Chemical Storage and Use**

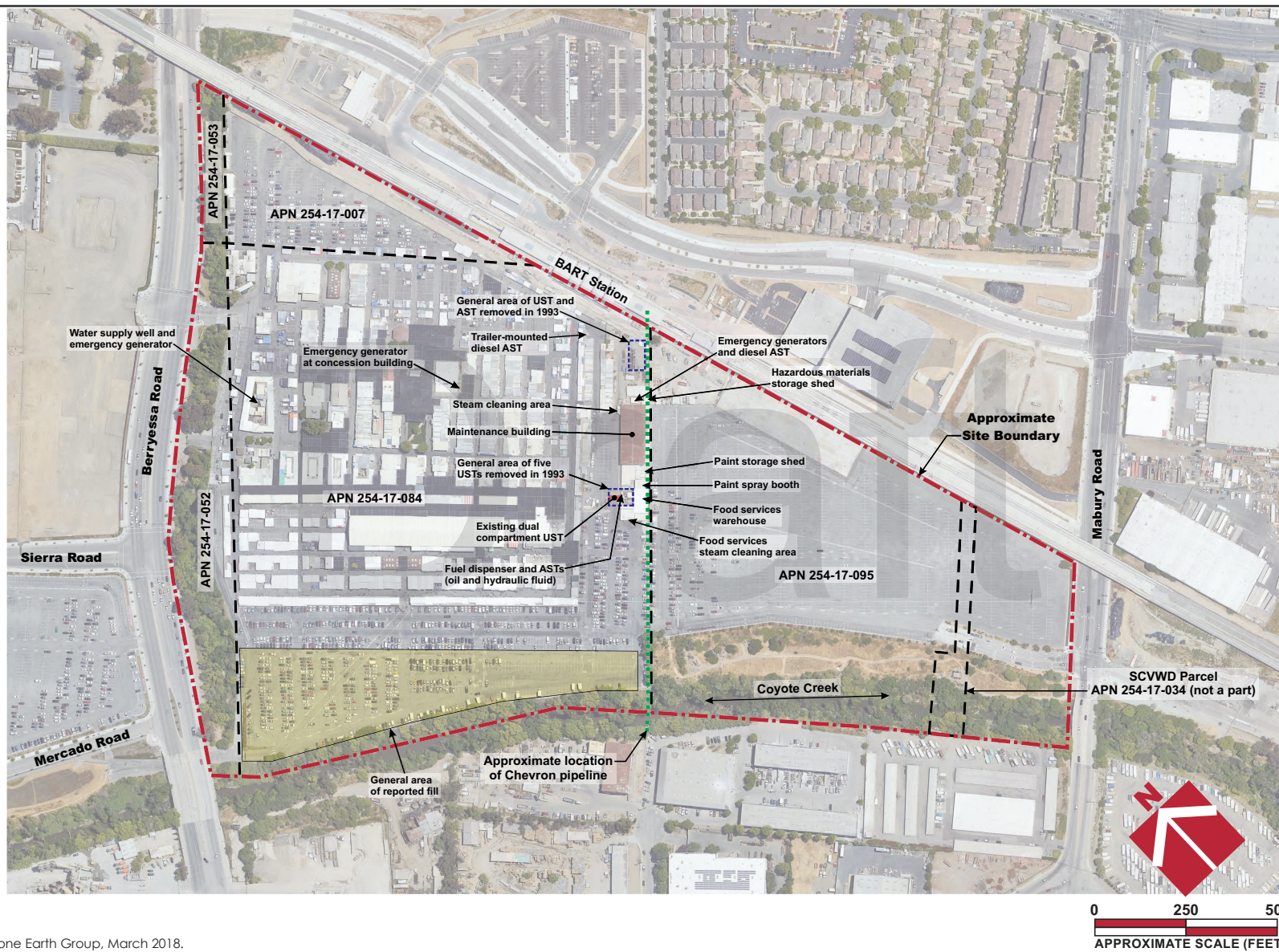
The Flea Market is listed on City and County databases of facilities that store hazardous materials, and as a Resource Conservation and Recovery Act (RCRA) Small Quantity Generator (SQG) of hazardous waste. In preparation of the 2018 Phase I ESA Update, Cornerstone Earth Group completed a review of City of San José Building Department, San José Fire Department (SJFD), and Santa Clara County Department of Environmental Health (SCCDEH) files related to hazardous material use and storage for the site.

Historic chemical storage and use on-site by the Flea Market involved moderate quantities of automotive/engine repair and maintenance-related chemicals (oils, ethylene glycol, gasoline, diesel, hydrocarbon solvent, and automatic transmission fluid) and painting/printing-related chemicals (paints, lacquers, stains, inks, and thinners). A paint spray booth, petroleum pipeline, print shop, paint shop, steam cleaning area, and several storage areas were present. Smaller quantities of numerous automotive/engine repair and maintenance-related chemicals, kerosene, solvents, Freon, and compressed welding gases were identified on-site. Chemical drums and some smaller containers were stored within secondary containment. Many smaller containers were not secondarily contained, and most of the paint and paint-related materials were not stored within secondary containment. An inspection report from 1985 documented the spillage of hydraulic fluid and motor oil during dispensing, due to the lack of a secondary containment system.

The Flea Market is also listed on the HAZNET database, which contains data extracted from the copies of hazardous waste manifests received each year by the DTSC. Liquid wastes disposed between 1993 and 2016 consisted of asbestos-containing waste; organic solids; aqueous solutions; oil-containing waste; organic liquid mixtures; unspecified solvent mixtures; organic liquids with metals; waste and mixed oil; oxygenated solvents; tank bottom waste; off-specification, aged or surplus inorganics; hydrocarbon solvents; photochemicals/photoprocessing waste; and latex waste.

### **Underground Storage Tanks**

The Flea Market is listed on City and County databases of facilities that operate underground storage tanks (USTs). The Flea Market historically stored gasoline and diesel in USTs, and jet fuel was stored in an aboveground storage tank (AST). A gasoline UST and a jet fuel AST were removed from the site in 1993. Three gasoline USTs and two diesel USTs were removed in 1999. An 8,000-gallon fiberglass dual compartment UST containing gasoline and diesel was installed in 1999, and is still present on the site. Diesel ASTs for emergency generators, hydraulic oil ASTs for below-grade vehicle lifts, and motor oil ASTs are also located on-site. Approximate tank locations are shown on Figure 3.9-1.



Soil and groundwater samples were collected during the tank removals in 1993 and 1999, and in subsequent studies. Residual concentrations of total petroleum hydrocarbons as gasoline (TPHg) and diesel (TPHd), as well as benzene, were detected in soil at concentrations exceeding the Regional Water Quality Control Board (RWQCB)'s Tier 1 Environmental Screening Levels (ESLs; see Appendix E).<sup>49</sup> Groundwater samples exceeded Tier 1 ESLs for TPHd only.

The two leaking underground storage tank (LUST) cases at the Flea Market site are both identified as being closed. The Santa Clara Valley Water District (Valley Water) issued case closure letters dated April 4, 1996 and October 30, 2000 for the USTs removed in 1993 and 1999, respectively. Valley Water stated that no further action related to the petroleum release(s) was required.

### **Soil and Groundwater Studies**

To evaluate potential impacts to the site from past agricultural uses, seven near-surface (zero to 0.5 foot depth) soil samples were collected from the site in March 2005. Dieldrin and lead were each detected in one soil sample at concentrations exceeding residential screening levels (see Appendix E). The organochlorine pesticide (OCP) and metal (lead, arsenic, and mercury) concentrations detected in the other soil samples did not exceed their respective residential screening levels.

Additional soil and groundwater sampling was completed at the site during June, July, and November 2005. The purpose of these sampling events was to evaluate soil and/or groundwater quality in the vicinity of the prior feed lot/meat packing facility, and at areas/features utilized by the Flea Market including 1) the former UST and AST locations, 2) the existing 8,000-gallon dual compartment UST, and 3) several Flea Market corporation/maintenance yard locations. Additional soil sampling also was completed to evaluate the extent of impacts in the vicinity of the two sampling locations where elevated lead or dieldrin concentrations were previously reported.

In soil samples collected at the former feed lot/meat packing facility, TPHd, TPH as oil (TPHo), OCP, and metal concentrations were detected at levels below the RWQCB's Tier 1 ESLs. In groundwater, TPHd, TPHo, and benzene exceeded the RWQCB's Tier 1 ESL in some samples.

At the Flea Market maintenance shop, TPHd was detected at 0.5 foot depth at concentrations exceeding the RWQCB's Tier 1 ESL. However, deeper soil samples (1.0 to 1.5 feet) and samples from additional borings drilled within 15 feet of the initial sampling location did not exceed residential screening levels, suggesting that the extent of TPHd impacts was limited. An elevated lead concentration was detected in one sample collected near a hazardous materials storage shed. The remaining concentrations detected in soil and groundwater in the vicinity of the USTs and at various Flea Market corporation/maintenance yard locations did not exceed their respective residential screening levels.

To evaluate the lateral and vertical extent of lead and dieldrin concentrations, soil samples were collected from three additional borings drilled within approximately 15 feet of the initial sampling

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<sup>49</sup> Environmental Screening Levels are used to screen sites for potential human health concerns where releases of hazardous chemicals to soil have occurred. ESLs are risk-based concentrations derived from standardized equations combining exposure information assumptions with toxicity data. Under most circumstances, the presence of a chemical in soil at concentrations below the corresponding screening level can be assumed not to pose a significant health risk.

locations. Deeper soil samples (1.0 and 2.5 feet) were collected at the locations where lead and dieldrin concentrations exceeded residential screening levels. An elevated lead concentration was detected at 1.0 foot depth at the original sampling location, but lead concentrations at the 2.5 foot depth and in soil from the surrounding three borings were typical of natural background concentrations. Dieldrin was not detected at the original sampling location at either the 1.0 or 2.5 foot depths, but was detected in near surface (zero to 0.5 foot depth) soil in each of the surrounding borings at concentrations exceeding the residential screening level (see Appendix E).

### **3.9.2            Impact Discussion**

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

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

#### **3.9.2.1            *Project Impacts***

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

### **Option 1 and Option 2**

#### **Underground Storage Tanks**

Option 1 and Option 2 construction would each require excavation up to 25 feet below grade. It is anticipated that Option 2's additional 1.2 million square feet of commercial development would require buildings to have larger footprints than those proposed by Option 1. Because commercial uses are proposed only in the eastern area of the site under both development options, differences in excavation extent and depth would be limited to that area. Excavation for residential development



would be the same under the two options since both options have the same residential capacity and buildings would likely be similar in size.

Gasoline and diesel currently are stored within a dual compartment 8,000-gallon UST on the site, which would be removed by the proposed project. A gasoline UST and a jet fuel AST were removed from the site in 1993. Three gasoline USTs and two diesel USTs were removed in 1999. Residual concentrations of petroleum hydrocarbons and benzene exceeding residential screening levels were identified in soil and groundwater near the former UST locations. Valley Water issued case closure letters dated April 4, 1996 and October 30, 2000 for the USTs removed in 1993 and 1999, respectively.

**Impact HAZ-1:** Redevelopment of the project site would require removal of the existing dual compartment underground storage tank. Hazardous materials concentrations in soil and groundwater, resulting from USTs and aboveground storage tanks previously located on the site, may be encountered during construction.  
**(Significant Impact)**

**Mitigation Measures:** The project would implement the following mitigation measures to reduce impacts related to existing and historic UST and AST on the site.

**MM HAZ-1.1:** The project applicant shall obtain proper permits from the Santa Clara County Department of Environmental Health and San José Fire Department prior to removal of the existing UST. Collect and analyze soil and groundwater (if encountered) beneath the UST after the removal under the direction of the SCCDEH. If the SCCDEH has determined the UST has leaked, perform all subsequent investigation and remediation as required under SCCDEH oversight.

During removal of the existing UST, underlying soil and groundwater samples shall be collected in the vicinity of the UST. The results of soil and groundwater sampling and testing shall be provided to the Director of Planning, Building and Code Enforcement or the Director's designee and the Environmental Compliance Officer of the City of San José for review.

**MM HAZ-1.2:** In areas of residual contamination from the previous UST and AST, prepare a Site Management Plan (SMP) or similar document to manage the cleanup of potential contamination to ensure there are no health risks to construction workers and future residences and site workers. Contact the SCCDEH to determine if the applicant needs to enter into the SCCDEH's Site Cleanup Program for oversight.

The SMP shall be prepared prior to construction to establish appropriate management practices for handling impacted soil, soil vapor, and groundwater, and shall include the following at a minimum:

- A detailed discussion of the site background;
- Management of stockpiles, including sampling, disposal, and dust and runoff control including implementation of a stormwater pollution prevention program;
- Procedures to follow if evidence of an unknown historic release of hazardous materials is discovered during excavation or demolition; and
- A health and safety plan (HSP) for each contractor working at the site, in an area below grade, that addresses the safety and health hazards of each site operation phase, including the requirements and procedures for employee protection. The HSP shall outline proper soil handling procedures and health and safety requirements to minimize work and public exposure to hazardous materials during construction.

With implementation of mitigation measures MM HAZ-1.1 through MM HAZ-1.2, the proposed project (both Option 1 and Option 2) would not result in impacts related to historic or existing USTs or ASTs. **(Less than Significant Impact with Mitigation Incorporated)**

#### Facility Closure

A variety of hazardous materials are used and stored on-site, mainly at the corporation yard/facility maintenance area, including automotive-related products, paint-related products, printing supplies, and other facility maintenance products. These materials are stored in 55-gallon drums, five-gallon buckets, and one-gallon containers. Several metal flammable material storage cabinets contain mostly aerosol cans, paint-related products, lubricants, and other maintenance products. Waste oils, used filters, used absorbents and rags, waste paint-related products, and waste printing materials are stored in drums, most of which are located on secondary containment pallets. Diesel fuel, motor oil, and hydraulic fluid are stored in ASTs. No evidence of significant hazardous materials spills has been identified in the corporation yard/facility maintenance area.

As part of the facility closure process for occupants that use and/or store hazardous materials, SJFD and SCCDEH typically require that a closure plan be submitted by the occupant that describes required closure activities, such as removal of remaining hazardous materials, cleaning of hazardous material handling equipment, decontamination of building surfaces, and waste disposal practices, among others.

**Impact HAZ-2:** To avoid impacts related to disposal of hazardous materials, the project would be required to implement a facility closure plan, including removal of existing hydraulic lifts. **(Significant Impact)**

**Mitigation Measures:** The project would implement the following mitigation measures to reduce impacts related to facility closure.

**MM HAZ-2.1:** Prior to issuance of a grading permit, the project applicant shall coordinate facility closure with the SJFD and SCCDEH to ensure that required closure activities are completed.



**MM HAZ-2.2:** The two subgrade hydraulic lifts in the corporate yard, including associated piping and hydraulic fluid reservoirs, shall be appropriately removed prior to issuance of a grading permit. Following removal of the lifts, verification soil samples shall be collected to document soil quality. Additional soil samples shall be collected at the locations of the trains associated with the two steam cleaning areas. Removal and sampling activities shall be observed and documented by an Environmental Professional. Remediation shall be completed to applicable regulatory standards, if necessary, to the satisfaction of the Director of Planning, Building and Code Enforcement or the Director's designee and the Environmental Compliance Officer of the City of San José.

With implementation of MM HAZ-2.1 and MM HAZ-2.2, the proposed project (both Option 1 and Option 2) would not result in significant impacts related to facility closure. **(Less than Significant Impact with Mitigation Incorporated)**

#### Imported Soil

Site grading is expected to require up to 70,000 cubic yards of soil to be imported from off-site to raise and level the site. The project would be required to document the source and quality of the soil imported to the site.

**Impact HAZ-3:** Soil imported to the project site for grading activities may result in contamination of the site. **(Significant Impact)**

**Mitigation Measures:** The project under both Option 1 and Option 2 would implement the following mitigation measures to reduce impacts related to imported soil.

**MM HAZ-3.1:** If the project requires importing soil for site grading, the project applicant shall evaluate the source and quality of imported soil consistent with the recommendations in the DTSC's October 2001 Clean Imported Fill Material Information Advisory. Evaluation of imported fill includes, but is not limited to, sourcing fill material from non-industrial sites, collection and analysis of fill samples, and documentation of the site selection and testing results. This documentation shall be provided to and approved by the Director of Planning, Building and Code Enforcement and the Environmental Compliance Officer of the City of San José prior to issuance of a grading permit.

With implementation of MM HAZ-3.1, the proposed project (both Option 1 and Option 2) would not result in significant impacts related to imported soil. **(Less than Significant Impact with Mitigation Incorporated)**

#### Soil and Groundwater Quality

In the vicinity of the former feed lot/meat packing facility (see location on Figure 3.9-1), analyzed constituent concentrations detected in soil did not exceed their respective residential screening levels. In groundwater, TPHd, TPHo, and benzene were detected at concentrations exceeding the RWQCB's

Tier 1 ESLs. The source of this contamination has not been determined due to sampling limitations caused by existing structures.

Elevated lead concentrations were sporadically detected in soil at the site. Lead concentrations reported at two sampling locations exceeded the residential screening level. The source of the lead was not identified. Soil adjacent to structures that are painted with lead-containing paint can become impacted with lead as a result of the weathering and/or peeling of painted surfaces. Although no information was identified during this study documenting the use of lead-based paint on-site, the detected lead concentrations could be associated with prior structures. Historically, there were several residences and associated outbuildings on-site, along with several prior structures that were associated with the former feed lot/meat packing facility.

Soil near wood framed structures also can be impacted by pesticides historically used to control termites. At agricultural properties, pesticides and/or pesticide application equipment often were stored in outbuildings such as barns and sheds.

Dieldrin concentrations exceeding the residential screening level were detected in the soil on the northern portion of the site (APN 254-17-007). Based on Cornerstone Earth Group's review of historical aerial photographs, this parcel historically was occupied by an orchard and later by row crops.

Fill was historically imported to the site to raise low lying land elevations near Coyote Creek. The source and quality of the fill are unknown.

**Impact HAZ-4:** Project implementation may encounter residual concentrations of chemicals, including TPHd, TPHo, benzene, lead, pesticides, and pesticide-related metals, that could expose construction workers, neighboring uses, and the environment to hazardous materials. **(Significant Impact)**

**Mitigation Measures:** The project under both Option 1 and Option 2 would implement the following mitigation measure to reduce impacts related to soil and groundwater quality.

**MM HAZ-4.1:** Prior to the issuance of any demolition or grading permits, the project applicant shall enter into an agreement with the SCCDEH's Site Cleanup Program to provide regulatory oversight. The applicant shall meet with the SCCDEH and perform additional soil and groundwater sampling and testing to adequately define the known and suspected contamination. A Remedial Action Work Plan and/or Soil Management Plan shall be prepared and submitted to the agency for their approval to demonstrate that cleanup standards will be met for the development of the site. All measures identified in the plan(s) shall be implemented during all phases of construction, as applicable.

Additional sampling and remediation shall include, at a minimum, the following areas: 1) TPHd, TPHo, and benzene groundwater sampling in the vicinity of the former feed lot/meat packing facility; 2) lead sampling in shallow soil surrounding former on-site structures; 3) shallow soil sampling near wood framed structures for organochlorine pesticides and pesticide-related metals (arsenic,

lead, and mercury); 4) shallow soil sampling on parcel 254-17-007 to define the extent of elevated dieldrin concentrations; and 5) soil sampling at planned earthwork locations within the fill area near Coyote Creek.

Evidence of regulatory oversight and approved plan(s) shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee and the Environmental Compliance Officer of the City of San José for approval prior to the issuance of any grading permits.

With implementation of MM HAZ-4.1, as well as MM HAZ-1.1 through MM HAZ-1.2 above, the proposed project (both Option 1 and Option 2) would not result in impacts related to soil and groundwater quality. **(Less than Significant Impact with Mitigation Incorporated)**

#### Wells and Septic Systems

Several groundwater monitoring wells historically were installed near the USTs. An active water supply well is also located on-site. Additional water supply wells reportedly were historically located at the site prior to acquisition by the Flea Market. Abandoned wells can act as a conduit for the vertical migration of groundwater contamination. If groundwater levels rise, an abandoned well can become an artisan well with uncontrolled water flow that can adversely impact future developments. In addition, septic systems associated with the former residences could remain on the site.

**Impact HAZ-5:** Groundwater monitoring wells, historic water supply wells, and septic systems associated with previous development may remain on the site, and could be encountered during or after project construction. If encountered, these structures could expose construction workers, neighboring uses, and the environment to hazardous materials. **(Significant Impact)**

**Mitigation Measures:** The project under both Option 1 and Option 2 would implement the following mitigation measure to destroy wells and septic systems on the site.

**MM HAZ-5.1:** Prior to issuance of a grading permit, the project applicant shall research well records from Valley Water and attempt to locate abandoned wells at the site. If the wells are identified, or subsequently encountered during earthwork activities, the wells shall be properly destroyed in accordance with Valley Water Ordinance 90-1. If septic systems are encountered during earthwork activities, those systems shall be abandoned in accordance with SCCDEH requirements.

With implementation of MM HAZ-5.1, historic wells and septic systems on the site would be destroyed in accordance with Valley Water and SCCDEH requirements, and would not result in significant impacts. **(Less than Significant Impact with Mitigation Incorporated)**

#### Asbestos and Lead-Based Paint on Existing Structures

Based on the age of existing development, it is likely that on-site buildings contain lead-based paint and/or asbestos. The project would be required to implement the standard permit conditions below to reduce the impacts of these materials during demolition.

**Standard Permit Conditions:** The project shall implement the following measures to reduce impacts related to lead-based paint and asbestos:

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

With implementation of the standard permit conditions above, the proposed project (both Option 1 and Option 2) would not result in significant impacts related to asbestos or lead-based paint. **(Less than Significant Impact)**

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

**Option 1 and Option 2**

Operation of the proposed residential and commercial development would include the use and storage of cleaning supplies and maintenance chemicals in small quantities, as well as operation of backup generators, similar to the current uses and nearby businesses. No other hazardous materials would be used or stored on-site. The small quantities of cleaning supplies and maintenance chemicals that would be transported, used, and stored on-site would not generate substantial hazardous emissions or accidental chemical releases that would pose a risk to site users or adjacent residential land uses. Compliance with applicable federal, state and local handling, storage, and disposal requirements would ensure that no significant hazards to adjacent residences are created by the routine transport, use, or disposal of hazardous substances. **(Less Than Significant Impact)**

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

**Option 1 and Option 2**

The closest school to the project site is Empire Gardens Elementary School, which is located approximately 0.6 mile southwest of the site. The project site is not within one-quarter mile of an existing or proposed school. Therefore, the proposed project (both Option 1 and Option 2) would not emit hazardous emissions or handle hazardous materials within one-quarter mile of an existing or proposed school. **(Less than Significant Impact)**

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

**Option 1 and Option 2**

Two LUST cases are listed at The Flea Market site. Both cases list gasoline in groundwater as the potential contaminant of concern. One case (T0608501176) was opened in September 1985 and closed in April 1996 following a soil and groundwater investigation and quarterly groundwater monitoring. The second case (T0608502408) was opened in April 1999 and closed in October 2000 following a soil and groundwater investigation. Both cases recorded No Further Action letters from the Leaking Underground Storage Tank Oversight Program.

The Flea Market was also listed on the HAZNET database, City and County databases of facilities that store hazardous materials and operate USTs, and as a RCRA Small Quantity Generator of hazardous waste.

The project would implement mitigation measures, including MM HAZ-1.1 through MM HAZ-2.2 and MM HAZ-4.1, to investigate existing soil and groundwater conditions and reduce hazards related to any previous releases at the site. With these mitigation measures, the proposed project (both Option 1 and Option 2) would not create a significant hazard to the public or the environment due to its inclusion on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5. **(Less than Significant Impact with Mitigation Incorporated)**

- 
- e) If located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard or excessive noise for people residing or working in the project area?**
- 

#### **Option 1 and Option 2**

The project site is not located within the Norman Y. Mineta San José International Airport Airport Influence Area (AIA) and, therefore, is not subject to the policies in the CLUP. Pursuant to FAR Part 77, any proposed structure on the site of a height greater than approximately 95 feet above ground level must be filed with the FAA for airspace safety review. FAA issuance of a “determination of no hazard,” and applicant compliance with any conditions set forth in such FAA determination, would ensure that the project would not adversely impact air safety. As a result, the proposed project (both Option 1 and Option 2) would not result in a safety hazard or excessive noise due to airport operations. **(Less than Significant Impact)**

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

#### **Option 1 and Option 2**

Built structures proposed by the project would be constructed in accordance with current building and fire codes to ensure structural stability and safety in the event of a seismic or seismic-related hazard. In addition, SJFD would review the site development plans to ensure fire protection design features are incorporated and adequate emergency access is provided. For these reasons, the proposed project (both Option 1 and Option 2) would not impair implementation of or physically interfere with the City’s San José Emergency Operations and Evacuation Plans. **(Less than Significant Impact)**

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

#### **Option 1 and Option 2**

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



### 3.9.2.2 *Cumulative Impacts*

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

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#### **Option 1 and Option 2**

The geographic area for cumulative hazards and hazardous materials impacts is the project site and within an approximate one-mile radius of the project site. This radius extends approximately to Sajak Avenue to the north, Interstate 680 to the east, East Saint James Street to the south, and North 10<sup>th</sup> Street to the west, and includes existing and previous industrial and commercial sites.

It is likely that hazardous materials may have been stored and used on, and/or transported to and from, some of these properties. In addition, many of the properties in San José were used for agricultural purposes prior to their urban development, and agricultural chemicals such as pesticides and fertilizers may have been used on these sites. The use of these chemicals can result in residual soil contamination, sometimes in concentrations that exceed regulatory thresholds. Further, development and redevelopment of some of the cumulative project sites would require demolition of existing buildings that may contain lead-based paint and/or ACMs. Demolition of these structures could expose construction workers to harmful levels of lead and/or ACMs. Based on the above-described conditions, which are present on many sites in San José, significant cumulative environmental impacts could occur because such conditions can lead to the exposure of people and the environment to hazardous materials.

The proposed project includes mitigation measures MM HAZ-1.1 through MM HAZ-5.1, as well as standard permit conditions, to reduce impacts associated with known and unknown hazardous materials storage, use, and contamination.

Similar to the proposed project, each of the cumulative development projects would implement mitigation measures for the risks associated with exposure to hazardous materials. Measures would include incorporating the requirements of applicable existing local, state, and federal laws, regulations, and agencies such as the SCCDEH, DTSC, and Cal/OSHA, during development. For these reasons, the proposed project (both Option 1 and Option 2) would not result in hazards and hazardous materials impacts that would have a cumulatively considerable contribution to significant cumulative hazards and hazardous materials impacts. **(Less than Significant Cumulative Impact with Mitigation Incorporated)**

### **3.10 HYDROLOGY AND WATER QUALITY**

The following discussion is based upon a Flooding and Drainage Evaluation prepared by Schaaf & Wheeler Consulting Civil Engineers on March 24, 2020. A copy of this report is included in Appendix F of this document.

#### **3.10.1 Environmental Setting**

##### **3.10.1.1 *Regulatory Framework***

#### **Federal and State**

##### **Clean Water Act and Porter-Cologne Water Quality Control Act**

The federal Clean Water Act (CWA) and California's Porter-Cologne Water Quality Control Act are the primary laws related to water quality. The CWA governs discharges to waters of the United States, which include oceans, bays, rivers, streams, lakes, ponds, and wetlands. The Porter-Cologne Act provides the basis for water quality regulation within California and assigns primary responsibility for the protection and enhancement of water quality to the State Water Resources Control Board (SWRCB) and the nine Regional Water Quality Control Boards (RWQCBs). These agencies are authorized to adopt regional water quality control plans, prescribe waste discharge requirements, and perform other functions concerning water quality control within their respective regions.

Regulations set forth by the Environmental Protection Agency (EPA) and the SWRCB have been developed to fulfill the requirements of this legislation. The EPA's regulations include the National Pollutant Discharge Elimination System (NPDES) permit program, which controls sources that discharge pollutants into waters of the United States. These regulations are implemented at the regional level by water quality control boards.

##### **National Flood Insurance Program**

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

##### **Statewide Construction General Permit**

The SWRCB has implemented a NPDES Construction General Permit for the State of California (Construction General Permit). For projects disturbing one acre or more of soil, a Notice of Intent (NOI) and Stormwater Pollution Prevention Plan (SWPPP) must be prepared by a qualified professional prior to commencement of construction. The Construction General Permit includes requirements for training, inspections, record keeping, and, for projects of certain risk levels, monitoring. The general purpose of the requirements is to minimize the discharge of pollutants and to

protect beneficial uses and receiving waters from the adverse effects of construction-related stormwater discharges.

#### Fish and Game Code Section 1602

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

### **Regional and Local**

#### San Francisco Bay Basin Plan

The San Francisco Bay RWQCB regulates water quality in accordance with the Water Quality Control Plan for the San Francisco Bay Basin (Basin Plan). The Basin Plan lists the beneficial uses that the San Francisco Bay RWQCB has identified for local aquifers, streams, marshes, rivers, and the San Francisco Bay, as well as the water quality objectives and criteria that must be met to protect these uses. The San Francisco Bay RWQCB implements the Basin Plan by issuing and enforcing waste discharge requirements, including permits for nonpoint sources such as the urban runoff discharged by a City's stormwater drainage system. The Basin Plan also describes watershed management programs and water quality attainment strategies.

#### Municipal Regional Permit Provision C.3.

The San Francisco Bay RWQCB issued a Municipal Regional Permit (MRP) to regulate stormwater discharges from municipalities and local agencies (co-permittees) in Alameda, Contra Costa, San Mateo, and Santa Clara Counties, and the cities of Fairfield, Suisun City, and Vallejo.<sup>50</sup> Under Provision C.3 of the MRP, new and redevelopment projects that create or replace 10,000 square feet or more of impervious surface area are required to implement site design, source control, and Low Impact Development (LID)-based stormwater treatment controls to treat post-construction stormwater runoff. LID-based treatment controls are intended to maintain or restore the site's natural hydrologic functions, maximizing opportunities for infiltration and evapotranspiration, and using stormwater as a resource (e.g. rainwater harvesting for non-potable uses). The MRP also requires that stormwater treatment measures are properly installed, operated, and maintained.

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

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<sup>50</sup> MRP Number CAS612008

### Municipal Regional Permit Provision C.12.f

Provision C.12.f of the MRP requires co-permittee agencies to implement a control program for polychlorinated biphenyls (PCBs) that reduces PCB loads by a specified amount during the term of the permit, thereby making substantial progress toward achieving the urban runoff PCBs wasteload allocation in the Basin Plan by March 2030.<sup>51</sup> Programs must include focused implementation of PCB control measures, such as source control, treatment control, and pollution prevention strategies. Municipalities throughout the Bay Area are updating their demolition permit processes to incorporate the management of PCBs in demolition building materials to ensure PCBs are not discharged to storm drains during demolition. As of July 1, 2019, buildings constructed between 1955 and 1978 that are proposed for demolition must be screened for the presence of PCBs prior to the issuance of a demolition permit.

### Water Resources Protection Ordinance and District Well Ordinance

The Santa Clara Valley Water District (Valley Water) operates as the flood control agency for Santa Clara County. Their stewardship also includes creek restoration, pollution prevention efforts, and groundwater recharge. Permits for well construction and destruction work, most exploratory boring for groundwater exploration, and projects within Valley Water property or easements are required under Valley Water's Water Resources Protection Ordinance and District Well Ordinance.

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

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

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

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

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<sup>51</sup> San Francisco Bay Regional Water Quality Control Board. *Municipal Regional Stormwater Permit, Provision C.12*. November 19, 2015.

## Floodplain Ordinance – Municipal Code 17.08

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

## Envision San José 2040 General Plan

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

<b>General Plan Policies - Hydrology and Water Quality</b>	
<b>Flooding and Stormwater Runoff</b>	
Policy EC-5.1	The City shall require evaluation of flood hazards prior to approval of development projects within a Federal Emergency Management Agency designated floodplain. Review new development and substantial improvements to existing structures to ensure it is designed to provide protection from flooding with a one percent annual chance of occurrence, commonly referred to as the “100-year” flood or whatever designated benchmark FEMA may adopt in the future. New development should also provide protection for less frequent flood events when required by the State.
Policy EC-5.3	Preserve designated floodway areas for non-urban uses.
Policy EC-5.7	Allow new urban development only when mitigation measures are incorporated into the project design to ensure that new urban runoff does not increase flood risks elsewhere.
<b>Stormwater</b>	
Policy ER-8.1	Manage stormwater runoff in compliance with the City’s Post-Construction Urban Runoff (6-29) and Hydromodification Management (8-14) Policies.
Policy ER-8.3	Ensure that private development in San José includes adequate measures to treat stormwater runoff.
Policy ER-8.4	Assess the potential for surface water and groundwater contamination and require appropriate preventative measures when new development is proposed in areas where storm runoff will be directed into creeks upstream from groundwater recharge facilities.
Policy ER-8.5	Ensure that all development projects in San José maximize opportunities to filter, infiltrate, store and reuse or evaporate stormwater runoff onsite.
<b>Water</b>	
Policy ER-9.5	Protect groundwater recharge areas, particularly creeks and riparian corridors.

<b>General Plan Policies - Hydrology and Water Quality</b>	
<b>Water Conservation and Quality</b>	
Policy MS-3.4	Promote the use of green roofs (i.e., roofs with vegetated cover), landscape-based treatment measures, pervious materials for hardscape, and other stormwater management practices to reduce water pollution.
Policy MS-3.5	Minimize area dedicated to surface parking to reduce rainwater that comes into contact with pollutants.
<b>Water Supply, Sanitary Sewer and Storm Drainage</b>	
Policy IN-3.7	Design new projects to minimize potential damage due to storm waters and flooding to the site and other properties.

### **3.10.1.2      *Existing Conditions***

#### **Upper Penitencia Creek Watershed**

The project site is located within the Upper Penitencia Creek watershed, which is in the northeast part of Santa Clara County near the southern end of the San Francisco Bay. The watershed lies in and adjacent to the eastern part of San José and extends northward into Milpitas. The total watershed area is about 24 square miles, or 15,300 acres.

Upper Penitencia Creek is a tributary of Coyote Creek. Coyote Creek originates in the mountains of the Diablo Range northeast of Morgan Hill. After leaving the mountains, it flows northwesterly along the floor of the Santa Clara Valley to the San Francisco Bay, a distance of about 42 miles. Upper Penitencia Creek joins it about 10 miles from the San Francisco Bay. Coyote Creek's drainage area, above the point where it enters the bay, is 320 square miles.

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

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

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

Valley Water operates a number of percolation ponds to recharge the local ground water. Three ponds are located adjacent to the creek downstream of Noble Avenue, and another is between



Interstate 680 and King Road. Valley Water diverts from the creek and imports water through a pipeline to supply the ponds. Valley Water also releases water into the creek, to be infiltrated into the streambed. This imported water augments the natural flow in the creek between Noble Avenue and King Road. Farther downstream the creek is usually dry during the summer.

For the most part, the vegetation along the creek has been preserved as development has occurred. Through the urbanized area, the creek supports an extensive stand of trees and other riparian vegetation along both banks, interrupted in only a few places. The creek is one of the few remaining riparian corridors connecting the mountains of the Diablo Range with Coyote Creek.

The creek is in public ownership for much of its length, including the City of San José's Alum Rock Park and Penitencia Creek Park. It combines lands owned by the County of Santa Clara, the City of San José, Valley Water, and various school districts. The portion owned by Valley Water was acquired for a flood control right-of-way. Valley Water also has a flood control easement on the reach downstream of King Road. However, at the project site, Upper Penitencia Creek is owned entirely by The Flea Market and Coyote Creek is privately held from at least the centerline to the project side east bank.

### **Flood History**

Upper Penitencia Creek is a well-defined, entrenched channel where it leaves the mountainous area near Dorel Avenue. Between Dorel Avenue and Piedmont Road its capacity is estimated to be approximately 3,000 cfs. From Piedmont Road through the culvert at Penitencia Creek Road the capacity is estimated to be close to 1,400 cfs. As the creek continues down the alluvial fan and across the urbanized valley floor, its capacity decreases to about 800 cfs near King Road.

The largest recorded flood of the century on Upper Penitencia Creek occurred in March 1911. No stream gauge data exists for that flood and a recurrence interval has therefore never been assigned to it. More recent floods have occurred in 1955, 1958, 1962, 1963, 1973, 1980, 1982, 1983, 1986, 1995, and 1998. The largest recorded flood for which a recurrence interval has been calculated occurred in 1958 and had a peak flow of 2,100 cubic feet per second (cfs). This flow approximates a 13-year event.

In February 2017, the largest spill from Anderson Dam ever recorded occurred after a historically wet rain season. The spill occurred from Anderson Dam into Coyote Creek one day after an approximately five year rain event began. Coyote Creek overtopped its banks at several locations, causing flooding in San José. Notably, Coyote Creek overtopped at Berryessa Road and resulted in significant flooding downstream on the western bank. Due to the relatively high elevation of the project site as compared to the western bank of Coyote Creek, the project site did not experience significant on-site flooding. There was inundation of the pedestrian underpass beneath Berryessa Road.

### **Flood Conditions**

#### **FEMA Effective Study**

Upper Penitencia Creek was studied in detail for the Flood Insurance Study for the City of San José, revised February 19, 2014. Most of the project site is located within SFHAs designated by FEMA

and shown on the effective FIRMs for the City of San José (Community No. 060349, Panels 0232H and 0251J, revised May 18<sup>th</sup>, 2009).

The effective FIRMs show that in the case of a one-percent annual chance flood, water would pond (Zone AH) to an elevation of 84 feet (NAVD88<sup>52</sup>) on the north side of the project site, adjacent to Berryessa Road. Based on the effective flood insurance study, the flood water surface elevations within Coyote Creek are below the existing top of bank elevations within the project site. Therefore, on-site flood modeling is based on potential spills from Upper Penitencia Creek alone.

### Project Site

The FIRM's ponded one-percent annual chance (i.e., 100-year) flood elevation of 84 feet NAVD was based on the maximum water surface elevation in the channel upstream of the existing vehicular bridge and assumes no flood water could return to the channel downstream of the bridge due to buildings and obstructions adjacent to the channel. The analysis which established the FIRM also assumes that no flood water would flow into Coyote Creek along the southeast side of the channel, although the water level would be three to four feet above the channel bank. In addition, there is an access ramp from the project site into the Coyote Creek channel which would allow runoff from the site to return to Coyote Creek.

Based on the FEMA effective study for the 100-year flood condition, approximately 1,100 cfs are contained in the Upper Penitencia Creek channel and approximately 390 cfs would flow through the project site toward Coyote Creek as shallow sheetflow. Since the map was developed, the BART station has been constructed which blocks a portion of this overflow from the site. In addition, the railroad bridge restriction within the channel has been removed, increasing the flow capacity within the creek channel.

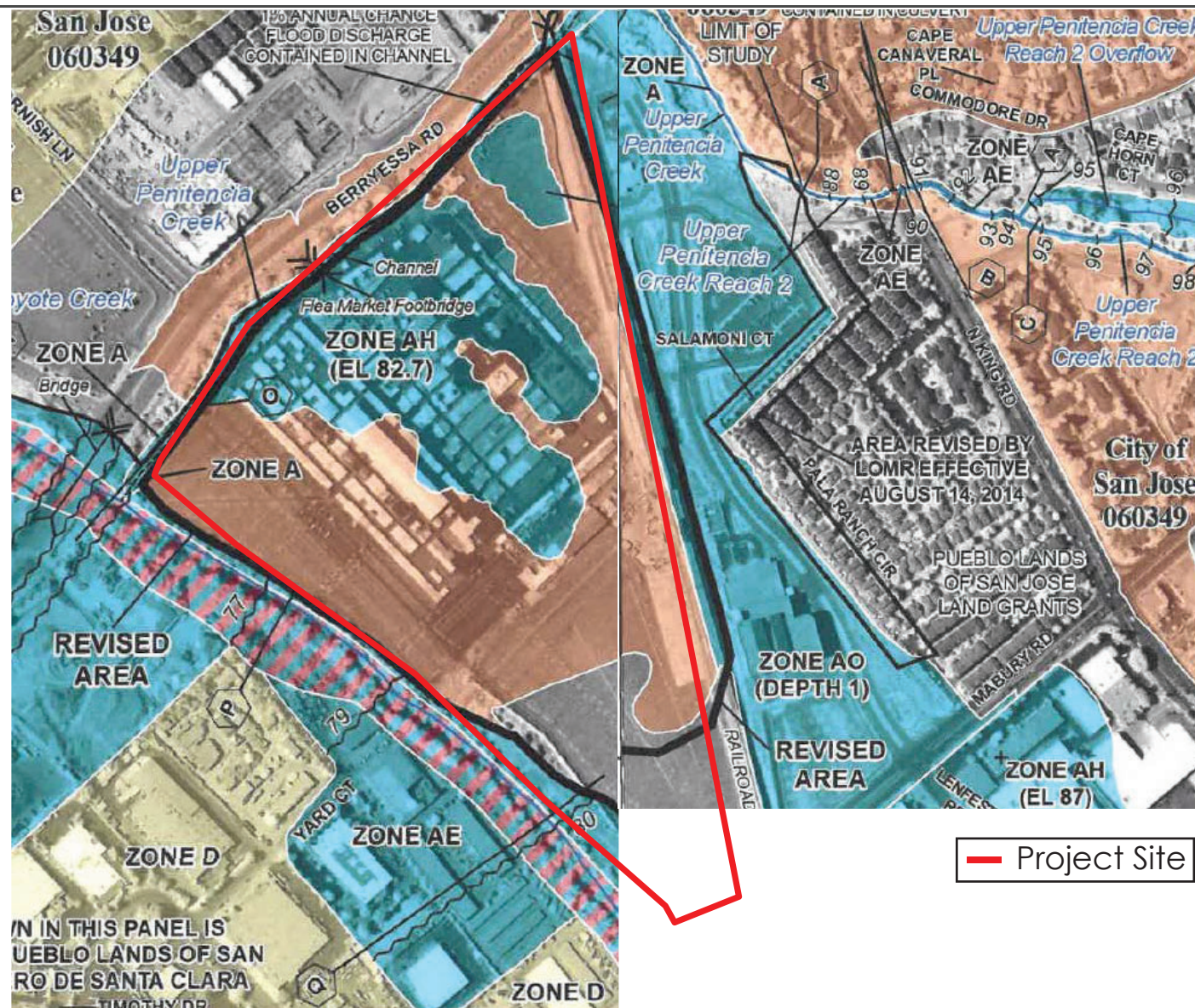
The proposed project removed a portion of the floodplain designation from the site by applying to FEMA for a Letter of Map Revision (LOMR). The LOMR is based on improved topographic data, which allows flow back into the channels. The revised floodplain from this LOMR Case 19-09-1592P is shown on Figure 3.10-1. The LOMR became effective on June 1, 2020.

### **BART Extension Project**

As part of the Silicon Valley BART Extension (SVBX) project, a new BART track has been constructed that bisects the Upper Penitencia Creek watershed to the northeast of the Flea Market project site. The SVBX project included the construction of the aboveground Berryessa Station. The construction of the track alignment within the existing Union Pacific Railroad (UPRR) right-of-way included replacing the existing railroad bridge over Upper Penitencia Creek. At that time, a flood control channel widening and restoration project was completed on Upper Penitencia Creek between Berryessa Road and King Road, and included the construction of a vehicle bridge over Upper Penitencia Creek to the new BART station.

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<sup>52</sup> The North American Vertical Datum of 1988 (NAVD88) is the official vertical control datum for elevation measurements in most of the United States, including California.



LOMR REVISED FLOODPLAIN

FIGURE 3.10-1

Due to the changes in the flood control facilities along Upper Penitencia Creek and others occurring within the watershed, the SVBX project was required to complete a Conditional Letter of Map Revision (CLOMR) which included remapping the watershed to account for the significant development that had occurred since the effective Flood Insurance Study (FIS). This CLOMR was completed, but never submitted to FEMA for remapping. Since that time, Valley Water has initiated a Cooperating Technical Partnership with FEMA to remap the watershed, thus making the SVBX CLOMR outdated.

### **Floodplain Modeling**

As part of the Cooperating Technical Partnership program, Valley Water and FEMA are undergoing a study of the Upper Penitencia Creek watershed, which encompasses the Flea Market project site. The study includes developing new calibrated hydrology and system hydraulics as well as modeling the overland two-dimensional floodplain. The new FEMA Levee Analysis and Mapping Procedures (LAMP) are being employed whereas levee analysis was not included in the effective FIS. If the City of San José elects to submit the resultant study as a LOMR, the effective map and FIS would be updated. Until these maps are updated or adopted by the City, the effective FEMA FIRM and FIS would continue to govern the flood design and elevations of the Flea Market project.

This model incorporates the Berryessa BART Station, tracks, new bridge crossings, and channel modifications described above. The placement of fill for the station and upsizing of the railroad bridge have significantly decreased the 100-year floodplain on the project site compared to the effective FEMA FIRM. However, the draft updated mapping still depicts a 100-year floodplain on the Flea Market site from a spill upstream of the existing pedestrian bridge over Upper Penitencia Creek. The project proposes to elevate the site or remove the channel restriction (existing pedestrian bridge) to remove the draft mapped flood risk from the site and maintain flows in Upper Penitencia Creek.

### **Flood Protection Project**

Valley Water is currently developing a Planning Study Report for Upper Penitencia Creek flood control conceptual alternatives between Dorel Drive and the Coyote Creek confluence. A combination of modified floodplains, levees, flood walls, bypass channels, and fish passage improvements are being considered. In previous studies completed by the U.S. Army Corps of Engineers (USACE) and Valley Water in 2006, the preferred alternative included widening the channel by 200 feet between the railroad bridge and the confluence with Coyote Creek adjacent to the Flea Market project site. No construction dates for the flood control project have been identified at this time, and this potential future activity has been excluded from the cumulative impacts discussion throughout this EIR.

### **Existing Drainage Conditions**

The project area is served by underground storm drainage systems which discharge to both Coyote Creek and Upper Penitencia Creek. The existing land use on the site includes extensive buildings, pavement, and parking lots. The existing site is estimated to be more than 95 percent pavement draining to the stream channels.

### **3.10.2      Impact Discussion**

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

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

#### **3.10.2.1      *Project Impacts***

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

### **Option 1 and Option 2**

#### **Construction**

Construction activities could result in a temporary increase in stormwater pollutants during ground disturbing activities. Construction of the proposed project would disturb more than 1.0 acre; therefore, compliance with the Construction General Permit (including submitting an NOI to the RWQCB and development of a SWPPP to control discharge associated with construction activities) is required.

Because the project under both Option 1 and Option 2 would remove and replace the existing pavement on the site, the project would be required to conform to the current stormwater quality requirements of the City of San José Grading Ordinance, including implementation of erosion and dust control during site preparation, and the City's Zoning Ordinance requirements for keeping adjacent streets free of dirt and mud during construction. These requirements are included in the conditions of approval and standard permit conditions listed below.



### **Project Conditions of Approval:**

- A Storm Water Permit shall be administered by the SWRCB. Prior to construction grading for the proposed land uses, the project applicant will file an NOI to comply with the General Permit and prepare a SWPPP which addresses measures that would be included in the project to minimize and control construction and post-construction runoff. Measures will include, but are not limited to, the aforementioned RWQCB Best Management Practices.
- The SWPPP shall be posted at the project site and shall be updated to reflect current site conditions.
- When construction is complete, a Notice of Termination for the General Permit for Construction shall be filed with the SWRCB. The Notice of Termination shall document that all elements of the SWPPP have been executed, construction materials and waste have been properly disposed of, and a post-construction stormwater management plan is in place as described in the SWPPP for the site.

### **Standard Permit Conditions:**

- Burlap bags filled with drain rock shall be installed around storm drains to route sediment and other debris away from the drains.
- Earthmoving or other dust-producing activities shall be suspended during periods of high winds.
- All exposed or disturbed soil surfaces shall be watered at least twice daily to control dust as necessary.
- Stockpiles of soil or other materials that can be blown by the wind shall be watered or covered.
- All trucks hauling soil, sand, and other loose materials shall be required to be covered trucks or maintain at least two feet of freeboard.
- All paved access roads, parking areas, and staging areas shall be swept daily (with water sweepers).
- Vegetation in disturbed areas shall be replanted as quickly as possible.
- All unpaved entrances to the site shall be filled with rock to knock mud from truck tires prior to entering City streets. A tire wash system may also be employed at the request of the City.

With implementation of the above conditions of approval and standard permit conditions, the proposed project (both Option 1 and Option 2) would have a less than significant construction-related water quality impact. **(Less than Significant Impact)**

### **Post-Construction**

The project would replace the impervious surfaces on the project site, including the existing buildings and pavement. Under Provision C.3 of the RWQCB's MRP, redevelopment projects that add and/or replace more than 10,000 square feet of impervious surface are required to design and construct stormwater treatment controls to treat post-construction stormwater runoff. Amendments to the MRP require that all post-construction runoff be treated by using LID treatment controls (e.g.,



biotreatment facilities). The project would be required to comply with Provision C.3 of the MRP to reduce potential post-construction water quality impacts.

To comply with MRP requirements, the proposed project (both Option 1 and Option 2) proposes to install bioretention areas throughout the project site that would treat, retain, and release stormwater from impervious surfaces. Details of specific site design, pollutant source control, and stormwater treatment control measures demonstrating compliance with the aforementioned policies shall be included in the project design as part of future Planned Development Permits for the build-out of the site. **(Less than Significant Impact)**

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

#### **Option 1 and Option 2**

The project site is located in a developed urban area and is not within a designated groundwater recharge zone for the groundwater basin. The proposed project does not include installation of new groundwater wells and would not deplete groundwater supplies. Because shallow groundwater on the project site is likely present at depths of approximately five to 15 feet, and excavation could extend to 25 feet below grade, project development could require groundwater pumping and dewatering both during construction and long-term. The proposed project (both Option 1 and Option 2) would implement LID treatment controls (e.g., bioretention facilities) in compliance with the MRP; therefore, impacts related to groundwater would be less than significant. **(Less than Significant Impact)**

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

#### **Option 1 and Option 2**

##### Site Drainage

The proposed project would redevelop the entire project site except for portions of the site along Coyote Creek and Upper Penitencia Creek. The site is approximately 95 percent pavement and buildings under existing conditions. The site drains to Coyote Creek and Upper Penitencia Creek through existing storm drain systems. The proposed project would increase the open space and riparian areas, and therefore would increase pervious surface area and reduce the potential runoff from impervious surfaces compared to existing conditions. Under the proposed project, impervious surfaces would be reduced from 95 percent to 58 percent of the site. The existing storm drain systems would be replaced under the project, and existing outfalls to the stream channels may be modified or

replaced. Because the proposed project would reduce the estimated runoff from the site, the project would not increase drainage or flood flows in the stream channels. Construction of the proposed project would comply with the MRP and City of San José Policy 6-29, which would remove pollutants and reduce the rate and volume of runoff from the project site. The site is within a subwatershed that is less than 65 percent impervious and is not subject to the HMP requirement under City Policy 8-14. Therefore, impacts related to site runoff and stream flows would be less than significant. **(Less than Significant Impact)**

### Flooding

Existing conditions in the project vicinity have changed since the adoption of the most recent FEMA FIRM in 1988. Development not included in the 1988 FIRM includes traffic barriers, walls, and buildings. The construction of the BART station, tracks, and bridges has caused a blockage in the overland floodplain from a potential spill at King Road, reducing the extent and depth of flooding on the Flea Market project site. However, the general flood conditions on the site with overflows from Upper Penitencia Creek have not changed.

The updated LOMR showing reduced flood potential on the project site became effective on June 1, 2020. As shown on Figure 3.10-1 above, a portion of the project site remains within the revised floodplain extent. Remaining buildings within the floodplain extents would be elevated above the effective base flood elevation and removed from the floodplain through the placement of engineered fill. In the case of a 100-year flood, there would be shallow flooding on the project site with ponding and flows from east to west toward Coyote Creek.

Sheetflow would travel parallel to Upper Penitencia Creek in the open space adjacent to the existing creek channel and in parallel streets. Preliminary hydraulic analysis suggests that bridges over the existing channel could contain the existing creek flow within the existing channel. The analysis would be confirmed during the project's bridge design process. The project proposes to avoid overflows during a 100-year flood event by placing fill to elevate the proposed structures above the base flood elevation, and would not impede or redirect flood flows. **(Less than Significant Impact)**

### Bridge Crossings

The project under both Option 1 and Option 2 proposes to install two new vehicle bridges spanning Upper Penitencia Creek. Bridges have the potential to affect the floodplain by causing a restriction of flow within the channel or an obstruction to overland flow outside the channel due to elevated bridge approaches. The bridge designs, including approaches, are required to adhere to Valley Water standards to prevent an increase in base flood elevation. Bridge designs would also incorporate any future flood control project between the BART tracks and the confluence with Coyote Creek.

The project also proposes to remove two existing bridges: the Flea Market vehicle bridge and a pedestrian bridge. Removing structures has the potential to increase flow by eliminating flow restrictions. Upper Penitencia Creek currently has a capacity of approximately 1,600 cfs at the project site, and flow is limited by restrictions upstream. Due to the existing restrictions upstream, including vehicle and railroad bridges that limit flow at the site, removing these two bridges would not cause flow to increase beyond the existing creek capacity. **(Less than Significant Impact)**

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

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**Option 1 and Option 2**

The project site is not subject to inundation by tsunami or seiche; therefore, there would be no risk of release of pollutants at the project site due to tsunamis or seiches.

In the event of flooding at the site, the proposed project (both Option 1 and Option 2) would not risk release of pollutants because the proposed residential and commercial uses would likely only store small quantities of cleaning supplies, herbicides, and pesticides which would be managed in accordance with existing laws and regulations that ensure proper containment. **(Less than Significant Impact)**

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

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**Option 1 and Option 2**

As discussed under checklist questions a) and b) above, the proposed project would implement identified conditions of approval and standard permit conditions, would be required to comply with the NPDES MRP, and would not impact groundwater recharge. The project would not result in significant water quality impacts during construction or operation. For these reasons, the proposed project (both Option 1 and Option 2) would not conflict with implementation of a water quality or groundwater management plan. **(Less than Significant Impact)**

**3.10.2.2 Cumulative Impacts**

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

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**Option 1 and Option 2**

The geographic area for cumulative hydrology and water quality impacts is the Upper Penitencia Creek and Coyote Creek watersheds. Cumulative developments near the project site would be subject to similar hydrological and urban runoff conditions. All cumulative projects occurring within San José would be required to implement the same project conditions related to construction water quality as the proposed project (including preparation of a SWPPP if disturbance if greater than one acre). In addition, all cumulative projects would be required to meet applicable MRP, City Council Policy 6-24, and City Council Policy 8-14 requirements on a project-specific basis. For these reasons, the cumulative projects, including the proposed project (both Option 1 and Option 2), would not result in significant cumulative hydrology or water quality impacts. **(Less than Significant Cumulative Impact)**

### 3.11 LAND USE AND PLANNING

#### 3.11.1 Environmental Setting

##### 3.11.1.1 *Regulatory Framework*

#### **Regional and Local**

##### Envision San José 2040 General Plan

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

<b>General Plan Policies - Land Use</b>	
Policy CD-1.12	Use building design to reflect both the unique character of a specific site and the context of surrounding development and to support pedestrian movement throughout the building site by providing convenient means of entry from public streets and transit facilities where applicable, and by designing ground level building frontages to create an attractive pedestrian environment along building frontages. Unless it is appropriate to the site and context, franchise-style architecture is strongly discouraged.
Policy CD-1.15	Consider the relationship between street design, use of the public right-of-way, and the form and uses of adjoining development. Address this relationship in the Urban Village Planning process, development of new zoning ordinances, and the review of new development proposals in order to promote a well-designed, active, and complete visual street environment.
Policy CD-2.3	<p>Enhance pedestrian activity by incorporating appropriate design techniques and regulating uses in private developments, particularly in Downtown, Urban Villages, Main Streets, and other locations where appropriate.</p> <ol style="list-style-type: none"><li>1. Include attractive and interesting pedestrian-oriented streetscape features such as street furniture, pedestrian scale lighting, pedestrian oriented way-finding signage, clocks, fountains, landscaping, and street trees that provide shade, with improvements to sidewalks and other pedestrian ways.</li><li>2. Strongly discourage drive-up services and other commercial uses oriented to occupants of vehicles in pedestrian-oriented areas. Uses that serve the vehicle, such as car washes and service stations, may be considered appropriate in these areas when they do not disrupt pedestrian flow, are not concentrated in one area, do not break up the building mass of the streetscape, are consistent with other policies in this Plan, and are compatible with the planned uses of the area.</li><li>3. Provide pedestrian connections as outlined in the Community Design Connections Goal and Policies.</li><li>4. Locate retail and other active uses at the street level.</li><li>5. Create easily identifiable and accessible building entrances located on street frontages or paseos.</li><li>6. Accommodate the physical needs of elderly populations and persons with disabilities.</li><li>7. Integrate existing or proposed transit stops into project designs.</li></ol>
Policy CD-2.11	Within the Downtown and Urban Village Area Boundaries, consistent with the minimum density requirements of the pertaining Land Use/Transportation Diagram

<b>General Plan Policies - Land Use</b>	
	designation, avoid the construction of surface parking lots except as an interim use, so that long-term development of the site will result in a cohesive urban form. In these areas, whenever possible, use structured parking, rather than surface parking, to fulfill parking requirements. Encourage the incorporation of alternative uses, such as parks, above parking structures.
Policy CD-4.9	For development subject to design review, the design of new or remodeled structures will be consistent or complementary with the surrounding neighborhood fabric (including but not limited to prevalent building scale, building materials, and orientation of structures to the street).
Policy CD-5.8	Comply with applicable Federal Aviation Administration regulations identifying maximum heights for obstructions to promote air safety.
Policy IP-1.6	Ensure that proposals to rezone and prezone properties conform to the Land Use/Transportation Diagram and advance 2040 General Plan Vision, goals and policies and benefit community welfare.
Policy IP-1.8	Consider and address potential land use compatibility issues, the form of surrounding development, and the availability and timing of infrastructure to support the proposed land use when reviewing rezoning or pre zoning proposals.
Policy IP-5.4	<p>Prepare and implement Urban Village Plans carefully, with sensitivity to concerns of the surrounding community, and property owners and developers who propose redevelopment of properties within the Urban Village areas. Proceed generally in the order of the following timeline, although some steps may be taken concurrently:</p> <ol style="list-style-type: none"> <li>1. City Council approves commencement of the Plan growth Horizon which includes the Urban Village Area during a Major 2040 General Plan Review. Completing Urban Village Plans for Urban Villages within the current Horizon is of greatest priority, but it is possible to prepare an Urban Village Plan for an Urban Village in an upcoming Horizon.</li> <li>2. The City completes preparation of and Council reviews an Urban Village Plan.</li> <li>3. The City or private property owners initiate rezoning for specific properties within the Urban Village as needed to implement the Urban Village Plan. Because most Urban Village sites initially have commercial zoning, rezoning will be necessary to provide for redevelopment and intensification with residential or residential mixed use projects on those sites.</li> <li>4. Private property owners or developers propose individual site designs and building architecture to be reviewed and determined through a Development Permit application and review process.</li> </ol>

### Berryessa BART Urban Village Plan

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

<b>Urban Village Plan Policies - Land Use</b>	
Policy LU-1.1	Prioritize the development of residential projects in land use designations that support the residential capacities of each District. While other land uses are not strictly prohibited under the residential land use designations, the goal is to foster the development of residential development in specific areas of each District.

<b>Urban Village Plan Policies - Land Use</b>	
Policy LU-1.2	Develop commercial projects adjacent to the BART station, and on lands planned for employment uses, at intensities that support the employment capacities and jobs-density envisioned by this Plan, and support BART ridership.
Policy LU-1.6	Provide flexibility to allocate more commercial FAR [floor area ratio] or residential density on certain areas of the Urban Village to support urban designed envisioned in each District, with emphasis on the development of “Towers,” provided that such FARs do not exceed the maximum building heights for those areas.
Policy LU-3.3	Require ground-floor commercial development (including business supportive uses) facing the Greenway in the Transit Employment Center land use designation in the Flea Market South District, including activating land uses that support transit ridership, walking, and biking. Such uses shall have direct pedestrian access from a public road and direct pedestrian access to the plaza in front of the BART station.
Policy LU-3.4	Support ground-floor neighborhood commercial uses in the Transit Residential land use designation in the Flea Market South District. Such commercial development shall have direct pedestrian access from any public street.
Policy LU-3.5	Ensure that development in the Flea Market South District has ground-floor active uses that activate the Main Street fronting the central open space, including retail storefronts, restaurants, or sidewalk seating. Those land uses shall support pedestrian traffic, placemaking, and transit ridership.
Policy LU-4.1	Ensure that all land uses in the Berryessa BART Urban Village support pedestrian activity, multi-modal accessibility, and an urban character radiating from the BART station.
Policy LU-5.2	Plan and design any parking structure to have ground-floor commercial, neighborhood-serving community commercial, community amenity spaces, or civic/cultural space on any side of the parking structure facing a public right-of-way.
Policy LU-5.4	Locate parking structures for commercial development behind office/R&D towers, so they are adjacent to the BART track line.
Policy LU-5.5	Ensure that the footprint of parking structures for commercial development does not exceed more than 50 percent of the net developable area of commercial blocks in the Flea Market South District.

### **3.11.1.2      *Existing Conditions***

#### **Land Use Designation**

##### Envision San José 2040 General Plan

The project site is designated Urban Village (UV) in the Envision San José 2040 General Plan. This land use designation supports a wide variety of land uses including commercial, residential, and institutional. The UV designation is applied within the UV areas that are planned to accommodate higher density housing growth along with a significant amount of job growth. Development within the UV designation should conform to land use and design standards established with an adopted Urban Village Plan. Prior to preparation of an Urban Village Plan, this designation supports uses consistent with those of the Neighborhood Community Commercial designation. Following preparation of an Urban Village Plan, the appropriate use for a site would be commercial, residential, mixed-use, public facility, or other use as indicated within the Urban Village Plan as well as those uses supported by the Neighborhood/Community Commercial designation.



The Coyote Creek and Upper Penitencia Creek corridors, located along the project site's western and northern boundaries, respectively, are designated Open Space, Parklands and Habitat (OSPH) in the General Plan. This land designation is intended for low intensity uses, including open space, parks, recreation areas, trails, habitat buffers, nature preserves, and other permanent open space areas. This land use designation also supports private buffer lands such as riparian setbacks.

### Berryessa BART Urban Village Plan

Existing neighborhoods cover most of the Berryessa BART Urban Village, with limited areas available for new development. The Urban Village Plan allocates growth to four sites, referred to as Districts. These Districts are sufficiently large to accommodate the Urban Village Plan's employment capacity of 4.2 million square feet of commercial uses and residential capacity of 5,100 dwelling units. The project site comprises the Flea Market South District of the Berryessa BART Urban Village.

The Flea Market South District is the largest of the four Districts. The Berryessa BART Urban Village Plan recommends a capacity of three million square feet of commercial development and 3,000 dwelling units for the Flea Market South District. An equal distribution of land is allocated to commercial and residential land, with residential uses fronting Coyote and Upper Penitencia Creeks and commercial uses adjacent to the BART tracks.

### **Zoning**

In 2007, the City of San José approved a General Plan land use designation of Urban Village (UV) and a Planned Development Zoning (File No. PDC03-108) on the 120-acre Flea Market property<sup>53</sup> allowing a total of 2,818 dwelling units and 365,622 square feet of commercial uses. Since the 2007 approval, the property north of Berryessa Road has been developed with 1,000 dwelling units and 118,580 square feet of commercial uses.<sup>54</sup> On the property south of Berryessa Road (the 61.5-acre project site that is the subject of this EIR), the existing Zoning District has a remaining capacity of 1,818 residential units and 247,042 square feet of commercial uses.

The proposed project would require a Planned Development rezoning for the site to accommodate both project options, which propose to increase the residential and commercial capacities for the project site. The applicant's proposed development project (Option 1) would result in a net increase of 1,632 residential units and 1.95 million square feet in commercial space over the existing entitlement. The maximum development option City staff would consider recommending to City Council (Option 2) would result in a net increase of 1,632 residential units and 3.15 million square feet of commercial space over the existing entitlement, i.e. 1.2 million square feet more commercial space than proposed by the applicant.

#### **3.11.2 Impact Discussion**

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

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<sup>53</sup> Includes the properties both north and south of Berryessa Road.

<sup>54</sup> Portions of this development are currently under construction. Construction north of Berryessa Road is expected to be completed in 2020.

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

### 3.11.2.1 *Project Impacts*

---

#### **a) Would the project physically divide an established community?**

---

##### **Option 1 and Option 2**

The Urban Village Plan prioritizes connectivity and accessibility, and includes General Plan Smart Growth strategies and Transit Oriented Development (TOD) initiatives to create pedestrian-oriented development in the project area. The proposed project (both Option 1 and Option 2) would remain publicly accessible and would not physically divide an established community by blocking roadways or sidewalks. Both options propose the construction of the Sierra Road extension, new roadways and sidewalks, public parks, two new bridges, and a pedestrian trail along the creeks which would enhance the connectivity of the site. Therefore, this is a less-than-significant impact. **(Less than Significant Impact)**

---

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

---

##### **Option 1 and Option 2**

##### General Plan and Urban Village Plan

As discussed in Section 3.11.1.2, the project site is designated as Urban Village (UV). The proposed project (both Option 1 and Option 2) would be required to be consistent with the final adopted Berryessa Urban Village Plan's land use policies and requirements.

The Coyote Creek and Upper Penitencia Creek corridors, located along the project site's western and northern boundaries, respectively, are designated Open Space, Parklands and Habitat (OSPH) in the General Plan. This land designation is intended for low intensity uses, including open space, parks, recreation areas, trails, habitat buffers, nature preserves, and other permanent open space areas. This land use designation also supports private buffer lands such as riparian setbacks. The proposed project would be consistent with the OSPH designation requirements in these areas. **(Less than Significant Impact)**

##### Zoning Designation

The proposed project would require a Planned Development Rezoning for the site to accommodate either of the development proposal options. Upon approval of the Planned Development Rezoning, the proposed project (both Option 1 and Option 2) would be consistent with the City's land use policies and zoning. **(Less than Significant Impact)**

Since the proposed project (both Option 1 and Option 2) would comply with all land use plans, policies, and regulations, it would have a less-than-significant impact. **(Less than Significant Impact)**

### **3.11.2.2**      *Cumulative Impacts*

---

**Would the project result in a cumulatively considerable contribution to a significant cumulative land use and planning impact?**

---

#### **Option 1 and Option 2**

The geographic area for the project's cumulative land use and planning impacts would be the project site and surrounding neighborhood, including the Berryessa BART Urban Village Plan area. As discussed above, the project would not divide an established community, and with the proposed Planned Development Rezoning, the project would be consistent with the General Plan. Additionally, the project would be consistent with the provisions of the proposed Berryessa BART Urban Village. Therefore, the proposed project (both Option 1 and Option 2) would not contribute to a significant cumulative land use and planning impact. **(Less than Significant Cumulative Impact)**

## **3.12 MINERAL RESOURCES**

### **3.12.1 Environmental Setting**

#### **3.12.1.1 *Regulatory Framework***

##### **State**

##### **Surface Mining and Reclamation Act**

The Surface Mining and Reclamation Act (SMARA) was enacted by the California legislature in 1975 to address the need for a continuing supply of mineral resources, and to prevent or minimize the negative impacts of surface mining to public health, property, and the environment. As mandated under SMARA, the State Geologist has designated mineral land classifications in order to help identify and protect mineral resources in areas within the state subject to urban expansion or other irreversible land uses which would preclude mineral extraction. SMARA also allowed the State Mining and Geology Board (SMGB), after receiving classification information from the State Geologist, to designate lands containing mineral deposits of regional or statewide significance.

Pursuant to the mandate of the SMARA, the SMGB has designated the Communications Hill Area (Sector EE), bounded generally by the Southern Pacific Railroad, Curtner Avenue, SR 87, and Hillsdale Avenue as containing mineral deposits that are of regional significance as a source of construction aggregate materials. Neither the State Geologist nor the SMGB have classified any other areas in San José as containing mineral deposits of statewide significance or requiring further evaluation.

#### **3.12.1.2 *Existing Conditions***

The Communications Hill area in central San José is the only area within the City of San José that is designated by the State Mining and Geology Board as containing mineral deposits of regional significance. The project site is located approximately five miles north of the Communications Hill area.

### **3.12.2 Impact Discussion**

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

- a) Result in the loss of availability of a known mineral resource that would be of value to the region and residents of the state?
- b) Result in the loss of availability of a locally important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?

### 3.12.2.1 *Project Impacts*

- 
- a) **Would the project result in the loss of availability of a known mineral resource that would be of value to the region and residents of the state?**
- 

#### **Option 1 and Option 2**

The project site does not contain any known state or locally important mineral resources. Therefore, the proposed project (both Option 1 and Option 2) would not impact the availability of a known mineral resource. **(No Impact)**

- 
- b) **Would the project result in the loss of availability of a locally important mineral resource recovery site delineated on a local general plan, specific plan, or other land use plan?**
- 

#### **Option 1 and Option 2**

The project site is not identified as a natural resource area containing mineral resources on a local general plan, specific plan, or other land use plan. Therefore, the proposed project (both Option 1 and Option 2) would not result in the loss of availability of a locally important mineral resource recovery site. **(No Impact)**

### 3.12.2.2 *Cumulative Impacts*

- 
- Would the project result in a cumulatively considerable contribution to a significant cumulative mineral resources impact?**
- 

#### **Option 1 and Option 2**

As discussed above, the project site is not designated as a mineral resource recovery site in a local land use plan, nor does the project site contain any known mineral resource. The proposed project (both Option 1 and Option 2), therefore, would not contribute to a significant cumulative impact to mineral resources. **(No Cumulative Impact)**

### 3.13 NOISE AND VIBRATION

The following discussion is based upon a Noise and Vibration Assessment prepared by Illingworth & Rodkin, Inc. on September 17, 2020. A copy of this report is included in Appendix G of this document.

#### 3.13.1 Environmental Setting

##### 3.13.1.1 *Background Information*

#### Noise

Factors that influence sound as it is perceived by the human ear, include the actual level of sound, period of exposure, frequencies involved, and fluctuation in the noise level during exposure. Noise is measured on a decibel scale, which serves as an index of loudness. The zero on the decibel scale is based on the lowest sound level that the healthy, unimpaired human ear can detect. Each 10 decibel increase in sound level is perceived as approximately a doubling of loudness. Because the human ear cannot hear all pitches or frequencies, sound levels are frequently adjusted or weighted to correspond to human hearing. This adjusted unit is known as the A-weighted decibel, or dBA.

Since excessive noise levels can adversely affect human activities and human health, federal, state, and local governmental agencies have set forth criteria or planning goals to minimize or avoid these effects. Noise guidelines are generally expressed using one of several noise averaging methods, including  $L_{eq}$ , DNL, or CNEL.<sup>55</sup> These descriptors are used to measure a location's overall noise exposure, given that there are times when noise levels are higher (e.g., when a jet is taking off from an airport or when a leaf blower is operating) and times when noise levels are lower (e.g., during lulls in traffic flows on freeways or in the middle of the night).  $L_{max}$  is the maximum A-weighted noise level during a measurement period.

#### Vibration

Ground vibration consists of rapidly fluctuating motions or waves with an average motion of zero. Vibration amplitude can be quantified using Peak Particle Velocity (PPV), which is defined as the maximum instantaneous positive or negative peak of the vibration wave. PPV has been routinely used to measure and assess ground-borne construction vibration. Studies have shown that the threshold of perception for average persons is in the range of 0.008 to 0.012 inch per second PPV.

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<sup>55</sup>  $L_{eq}$  is a measurement of average energy level intensity of noise over a given period of time. Day-Night Level (DNL) is a 24-hour average of noise levels, with a 10 dB penalty applied to noise occurring between 10:00 PM and 7:00 AM. Community Noise Equivalent Level (CNEL) includes an additional five dB applied to noise occurring between 7:00 PM and 10:00 PM. Where traffic noise predominates, the CNEL and DNL are typically within two dBA of the peak-hour  $L_{eq}$ .



### 3.13.1.2 Regulatory Framework

#### Federal

##### Federal Transit Administration Vibration Limits

The Federal Transit Administration (FTA) has developed vibration impact assessment criteria for evaluating vibration impacts associated with transit projects. The FTA has proposed vibration impact criteria based on maximum overall levels for a single event. The impact criteria for groundborne vibration are shown in Table 3.13-1 below. There are established criteria for frequent events (more than 70 events of the same source per day), occasional events (30 to 70 vibration events of the same source per day), and infrequent events (less than 30 vibration events of the same source per day). These criteria can be applied to development projects in jurisdictions that lack vibration impact standards.

<b>Table 3.13-1: Groundborne Vibration Impact Criteria</b>			
<b>Land Use Category</b>	<b>Groundborne Vibration Impact Levels (VdB inch/sec)</b>		
	<b>Frequent Event</b>	<b>Occasional Events</b>	<b>Infrequent Events</b>
<b>Category 1:</b> Buildings where vibration would interfere with interior operations	65	65	65
<b>Category 2:</b> Residences and buildings where people normally sleep	72	75	80
<b>Category 3:</b> Institutional land uses with primarily daytime use	75	78	83
Source: Federal Transit Administration. <i>Transit Noise and Vibration Assessment Manual</i> . September 2018.			

#### State and Local

##### California Building Standards Code

The California Building Standards Code (CBC) establishes uniform minimum noise insulation performance standards to protect persons within new buildings housing people, including hotels, motels, dormitories, apartments, and dwellings other than single-family residences. Title 24 mandates that interior noise levels attributable to exterior sources not exceed 45 DNL/CNEL in any habitable room. Exterior windows must have a minimum Sound Transmission Class (STC) of 40 or Outdoor-Indoor Transmission Class (OITC) of 30 when the property falls within the 65 dBA DNL noise contour for a freeway or expressway, railroad, or industrial source.

##### California Green Building Standards Code

For commercial uses, the California Green Building Standards Code (CALGreen; Section 5.507.4.1 and 5.507.4.2) requires that wall and roof-ceiling assemblies exposed to the adjacent roadways have a composite STC rating of at least 50 or a composite OITC rating of no less than 40, with exterior windows of a minimum STC of 40 or OITC of 30 when the commercial property falls within the 65

dBA DNL or greater noise contour for a freeway or expressway, railroad, or industrial or stationary noise source. The state requires interior noise levels to be maintained at 50 dBA  $L_{eq(1-hr)}$  or less during hours of operation at a proposed commercial use.

### Envision San José 2040 General Plan

The Envision San José 2040 General Plan includes noise compatibility guidelines for various land uses. For reference, these guidelines are provided in Table 3.13-2 below.

<b>Table 3.13-2: General Plan Land Use Compatibility Guidelines</b>						
<b>Land Use Category</b>	<b>Exterior DNL Value in Decibels</b>					
	<b>55</b>	<b>60</b>	<b>65</b>	<b>70</b>	<b>75</b>	<b>80</b>
1. Residential, Hotels and Motels, Hospitals and Residential Care						
2. Outdoor Sports and Recreation, Neighborhood Parks and Playgrounds						
3. Schools, Libraries, Museums, Meeting Halls, and Churches						
4. Office Buildings, Business Commercial, and Professional Offices						
5. Sports Arena, Outdoor Spectator Sports						
6. Public and Quasi-Public Auditoriums, Concert Halls, and Amphitheaters						
<div> <div></div> <b>Normally Acceptable:</b>  Specified land use is satisfactory, based upon the assumption that any buildings involved are of normal conventional construction, without any special noise insulation requirements. </div>						
<div> <div></div> <b>Conditionally Acceptable:</b>  Specified land use may be permitted only after detailed analysis of the noise reduction requirements and noise mitigation features included in the design. </div>						
<div> <div></div> <b>Unacceptable:</b>  New construction or development should generally not be undertaken because mitigation is usually not feasible to comply with noise element policies. Development will only be considered when technically feasible mitigation is identified that is also compatible with relevant design guidelines. </div>						

In addition, various policies in the Envision San José 2040 General Plan have been adopted for the purpose of reducing or avoiding impacts related to noise, as listed in the table below.

General Plan Policies – Noise and Vibration	
Noise and Vibration	
Policy EC-1.1	<p>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:</p> <p><u>Interior Noise Levels</u></p> <ul style="list-style-type: none"> <li>• The City’s standard for interior noise levels in residences, hotels, motels, residential care facilities, and hospitals is 45 dBA DNL. Include appropriate site and building design, building construction and noise attenuation techniques in new development to meet this standard. For sites with exterior noise levels of 60 dBA DNL or more, an acoustical analysis following protocols in the City-adopted California Building Code is required to demonstrate that development projects can meet this standard. The acoustical analysis shall base required noise attenuation techniques on expected 2040 General Plan traffic volumes to ensure land use compatibility and 2040 General Plan consistency over the life of this plan.</li> </ul> <p><u>Exterior Noise Levels</u></p> <ul style="list-style-type: none"> <li>• The City’s acceptable exterior noise level objective is 60 dBA DNL or less for residential and most institutional land uses (Table EC-1). The acceptable exterior noise level objective is established for the City, except in the environs of the Norman Y. Mineta San José International Airport, the Downtown Core Area, and along major roadways. For the remaining areas of the City, the following standards apply: <ul style="list-style-type: none"> <li>– For new multi-family residential projects and for the residential component of mixed-use development, use a standard of 60 dBA DNL in usable outdoor activity areas, excluding balconies and residential stoops and porches facing existing roadways. There will be common use areas available to all residents that meet the 60 dBA exterior standard. Use noise attenuation techniques such as shielding by buildings and structures for outdoor common use areas.</li> <li>– For single-family residential uses, use a standard of 60 dBA DNL for exterior noise in private usable outdoor activity areas, such as back yards.</li> </ul> </li> </ul>
Policy EC-1.2	<p>Minimize the noise impacts of new development on land uses sensitive to increased noise levels (Categories 1, 2, 3 and 6) by limiting noise generation and by requiring use of noise attenuation measures such as acoustical enclosures and sound barriers, where feasible. The City considers significant noise impacts to occur if a project would:</p> <ul style="list-style-type: none"> <li>• Cause the DNL at noise sensitive receptors to increase by five dBA DNL or more where the noise levels would remain “Normally Acceptable”; or</li> <li>• 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.</li> </ul>

<b>General Plan Policies – Noise and Vibration</b>	
Policy EC-1.3	New nonresidential land uses will mitigate noise generation to 55 dBA DNL at the property line when located adjacent to existing or planned noise sensitive residential and public/quasi-public land uses.
Policy EC-1.4	Include appropriate noise attenuation techniques in the design of all new General Plan streets projected to adversely impact noise sensitive uses.
Policy EC-1.6	Regulate the effects of operational noise from existing and new industrial and commercial development on adjacent uses through noise standards in the City's Municipal Code.
Policy EC-1.7	<p>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:</p> <ul style="list-style-type: none"> <li>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.</li> </ul> <p>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.</p>
Policy EC-1.9	Noise studies are required for land use proposals where known or suspected loud intermittent noise sources occur which may impact adjacent existing or planned land uses. For new residential development affected by noise from heavy rail, light rail, BART or other single-event noise sources, mitigation will be implemented so that recurring maximum instantaneous noise levels do not exceed 50 dBA $L_{max}$ in bedrooms and 55 dBA $L_{max}$ in other rooms.
Policy EC-1.14	Require acoustical analyses for proposed sensitive land uses in areas with exterior noise levels exceeding the City's noise and land use compatibility standards to base noise attenuation techniques on expected Envision General Plan traffic volumes to ensure land use compatibility and General Plan consistency.
Policy EC-2.1	Near light and heavy rail lines or other sources of ground-borne vibration, minimize vibration impacts on people, residences, and businesses through the use of setbacks and/or structural design features that reduce vibration to levels at or below the guidelines of the Federal Transit Administration. Require new development within 100 feet of rail lines to demonstrate prior to project approval that vibration experienced by residents and vibration sensitive uses would not exceed these guidelines.

<b>General Plan Policies – Noise and Vibration</b>	
Policy EC-2.3	Require new development to minimize continuous vibration impacts to adjacent uses during demolition and construction. For sensitive historic structures, including ruins and ancient monuments or building that are documented to be structurally weakened, a continuous vibration limit of 0.08 in/sec PPV (peak particle velocity) will be used to minimize the potential for cosmetic damage to a building. A continuous vibration limit of 0.20 in/sec PPV will be used to minimize the potential for cosmetic damage at buildings of normal conventional construction. Equipment or activities typical of generating continuous vibration include but are not limited to: excavation equipment; static compaction equipment; vibratory pile drivers; pile-extraction equipment; and vibratory compaction equipment. Avoid use of impact pile drivers within 125 feet of any buildings, and within 300 feet of historical buildings, or buildings in poor condition. On a project-specific basis, this distance of 300 feet may be reduced where warranted by a technical study by a qualified professional that verifies that there will be virtually no risk of cosmetic damage to sensitive buildings from the new development during demolition and construction. Transient vibration impacts may exceed a vibration limit of 0.08 in/sec PPV only when and where warranted by a technical study by a qualified professional that verifies that there will be virtually no risk of cosmetic damage to sensitive buildings from the new development during demolition and construction.

### City of San José Municipal Code

Chapter 20.100.450 of the Municipal Code establishes allowable hours of construction within 500 feet of a residential unit between 7:00 AM and 7:00 PM Monday through Friday unless permission is granted with a development permit or other planning approval. No construction activities are permitted on the weekends at sites within 500 feet of a residence.

On May 21, 2020, City Manager Dave Sykes signed an Emergency Order to extend construction hours to 6:00 AM to 8:00 PM Monday through Saturday for project sites with an approved development permit or other planning approval that are at least 50,000 square feet of development or at least 50 residential units. The Emergency Order is effective immediately and was brought to the City Council for ratification on June 9, 2020 (Resolution No. 79557). The declaration will remain in place until terminated by the Director of Emergency Services or the City Council, or upon the termination or expiration of the Proclamation of Local Emergency.

#### **3.13.1.3      *Existing Conditions***

The project site is bordered by Mabury Road to the south, Coyote Creek to the west, Berryessa Road and Upper Penitencia Creek to the north, and the Berryessa BART Station to the east. Commercial and residential uses are located to the south, industrial uses are located across Coyote Creek to the west, residential and commercial development are located to the north, and residential uses are located to the east. The site is approximately 2.5 miles east of Norman Y. Mineta San José International Airport, placing it outside of the airport's 60 CNEL noise contour. BART began operations on the Berryessa Extension in June 2020. Noise from the Berryessa Extension is, therefore, included in baseline noise and vibration calculations.

## Measured Noise Levels

Several noise surveys have been completed at the project site since 2001. Measurements taken between 2001 and 2005 found noise levels in the site vicinity between 57 and 62 dBA DNL, and noise levels along Berryessa and Mabury Roads at 72 and 76 dBA DNL, respectively. The past noise environment resulted primarily from traffic along Berryessa and Mabury Roads, and industrial activity west of Coyote Creek.

A new noise monitoring survey was completed in the site vicinity between Tuesday, August 27, 2019 and Thursday, August 29, 2019. The monitoring survey included five long-term (LT-1 through LT-5) noise measurements and two observed, short-term (ST-1 and ST-2) noise measurements. Long-term measurements were made to quantify the daily trend in noise levels at the project site and at sensitive receptors in the site vicinity, including residences to the north and east and commercial uses to the south. Attended short-term measurements were made to document ambient noise levels at additional residences in the site vicinity. Measurement locations are shown on Figure 3.13-1. As concluded in the 2001 and 2005 surveys, the existing noise environment at the project site results primarily from vehicular traffic along Berryessa and Mabury Roads, and industrial activities at sites to the west across Coyote Creek. Day-night average noise levels at long-term measurement locations were calculated for Wednesday, August 28, 2019.

Long-term noise measurement LT-1 was taken approximately 50 feet southeast of the centerline of Mabury Road at the southeast corner of the intersection of Mabury and Lenfest Roads. The primary noise source at this location was vehicular traffic on Mabury Road. Hourly average noise levels at this location ranged from 64 to 72 dBA  $L_{eq}$  during the day and from 58 to 70 dBA  $L_{eq}$  at night. The day-night average noise level was 72 dBA DNL.

Long-term noise measurement LT-2 was taken at the southwestern end of Salamoni Court, approximately 310 feet east of the project site. The primary noise source at this location was vehicular traffic along Berryessa Road to the north and King Road to the east. Hourly average noise levels at this location typically ranged from 48 to 55 dBA  $L_{eq}$  during the day and from 38 to 52 dBA  $L_{eq}$  at night. The day-night average noise level was 54 dBA DNL.

Long-term noise measurement LT-3 was taken near the center of the northwestern property line of the site, approximately 75 feet southeast of the centerline of Berryessa Road. The primary noise source at this location was vehicular traffic on Berryessa Road. Hourly average noise levels at this location typically ranged from 69 to 72 dBA  $L_{eq}$  during the day and from 59 to 70 dBA  $L_{eq}$  at night. The day-night average noise level was 73 dBA DNL.

Long-term noise measurement LT-4 was taken near the site's western property line, approximately 480 northeast of the Yard Court cul-de-sac and across Coyote Creek from the site. The primary noise sources at this location included distant traffic and local industrial land use noises. Hourly average noise levels at this location typically ranged from 53 to 58 dBA  $L_{eq}$  during the day and from 41 to 52 dBA  $L_{eq}$  at night. The day-night average noise level was 57 dBA DNL.





NOISE MEASUREMENT LOCATIONS

FIGURE 3.13-1



Long-term noise measurement LT-5 was taken near the western property line, approximately 415 feet southeast of the Berryessa Road centerline. The primary noise sources at this location included vehicular traffic on Berryessa Road and industrial land uses. Hourly average noise levels at this location typically ranged from 55 to 58 dBA  $L_{eq}$  during the day, and from 43 to 54 dBA  $L_{eq}$  at night. The day-night average noise level was 61 dBA DNL.

Two attended, ten-minute short-term measurements were taken between 10:30 AM and 11:00 AM on Tuesday, August 27, 2019. Measurement ST-1 was taken on Commodore Drive near residences approximately 745 feet east of the site boundary. The equivalent sound level at this location was 54 dBA  $L_{eq}$ . Measurement ST-2 was taken approximately 125 feet northwest of the site near the northeastern corner of Berryessa Road and Sierra Road. The equivalent sound level at this location was 69 dBA  $L_{eq}$ .

Noise measurement results are summarized in Table 3.13-3. Daily trends in noise levels at long-term measurement sites are shown in Appendix G.

<b>Table 3.13-3: Summary of Long-Term Noise Measurements near Project Site</b>			
<b>Noise Measurement Location</b>	<b>Daytime dBA <math>L_{eq}</math></b>	<b>Nighttime dBA <math>L_{eq}</math></b>	<b>Day-Night Average</b>
LT-1: 50 feet south of Mabury Road centerline	64 – 72	58 – 70	72
LT-2: West end of Salamoni Court	48 – 55	38 – 52	54
LT-3: 75 feet south of Berryessa Road	69 – 72	59 – 70	73
LT-4: Western property line	53 – 58	41 – 52	57
LT-5: Western property line	55 – 58	43 – 54	61
ST-1: Residences on Commodore Drive	54	-	-
ST-2: 70 feet north of Berryessa Road	69	-	-

### **BART Noise and Vibration**

A BART alignment and the Berryessa BART Station adjoin the east boundary of the project site. The first phase of the Silicon Valley BART Extension (SVBX) project is a 9.9-mile segment that includes stations in Milpitas and the Berryessa area of north downtown San José. BART began operations on the Berryessa extension in June 2020. The BART track along the east boundary of the site is approximately 28 feet above grade. Trains approach the station at a speed of approximately 50 miles per hour before slowing to a stop. It is estimated that operations during regular daytime hours between 7:00 AM and 10:00 PM, the tracks would operate an average of 16 trains. The noise levels of the 16 trains would reach 72 dBA  $L_{eq}$  at a distance of 50 feet from the tracks. Noise from an average of 10 nighttime trains operating between 10:00 PM and 1:30 AM is estimated to reach 70 dBA  $L_{eq}$  at a distance of 50 feet from the tracks. Over a 24-hour period, BART operations at the site are expected to generate day-night average noise levels of 75 dBA DNL at a distance of 50 feet from the tracks.

A six-level parking structure was constructed to serve the BART station. It is located between the BART alignment and Berryessa Station Way, approximately 220 feet east of the nearest proposed

project site buildings. Noise associated with the parking structure primarily results from car engine startups, door closings, and horns being sounded. Noise associated with the six-level structure servicing the Berryessa BART Station is estimated to reach maximum levels between 35 and 43 dBA  $L_{max}$  at site buildings. This is well below the ambient noise level at the site; therefore, the parking structure is not expected to be a substantial noise source affecting the noise environment at the project site.

Berryessa Station Way is a road which runs along the BART alignment from Berryessa Road to the north to Mabury Road to the south. It opened with the Berryessa BART Station. Points along the southbound lane of Berryessa Station Way come within approximately 250 feet of proposed site buildings. As ridership of BART at this station increases, traffic noise along Berryessa Station Way will increase. The traffic noise level from this road was modeled under future 2040 traffic conditions as provided in the project's transportation study, completed by Hexagon Transportation Consultants, Inc. Traffic noise levels at the site associated with Berryessa Station Way are anticipated to reach 58 dBA DNL at the nearest proposed office building. Much of the site will be shielded from the road by the BART station and its parking structure.

Two transit power substations are located within the site vicinity, beneath the elevated BART tracks east of the site. The nearest proposed office buildings are located approximately 90 feet from the southern substation. At a distance of 90 feet, a continuous noise level of 46 dBA would be anticipated from the substations. Additionally, the substations in the site vicinity are surrounded with a noise wall that would further decrease the noise level produced by the substations. Noise associated with the substations is not anticipated to have an impact at any location on the site.

Other potential noise sources originating from BART operations include occasional train horns and the station's public address system. Neither of these sources are expected to contribute substantially to the overall operational noise level.

The SVBX project was designed with vibration mitigation measures in place to reduce impacts at nearby sensitive receptors to below the FTA's 72 vibration decibels (VdB) threshold for residences and buildings where people usually sleep. Due to the elevated alignment of the tracks, there were no potential vibration impacts identified along the site boundary. While in operation, vibration levels produced by BART trains are expected to occasionally be perceptible at locations along the eastern property line of the site.

### **3.13.2      Impact Discussion**

For the purpose of determining the significance of the project's impact on noise, would the project result in:

- a) Generation of a substantial temporary or permanent increase in ambient noise levels in the vicinity of the project in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?
- b) Generation of excessive groundborne vibration or groundborne noise levels?
- c) For a project located within the vicinity of a private airstrip or an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use

airport, would the project expose people residing or working in the project area to excessive noise levels?

### 3.13.2.1 *Project Impacts*

- 
- a) **Would the project result in generation of a substantial temporary or permanent increase in ambient noise levels in the vicinity of the project in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?**
- 

#### **Option 1 and Option 2**

##### Temporary Construction Noise

The potential for temporary noise impacts due to project construction activities would depend upon the noise generated by various pieces of construction equipment, the timing and duration of noise-generating activities, and the distance between construction noise sources and noise-sensitive areas. Construction noise impacts primarily result when construction activities occur during noise-sensitive times of the day (e.g., early morning, evening, or nighttime hours), the construction occurs in areas immediately adjoining noise-sensitive land uses, or when construction lasts over extended periods of time. Policy EC-1.7 of the City's General Plan requires all construction operations within the City to use best available noise suppression devices and techniques and to limit construction hours near residential uses per the Municipal Code allowable hours. Further, the City considers significant construction noise impacts to occur if a project located within 500 feet of residential uses or 200 feet of commercial or office uses would involve substantial noise-generating activities (such as building demolition, grading, excavation, pile driving, use of impact equipment, or building framing) continuing for more than 12 months.

Construction activities generate considerable amounts of noise, especially during earth-moving activities and during the construction of the building's foundation when heavy equipment is used. The highest noise levels would be generated during grading, excavation, and foundation construction. Pile driving is not anticipated as a foundation construction technique, given that mid-rise buildings are proposed, but pile driving has not been explicitly ruled out at the time this analysis was completed and was included in the construction assumptions. The hauling of excavated materials and construction materials would generate truck trips on local roadways, as well. The total construction period would be approximately six years for both Option 1 and Option 2.

A detailed list of construction equipment was not available at the time the Noise and Vibration Assessment was completed, and default assumptions based upon the project size and construction timeline were used. During each stage of construction, there would be a different mix of equipment operating, and noise levels would vary by stage and vary within stages, based on the amount of equipment in operation and the location at which the equipment is operating. Most demolition and construction noise is within the range of 80 to 90 dBA at a distance of 50 feet from the source. Construction-generated noise levels drop off at a rate of about six dBA per doubling of the distance between the source and receptor. Additional details regarding maximum noise levels for construction equipment and average noise levels for construction phases are provided in Appendix G.

There are three residential areas potentially affected by construction noise generated on the project site: residences across Berryessa Road from the project site approximately 200 feet north of the site, residences in the Salamoni Court/Pala Ranch Circle area east of the new BART station approximately 310 feet east of the site, and the Bridge Housing temporary residences across Mabury Road, approximately 120 feet south of the site. Long-term measurements taken at the site indicated ambient noise levels of 73 dBA DNL at the residences to north across Berryessa Road, 54 dBA DNL at the residences east of the site on Salamoni Court, and 72 dBA DNL at the Bridge Housing site. Noise from construction activity would periodically exceed these levels.

During construction in the northern area of the site, construction noise levels at the nearest Berryessa Road residences would range from 66 to 80 dBA  $L_{eq}$  when construction is occurring adjacent to Berryessa Road and from 57 to 71 dBA  $L_{eq}$  when construction is occurring throughout most of the northern area of the site. Construction noise levels at the nearest residences in the Salamoni Court/Pala Ranch Circle neighborhood would range from 53 to 67 dBA  $L_{eq}$  when construction is occurring at office development area O1 (see Figure 2.2-4) and from 47 to 61 dBA  $L_{eq}$  when construction is occurring throughout most of the area.

During construction in the central area of the site, the most affected receptors would be residences in the Salamoni Court/Pala Ranch Circle neighborhood. Noise from construction would range from 59 to 73 dBA  $L_{eq}$  when construction is occurring adjacent to BART and from 50 to 64 dBA  $L_{eq}$  when construction is occurring throughout most of the central area of the site. Construction noise levels at the nearest Berryessa Road residences would range from 55 to 69 dBA  $L_{eq}$  when construction is occurring at the closest location in development areas O2 and H2 (see Figure 2.2-4) and from 49 to 63 dBA  $L_{eq}$  when construction is occurring throughout most of the central area of the site. These residences are shielded by an existing eight-foot high sound barrier, which would be anticipated to provide about eight dBA of noise reduction to ground level construction activities.

During construction in the southern area of the site, the affected receptors would be residences in the Salamoni Court/Pala Ranch Circle neighborhood and temporary residences at the Bridge Housing site. At residences in the Salamoni Court/Pala Ranch Circle neighborhood, noise from construction would range from 57 to 71 dBA  $L_{eq}$  when construction is occurring adjacent to BART and from 50 to 64 dBA  $L_{eq}$  when construction is occurring throughout most of the southern area of the site. At the Bridge Housing temporary residences, noise from construction would range from 67 to 82 dBA  $L_{eq}$  when construction is occurring along the southern property line, and from 50 to 64 dBA  $L_{eq}$  when construction is occurring throughout most of the southern area of the site. Construction noise levels at the nearest Berryessa Road residences would not make a measurable contribution to the noise environment at Salamoni Court/Pala Ranch Circle or the Bridge Housing site.

The nearest Berryessa Road residences would be located within 500 feet of construction activities in the northern and central areas of the project site. The Salamoni Court/Pala Ranch Circle neighborhood would be located within 500 feet of construction activities in the central and southern areas of the project site. The Bridge Housing temporary residences would be located within 500 feet of construction activities in the southern area of the project site. While a detailed schedule for construction was not available at the time the Noise and Vibration Assessment was completed, it is reasonable to assume the Berryessa Road and Salamoni Court/Pala Ranch Circle residential areas would experience elevated noise levels for a period exceeding one year under both project options. Although the construction timeframe would be the same for both options, Option 2 would be

relatively more intensive because it would include 1.2 million square feet of additional office development.

The project would comply with the City's standard noise control measures and General Plan Policy EC-1.7, which requires large or complex projects to prepare a construction noise logistics plan.

**Impact NOI-1:** Redevelopment of the project site would result in elevated noise levels at nearby residences for a period exceeding one year. **(Significant Impact)**

**Mitigation Measures:** The project would implement the following mitigation measure to reduce impacts related to construction noise.

**MM NOI-1.1:** An acoustic engineer shall prepare and implement a construction noise logistics plan, in accordance with General Plan Policy EC-1.7, prior to issuance of any demolition or grading permits. A typical construction noise logistics plan will include, but not be limited to, the following measures to reduce construction noise levels:

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

uses so that construction activities can be scheduled to minimize noise disturbance.

A copy of the construction noise logistics plan shall be submitted to the Director of Planning, Building and Code Enforcement prior to issuance of any demolition or grading permits.

**Standard Permit Conditions:** The project applicant shall implement the following standard permit conditions to minimize the impacts of construction-generated noise.

- Construction will be limited to the hours of 7:00 AM to 7:00 PM Monday through Friday for any on-site or off-site work within 500 feet of any residential unit. Construction outside of these hours may be approved through a development permit based on a site-specific construction noise mitigation plan and a finding by the Director of Planning, Building and Code Enforcement that the construction noise mitigation plan is adequate to prevent noise disturbance of affected residential uses or other City regulations.
- The contractor shall use “new technology” power construction equipment with state-of-the-art noise shielding and muffling devices. All internal combustion engines used on the project site shall be equipped with adequate mufflers and shall be in good mechanical condition to minimize noise created by faulty or poorly maintained engines or other components.
- The unnecessary idling of internal combustion engines shall be prohibited.
- Staging areas and stationary noise-generating equipment shall be located as far as possible from noise-sensitive receptors such as residential uses (a minimum of 200 feet).
- The surrounding neighborhood shall be notified early and frequently of the construction activities.
- A noise disturbance coordinator shall be designated to respond to any local complaints about construction noise. The disturbance coordinator would determine the cause of the noise complaints (e.g., beginning work too early, bad muffler, etc.) and institute reasonable measures warranted to correct the problem. A telephone number for the disturbance coordinator would be conspicuously posted at the construction site.

With implementation of mitigation measure MM NOI-1.1 and the standard permit conditions above, construction of the proposed project (both Option 1 and Option 2) would not generate noise levels in excess of the standards defined in the City’s Noise Element. **(Less than Significant Impact with Mitigation Incorporated)**

### Operational Noise

According to Policy EC-1.2 of the City’s General Plan, a significant permanent noise increase would occur if the project would increase noise levels at noise-sensitive receptors by three dBA DNL or more where ambient noise levels exceed the “normally acceptable” noise level standard. Where future noise levels are at or below the “normally acceptable” noise level standard, noise level increases of five dBA DNL or more would be considered significant. The City’s General Plan defines the “normally acceptable” outdoor noise level standard for the residential land uses to be 60 dBA DNL. Existing ambient levels, based on the measurements made in the project vicinity, exceed



60 dBA DNL. Therefore, a significant impact would occur if traffic due to the proposed project would permanently increase ambient levels by three dBA DNL. For reference, a three dBA DNL noise increase would be expected if the project would double existing traffic volumes along a roadway.

AM and PM peak hour traffic volumes were reviewed to calculate potential traffic noise level increases attributable to the project expected along roadways serving the site. Roadways affecting the site evaluated in the analysis included Berryessa Road, Mabury Road, King Road, Lundy Avenue, Berryessa Way, and US 101. Traffic volumes for the Year 2040 Build conditions included the changes proposed for the Mabury Interchange Network or the Berryessa Interchange Network (see transportation discussion in Section 3.17). Based on these values, project-generated traffic increases (under both Option 1 and Option 2) would not increase noise levels by three dBA DNL or greater at any noise-sensitive location. **(Less than Significant Impact)**

### Noise Levels in Excess of Standards

As a mixed-use development project, residential uses are proposed in proximity to commercial uses. Noise conflicts may be caused by different on-site noise sources such as outdoor dining areas or bars, mechanical equipment, outdoor maintenance areas, truck loading docks and delivery activities, public address systems, and parking lots and parking structures (e.g., opening and closing of vehicle doors, people talking, car alarms). Development under the proposed project (both Option 1 and Option 2) would introduce new noise-generating sources adjacent to existing noise-sensitive areas and new noise-sensitive uses adjacent to existing noise sources.

The nearest noise sensitive receptors to the project site are the Bridge Housing temporary residences located approximately 120 feet south of the site, residences under construction about 200 feet north of the site, across Berryessa Road, and residences in the Salamoni Court/Pala Ranch Circle area, located east of the Berryessa BART tracks and station, about 310 feet east of the site, and shielded by an existing eight-foot-high sound wall. Specific information on selection of generators including model, placement, number of generators, testing schedule, and sound data were not known at the time the Noise and Vibration Assessment was completed. A worst-case placement of one rooftop emergency backup generator per office building would locate the generators approximately 140 feet north of the nearest residence to the south and 400 feet west of the nearest residence to the east. A typical 1,000-kW generator tested at full load and unequipped with any sound attenuation would result in a noise level of approximately 86 dBA at a distance of 140 feet and a noise level of approximately 77 dBA at a distance of 400 feet. Generator testing typically occurs monthly for durations of 15 minutes to one hour. A one-hour test at full load would result in a noise level of 72 dBA DNL at the nearest residences to the south and 63 dBA DNL at the nearest residences to the east, not accounting for attenuation from intervening structures.

The implementation of General Plan Policies EC-1.2, EC-1.3, and EC-1.9 would reduce potential impacts associated with new noise-producing land uses facilitated by the project to a less-than-significant level. Policy EC-1.2 limits noise generation by requiring use of noise attenuation measures such as acoustical enclosures and sound barriers, where feasible, to avoid substantial increases to ambient noise (see standard permit condition below). General Plan Policy EC-1.3 requires new projects to mitigate noise generation to 55 dBA DNL at the property line. Lastly,

General Plan Policy EC-1.9 requires that studies be completed to mitigate loud intermittent noise sources associated with new projects.

New noise-generating projects implemented by the project or the siting of noise-sensitive receptors would be subject to the City's Municipal Code, which sets noise limits for existing or proposed residences and other noise-sensitive land uses. Compliance with the City's Municipal Code noise limits would result in a less-than-significant impact. In addition, the project includes the below standard permit condition as a Condition of Approval.

**Standard Permit Condition:** Mechanical equipment, including generators, shall be selected and designed to reduce excessive noise levels at the surrounding uses to meet the City's 55 dBA DNL noise level requirement at the nearby noise-sensitive land uses. A qualified acoustical consultant shall be retained to review mechanical noise as these systems are selected to determine specific noise reduction measures necessary to reduce noise to comply with the City's Municipal Code noise level requirements. Noise reduction measures could include, but are not limited to, selection of equipment that emits low noise levels and installation of noise barriers, such as enclosures and parapet walls, to block the line-of-sight between the noise source and the nearest receptors. Other alternative measures may be optimal, such as locating equipment in less noise-sensitive areas, such as along the building façades farthest from adjacent neighbors, where feasible.

With incorporation of the standard permit condition above, the project (both Option 1 and Option 2) would not generate noise levels in excess of standards. **(Less than Significant Impact)**

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**b) Would the project result in generation of excessive groundborne vibration or groundborne noise levels?**

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**Option 1 and Option 2**

Construction of the project would generate vibration when heavy equipment or impact tools are used. Construction activities would include the demolition of existing structures, site preparation work, excavation of the below-grade parking level, foundation work, and new building framing and finishing. Pile driving is not anticipated as a foundation construction technique, given that mid-rise buildings are proposed, but pile driving has not been explicitly ruled out at the time the Noise and Vibration Assessment was completed and was included in the analysis.

Policy EC-2.3 of the City of San José General Plan establishes a vibration limit of 0.08 inch per second PPV to minimize the potential for cosmetic damage to sensitive historic structures, and a vibration limit of 0.2 inch per second PPV to minimize damage at buildings of normal conventional construction. The vibration limits contained in this policy are conservative and designed to provide the ultimate level of protection for existing buildings in San José. As discussed in detail in Appendix G, vibration levels exceeding these thresholds would be capable of cosmetically damaging adjacent buildings. Cosmetic damage (also known as threshold damage) is defined as hairline cracking in plaster, the opening of old cracks, the loosening of paint or the dislodging of loose objects. Minor damage is defined as hairline cracking in masonry or the loosening of plaster. Major structural damage is defined as wide cracking or the shifting of foundation or bearing walls. Based on review of the City of San José Historic Resource Inventory, there are no historic structures located within

500 feet of the project site. Therefore, the 0.2 inch per second PPV criterion for structures of normal conventional construction would apply.

Project-generated vibration levels from all activities other than pile installation would fall below the General Plan threshold of 0.2 inch per second PPV at buildings located 30 feet or more from the project site. Vibration from pile driving would fall below 0.2 inch per second PPV at buildings located at least 125 feet from the activity.

There are no structures of conventional construction located within 60 feet of general construction activities. Residential structures at the Bridge Housing site would be outside of the range of potential construction-generated vibration impacts. Non-vibration sensitive structures, including the Tesla Repair Center, a storage facility, and a parking garage are located 125 feet or further from the project site. Again, these structures are outside of the potential impact area. The Berryessa BART station structure is a specially engineered concrete structure that is not sensitive to potential vibration levels from pile driving and is located approximately 50 feet from the nearest proposed site building.

At these locations, and in other surrounding areas where vibration would not be expected to cause cosmetic damage, vibration levels may still be perceptible. However, as with any type of construction, this would be anticipated and would not be considered significant, given the intermittent and short duration of the phases that have the highest potential of producing vibration (use of jackhammers, compactors, and other high-power tools). By notifying neighbors of scheduled construction activities (see standard permit condition under checklist question a) above) and scheduling construction activities with the highest potential to produce perceptible vibration during hours with the least potential to affect nearby businesses, perceptible vibration would be less than significant under both Option 1 and Option 2. **(Less than Significant Impact)**

- 
- 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?**
- 

### **Option 1 and Option 2**

Norman Y. Mineta San José International Airport is a public-use airport located approximately 2.5 miles west of the project site. The project site lies outside the 60 dBA CNEL 2037 noise contour of the airport, according to the Norman Y. Mineta San José International Airport Master Plan Update. This means that future exterior noise levels due to aircraft from Norman Y. Mineta San José International Airport are compatible with the proposed use. **(Less than Significant Impact)**

### 3.13.2.2 *Cumulative Impacts*

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#### **Would the project result in a cumulatively considerable contribution to a significant cumulative noise impact?**

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##### **Option 1 and Option 2**

The geographic area for cumulative noise impacts includes the project site and surrounding area. As described previously, the project site is located within an urban area exposed to noise from vehicular traffic along Berryessa and Mabury Roads, industrial activities at sites to the west across Coyote Creek, and BART train pass-bys to the east.

##### Construction

While cumulative projects could be constructed at the same time as the proposed project and result in a temporary construction noise increase, all projects in the City would be required to implement the construction noise standard permit conditions identified under checklist question a) above. In addition to the standard permit condition, the proposed project includes mitigation measure MM NOI-1.1 in compliance with General Plan Policy EC-1.7, which requires large or complex projects to prepare a construction noise logistics plan.

Similar to the proposed project, each of the cumulative development projects and future development under the Berryessa BART Urban Village Plan would implement mitigation measures to reduce the impacts of construction noise and comply with General Plan policies. For these reasons, with the implementation of MM NOI-1.1 and standard permit conditions, the proposed project (both Option 1 and Option 2) would not result in construction noise impacts that would have a cumulatively considerable contribution to significant cumulative noise impacts. **(Less than Significant Cumulative Impact with Mitigation Incorporated)**

##### Operation

Once operational, the proposed project (both Option 1 and Option 2) would not result in significant noise impacts (see checklist question a) above). However, traffic trips associated with the proposed project would increase ambient noise levels on the adjacent streets. The proposed project, combined with other pending and approved projects in the immediate area as well as future development under the Berryessa BART Urban Village Plan would further increase ambient noise levels over existing conditions.

A significant long-term cumulative noise impact would occur if two criteria are met: 1) if the cumulative traffic noise level increase is three dBA CNEL or greater for future levels exceeding 60 dBA CNEL or is five dBA CNEL or greater for future levels at or below 60 dBA CNEL; and 2) if the project would make a “cumulatively considerable” contribution to the overall traffic noise increase. A “cumulatively considerable” contribution is defined as an increase of one dBA CNEL or more attributable solely to the proposed project.

Future noise levels at the project site would exceed 60 dBA CNEL. However, under cumulative conditions, there are no roadway segments at which 1) the traffic noise resulting from cumulative

projects would increase noise levels by at least three dBA CNEL due to a doubling of existing roadway volumes; and 2) the proposed project's contribution to traffic noise would be expected to exceed one dBA CNEL. As a result, the project (both Option 1 and Option 2) would not result in a cumulatively considerable increase in ambient noise levels. **(Less than Significant Cumulative Impact)**

### 3.13.3 Non-CEQA Effects

#### Option 1 and Option 2

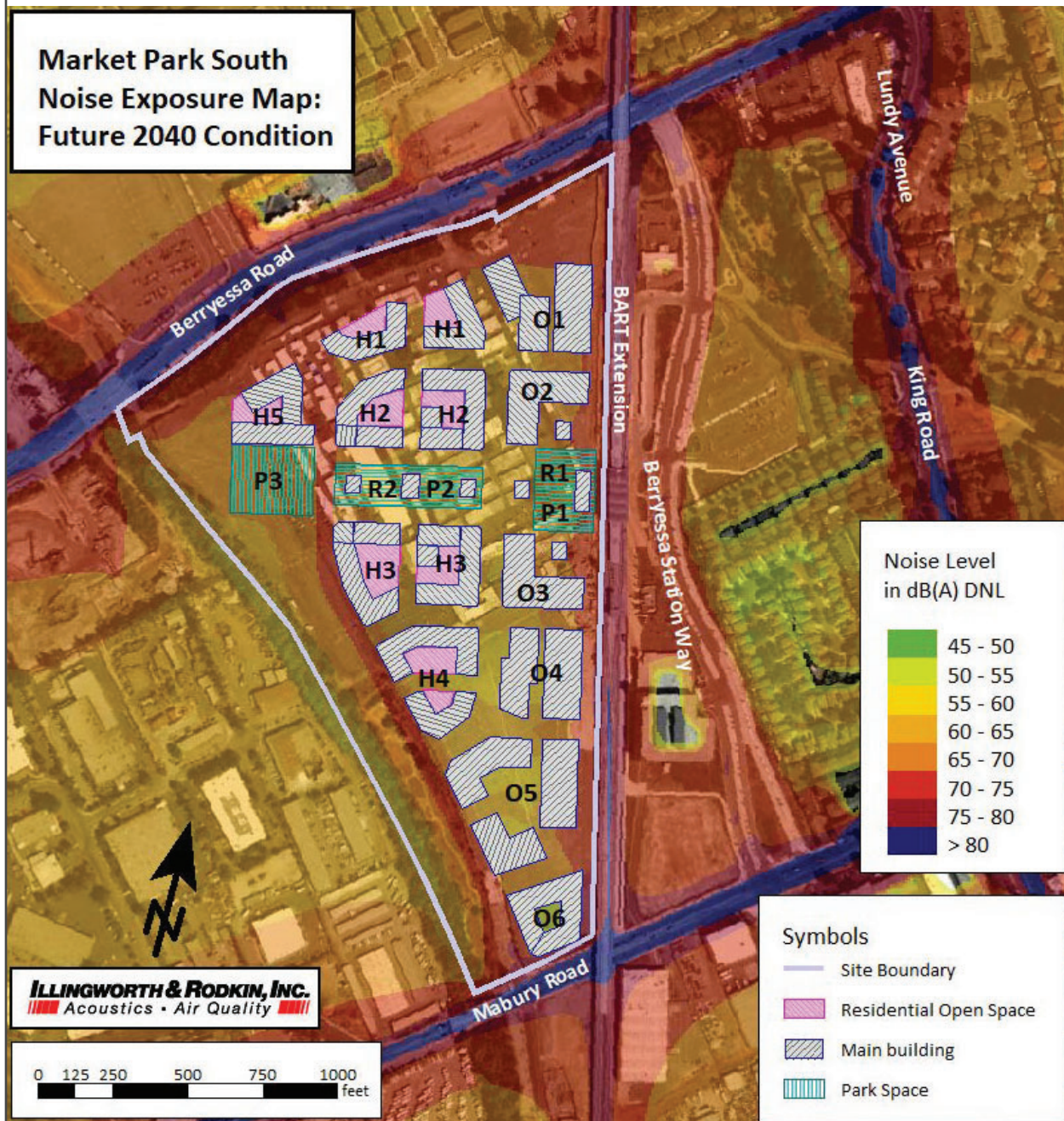
##### Future Exterior Noise Environment

The future exterior noise environment at the project site would continue to result from vehicular traffic along Berryessa and Mabury Roads, industrial activities at properties to the west across Coyote Creek, and BART train pass-bys to the east. Vehicular activity along the project site access road connecting Berryessa and Mabury Roads would dominate the noise environment at adjacent residential and commercial buildings. Based on traffic volumes provided by Hexagon Transportation Consultants, Year 2040 peak hour traffic noise levels along roadways in the site vicinity are expected to increase by up to eight dBA  $L_{eq}$  above existing levels as a result of development in the surrounding area, including General Plan buildout and potential improvements to the US-101/Berryessa Road interchange (see discussion in Section 3.17 Transportation and Appendix H).

Future DNL noise contours for the site, resulting from all environmental noise sources, including vehicular and rail traffic and industrial activities, are provided in Figure 3.13-2 and Table 3.13-4. Peak hour  $L_{eq}$  noise levels are approximately two dBA lower than the future DNL levels.

<b>Table 3.13-4: Calculated Exterior Noise Levels at Proposed Park and Residential Open Space Areas</b>	
<b>Open Space Location</b>	<b>Calculated Noise Level (dBA DNL)</b>
H1 Park Space East	<b>69</b>
H1 Park Space West	<b>72</b>
H2 Open Space East	52
H2 Open Space West	52
H2 Rooftop Garden East	<b>61</b>
H2 Rooftop Garden West	<b>64</b>
H3 Open Space East	47
H3 Open Space West	50
H3 Rooftop Garden East	59
H3 Rooftop Garden West	<b>62</b>
H4 Open Space North	56
H4 Open Space South	54
H5 Open Space	<b>68</b>
H5 Rooftop Garden	<b>65</b>
P1/R1 Park Space	<b>67</b>
P2/R2 Park Space	<b>59 – 67</b>
P3 Park Space	<b>66</b>
Note: Values that exceed the normally acceptable objective of 60 dBA DNL for residential areas and 65 dBA DNL for parks are shown in <b>bold</b> .	

**Market Park South  
Noise Exposure Map:  
Future 2040 Condition**





Noise levels would exceed the normally acceptable objective of 60 dBA DNL for residential open space at the Building H1 open spaces, Building H2 rooftop gardens, Building H5 open space, and Building H5 rooftop garden. Noise levels would exceed the normally acceptable objective of 65 dBA DNL at the P1/R1 park space and P2/R2 park space. With construction of four-foot parapet walls along portions of rooftop perimeters as shown in Figure 3.13-3, noise levels at the Buildings H2, H3, and H5 rooftop gardens would be reduced to below 60 dBA DNL. With construction of six-foot noise walls along segments of the arterial site access road as shown in Figure 3.13-3, noise levels at park spaces P2 and P3 would be reduced below 65 dBA DNL. As park space P1 is adjacent to the elevated BART track, it is not feasible to reduce noise levels below 65 dBA DNL. It would not be feasible to reduce noise levels at the H1 or H5 open spaces without construction of a noise wall along Berryessa Road or without redesigning building orientations to avoid direct exposure to Berryessa Road. Noise levels at all outdoor use areas would fall below the conditionally acceptable objective of 75 dBA DNL for residential spaces and 80 dBA DNL for neighborhood parks.

**Project Conditions of Approval:** The project would implement the following conditions of approval to reduce exterior noise levels in compliance with City standards:

- When refining the project's site plan, continue to locate common outdoor areas away from adjacent noise sources and shield noise-sensitive outdoor spaces with buildings or noise barriers where feasible. Site plan refinements are needed to reduce noise levels at the H1 and H5 open spaces to meet the City's 60 dBA DNL normally acceptable guideline for residential outdoor spaces.
- Construct four-foot-high parapet walls along portions of perimeters of rooftops (see Figure 3.13-3) to reduce noise levels at the H2, H3, and H5 rooftop gardens to meet the 60 dBA DNL objective. To be effective, walls must be constructed with a solid material with no gaps in the face of the wall or at the base. Openings or gaps between sound wall materials or the ground substantially decrease the effectiveness of the sound wall. Suitable materials for sound wall construction should have a minimum surface weight of three pounds per square inch (such as one-inch wood, 0.5-inch laminated glass, masonry block, concrete, or one-inch metal).
- Construct six- and eight-foot-high sound barriers, as shown on Figure 3.13-3, to shield proposed park and open space areas P2 and P3. These barriers will reduce exterior noise levels in these areas to meet the normally acceptable 65 dBA DNL objective. Walls shall be constructed of a solid material with no gaps in the face of the wall or at the base. Openings or gaps between sound wall materials or the ground substantially decrease the effectiveness of the sound wall. Suitable materials for sound wall construction shall have a minimum surface weight of three pounds per square foot (such as one-inch wood, 0.5-inch laminated glass, masonry block, concrete, or one-inch metal).

With incorporation of the conditions of approval listed above, the project would not exceed exterior noise standards.

**Market Park South  
Noise Reduction  
Measures:  
Future 2040 Condition**

**Symbols**

- 70 - 75 dBA DNL
- 60 - 70 dBA DNL
- Noise Wall

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## Future Interior Noise Environment

Interior noise levels would vary depending upon the design of the buildings (relative window area to wall area) and the selected construction materials and methods. Standard residential construction provides approximately 15 dBA of exterior-to-interior noise reduction, assuming the windows are partially open for ventilation. Standard new construction with the windows closed provides approximately 20 to 25 dBA of noise reduction in interior spaces. The façade elements which contribute to the composite sound isolation of the assembly are the exterior wall assemblies themselves, along with significant openings/penetrations to the wall assembly, such as windows or exterior doors.

Both the City of San José and the CBC require that interior noise levels be maintained at 45 dBA DNL or less for residences. CALGreen limits noise levels inside occupied non-residential spaces to 50 dBA  $L_{eq}(1-hr)$  during any hours of operation. Table 3.13-5 lists calculated exterior noise exposures at building facades.

As seen in Figure 3.13-3, outlined in red, some building façades nearest major roads and the BART tracks are anticipated to be exposed to average noise levels between 70 and 75 dBA DNL. Outlined in orange are façades where noise levels are expected to range between 60 to 70 dBA DNL. Façades outlined in orange would require adequate forced-air mechanical ventilation. Those outlined in red would require sound-rated construction methods in addition to forced-air mechanical ventilation.

**Project Conditions of Approval:** The project would implement the following conditions of approval to reduce interior noise levels in compliance with City standards:

- Project-specific acoustical analyses are required by the CBC to confirm interior noise levels in residences will be reduced to 45 dBA DNL or lower and interior levels in non-residential areas are 50 dBA  $L_{eq}$  or less. The specific determination of what treatments are necessary will be completed on a unit-by-unit basis. Results of the analysis, including the description of the necessary noise control treatments, will be submitted to the City along with the building plans and approved prior to issuance of a building permit.
- Building sound insulation requirements shall include the provision of forced-air mechanical ventilation for the units detailed in Figure 3.13-3 and Table 3.13-5 so that windows can be kept closed at the occupant's discretion to control noise.
- Special building techniques (e.g., sound-rated windows and building façade treatments) shall be installed as required to maintain interior noise levels at or below acceptable levels. These treatments shall include, but are not limited to, sound-rated windows and doors, sound-rated wall construction, acoustical caulking, protected ventilation openings, etc.
- Maximum noise levels inside residential units shall be limited as low as reasonable and feasible to reduce the potential for sleep disturbance and activity interference during railroad train pass-by events. Results of the acoustical analysis, including sound-rated construction treatments to reduce interior noise levels, shall be submitted to the City and approved prior to issuance of a building permit.

With incorporation of the conditions of approval listed above, the project would not exceed interior noise standards.

**Table 3.13-5: Calculated Exterior Noise Levels at Building Facades**

<b>Building</b>	<b>Calculated Noise Level (DNL)</b>			
	<b>North</b>	<b>South</b>	<b>East</b>	<b>West</b>
H1 East	<i>68 – 69</i>	<i>61</i>	<i>64</i>	<i>64 – 65</i>
H1 West	<i>69 – 70</i>	<i>63</i>	<i>64 – 65</i>	<i>68</i>
H2 East	<i>61 – 62</i>	<i>61 – 63</i>	<i>61</i>	<i>62 – 63</i>
H2 West	<i>63 – 64</i>	<i>63 – 65</i>	<i>63 – 64</i>	<i>68 – 69</i>
H3 East	<i>60 – 61</i>	<i>59</i>	<i>59</i>	<i>58 – 59</i>
H3 West	<i>61 – 63</i>	<i>62</i>	<i>58 – 59</i>	<i>67 – 68</i>
H4 North	<i>60 – 61</i>	<i>60 – 63</i>	<i>57</i>	<i>67 – 68</i>
H4 South	<i>58 – 62</i>	<i>62</i>	<i>60</i>	<i>67 – 68</i>
H5	<b>68 – 70</b>	<i>65</i>	<i>67 – 68</i>	<i>67 – 68</i>
O1	<i>68 – 69</i>	<i>62 – 63</i>	<i>66 – 67</i>	<i>64 – 66</i>
O2	<i>62 – 64</i>	<i>63 – 64</i>	<b>68 – 72</b>	<i>60 – 63</i>
O3	<i>62 – 63</i>	<i>61 – 62</i>	<b>68 – 72</b>	<i>55 – 57</i>
O4	<i>61 – 62</i>	<i>59 – 60</i>	<i>58 – 62</i>	<i>57 – 58</i>
O5 North	<i>60</i>	<i>61</i>	<i>58 – 59</i>	<i>67 – 68</i>
O5 South	<i>60 – 61</i>	<i>65</i>	<i>66 – 67</i>	<i>68 – 69</i>
O6	<i>66</i>	<b>74 – 75</b>	<b>73 – 75</b>	<i>68 – 69</i>
P1/R1 North	<i>66</i>	<i>66</i>	<i>69</i>	<i>62</i>
P1/R1 East	<i>68</i>	<i>68</i>	<b>72</b>	<i>58</i>
P1/R1 South	<i>66</i>	<i>66</i>	<i>69</i>	<i>61</i>
P1/R1 West	<i>62</i>	<i>63</i>	<i>64</i>	<i>59</i>
P2/R2 East	<i>60</i>	<i>61</i>	<i>62</i>	<i>60</i>
P2/R2 Center	<i>63</i>	<i>62</i>	<i>61</i>	<i>64</i>
P2/R2 West	<i>64</i>	<i>64</i>	<i>61</i>	<i>66</i>
<p>Values shown in <i>italics</i> are considered acceptable with standard construction and the incorporation of adequate forced-air mechanical ventilation to allow occupants the option of keeping windows closed for noise control.</p> <p>Values shown in <b>bold</b> represent environments where a combination of forced-air mechanical ventilation and sound-rated construction methods would be required to meet the interior noise level limits.</p>				

### Future Vibration Environment

The Berryessa BART Station was designed with vibration mitigation measures in place to reduce impacts at nearby sensitive receptors to below the FTA’s 72 VdB threshold for residences and buildings where people usually sleep. The FTA Guidance Manual specifies that groundborne vibration is rarely a problem for elevated railways except when guideway supports are located within

50 feet of buildings. Office building O6, the nearest proposed site building to the BART railway, is located approximately 50 feet southwest of the near track. There are no vibration sensitive receptors proposed within 50 feet of the tracks; therefore, there is no location on site where vibration levels are anticipated to exceed FTA vibration impact criteria.

### 3.14 POPULATION AND HOUSING

As shown in Table 1.2-1, the City's Parks, Recreation, and Neighborhood Service Department comment was received on the Notice of Preparation (NOP) on the issue of affordable housing, and this is discussed under checklist question a) below.

#### 3.14.1 Environmental Setting

##### 3.14.1.1 *Regulatory Framework*

#### State

##### Housing-Element Law

State requirements mandating that housing be included as an element of each jurisdiction's general plan is known as housing-element law. The Regional Housing Need Allocation (RHNA) is the state-mandated process to identify the total number of housing units (by affordability level) that each jurisdiction must accommodate in its housing element. California housing-element law requires cities to: 1) zone adequate lands to accommodate its RHNA; 2) produce an inventory of sites that can accommodate its share of the RHNA; 3) identify governmental and non-governmental constraints to residential development; 4) develop strategies and a work plan to mitigate or eliminate those constraints; and 5) adopt a housing element and update it on a regular basis.<sup>56</sup> The City of San José Housing Element and related land use policies were last updated in January 2015.

#### Regional and Local

##### Plan Bay Area 2040

Plan Bay Area 2040 is a long-range transportation, land-use, and housing plan intended support a growing economy, provide more housing and transportation choices, and reduce transportation-related pollution and greenhouse gas (GHG) emissions in the Bay Area. Plan Bay Area 2040 promotes compact, mixed-use residential and commercial neighborhoods near transit, particularly within identified Priority Development Areas (PDAs).<sup>57</sup>

The Association of Bay Area Governments (ABAG) allocates regional housing needs to each city and county within the nine-county San Francisco Bay Area, based on statewide goals. ABAG also develops forecasts for population, households, and economic activity in the Bay Area. ABAG, the Metropolitan Transportation Commission (MTC), and local jurisdiction planning staff created the Regional Forecast of Jobs, Population, and Housing, which is an integrated land use and transportation plan through the year 2040 (upon which Plan Bay Area 2040 is based).

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<sup>56</sup> California Department of Housing and Community Development. "Regional Housing Needs Allocation and Housing Elements" Accessed April 27, 2018. <http://hcd.ca.gov/community-development/housing-element/index.shtml>.

<sup>57</sup> Association of Bay Area Governments and Metropolitan Transportation Commission. "Project Mapper." <http://projectmapper.planbayarea.org/>.



## Envision San José 2040 General Plan

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

<b>General Plan Policies - Population and Housing</b>	
<b>General Plan Phasing / Planning Horizons/ Major Review Policies</b>	
Policy IP-2.9	Focus new residential development into specified Growth Areas to foster the cohesive transformation of these areas into complete Urban Villages. Allow immediate development of all residential capacity planned for the Growth Areas included in the current Plan Horizons.
<b>Attractive City Policies</b>	
Policy CD-1.9	Give the greatest priority to developing high-quality pedestrian facilities in areas that will most promote transit use and bicycle and pedestrian activity. In pedestrian-oriented areas such as Downtown, Urban Villages, or along Main Streets, place commercial and mixed-use building frontages at or near the street-facing property line with entrances directly to the public sidewalk, provide high-quality pedestrian facilities that promote pedestrian activity, including adequate sidewalk dimensions for both circulation and outdoor activities related to adjacent land uses, a continuous tree canopy, and other pedestrian amenities. In these areas, strongly discourage parking areas located between the front of buildings and the street to promote a safe and attractive street facade and pedestrian access to buildings
Policy CD-1.14	Use the Urban Village Planning process to establish standards for their architecture, height, and massing.
Policy CD-1.25	Apply Riparian Corridor Goals and Policies of this Plan when reviewing development adjacent to creeks <ul style="list-style-type: none"><li>• Development adjacent to creekside areas should incorporate compatible design and landscaping, including appropriate setbacks and plant species that are native to the area or are compatible with native species.</li><li>• Development should maximize visual and physical access to creeks from the public right-of-way while protecting the natural ecosystem. Consider whether designs could incorporate linear parks along creeks or accommodate them in the future.</li></ul>

## Berryessa BART Urban Village Plan

The draft Berryessa BART Urban Village Plan adjusts the area's planned growth set in the Envision San José 2040 General Plan, and includes an employment capacity of 4.2 million square feet of commercial uses (14,000 jobs) and a residential capacity of 5,100 dwelling units. Under the draft Berryessa BART Urban Village Plan, the commercial capacity is reduced from 6.63 million square feet of commercial uses (21,100 jobs) to 4.2 million square feet of commercial uses. The residential capacity is increased from the General Plan allocation of 4,814 dwelling units to 5,100 dwelling units.

### 3.14.1.2 Existing Conditions

Changes in population, housing, and employment in and of themselves are generally characterized as social and economic effects. While increased population does not necessarily cause direct effects on the physical environment, it could cause indirect environmental effects such as increased vehicle trips and air pollutant emissions. Therefore, this discussion focuses on the relationship between the locations of jobs and housing, based upon the analysis in the Envision San José 2040 General Plan EIR.

Table 3.14-1 below summarizes the existing and projected population and employment data for San José as analyzed in the Envision San José 2040 General Plan EIR. Over half of the city's housing stock consists of single-family detached units, although multi-family development (i.e., apartments, condominiums, and townhouses) has been the fastest growing housing type in recent years, accounting for 75 percent of all residential construction since 2000.

<b>Table 3.14-1: Population and Employment in San José</b>			
	<b>General Plan Baseline Conditions (2010)</b>	<b>General Plan Buildout Conditions (2040)</b>	<b>ABAG Projections for 2040</b>
<b>Population</b>	945,942	1,313,811	1,334,100
<b>Households/Dwelling Units</b>	314,038	429,350	432,030
<b>Employed Residents</b>	489,305	665,493	621,780
<b>Jobs</b>	369,450	751,650	524,510
<b>Source:</b> April 2010 Census Data, U.S. Census Bureau. ABAG data is based on the <i>2013 Projections</i> report.			

In January 2019, the City was estimated to have a population of 1,043,058, with an average of 3.20 persons per household.<sup>58</sup> The average household size is expected to decrease from the current ratio of 3.20 people to about 3.06 people by 2040 Citywide.

#### **Jobs/Housing Balance**

The term “jobs/housing balance” refers to the ratio of employed residents to jobs in a given community or area. It is used to indicate the general distance between residences and employment locations. A well-balanced ratio (close to 1 to 1) can minimize commute distances and the number of vehicle miles traveled.<sup>59</sup> As described throughout this EIR, vehicle miles traveled (VMT) are linked to a variety of environmental impacts (i.e., traffic flows, air quality, energy consumption, etc.).

<sup>58</sup> California Department of Finance. “E-5 Population and Housing Estimates for Cities, Counties, and the State, 2011-2019.” Accessed September 23, 2019. <http://www.dof.ca.gov/Forecasting/Demographics/Estimates/E-5/>.

<sup>59</sup> Paradoxically, a balanced ratio of jobs and housing could result in increased VMT by dispersing vehicle travel in such a way as to facilitate a greater overall utilization of existing roadways, while concentrating jobs in a single location may force more commuters to divert from congested roadways to alternative modes of transportation, such as the regional transit system.

Important to the analysis of the jobs/housing balance is whether housing is affordable to local employees and whether employment opportunities match the skills and educational characteristics of the local labor force. When considering these factors, sizeable levels of in-commuting and out-commuting may occur, even if a jurisdiction has a statistical balance between jobs and housing. Improving the availability of housing that is suitable for those holding jobs in the community can allow employees to live in proximity to their place of work.

The City of San José has historically provided a higher than average proportion of housing in Santa Clara County. The current ratio of jobs to employed residents in San José is estimated to be 0.8 to 1, making the city “housing rich”.<sup>60</sup> The concentration of housing in San José and employment in other jurisdictions has created a well-established commute pattern (southeast to northwest). It has become apparent that the physical relationship between jobs and housing significantly contributes to several of the primary environmental impacts of concern in the Bay Area, particularly air pollution and the excessive consumption of energy resulting from an inefficient, sprawling land-use pattern.

### **3.14.2      Impact Discussion**

For the purpose of determining the significance of the project’s impact on population and housing, would the project:

- a) Induce substantial unplanned population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?
- b) Displace substantial numbers of existing people or housing, necessitating the construction of replacement housing elsewhere?

#### **3.14.2.1      *Project Impacts***

- 
- a) Would the project induce substantial unplanned population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?**
- 

### **Option 1 and Option 2**

The proposed project includes 3,450 residential units. The applicant’s proposed project (Option 1) would construct up to 2.2 million square feet of commercial uses, and the maximum development option City staff would consider recommending to City Council (Option 2) would construct up to 3.4 million square feet of commercial uses.

Based on the current average rate of 3.20 people per household in the City of San José, the proposed 3,450 residential units would support a population of 11,040. Option 1 would support 8,800 jobs, and Option 2 would support 13,600 jobs.<sup>61</sup>

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<sup>60</sup> San José is unique in that all other large cities in the U.S. function as regional job centers, with a greater than 1 to 1 ratio of jobs to employed residents.

<sup>61</sup> Based on a ratio of one employee per 250 square feet of commercial space.

As noted in Table 1.2-1, the City of San José's Parks, Recreation, and Neighborhood Services Department commented that the proposed project should include affordable/low income units that meet City's Affordable Housing Criteria. San José has a city-wide inclusionary housing ordinance that requires a minimum of 15 percent of residential units built on-site to be affordable to renter households of low and moderate income. The proposed project (both Option 1 and Option 2) would comply with this requirement; otherwise, the developer would be required to pay an in-lieu fee of 20 percent times the total number of units in the Residential Development times the For-Sale In-Lieu Fee.

The proposed project would not induce substantial unplanned population growth because the project is consistent with the development assumptions of the Envision San José 2040 General Plan EIR and the proposed Berryessa BART Urban Village Plan. The proposed project is consistent with the General Plan goals for focused and sustainable growth, because it supports the intensification of development in an urbanized area that is currently served by existing roads, transit, utilities, and public services. Therefore, the proposed project (both Option 1 and Option 2) would not directly or indirectly induce population growth. **(Less than Significant Impact)**

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**b) Would the project displace substantial numbers of existing people or housing, necessitating the construction of replacement housing elsewhere?**

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**Option 1 and Option 2**

The project site currently operates as the San José Flea Market and does not contain dwelling units or residents. For this reason, the proposed project (both Option 1 and Option 2) would not displace existing housing or people. **(No Impact)**

**3.14.2.2 Cumulative Impacts**

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**Would the project result in a cumulatively considerable contribution to a significant cumulative population and housing impact?**

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**Option 1 and Option 2**

The proposed project would construct 3,450 residential units and would not displace residents or housing. Since the project is accounted for in the Envision San José 2040 General Plan and included in the Urban Village Plan, the project is not considered substantial unplanned population growth. Therefore, the proposed project (both Option 1 and Option 2) would not have a cumulatively considerable contribution to a significant cumulative unplanned population growth in the area. **(Less than Significant Cumulative Impact)**

### **3.15 PUBLIC SERVICES**

#### **3.15.1 Environmental Setting**

##### **3.15.1.1 *Regulatory Framework***

#### **State**

##### Government Code Section 66477

The Quimby Act (included within Government Code Section 66477) requires local governments to set aside parkland and open space for recreational purposes. It provides provisions for the dedication of parkland and/or payment of fees in lieu of parkland dedication to help mitigate the impacts from new residential developments. The Quimby Act authorizes local governments to establish ordinances requiring developers of new residential subdivisions to dedicate parks, pay a fee in lieu of parkland dedication, or perform a combination of the two.

##### Government Code Section 65995 through 65998

California Government Code Section 65996 specifies that an acceptable method of offsetting a project's effect on the adequacy of school facilities is the payment of a school impact fee prior to the issuance of a building permit. Government Code Sections 65995 through 65998 set forth provisions for the payment of school impact fees by new development by "mitigating impacts on school facilities that occur (as a result of the planning, use, or development of real property" (Section 65996[a]). The legislation states that the payment of school impact fees "are hereby deemed to provide full and complete school facilities mitigation" under CEQA (Section 65996[b]).

Developers are required to pay a school impact fee to the school district to offset the increased demands on school facilities caused by the proposed residential development project. The school district is responsible for implementing the specific methods for mitigating school impacts under the Government Code.

#### **Regional and Local**

##### Countywide Trails Master Plan

The Santa Clara County Trails Master Plan Update is a regional trails plan approved by the Santa Clara County Board of Supervisors. It provides a framework for implementing the County's vision of providing a contiguous trail network that connects cities to one another, cities to the county's regional open space resources, County parks to other County parks, and the northern and southern urbanized regions of the County. The plan identifies regional trail routes, sub-regional trail routes, connector trail routes, and historic trails.

##### San José Greenprint 2009 Update

In December 2009, the City Council adopted the City of San José Greenprint 2009 Update, which is the City's 20-year strategic plan for parks, recreational facilities, and programs. As part of the Greenprint and Green Vision, the City has identified two goals related to the trail network: 1) complete 100 miles of interconnected trails by 2022, and 2) complete 130 miles of the network by 2035.

The Greenprint identifies the Alum Rock Planning Area, which includes the project site, as having 435 acres of neighborhood/community-serving parkland including school recreation parkland at a ratio of 3.0 acres per 1,000 population. The Alum Rock Planning Area will need an additional 108.8 acres of neighborhood/community-serving parkland to meet the service level objective of 3.5 acres per 1,000 population. Completion of planned park facilities will help offset the acreage needed.<sup>62</sup> According to the Greenprint, there are no areas in the Alum Rock Planning Area that are underserved by community centers, based on a three-mile radius from residential uses.

### Activate San José

Activate San José 2020-2040 (ActivateSJ) complements the Greenprint 2009 Update and details PRNS's plans to maintain, improve, and expand facilities and services throughout the City. ActivateSJ includes goals and benchmarks for park improvements, including enacting Park Condition Assessments, providing City residents with parks within a 10-minute walk, and completing Regional Master Plans for park and trail systems. The project site is not identified in ActivateSJ as a very high need or high need area for park access.<sup>63</sup>

### Parkland Dedication Ordinance and the Park Impact Ordinance

The City of San José has adopted the Parkland Dedication Ordinance (PDO, Municipal Code Chapter 19.38) and Park Impact Ordinance (PIO, Municipal Code Chapter 14.25) requiring new residential development to either dedicate sufficient land to serve new residents, or pay fees to offset the increased costs of providing new park facilities for new development. Under the PDO and PIO, a project can satisfy half of its total parkland obligation by providing private recreational facilities on-site. For projects over 50 units, it is the City's decision as to whether the project would dedicate land for a new public park site or accept a fee in-lieu of land dedication.

### Envision San José 2040 General Plan

Various policies in the Envision San José 2040 General Plan have been adopted for the purpose of reducing or avoiding impacts associated with public facilities and services, as listed below.

<b>General Plan Policies - Public Facilities and Services</b>	
<b>Education</b>	
Policy ES-1.16	Continue to work with public and private schools through programs such as the Street Smarts School Safety Education Program to improve pedestrian and bicycle safety and encourage walking and biking to and from school.
<b>Law Enforcement and Fire Protection</b>	
Policy ES-3.1	Provide rapid and timely Level of Service response time to all emergencies: 1. For police protection, achieve a response time of six minutes or less for 60 percent of all Priority 1 calls, and of eleven minutes or less for 60 percent of all Priority 2 calls.

<sup>62</sup> City of San José. *Greenprint 2009 Update for Parks, Recreation Facilities and Trails*. 2009.

<sup>63</sup> City of San José. *ActivateSJ Strategic Plan (2020-2040)*.



<b>General Plan Policies - Public Facilities and Services</b>	
	<ol style="list-style-type: none"> <li>2. For fire protection, achieve a total response time (reflex) of eight minutes and a total travel time of four minutes for 80 percent of emergency incidents.</li> <li>3. Enhance service delivery through the adoption and effective use of innovative, emerging techniques, technologies and operating models.</li> <li>4. Measure service delivery to identify the degree to which services are meeting the needs of San José's community.</li> <li>5. Ensure that development of police and fire service facilities and delivery of services keeps pace with development and growth in the city.</li> </ol>
Policy ES-3.9	Implement urban design techniques that promote public and property safety in new development through safe, durable construction and publicly-visible and accessible spaces.
Policy ES-3.11	Ensure that adequate water supplies are available for fire-suppression throughout the City. Require development to construct and include all fire suppression infrastructure and equipment needed for their projects.

### **3.15.1.2      *Existing Conditions***

#### **Fire Protection**

Fire protection services in San José are provided by the San José Fire Department (SJFD). The SJFD responds to all fires, hazardous materials spills, and medical emergencies (including injury accidents). There are currently 34 active fire stations in the City, serving an area of 205 square miles and over one million residents. Fire Station 34 is located at 1634 Las Plumas Avenue, 1.6 mile southeast of the project site.

The SJFD employs two standards to measure service performance: travel time and total reflex time. Travel time is the period of time from when a responding unit leaves the fire station to its arrival at the emergency scene. Total reflex time refers to the total amount of time that passes from receipt of the emergency call to the arrival of the responding unit at the scene. The SJFD has the ability to preempt traffic signals to speed travel times.

#### **Police Protection**

Police protection services for the project site are provided by the San José Police Department (SJPD). The SJPD employs approximately 1,400 employees, including both sworn and non-sworn officers. Patrolling officers are dispatched via police headquarters, which is at 201 West Mission Street, approximately 2.6 miles southwest of the project site.

#### **Schools**

The project site is served by the Berryessa Union School District (BUSD), which consists of ten elementary schools and three middle schools. The number of students enrolled in BUSD transitional kindergarten through eighth grade decreased from 7,102 during the 2017-18 school year to 6,988

during the 2018-2019 school year.<sup>64</sup> For future students residing on the project site, their assigned schools would be Vinci Park Elementary School and Piedmont Middle School.

The project site is served by the East Side Union High School District (ESUHSD), which consists of 19 high schools including 11 comprehensive or traditional schools and seven alternative high schools. The number of students enrolled in ESUHSD ninth through 12<sup>th</sup> grades decreased from 27,263 during the 2017-18 school year to 26,568 during the 2018-2019 school year. For future students residing on the project site, their assigned school would be Independence High School.

## **Parks**

The City's Department of Parks, Recreation, and Neighborhood Services is responsible for the development, operation, and maintenance of parks, trails, community centers, and other recreational facilities in San José. The City manages a total of 3,534 acres of regional and neighborhood/community-serving parkland.<sup>65</sup>

City parks in the vicinity of the project site include Watson Park and Townsend Park. Watson Park is a 26.6-acre park that includes playgrounds, sports fields, playgrounds, and a dog park. Townsend Park is an eight-acre park that includes an exercise course, water play feature, playgrounds, and tennis courts. Penitencia Creek County Park, located 0.2 mile east of the site, is a 163-acre linear park and regional trail managed by the Santa Clara County Parks and Recreation Department.

The project site is bordered by Upper Penitencia Creek to the north and Coyote Creek to the west. The Penitencia Creek and Coyote Creek trail systems are designated as part of the Bay Area Ridge Trail.

## **Community Centers and Other Recreational Facilities**

The City currently has 50 community centers, seven public skate parks, three municipal golf courses, 17 community gardens, six swimming pools, and two lake parks.<sup>66,67,68</sup>

## **Libraries**

The Educational Park Branch Library, located at 1722 Educational Park Drive approximately two miles southeast of the site, is the closest library to the project site. There are 22 additional libraries located throughout San José.

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<sup>64</sup> California Department of Education, Educational Demographics Unit. "DataQuest: District Enrollment by Grade." Accessed April 30, 2020. <http://dq.cde.ca.gov/dataquest>.

<sup>65</sup> Only existing parks are included in the above acreage. Secured or potential parks, which total approximately 118 acres, are not included in the acreage total. Source: City of San José. *Greenprint 2009 Update for Parks, Recreation Facilities and Trails*. December 2009.

<sup>66</sup> City of San José, Department of Parks, Recreation, and Neighborhood Services. "Community Gardening." <https://www.sanjoseca.gov/your-government/departments/parks-recreation-neighborhood-services/reservations-permits/community-garden-plots>. Accessed August 22, 2020.

<sup>67</sup> City of San José, Department of Parks, Recreation, and Neighborhood Services. "Parks and Trails." <https://www.sanjoseca.gov/your-government/departments/parks-recreation-neighborhood-services/outdoor-activities/-fsiteid-1>. Accessed August 22, 2020.

<sup>68</sup> City of San José. *Greenprint 2009 Update for Parks, Recreation Facilities and Trails*. December 2009.

### 3.15.2 Impact Discussion

For the purpose of determining the significance of the project's impact on public services, would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, the need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:

- a) Fire protection?
- b) Police protection?
- c) Schools?
- d) Parks?
- e) Other public facilities?

#### 3.15.2.1 *Project Impacts*

- 
- a) **Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times, or other performance objectives for fire protection services?**
- 

#### **Option 1 and Option 2**

According to the General Plan EIR, development allowed under the General Plan is not anticipated to require the construction of new fire stations, other than those currently planned.<sup>69</sup> The expansion of existing facilities may be required to accommodate additional equipment and employees. In the event expanded or additional facilities are determined to be necessary, it is assumed that adherence to General Plan policies would reduce the physical impacts from development of fire department facilities to a less than significant level, although supplemental environmental review would be required. Implementation of General Plan policies and actions would ensure adequate long-term provision of services throughout the City. Therefore, planned growth would not result in a significant impact related to fire protection.

The project proposes to construct up to 3,450 residential unit under both development options. Option 1 would also include up to 2.2 million square feet of commercial uses while Option 2 would include up to 3.4 million square feet of commercial uses consistent with the existing Urban Village (UV) General Plan designation.

Implementation of the project would intensify the use of the project site compared to existing conditions and would increase the demand for fire protection services on the project site. Physical improvements to the project site (i.e., structures and buildings) would, however, be constructed in conformance with current building and fire codes, and SJFD would review project plans to ensure appropriate safety features are incorporated to reduce fire hazards. For these reasons, the proposed

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<sup>69</sup> City of San José. *Integrated Final Program Environmental Impact Report for the Envision San José 2040 General Plan*. SCH# 2009072096. September 2011. Pages 626-629.

project (both Option 1 and Option 2) would not require new or expanded fire protection facilities (the construction of which could cause significant environmental impacts) in order to maintain acceptable service ratios, response times or other performance objectives for fire protection services. **(Less than Significant Impact)**

- 
- b) Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times, or other performance objectives for police protection services?**
- 

### **Option 1 and Option 2**

The General Plan EIR concluded that population growth under the General Plan would increase demand for police protection services, including additional officers and equipment. Police services would continue to be dispatched from police headquarters and no additional stand-alone police facilities are anticipated; however, expansion of existing facilities on developed sites may be required. The SJPd may increase the number of community policing centers located in existing commercial buildings or incorporated into new private development within Growth Areas.

In the event additional or expanded facilities are determined to be necessary, it is assumed that implementation of General Plan policies would reduce the physical impacts from development of police facilities to a less than significant level, although supplemental environmental review would be required. Implementation of General Plan policies and actions would also help the SJPd to meet and maintain the City's response time objectives over the long term. Therefore, planned growth would not result in a significant impact to police protection. **(Less than Significant Impact)**

- 
- c) Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times, or other performance objectives for schools?**
- 

### **Option 1 and Option 2**

Within the Berryessa Union School District, students from the project site would be closest to Vinci Park Elementary School located at 1311 Vinci Park Way and Piedmont Middle School located at 955 Piedmont Road in San José. Total enrollment in the BUSD was 6,842 students in 2019/2020.<sup>70</sup> The BUSD elementary school and middle school student generation rates are 0.046 and 0.016 students, respectively. These rates are used for both single-family and multi-family attached residential units. Using these rates, the proposed project (i.e., 3,450 residential units) would generate an estimated 159 students that would attend Vinci Park Elementary School and 55 students that would attend Piedmont Middle School.<sup>71</sup> In 2019/2020, Vinci Park Elementary School had 568 students enrolled, and

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<sup>70</sup> California Department of Education, Educational Demographics Unit. "DataQuest: District Enrollment by Grade." Accessed April 30, 2020. <http://dq.cde.ca.gov/dataquest>.

<sup>71</sup> The Flea Market development north of Berryessa Road includes 1,000 dwelling units, generating an estimated 46 elementary school students and 16 middle school students in the BUSD.

Piedmont Middle School had 750 students enrolled. Both schools' enrollment has declined by approximately 10 to 15 percent over the last six years.

High school students from the project site would attend Independence High School, located at 1776 Educational Park Drive in San José. Total enrollment in the ESUHSD was 26,537 students in 2019/2020. The ESUHSD student generation rate is 0.02 students per single-family or multi-family residential unit. The proposed project would generate an estimated 69 high school students.<sup>72</sup> Independence High School had 2,879 students enrolled in the 2019/2020 school year, a decrease of approximately eight percent over the last six years.

The Envision San José 2040 General Plan EIR identified an available capacity of 72 students across the BUSD and -210 students across the ESUHSD, meaning that both districts were operating nearly at or above capacity when the General Plan was prepared. There are a number of methods that can be used to accommodate the increased numbers of students at existing schools. These methods include: 1) the provision of portable or relocatable classrooms, 2) expansion of existing schools, 3) the opening of existing schools previously considered surplus, 4) adjustment of school attendance boundaries, 5) the busing of students to schools with surplus capacity, or 6) the conversion to year-round schools with a four-track schedule.

State law (Government Code Section 65996) specifies an acceptable method of offsetting a project's effect on the adequacy of school facilities as the payment of a school impact fee prior to issuance of a building permit. California Government Code Sections 65995-65998 sets forth provisions for the payment of school impact fees by new development as the exclusive means of "considering and mitigating impacts on school facilities that occur or might occur as a result of any legislative or adjudicative act, or both, by any state or local agency involving, but not limited to, the planning, use, or development of real property" (§65996(a)). The legislation goes on to say that the payment of school impact fees "are hereby deemed to provide full and complete school facilities mitigation" under CEQA. (§65996(b)). The school district is responsible for implementing the specific methods for mitigating school impacts under the Government Code. The school impact fees and the school districts' methods of implementing measures specified by Government Code 65996 would offset project-related increases in student enrollment. Fees have been paid for the residential development on the portion of the Flea Market site north of Berryessa Road.

**Standard Permit Condition:** In accordance with California Government Code Section 65996, the developer shall pay a school impact fee to the School District, to offset the increased demands on school facilities caused by the proposed project.

Although residential development under the proposed project, which would not vary between Option 1 and Option 2, could generate new students in the area, the project would conform to Government Code Section 65996, which requires the project to pay school impact fees and is considered adequate mitigation for increased demands upon school facilities. (**Less than Significant Impact**)

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<sup>72</sup> The Flea Market development north of Berryessa Road generated an estimated 20 high school students in the ESUHSD.

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- d) **Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times, or other performance objectives for parks?**
- 

### **Option 1 and Option 2**

The City's service level objectives for parkland include providing public parkland or recreational open space within 1/3 mile of all residents, and providing new or expanded facilities to serve new residential development in order to maintain performance standards.

Implementation of the proposed project would redevelop the project site with a mix of uses, including 3,450 residential units. It is anticipated that the residential units on the project site would result in 11,040 new residents on-site.<sup>73</sup> The project's new residents would result in an incremental increase in demand on existing recreational facilities in the area, including Watson Park and Townsend Park. Office workers occupying the 2.2 million square feet (under Option 1) or 3.4 million square feet (under Option 2) of proposed office development would also increase the demand on nearby recreational facilities.

The project includes 17 acres of public open space along the northern and western site boundaries, adjacent to Upper Penitencia Creek and Coyote Creek. The project also includes 4.9 acres of public open space in the central area of the site. The project would conform to the City's Parkland Dedication Ordinance and Park Impact Ordinance, and would be required to pay PDO/PIO fees to offset the increased demand for parks and recreational facilities. The project shall implement the following standard permit condition as a Condition of Approval for the project.

**Standard Permit Condition:** The project shall conform to the City's Park Impact Ordinance and Parkland Dedication Ordinance.

The PDO/PIO fees generated by the residential development would be used to provide neighborhood-serving facilities within a 0.75-mile radius of the project site and/or community-serving facilities within a three-mile radius (General Plan Policies PR-2.4 and PR-2.5). Therefore, the proposed project (both Option 1 and Option 2) would not result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities or the need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts to parks. **(Less than Significant Impact)**

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<sup>73</sup> Based upon the City's average of 3.20 persons per household.

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- e) **Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times, or other performance objectives for other public facilities?**
- 

### **Option 1 and Option 2**

The Educational Park Branch Library, located at 1722 Educational Park Drive approximately two miles southeast of the site, is the closest library to the project site. There are 22 additional libraries located throughout San José.

Development approved under the City's General Plan will increase the City's residential population to 1,313,811. The existing and planned library facilities in the City will provide approximately 0.68 square feet of library space per capita for the anticipated population under the General Plan by the year 2035, which is above the City's service goal of 0.59 square feet per capita.

The proposed project, along with the Flea Market development already implemented on the north side of Berryessa Road, would contribute to Citywide demand for library services; however, the General Plan EIR concluded that development allowed under the General Plan would be adequately served by existing and planned library facilities. Therefore, the proposed project (both Option 1 and Option 2) would not result in substantially increase use of San José facilities or otherwise require the construction of new library facilities. **(Less than Significant Impact)**

#### **3.15.2.2 Cumulative Impacts**

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**Would the project result in a cumulatively considerable contribution to a significant cumulative public services impact?**

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### **Fire Protection Services**

#### Option 1 and Option 2

The geographic area for cumulative fire protection services is the City boundaries. The Envision San José 2040 General Plan EIR concluded that buildout under the General Plan would not be anticipated to require the construction of new fire stations, aside from those already planned. In the event new or expanded facilities are required, construction of those facilities would be subject to site-specific CEQA environmental review. Based on previous analyses for new fire stations in developed South Bay locations, the primary environmental effects associated with construction and operation of fire stations are noise and air emissions from diesel trucks and backup generators. Mitigation measures are available to reduce those potential impacts to a less-than-significant level. For these reasons, the proposed project (both Option 1 and Option 2) would not have a cumulatively considerable impact with respect to fire protection services. **(Less than Significant Cumulative Impact)**



## Police Protection Services

### Option 1 and Option 2

The geographic area for cumulative police protection services is the City boundaries. The General Plan EIR concluded that population growth under the General Plan would increase demand for police protection services. Although no additional stand-alone police facilities are anticipated, expansion of existing facilities on developed sites may be required.

In the event new or expanded facilities are required, construction of those facilities would be subject to site-specific CEQA environmental review. It is assumed that implementation of General Plan policies would reduce the physical impacts from development of police facilities to a less-than-significant level. For these reasons, the proposed project (both Option 1 and Option 2) would not have a cumulatively considerable impact with respect to police protection services. **(Less than Significant Cumulative Impact)**

## Schools

### Option 1 and Option 2

The geographic area for cumulative schools impacts is the BUSD and ESUHSD boundaries, because the project site is located within these two school districts. The cumulative projects within these districts include residential development projects that would generate new students. Although schools in the vicinity of the project site are experiencing reductions in enrollment, the General Plan EIR noted that the districts were operating at or above capacity. Additional student enrollment from the cumulative projects may not be accommodated by existing school facilities.

No net new school facilities are anticipated, though BUSD and ESUHSD will continue to renovate and expand existing facilities as necessary. Given the developed nature of the existing school campuses, it is anticipated that environmental impacts associated with future renovations could be mitigated to a less-than-significant level.

As required by state law (Government Code Section 65996), development projects shall pay the appropriate school impact fees to impacted school districts to offset the increased demands on school facilities caused by the development. The cumulative projects (including the proposed project, both Option 1 and Option 2), in conformance with state law (Government Code Section 65996), would not result in significant cumulative impacts to schools. **(Less than Significant Cumulative Impact)**

## Parks

### Option 1 and Option 2

The geographic area for cumulative parks impacts is the City boundaries. The buildout of the General Plan and cumulative projects (including the proposed project) would incrementally increase the demand for park facilities but would also create new public open space. The cumulative projects within the City of San José would be required to fund park improvements and dedicate land through compliance with the City's PDO and PIO, which help ensure the provision of parklands in compliance with City standards. In addition, impacts to other open spaces would be mitigated through the contribution of property taxes. For these reasons, the cumulative projects (including the

proposed project) would not result in significant cumulative impacts to parks. **(Less than Significant Cumulative Impact)**

### **Libraries**

#### Option 1 and Option 2

The geographic area for cumulative library impacts is the City boundaries. The cumulative projects (including the proposed project) would contribute to Citywide demand for library services; however, the General Plan EIR concluded that development allowed under the General Plan would be adequately served by existing and planned library facilities. In the event new or expanded library facilities are required, construction of those facilities would be subject to site-specific CEQA environmental review. It is assumed that implementation of General Plan policies would reduce the physical impacts from development of police facilities to a less-than-significant level. For these reasons, the proposed project (both Option 1 and Option 2) would not have a cumulatively considerable impact with respect to libraries. **(Less than Significant Cumulative Impact)**

### **3.16 RECREATION**

As shown in Table 1.2-1, the City's Parks, Recreation, and Neighborhood Service Department comment was received on the Notice of Preparation (NOP). The comment noted that the project is required to comply with the City's Parkland Dedication and Park Impact Ordinance; the project shall provide a park connecting Coyote Creek to the BART station; and the project must provide for construction of trail segments along the creek corridors. These issues are discussed under checklist question a) below.

#### **3.16.1 Environmental Setting**

##### **3.16.1.1 *Regulatory Framework***

###### **State**

###### **Government Code Section 66477**

The Quimby Act (included within Government Code Section 66477) requires local governments to set aside parkland and open space for recreational purposes. It provides provisions for the dedication of parkland and/or payment of fees in lieu of parkland dedication to help mitigate the impacts from new residential developments. The Quimby Act authorizes local governments to establish ordinances requiring developers of new residential subdivisions to dedicate parks, pay a fee in lieu of parkland dedication, or perform a combination of the two.

###### **Regional and Local**

###### **Greenprint 2009 Update**

In December 2009, the City Council adopted the City of San José Greenprint 2009 Update, which is the City's 20-year strategic plan for parks, recreational facilities, and programs. As part of the Greenprint and Green Vision, the City has identified two goals related to the trail network: 1) complete 100 miles of interconnected trails by 2022, and 2) complete 130 miles of the network by 2035.

The Greenprint identifies the Alum Rock Planning Area, which includes the project site, as having 435 acres of neighborhood/community-serving parkland including school recreation parkland at a ratio of 3.0 acres per 1,000 population. The Alum Rock Planning Area will need an additional 108.8 acres of neighborhood/community-serving parkland to meet the service level objective of 3.5 acres per 1,000 population. Completion of planned park facilities will help offset the acreage needed.<sup>74</sup> According to the Greenprint, there are no areas in the Alum Rock Planning Area that are underserved by community centers, based on a three-mile radius from residential uses.

###### **Activate San José**

Activate San José 2020-2040 (ActivateSJ) complements the Greenprint 2009 Update and details PRNS's plans to maintain, improve, and expand facilities and services throughout the City. ActivateSJ includes goals and benchmarks for park improvements, including enacting Park Condition Assessments, providing City residents with parks within a 10-minute walk, and

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<sup>74</sup> City of San José. *Greenprint 2009 Update for Parks, Recreation Facilities and Trails*. 2009.

completing Regional Master Plans for park and trail systems. The project site is not identified in ActivateSJ as a very high need or high need area for park access.<sup>75</sup>

### Parkland Dedication Ordinance and the Park Impact Ordinance

The City of San José has adopted the Parkland Dedication Ordinance (PDO) and Park Impact Ordinance (PIO) requiring new residential development to either dedicate sufficient land to serve new residents, or pay fees to offset the increased costs of providing new park facilities for new development. Under the PDO and PIO, a project can satisfy half of its total parkland obligation by providing private recreational facilities on-site. For projects over 50 units, it is the City's decision as to whether the project will dedicate land for a new public park site or accept a fee in-lieu of land dedication. Deed-restricted affordable housing projects that meet the City's affordability criteria are subject to the PDO and PIO and receive a 50 percent credit toward the parkland obligation. The acreage of parkland required is based on the minimum acreage dedication formula outlined in the PDO.

### Envision San José 2040 General Plan

Various policies in the Envision San José 2040 General Plan have been adopted for the purpose of reducing or avoiding impacts associated with public facilities and services, as listed below.

<b>General Plan Policies - Recreation</b>	
<b>Parks, Trails, Open Space, and Recreation</b>	
Policy PR-1.1	Provide 3.5 acres per 1,000 population of neighborhood/community serving parkland through a combination of 1.5 acres of public park and 2.0 acres of recreational school grounds open to the public per 1,000 San José residents.
Policy PR-1.2	Provide 7.5 acres per 1,000 population of citywide/regional park and open space lands through a combination of facilities provided by the City of San José and other public land agencies.
Policy PR-1.3	Provide 500 square feet per 1,000 population of community center space.
Policy PR-1.9	As Village and Corridor areas redevelop, incorporate urban open space and parkland recreation areas through a combination of high-quality, publicly accessible outdoor spaces provided as part of new development projects; privately, or in limited instances publicly, owned and maintained pocket parks; neighborhood parks where possible; as well as through access to trails and other park and recreation amenities.
Policy PR-2.6	Locate all new residential developments over 200 units in size within 1/3 of a mile walking distance of an existing or new park, trail, open space or recreational school grounds open to the public after normal school hours or include one or more of these elements in its project design.

<sup>75</sup> City of San José. *ActivateSJ Strategic Plan (2020-2040)*.

### **3.16.1.2      *Existing Conditions***

The City of San José manages a total of 3,534 acres of regional and neighborhood/community-serving parkland. The City currently has 50 community centers, seven public skate parks, three municipal golf courses, 17 community gardens, six swimming pools, and two lake parks.

The project site is located within the Alum Rock Planning Area of San José, portions of which are currently underserved with respect to parklands for the population. The project site is not located within an area that is considered underserved with respect to parklands or community centers.

City parks in the vicinity of the project site include Watson Park and Townsend Park. Watson Park is a 26.6-acre park that includes playgrounds, sports fields, playgrounds, and a dog park. Townsend Park is an eight-acre park that includes an exercise course, water play feature, playgrounds, and tennis courts. Penitencia Creek County Park, located 0.2 mile east of the site, is a 163-acre linear park and regional trail incorporating parkland and open space operated by the City of San José, Santa Clara County, and the Santa Clara Valley Water District.

### **3.16.2      Impact Discussion**

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

- a) Increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?
- b) Include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?

#### **3.16.2.1      *Project Impacts***

- 
- a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?**
- 

#### **Option 1 and Option 2**

The proposed project would construct 3,450 residential units, resulting in an estimated 11,040 residents on the site. The project also includes 2.2 million square feet (under Option 1) or 3.4 million square feet (under Option 2) of proposed office development.

The new residents and office employees on the project site would increase demand on local recreational facilities, including parks. The proposed project would construct 17 acres of public open space along the northern and western site boundaries, adjacent to Upper Penitencia Creek and Coyote Creek. This open space would provide passive recreational uses, including multi-use trails parallel to the creeks. The project also includes 4.9 acres of public parks in the central area of the site.

As described in Section 3.15, Public Services, the project would conform to the City's Parkland Dedication Ordinance and Park Impact Ordinance, and would pay PDO/PIO fees to offset the

increased demand for parks and recreational facilities. With inclusion of the proposed public parks and open space, and adherence to the City's PDO and PIO, the proposed project (both Option 1 and Option 2) would not result in substantial physical deterioration of recreational facilities. **(Less than Significant Impact)**

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**b) Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?**

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**Option 1 and Option 2**

The development of the entire proposed project (both Option 1 and Option 2), which includes public parks, open space, and landscaping, would result in significant impacts that can be mitigated to a less than significant level as well as significant and unavoidable impacts, all of which are analyzed throughout this EIR. These impacts are primarily from the development of the residential and commercial land uses, not the public parks, open space, and landscaping. **(Less than Significant Impact)**

**3.16.2.2 Cumulative Impacts**

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

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**Option 1 and Option 2**

As discussed under checklist question a) above, the project would generate residents who would increase demand on surrounding recreational facilities. However, the project would also include 17 acres of public open space along the northern and western site boundaries, as well as 4.9 acres of public parks in the central area of the site. The proposed addition of public parks would lessen the impact of project residents on surrounding parks. Impacts related to development of these parks are analyzed throughout this EIR.

The geographic area for cumulative recreation impacts is the City's boundaries. Cumulative projects generating new residents must comply with the City's requirements for parkland dedication, provisions of public space, and/or payment of in-lieu fees to minimize impacts of new residents on existing park and recreation facilities. For these reasons, the proposed project (both Option 1 and Option 2) would not have a cumulatively considerable contribution to a significant cumulative recreation impact. **(Less than Significant Cumulative Impact)**

### **3.17 TRANSPORTATION**

The following discussion is based upon a Transportation Analysis prepared by Hexagon Transportation Consultants, Inc. on September 14, 2020. A copy of this report is included in Appendix H of this document.

#### **3.17.1 Environmental Setting**

##### **3.17.1.1 *Regulatory Framework***

#### **State**

##### **Regional Transportation Plan**

The Metropolitan Transportation Commission (MTC) is the transportation planning, coordinating, and financing agency for the nine-county San Francisco Bay Area, including Santa Clara County. MTC is charged with regularly updating the Regional Transportation Plan, a comprehensive blueprint for the development of mass transit, highway, airport, seaport, railroad, bicycle, and pedestrian facilities in the region. MTC and the Association of Bay Area Governments (ABAG) adopted Plan Bay Area 2040 in July 2017, which includes a Regional Transportation Plan to guide regional transportation investment for revenues from federal, state, regional and local sources through 2040.

##### **Senate Bill 743**

Senate Bill (SB) 743 establishes criteria for determining the significance of transportation impacts using a vehicle miles traveled metric intended to promote the reduction of greenhouse gas (GHG) emissions, the development of multimodal transportation networks, and a diversity of land uses. Specifically, SB 743 requires the replacement of automobile delay—described solely by level of service or similar measures of vehicular capacity or traffic congestion—with vehicle miles traveled (VMT) as the recommended metric for determining the significance of transportation impacts. The Governor’s Office of Planning and Research (OPR) approved the CEQA Guidelines implementing SB 743 on December 28, 2018. Local jurisdictions were required to implement a VMT policy by July 1, 2020.

SB 743 did not authorize OPR to set specific VMT impact thresholds, but it did direct OPR to develop guidelines for jurisdictions to utilize. CEQA Guidelines Section 15064.3(b)(1) describes factors that might indicate whether a development project’s VMT may be significant. Notably, projects located within 0.50 mile of transit should be considered to have a less than significant transportation impact based on OPR guidance.

#### **Regional and Local**

##### **Congestion Management Program**

The Santa Clara Valley Transportation Authority (VTA) oversees the Congestion Management Program (CMP), which is aimed at reducing regional traffic congestion. The relevant state legislation requires that urbanized counties in California prepare a CMP in order to obtain each county’s share of gas tax revenues. State legislation requires that each CMP define traffic level of service (LOS)



standards, transit service standards, a trip reduction and transportation demand management plan, a land use impact analysis program, and a capital improvement element. VTA has review responsibility for proposed development projects that are expected to affect CMP-designated intersections.

#### Transportation Analysis Policy (City Council Policy 5-1)

As established in City Council Policy 5-1, Transportation Analysis Policy (2018), the City of San José uses VMT as the metric to assess transportation impacts from new development. According to the policy, an employment (e.g., office or research and development) or residential project's transportation impact would be less than significant if the project VMT is 15 percent or more below the existing average regional per capita VMT. For industrial projects (e.g., warehouse, manufacturing, distribution), the impact would be less than significant if the project VMT is equal to or less than existing average regional per capita VMT. The threshold for a retail project is whether it generates net new regional VMT, as new retail typically redistributes existing trips and miles traveled as opposed to inducing new travel. Screening criteria have been established to determine which projects require a detailed VMT analysis. If a project meets the relevant screening criteria, it is considered to have a less than significant VMT impact.

If a project's VMT does not meet the established thresholds, mitigation measures would be required, where feasible. The policy also requires preparation of a Local Transportation Analysis to analyze non-CEQA transportation issues, including local transportation operations, intersection level of service, site access and circulation, and neighborhood transportation issues such as pedestrian and bicycle access and recommend transportation improvements. The VMT policy does not negate Area Development policies and Transportation Development policies approved prior to adoption of Policy 5-1. Policy 5-1 does, however, negate the City's Protected Intersection policy as defined in Policy 5-3.

#### Envision San José 2040 General Plan

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

<b>General Plan Policies – Transportation</b>	
Policy TR-1.1	Accommodate and encourage use of non-automobile transportation modes to achieve San José's mobility goals and reduce vehicle trip generation and vehicle miles traveled.
Policy TR-1.2	Consider impacts on overall mobility and all travel modes when evaluating transportation impacts of new developments or infrastructure projects.
Policy TR-2.8	Require new development where feasible to provide on-site facilities such as bicycle storage and showers, provide connections to existing and planned facilities, dedicate land to expand existing facilities or provide new facilities such as sidewalks and/or bicycle lanes/paths, or share in the cost of improvements.
Policy TR-3.3	As part of the development review process, require that new development along existing and planned transit facilities consist of land use and development types and intensities that contribute towards transit ridership. In addition, require that new

<b>General Plan Policies – Transportation</b>	
	development is designed to accommodate and to provide direct access to transit facilities.
Policy TR-7.1	Require large employers to develop and maintain TDM programs to reduce the vehicle trips and vehicle miles generated by their employees through the use of shuttles, provision for car-sharing, bicycle sharing, carpool, parking strategies and other measures.
Policy TR-8.6	Allow reduced parking requirements for mixed-use developments and for developments providing shared parking or a comprehensive TDM program, or developments located near major transit hubs or within Villages and Corridors and other growth areas.
Policy TR-9.1	Enhance, expand and maintain facilities for walking and bicycling, particularly to connect with and ensure access to transit and to provide a safe and complete alternative transportation network that facilitates non-automobile trips.

#### Berryessa BART Urban Village Plan

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

<b>Urban Village Plan Policies – Transportation</b>	
Policy LU-2.7	Prohibit new surface parking in the Urban Village, unless it is approved to support the functioning of entertainment, civic, cultural, placemaking, and other interim uses, as defined in the Land Use Chapter. Surface parking is only allowed in the Transit Employment Center designation of the Flea Market South District to support interim uses.
Policy LU-4.2	Require that new development supports the multi-modal circulation system developed for the Berryessa BART Urban Village Plan, which provides direct multi-modal connections to all residents, visitors, and employees within a half-mile radius from the BART station.
Policy LU-4.5	Future multi-modal connections under the BART tracks (including motor vehicle connections) should be consistent with the circulation system developed for the Berryessa BART Urban Village Plan and block layout of the Flea Market South District.
Policy CS-3.2	All pedestrian infrastructure shall be designed with safety and convenience in mind, in compliance with the Americans with Disabilities Act and City of San José Complete Streets Design Guidelines and Standards.
Policy CS-3.3	Encourage the installation of paseos that enhance the pedestrian environment and improve connectivity throughout the Urban Village Area.
Policy CS-3.4	Connect streets, paseos, and Coyote Creek and Penitencia Creek trails to the larger public street network and to the open space system.
Policy CS-3.5	Improve pedestrian crossings at Urban Village boundaries to provide access to the Berryessa BART Station for those traveling on foot.

<b>Urban Village Plan Policies – Transportation</b>	
Policy CS-3.6	Develop and implement a coherent wayfinding system for the Urban Village for more convenient travel.
Policy CS-4.1	Plan, design, and construct bicycle priority treatments on all On-Street Bicycle Facility Streets within the Urban Village as defined in this plan.
Policy CS-4.2	Connect the regional trail network to the on-street bicycle network through improved connections and wayfinding.
Policy CS-4.3	Expand the bicycle network by adding facilities within the Urban Village.
Policy CS-4.4	New developments shall provide high quality, desirable bicycle parking and/or storage facilities along sidewalks, in parking garages, and building entrances and public sites as defined in the San José Municipal Code.

### San José Bike Plan 2020

The San José Bike Plan 2020 establishes goals, policies, and actions to facilitate bicycling as a daily part of life in San José. The plan includes and describes designated bike lanes along many City streets, as well as designated bike corridors. In order to further the goals of the City, pedestrian and bicycle facilities are encouraged with new development projects.

#### **3.17.1.2 Existing Conditions**

##### **VMT of Existing Land Uses in the Project Area**

The project site is located within the Berryessa BART Urban Village Plan area with residential VMT per capita of 12.63 and employment VMT per worker of 13.1. The current citywide average VMT for residential uses is 11.91 per capita and the regional average VMT for employment uses is 14.37 per employee. Therefore, the VMT levels of existing residential uses in the project vicinity are currently greater than the Citywide average VMT levels for residential uses.

Projects that include general employment uses (office) are said to create a significant adverse impact when the estimated project-generated VMT exceeds the existing regional average VMT per employee minus 15 percent. Currently, the reported regional average is 14.37 VMT per employee. This equates to a significant impact threshold of 12.21 VMT per employee. Projects that include residential uses are said to create a significant adverse impact when the estimated project-generated VMT exceeds the existing Citywide average VMT per capita minus 15 percent or the existing regional average VMT per capita minus 15 percent, whichever is lower. Currently, the reported Citywide average is 11.94 VMT per capita, which is less than the regional average. This equates to a significant impact threshold of 10.12 VMT per capita.

The existing VMT per capita is 12.63 and the VMT per worker is 13.1. The existing conditions are higher than the CEQA thresholds of 10.12 VMT per capita and 12.21 VMT per worker. However, it is important to note that the existing VMT for residential and commercial uses in the project area are reflective of transportation conditions at the time the VMT calculations in the Transportation Analysis were completed (see Appendix H) and do not account for the Silicon Valley BART Extension (SVBX) project and Berryessa BART Station, which became active in June 2020.

## Existing Roadway Network

Roadway access to the project area is described below.

*US-101* is an eight-lane freeway (six mixed-flow and two high-occupancy vehicle lanes) in the vicinity of the project area. US 101 provides connections to Interstate (I-)880, I-680/280, State Route (SR) 237, and SR 87. Access to the project area is provided via an interchange at Oakland Road.

*I-880* is an eight-lane freeway (six mixed-flow and two high-occupancy vehicle lanes) in the vicinity of the project area. It extends along the eastern side of San Francisco Bay from San José to Oakland. South of its interchange with I-280 in west San José, I-880 becomes SR 17 and extends southward to Santa Cruz. Access to and from the project site from I-880 is provided via its interchanges with US 101 and Old Bayshore Highway/Gish Road.

*I-680* is an eight-lane freeway in the vicinity of the site. It extends north to Sacramento and south to an interchange with US-101 in San José, at which point it makes a transition into I-280 to San Francisco. North of SR 237, I-680 has toll express lanes in the southbound direction. Express toll lanes in the northbound direction are currently under construction. Access to and from I-680 to the site is provided via its interchange with Berryessa Road.

*Berryessa Road* is a divided six-lane east-west roadway in the vicinity of the project site, east of Commercial Street to an interchange with I-680. Berryessa Road is a four-lane roadway from Commercial Street west to Mabury Road, where it transitions into Hedding Street. In the project vicinity, Berryessa Road has a posted speed limit of 40 miles per hour (mph) with sidewalks on both sides of the street and on-street bike lanes between Mabury Road and Piedmont Road. Berryessa Road would provide direct access to the project site via a new south leg addition to the signalized Sierra Road intersection. A secondary access point would also be available at the location of the existing Flea Market access point.

*Mabury Road* is a four-lane east-west roadway that runs between the Flea Market site access point and White Road. West of the Flea Market site access point, Mabury Road is a two-lane roadway where it intersects Taylor Street. From this intersection, Mabury Road runs parallel to the north side of US-101 and continues west to its intersection with Oakland Road. In the project vicinity, Mabury Road has a posted speed limit of 35 mph with sidewalks on both sides of the street and on-street bike lanes between the Flea Market access point and White Road. Mabury Road provides direct access to the project site via a signalized intersection.

*Lundy Avenue/King Road* is generally a divided four-lane north-south roadway that runs from Trade Zone Boulevard in Milpitas south to Mabury Road, where it transitions to King Road. King Road runs from Mabury Road south to Aborn Road, where it transitions to Silver Creek Road. Sidewalks on both sides of the roadway are present throughout the entire length of Lundy Avenue/King Road, with the exception of a segment between Commodore Drive and Salamoni Court, where only a sidewalk along the east side of the road is provided. On-street bike lanes are present on Lundy Avenue/King Road north of Berryessa Road and south of Salamoni Court. Access to the project site is provided via its signalized intersections with Berryessa Road and Mabury Road.

*Hedding Street* is generally a two-lane east-west roadway that runs west from Mabury Road to Winchester Boulevard, where it transitions to Pruneridge Avenue. North of Mabury Road, Hedding Street transitions to Berryessa Road. On-street bike lanes and sidewalks on both sides of the roadway are present throughout the entire length of Hedding Street. Access to the project site is provided via Berryessa Road.

*Taylor Street* is generally a two-lane east-west roadway that runs west from Mabury Road to The Alameda, where it transitions to Naglee Avenue. Sidewalks on both sides of the roadway are present west of 23rd Street. Between 23rd Street and Mabury Road, only a sidewalk along the north side of the road is available. Access to the project site is provided via Mabury Road.

*Jackson Avenue/Flickinger Avenue* is a north-south four-lane roadway that extends from Story Road to Berryessa Road where it becomes Flickinger Avenue. Jackson Avenue has a two-lane segment between Alum Rock Avenue and Story Road. Major cross streets include Alum Rock Avenue, McKee Road, Mabury Road, and Berryessa Road. Jackson Avenue has a posted speed limit of 35 mph and sidewalks on both sides of the street. Access to the project site is provided via Berryessa Road and Mabury Road.

*McKee Road* is a six-lane east-west roadway that extends east from US 101 to east San José. McKee Road has full access interchanges with US 101 and I-680. Major north-south cross streets include King Road, Jackson Avenue, Capitol Avenue, and White Road. McKee Road becomes Julian Street just east of US 101 and has a posted speed limit of 40 mph with sidewalks on both sides of the street. Access to the project site is provided via Lundy Avenue, Berryessa Road, and Mabury Road.

*Commercial Street* is a three-lane (two westbound travel lanes and one eastbound travel lane) east-west roadway that runs between Berryessa Road and 13th Street, approximately 750 feet west of Oakland Road, where it transitions to Old Bayshore Highway. Sidewalks are present on both sides of Commercial Street, with the exception of a missing segment extending 600 feet west of its intersection with Berryessa Road along the north side of the roadway. Access to the project site is provided via Berryessa Road.

*Oakland Road* is north-south roadway consisting of four lanes between Hedding Street and Commercial Street and six lanes north of Commercial Street until Montague Expressway, where it transitions to Main Street. On-street bike lanes and sidewalks on both sides of the roadway are present throughout the entire length of Oakland Road. Access to the project site is provided via Commercial Street and Berryessa Road.

*Sierra Road* is generally a two-lane east-west roadway that extends north from Berryessa Road and continues east to Flickinger Avenue. Sidewalks on both sides of the roadway are present throughout the entire length of Sierra Road. On-street bike lanes on Sierra Road are present approximately 500 feet west and east of its intersections with Lundy Avenue and Flickinger Avenue. Access to the project site is provided via its intersection with Berryessa Road.

### **Pedestrian Facilities**

Pedestrian facilities near the project site consist mostly of sidewalks along the streets. Sidewalks are found along both sides of all streets near the project site including Berryessa Road and Mabury Road.

Other pedestrian facilities in the project area include crosswalks and pedestrian push buttons at all signalized study intersections.

Existing sidewalks along Berryessa Road and Mabury Road provide a pedestrian connection between the project site and pedestrian destinations in the project vicinity. A missing segment of sidewalk is located along the north side of Commercial Street extending 600 feet west of its intersection with Berryessa Road. A sidewalk is provided along only the east side of King Road between Commodore Drive and Salamoni Court. Sidewalks are not provided along the south side of Mabury Road between Oakland Road and 800 feet west of Taylor Street since the roadway fronts US-101 with no adjacent uses. The existing pedestrian facilities are shown in Figure 3.17-1.

### **Bicycle Facilities**

Bicycle facilities are divided into three classes. Class I bikeways are bike paths that are physically separated from motor vehicles and offer two-way bicycle travel. The Penitencia Creek Trail is located in the project area and is a continuous multi-purpose pathway for pedestrians and bicycles that is separated from motor vehicles. It begins at the Berryessa BART Station and extends to the east of I-680 to Alum Rock Park.

Class II bikeways are striped bike lanes on roadways that are marked by signage and pavement markings. Within the vicinity of the project site, striped bike lanes are present on the following roadway segments:

- Berryessa Road between Mabury Road and Piedmont Road
- Lundy Avenue north of Berryessa Road to Trade Zone Boulevard
- Sierra Road between Pietro Drive/Briarberry Court and Mossland Drive
- King Road south of Salamoni Court/Penitencia Creek Trail
- Mabury Road from 21<sup>st</sup> Street to White Road
- Commercial Street north of Berryessa Road to Zanker Road

Within the Berryessa BART Station, a bike-only path is provided along the east side of Berryessa BART Way between Berryessa Road and Mabury Road. An additional bike path starts approximately 280 feet south of the BART Way/Berryessa Road intersection and provides direct access to the east frontage of the project site. A third bike path located between the BART tracks and station parking garage provides access between Mabury Road and the station entrance. Bike lockers and bike racks are provided at the BART station.

Although most of the residential streets near the project site do not have striped bike lanes and are not designated as bike routes, due to their low traffic volumes many of them are conducive to bicycle usage. The existing bicycle facilities are shown in Figure 3.17-2.

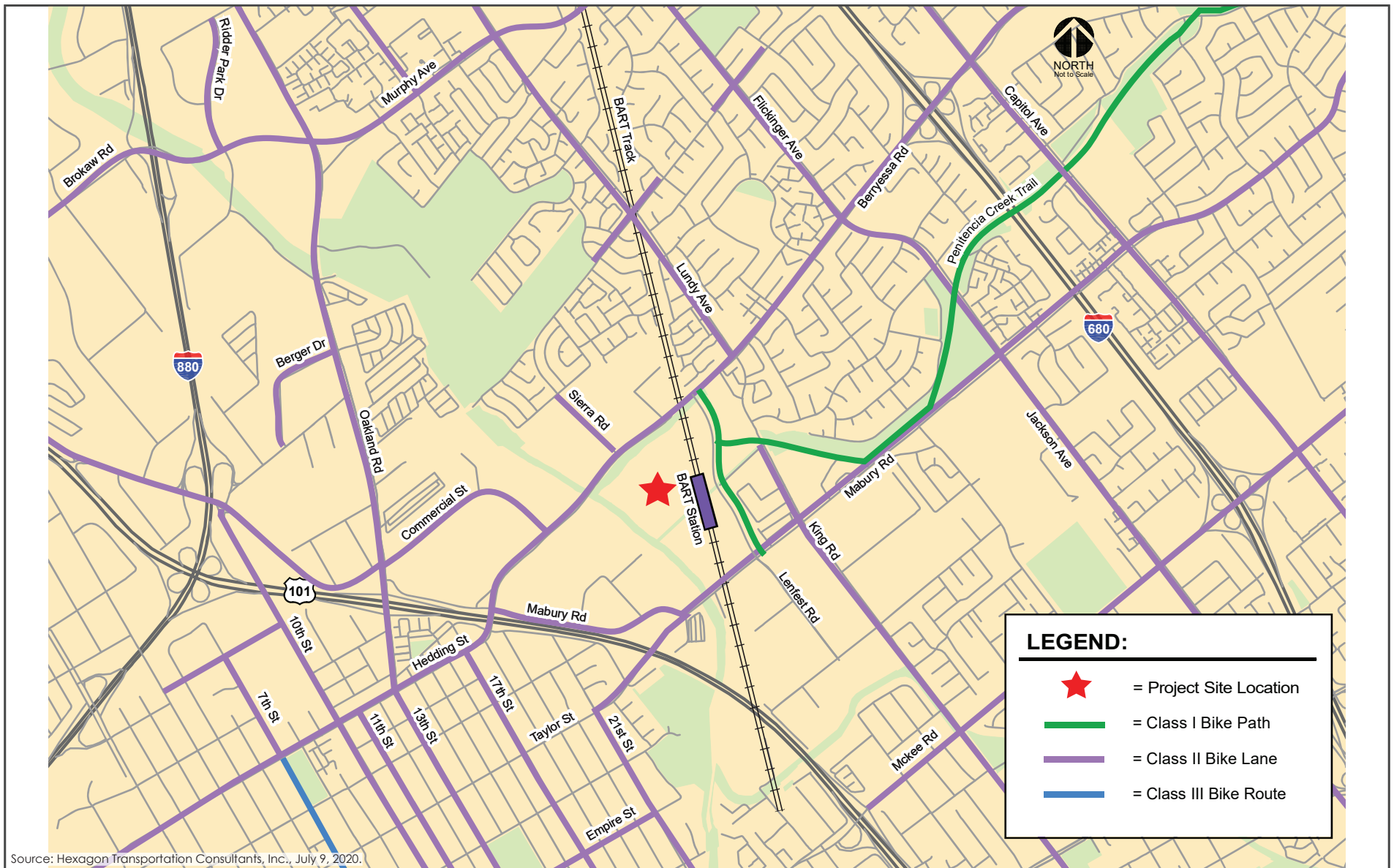




EXISTING PEDESTRIAN FACILITIES

FIGURE 3.17-1





EXISTING BICYCLE FACILITIES

FIGURE 3.17-2

## Transit Services

### VTA Bus Service

The project site is primarily served by six VTA bus routes (61, 64A, 64B, 66, 70, 77, and 523). These bus lines are shown in Figure 3.17-3 and described in Table 3.17-1, including their terminus points, closest scheduled stop, and commute hour headways. The nearest existing bus stops to the project site are located along Berryessa Road, near Sierra Road along the north project frontage, and are served by Routes 61, 70, 77, and 523.

Additionally, the Penitencia Creek Transit Center is located approximately two miles east of the project site along Capitol Avenue. The Penitencia Creek Transit Center is served by two bus routes, Route 45 and Route 61.

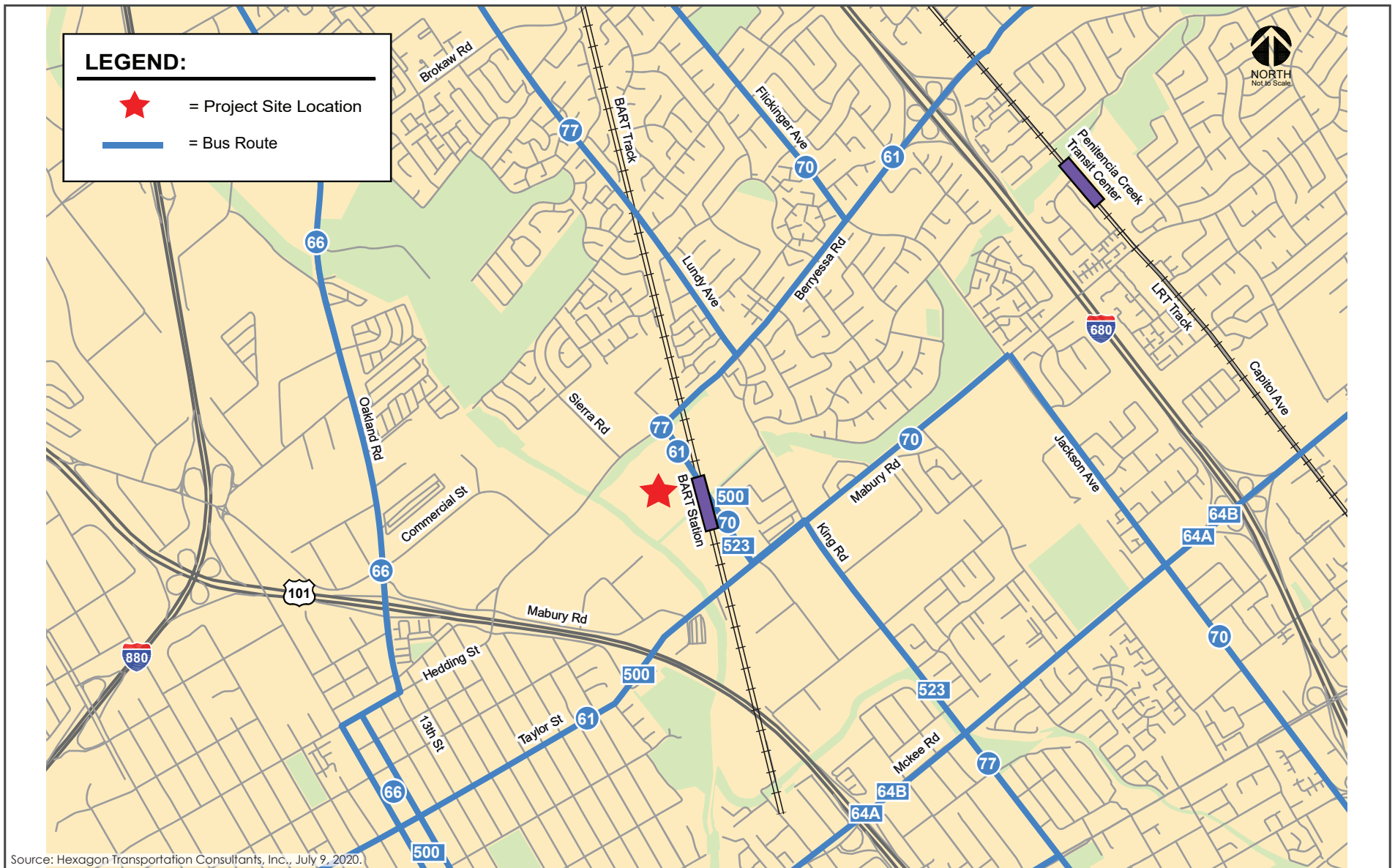
<b>Table 3.17-1: Existing Transit Service</b>			
Transit Service	Route Description	Nearest Stop	Headway <sup>1</sup>
Frequent Route 61	Sierra Road and Piedmont Road to Good Samaritan Hospital	Berryessa Transit Center	20-60 min
Frequent Route 64A	McKee Road and White Road to Ohlone-Chynoweth Station	King Road/McKee Road	30-40 min
Frequent Route 64B	McKee Road and White Road to Almaden Expressway and Camden Avenue	King Road/McKee Road	30-40 min
Frequent Route 66	North Milpitas to Kaiser Hospital in San José	Oakland Road/Commercial Street	20-30 min
Frequent Route 70	Milpitas BART to Eastridge Mall via Jackson Street	Berryessa Transit Center	20-30 min
Frequent Route 77	Milpitas BART to Eastridge Mall via King Road	Berryessa Transit Center	30 min
Frequent Rapid Route 500	Berryessa BART to San José Diridon Station	Berryessa Transit Center	10-20 min
Frequent Rapid Route 523	Berryessa BART to Lockheed Martin	Berryessa Transit Center	15-20 min
<sup>1</sup> Headway during peak commute periods in the project area.			

### VTA Light Rail Transit Service

The VTA currently operates the 42.2-mile VTA light rail line system extending from south San José through downtown to the northern areas of San José, Santa Clara, Milpitas, Mountain View, and Sunnyvale. The Alum Rock-Santa Teresa light rail transit (LRT) line (Route 901) runs within the median of Capitol Avenue from Alum Rock Avenue to Montague Expressway. The Penitencia Creek LRT Station is located approximately two miles east of the project site and is served by the Alum Rock-Santa Teresa LRT line.

### BART Transit Service

The Berryessa/North San José BART Station, which opened in June 2020, is served by the Richmond – Berryessa/North San José line (Orange line) and the Berryessa/North San José – Daly City line (Green line).



EXISTING TRANSIT SERVICES

FIGURE 3.17-3

### 3.17.2 **Impact Discussion**

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

- a) Conflict with a program plan, ordinance or policy addressing the circulation system, including transit, roadways, bicycle lanes and pedestrian facilities?
- b) For a land use project, 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 land uses (e.g., farm equipment)?
- d) Result in inadequate emergency access?

#### 3.17.2.1 ***Project Impacts***

- 
- a) Would the project conflict with a program, plan, ordinance or policy addressing the circulation system, including transit, roadways, bicycle lanes, and pedestrian facilities?**
- 

#### **Option 1 and Option 2**

New development projects in San José should encourage multi-modal travel, consistent with the goals and policies of the City's General Plan to reduce vehicle trip generation and VMT. In addition, the adopted San José Bike Plan 2020 establishes goals, policies, and actions to facilitate bicycling and designates bike lanes along many City streets. In order to further the goals of the City, pedestrian and bicycle facilities are encouraged with new development projects.

The project site is located within the Berryessa BART Urban Village boundary. Development within Urban Villages must incorporate additional urban design and architectural elements that facilitate buildings with pedestrian-oriented design and activate the pedestrian public right-of-way. The Berryessa BART Urban Village Plan also includes policies that provide for the enhancement of the pedestrian and bicycle environment and greater connectivity to the overall transportation network.

#### **Pedestrian and Bicycle Facilities**

Pedestrian facilities in the project vicinity consist of sidewalks along both sides of all streets, crosswalks, and pedestrian push buttons at all signalized study intersections. Bicycle facilities include striped bike lanes, three bike-only paths providing access to the Berryessa BART Station and eastern project site frontage, and bike lockers and bike racks at the BART station. The Penitencia Creek Trail is a continuous pathway for pedestrians and bicycles that extends from the Berryessa BART Station to Alum Rock Park.

The project proposes to provide pedestrian and bicycle connections between the open spaces of the project site and the BART station. Pedestrian and bicycle connections would provide centralized access from the project site to the BART platforms. Enhancements to pedestrian routes would include controlled crossing points along Berryessa Road, improvements to sidewalks and the pedestrian environment along the project's Berryessa Road and Mabury Road frontages, the riparian trail along the site's northern and western perimeters, and a central plaza within the site.

The proposed on-street network would be consistent with planned streetscape features of the Berryessa BART Urban Village Plan. In addition, the project frontage along Berryessa Road would be designed to accommodate the planned Berryessa Road Complete Streets improvements including protected bicycle lanes, wider sidewalks, and other pedestrian safety features. The project (both Option 1 and Option 2) would not conflict with a plan, ordinance, or policy addressing pedestrian or bicycle circulation. **(Less than Significant Impact)**

### Transit Facilities

The Envision San José 2040 General Plan identifies the following goals regarding public transit:

- As part of the development review process, require that new development along existing and planned transit facilities consist of land use and development types and intensities that contribute towards transit ridership. In addition, require that new development is designed to accommodate and to provide direct access to transit facilities.
- Pursue development of BART, bus, shuttle, and fixed guideway services on designated streets and connections to major destinations.

The Berryessa BART Station is located along the project site's eastern boundary between Berryessa Road and Mabury Road. Station facilities include a parking structure for park-and-ride (PNR) commuters, surface parking lots, kiss-and-ride (KNR) drop-off points, bus transfer bays, and bikeshare stations. Phase 1 of the SVBX project included the extension of service to the Berryessa BART Station and began operation in June 2020. Phase 2 would extend service six miles into downtown San José and terminate in Santa Clara, with completion planned for 2030.

The nearest bus stops to the project site are along Berryessa Road, near Sierra Road along the northern project frontage and Mabury Road near Taylor Street and Lenfest Road along the southern project frontage. As part of the VTA's 2019 New Transit Service Plan and extension of BART service to Santa Clara County, frequent bus routes 61, 70, and 77, and frequent rapid routes 500 and 523 provide service at the Berryessa BART Station. The new transit trips generated by the project are not expected to create demand in excess of the existing and planned transit service.

The project proposes to provide pedestrian and bicycle connections to the Berryessa BART Station as well as provide vehicle connections between the Sierra Road extension and the BART station. The project would provide safe and direct routes to and from the BART station and transit services along Berryessa Road and Mabury Road that would encourage increased use of transit and be consistent with the Envision San José 2040 General Plan and Berryessa BART Urban Village Plan strategies and policies. **(Less than Significant Impact)**

---

**b) Would the project conflict or be inconsistent with CEQA Guidelines Section 15064.3, subdivision (b)?**

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**Option 1 and Option 2**

VTM Screening Criteria

The City of San José's Transportation Analysis Handbook identifies screening criteria to determine whether a CEQA transportation analysis would be required for a development project. The criteria are based on the type of project, characteristics, and location. If a project or a component of a project meets the City's screening criteria, it is presumed that the project would result in a less-than-significant transportation impact and a detailed VMT analysis is not required. See Appendix H for detailed criteria.

The proposed project (both Option 1 and Option 2) would meet most of the City's VMT analysis screening criteria based on its location within a planned growth area, proximity to high-quality transit, transit-supporting density, and the amount of parking limited by parking management policies to serve the planned development. However, the project site is not located in an area that currently has low VMT per capita or worker, and thus the proposed residential and commercial uses do not meet the City's screening criteria. Therefore, a CEQA-level transportation analysis that evaluates the project's effects on VMT is required.

VTM Evaluation

Given the large scale of the proposed project and its proximity to a major transit facility, the City's Transportation Demand Forecasting (TDF) model was utilized to complete the VMT evaluation for the project. The TDF model includes the extension of BART service to the Berryessa BART Station that will significantly alter modes of travel in the project area. Due to the large scale of the project and other planned changes (including roadway improvements and new BART service), a multi-modal model was used to calculate the effects of the proposed project on VMT.

Descriptions of VMT thresholds of significance for development projects are provided in Appendix H. The two criteria applicable for the proposed project are described below.

- Projects that include general employee uses (office) create a significant adverse impact when the estimated project-generated VMT exceeds the existing regional average VMT per employee minus 15 percent. Currently, the reported regional average is 14.37 VMT per employee. This equates to a significant impact threshold of 12.21 VMT per employee.
- Projects that include residential uses create a significant adverse impact when the estimated project-generated VMT exceeds the existing Citywide average VMT per capita minus 15 percent or the existing regional average VMT per capita minus 15 percent, whichever is lower. Currently, the reported Citywide average is 11.94 VMT per capita, which is less than the regional average. This equates to a significant impact threshold of 10.12 VMT per capita.

As discussed above, the proposed project would result in a significant impact if it results in VMT that exceeds VMT per capita of 10.12 and VMT per employee of 12.21.

The results of the VMT evaluation (see Appendix H) indicate that the Option 1 project would generate VMT per capita of 8.03 and VMT per employee of 8.40 under Year 2040 conditions. The Option 2 project would generate VMT per capita of 4.80 and VMT per employee of 7.51 under Year 2040 conditions. When compared to the existing VMT within the project area, each development option would result in a reduction of VMT per capita and VMT per employee under Year 2040 conditions. The VMT per capita and VMT per employee for both development options are shown in Table 3.17-2.

The addition of residents and jobs in proximity to one another and in an area with extensive opportunities for the use of transit, bicycles, and other non-auto modes of travel would result in fewer trips and a reduction of length of those trips that would be added to the roadway system due to planned growth. In addition, the development growth due to the proposed project would result in a larger percentage of the residents and employees living and working within the project site to use transit more regularly than the average transit usage for these land uses in the Bay Area.

<b>Table 3.17-2: VMT Evaluation Summary</b>						
	<b>Residential</b>			<b>Employment</b>		
	<b>Number of Units</b>	<b>VMT per Capita</b>	<b>Exceeds Thresholds?</b>	<b>Square Footage</b>	<b>VMT per Job</b>	<b>Exceeds Thresholds?</b>
<i>Threshold</i>	<i>10.12</i>			<i>12.21</i>		
2025 Baseline <sup>1</sup>	--	<b>12.63</b>	<b>Yes</b>	--	<b>13.10</b>	<b>Yes</b>
2040 Option 1	3,450	8.03	No	2.2 million	8.40	No
2040 Option 2	3,450	4.80	No	3.4 million	7.51	No
<sup>1</sup> 2025 baseline includes the existing VMT within the project area, prior to project development.						

The project (both Option 1 and Option 2) would result in VMT per capita and VMT per employee below the established thresholds, and would not result in an impact to the transportation system based on the City's VMT impact criteria. **(Less than Significant Impact)**

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**c) Would the project substantially increase hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?**

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### **Option 1 and Option 2**

The applicant's proposed project (Option 1) includes 3,450 dwelling units and 2.2 million square feet of commercial space, including office and retail uses. The maximum development option City staff would consider recommending to City Council (Option 2) includes 3,450 dwelling units and 3.4 million square feet of commercial space, including office and retail uses.

Both project options would include a new southerly extension of Sierra Road, which would bisect the site and provide access from Berryessa Road via a vehicle bridge over Upper Penitencia Creek, aligning with Sierra Road to the north and a connection at Mabury Road at its southern terminus (refer to Figure 2.2-7). The intersection of six new private streets along the east side of the Sierra Road extension would provide access to the project site's residential parking garages. In addition, a new public north-south roadway running parallel to and east of the Sierra Road extension would connect to Berryessa Road at the existing Flea Market entrance to the north and curve to connect to



the Sierra Road extension to the south. This new roadway would provide an alternative access point to the Sierra Road extension and provide access to the project site's office parking garages via five intersections.

The extension of Sierra Road and the new parallel roadway are proposed to be constructed as north-south public arterials measuring 70 feet and 80 feet wide, respectively. Construction of the on-site roadways would provide vehicle connections to the BART station.

### Complete Street Improvements

The Berryessa BART Urban Village Plan requires that the proposed Sierra Road extension be constructed as a complete street. Complete streets are roadways designed to safely accommodate many different users including bicyclists, pedestrians, transit riders, motorists, and emergency vehicles. In addition to providing a 20-foot sidewalk along the extension, the site design would be required to ensure the safe travel of pedestrians and bicyclists along the extension.

With the extension of Sierra Road, improvements and lane configuration adjustments at its intersections with Berryessa Road and Mabury Road would be completed as part of the proposed project (both Option 1 and Option 2) to adequately serve the projected traffic volumes. The proposed roadway improvements include the following:

- The project would construct a clear-span vehicle bridge over Upper Penitencia Creek to provide vehicular access from Berryessa Road at the northerly extension of Sierra Road. The new bridge width would be determined based on the intersection operation recommendations in the Transportation Analysis and input from City staff.
- The project would provide multimodal access that facilitates walking and bicycling to and from the project site and the BART station.
- A new multi-modal, clear-span bridge from Berryessa Road to the project site would be constructed east of the proposed Sierra Road extension. This is the location of the current main vehicle entrance to the Flea Market. The new bridge would continue to serve vehicular traffic. The new bridge width would be determined based on the intersection operation recommendations in the Transportation Analysis and input from City staff.

The proposed project would be subject to City review to ensure compliance with traffic engineering standards and transportation planning principles. As part of the review process, construction logistics would be reviewed to ensure hazards are not created. In addition, the project would comply with the Department of Public Works standard inspection process to ensure safe access around the site vicinity during construction process. Through compliance with the City's developmental review process, the project (both Option 1 and Option 2) would not increase hazards due to a design feature.  
**(Less than Significant Impact)**

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**d) Would the project result in inadequate emergency access?**

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**Option 1 and Option 2**

Emergency vehicle access (EVA) would be provided via Mabury Road and Berryessa Road. The proposed roadways throughout the project site would be accessible to emergency vehicles at all times. Emergency access would be maintained during construction of the project. The project would be required to comply with relevant building and fire codes that would ensure free and clear accessways are maintained for emergency situations during operation of the project. Therefore, the project (both Option 1 and Option 2) would not result in inadequate emergency vehicle access. **(Less than Significant Impact)**

**3.17.2.2 Cumulative Impacts**

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

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**Option 1 and Option 2**

Projects must demonstrate consistency with the Envision San José 2040 General Plan to address cumulative impacts. Consistency with the City's General Plan is based on the project's density, design, and conformance with the General Plan goals and policies. If a project is determined to be inconsistent with the General Plan, a cumulative impact analysis is required per the City's Transportation Analysis Handbook.

The project site is located within the Berryessa BART Urban Village Plan. According to the General Plan, the Urban Village strategy fosters:

- Mixed residential and employment activities that are attractive to an innovative workforce;
- Revitalization of underutilized properties that have access to existing infrastructure;
- Densities that support transit use, bicycling, and walking; and
- High-quality urban design.

The Berryessa BART Urban Village is the first regional transit urban village plan to be developed in San José. Regional transit urban villages are locations with access to major transit facilities of regional significance. Recognizing its emerging role as a gateway to the City, the design of new development within this urban village aims for high-quality environments for public circulation and gathering.

The project is consistent with the Envision San José 2040 General Plan and Berryessa BART Urban Village goals and policies for the following reasons:

- The proposed residential uses for the project site are consistent with the Residential Neighborhood land designation per the Berryessa BART Urban Village Plan.

- The proposed on-site street network would be consistent with planned streetscape design features of Complete Streets and the Berryessa BART Urban Village Plan.
- The project frontages along Berryessa Road would be designed to accommodate the planned Berryessa Road Complete Street improvements including protected bicycle lanes, wider sidewalks, and other pedestrian safety features.
- The project site is adjacent to a major transit station, bus stops, and bicycle lanes on Berryessa Road.

Therefore, the proposed project would be consistent with the Berryessa BART Urban Village Plan and the Envision San José 2040 General Plan. The project would be considered as part of the cumulative solution to meet the General Plan's long-range transportation goals and would result in a less-than-significant cumulative impact. **(Less than Significant Cumulative Impact)**

### **3.17.3      Non-CEQA Effects**

As noted above, with the passage of SB 743 amending CEQA's evaluation of transportation impacts and the effective date of the Guidelines implementing SB 743, a project's effects on level of service shall no longer be considered an impact on the environment. The following discussion is included because the City of San José has policies that address LOS as a planning or growth management matter, outside the CEQA process. In the event a deficient LOS condition is identified, the City has discretion whether to require a project to address the deficiency by implementing roadway or other transportation improvements to restore or improve the LOS, and the relevant question under CEQA is whether those improvements would result in adverse physical changes to the environment, and not whether LOS has degraded below the condition considered acceptable.

#### **Trip Generation**

The LOS analysis in Appendix H utilized the City of San José TDF model to project long-term traffic growth. The model was used to produce projections of AM and PM peak hour traffic for the project based on the proposed type and amount of land uses on the site. The forecasted trip generation estimates are based on the trip-making characteristics of the proposed land uses and reflect the mode of travel and interaction of trips between land uses and use of non-auto-based modes of travel, including BART. Based on the analysis in Appendix H, Option 1 would generate 2,891 trips during the AM peak hour and 3,805 trips during the PM peak hour. Option 2 would generate 2,978 trips during the AM peak hour and 4,231 trips during the PM peak hour.<sup>76</sup> Trip generation rates for both options are shown in Table 3.17-3.

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<sup>76</sup> At the direction of City staff, evaluation of Option 2 trip generation included adjustments to the TDF model's default mode-share percentages to reflect the City's goal-based mode-share per the Berryessa Multi-Modal Transportation Improvement Plan (MTIP). These adjustments resulted in an increased transit mode-share percentage and a reduction in the drive-alone mode-share percentage. No adjustments were made to the Option 1 model inputs.

<b>Table 3.17-3: Project Trip Generation Estimates</b>						
	<b>AM Peak Hour</b>			<b>PM Peak Hour</b>		
	<b>In</b>	<b>Out</b>	<b>Total</b>	<b>In</b>	<b>Out</b>	<b>Total</b>
Option 1	1,444	1,447	2,891	1,871	1,934	3,805
Option 2	1,694	1,284	2,978	1,902	2,329	4,231
Note: AM and PM peak hour trips were based on the City of San José travel demand forecasting model runs completed in April 2020 by Hexagon Transportation Consultants.						

### **Trip Distribution**

#### Intersection Evaluation

The assignment of project site traffic to the road network and intersections was completed using the TDF model. Hexagon Transportation Consultants completed a study of AM and PM peak-hour traffic conditions for 25 signalized intersections within the City of San José. Intersections were selected for study if the project is expected to add 10 vehicle trips per hour per lane to a signalized intersection that meets additional Transportation Analysis Handbook criteria (see Appendix H). Data for the analysis were also collected to determine existing traffic volumes, lane configurations, and signal timing and phasing.

LOS is a qualitative description of operating conditions ranging from LOS A, or free-flow conditions with little or no delay, to LOS F, or jammed conditions with excessive delays. Table 3.17-4 and Table 3.17-5 below show the existing, background, and project plus background intersection operations analysis results for Year 2040 conditions. Background conditions reflect trips from approved but not yet constructed or occupied developments in the vicinity.

Table 3.17-4 (Option 1) and Table 3.17-5 (Option 2) include project scenarios under two interchange alternatives being considered by the City of San José. The US-101/Mabury Road interchange has been identified in the City's General Plan as a needed freeway gateway to alleviate congestion at the US-101/Oakland Road interchange. However, the design of a full interchange at Mabury Road has not progressed due to the lack of acceptance of interchange spacing and ramp operations by the California Department of Transportation (Caltrans). The City is currently working with VTA and Caltrans to develop an alternative interchange design option that improves access, addresses traffic operations, and relieves congestion. After considering several interchange design options, the City has developed a preferred interchange plan that is centered around the implementation of a full interchange at Berryessa Road rather than Mabury Road. Therefore, the Transportation Analysis evaluated US-101 interchange alternatives at both Mabury Road and Berryessa Road.

**Table 3.17-4: Option 1 Intersection Levels of Service**

Intersection	LOS Standard	Peak Hour	Year 2040 No Project		Year 2040 Project with Mabury Alternative		Year 2040 Project with Berryessa Alternative	
			Avg. Delay <sup>1</sup>	LOS <sup>2</sup>	Avg. Delay <sup>1</sup>	LOS <sup>2</sup>	Avg. Delay <sup>1</sup>	LOS <sup>2</sup>
Oakland Rd. & US-101 (N)	D	AM PM	24.9 23.5	C C	23.9 23.0	C C	21.2 24.0	C C
Oakland Rd. & US-101 (S)	D	AM PM	29.9 24.8	C C	29.1 25.2	C C	9.1 10.0	A A
Berryessa Rd. & US-101 (N)	D	AM PM	-- --	-- --	-- --	-- --	78.6 33.9	E C
Berryessa Rd. & US-101 (S)	D	AM PM	-- --	-- --	-- --	-- --	31.0 81.1	C F
US-101 & Mabury Rd. (E)	D	AM PM	114.2 174.6	F F	121.9 178.0	F F	-- --	-- --
US-101 & Mabury Rd. (W)	D	AM PM	26.3 38.1	C D	26.4 38.2	C D	-- --	-- --
Eleventh St. & Taylor St.	D	AM PM	71.6 76.3	E E	70.0 78.0	E E	69.6 66.7	E E
Tenth St. & Taylor St.	D	AM PM	78.8 91.9	E F	85.1 80.0	F F	83.4 86.9	F F
Tenth St. & Hedding St.	D	AM PM	47.3 41.9	D D	48.7 44.3	D D	51.6 49.2	D D
Eleventh St. & Hedding St.	D	AM PM	27.7 34.6	C C	27.7 33.5	C C	26.8 32.0	C C
Oakland Rd. & Hedding St.	D	AM PM	50.2 50.1	D D	46.5 49.9	D D	47.1 47.6	D D
Oakland Rd. & Commercial St.	D	AM PM	45.7 67.3	D E	46.0 64.6	D E	44.9 60.3	D E
Commercial St. & Berryessa Rd.	D	AM PM	129.5 36.9	F D	134.1 37.1	F D	51.5 44.1	D D
Sierra Rd. & Berryessa Rd.	D	AM PM	54.0 51.7	D D	44.0 39.0	D D	43.7 40.1	D D
Flea Market & Berryessa Rd.	D	AM PM	20.0 20.6	C C	26.0 32.2	C C	28.6 38.5	C D
BART Entrance & Berryessa Rd.	D	AM PM	10.4 17.0	B B	10.7 17.4	B B	10.8 17.8	B B
Lundy Ave. & Sierra Rd.	D	AM PM	48.4 123.1	D F	41.1 54.8	D D	42.2 55.5	D E
Lundy Ave. & Berryessa Rd.	D	AM PM	47.1 47.2	D D	45.6 46.6	D D	45.8 50.3	D D
Flickinger Ave. & Berryessa Rd.	D	AM PM	41.9 45.0	D D	42.0 45.7	D D	41.6 44.2	D D
Jackson Ave. & Berryessa Rd.	D	AM PM	49.9 38.9	D D	50.6 40.4	D D	49.4 41.4	D D
King Rd. & Mabury Rd.	D	AM PM	72.0 39.5	E D	66.7 38.1	E D	43.4 40.2	D D
Lenfest Rd. & Mabury Rd.	D	AM PM	19.5 25.2	B C	19.9 25.2	B C	20.2 23.0	C C
Flea Market & Mabury Rd.	D	AM PM	32.1 25.6	C C	35.1 28.3	D C	198.8 157.2	F F
King Rd. & McKee Rd.	D	AM PM	46.8 49.0	D D	47.0 49.5	D D	48.8 50.4	D D

Berryessa Rd. & Mabury Rd.	D	AM PM	23.3 25.9	C C	25.6 23.6	C C	28.2 21.8	C C
<sup>1</sup> Average delay time is in seconds. <sup>2</sup> Values in <i>italics</i> indicate unacceptable levels of service. Values in <b><i>bold italics</i></b> indicate an adverse effect.								

The results of the level of service analysis show that seven of the 25 studied intersections are projected to operate at unacceptable levels of service (LOS E or F) during at least one peak hour under Year 2040 no project conditions:

- US-101 and Mabury Road (E) during AM and PM peak hours
- Eleventh Street and Taylor Street during AM and PM peak hours
- Tenth Street and Taylor Street during AM and PM peak hours
- Oakland Road and Commercial Street during the PM peak hour
- Commercial Street and Berryessa Road during the AM peak hour
- Lundy Avenue and Sierra Road during the PM peak hour
- King Road and Mabury Road during the AM peak hour

The results also show that the following intersections are projected to operate at an unacceptable level of service during at least one peak hour under Year 2040 conditions with development of the Option 1 project.

Mabury Interchange Alternative:

- US-101 and Mabury Road (E) during AM and PM peak hours, resulting in an adverse effect for the AM and PM peak hours
- Eleventh Street and Taylor Street during AM and PM peak hours
- Tenth Street and Taylor Street during AM and PM peak hours, resulting in an adverse effect for the AM peak hour
- Oakland Road and Commercial Street during the PM peak hour
- Commercial Street and Berryessa Road during the AM peak hour
- King Road and Mabury Road during the AM peak hour

Berryessa Interchange Alternative:

- Berryessa Road and US-101 (N) during the AM peak hour
- Berryessa Road and US-101 (S) during the PM peak hour
- Eleventh Street and Taylor Street during AM and PM peak hours, resulting in an adverse effect during the PM peak hour
- Tenth Street and Taylor Street during AM and PM peak hours
- Oakland Road and Commercial Street during the PM peak hour
- Lundy Avenue and Sierra Road during the PM peak hour
- Flea Market Entrance and Mabury Road during the AM and PM peak hours

At the intersection of US-101/Mabury Road (E) and Taylor Street/Tenth Street under the Mabury interchange alternative and Eleventh Street/Taylor Street and Flea Market Entrance/Mabury Road under the Berryessa interchange alternative, the added trips as a result of Option 1 development would cause the intersections' critical-movement delay to either decrease or increase by four or more seconds and the volume-to-capacity ratio (V/C) to increase by 0.01 or more during at least one of the peak hours. Based on City guidelines, this constitutes an adverse effect on intersection operations.

All other intersections are projected to meet the City's LOS D standard. The level of service calculation sheets are included in Appendix H.

<b>Table 3.17-5: Option 2 Intersection Levels of Service</b>								
<b>Intersection</b>	<b>LOS Standard</b>	<b>Peak Hour</b>	<b>Year 2040 No Project</b>		<b>Year 2040 Project with Mabury Alternative</b>		<b>Year 2040 Project with Berryessa Alternative</b>	
			<b>Avg. Delay<sup>1</sup></b>	<b>LOS<sup>2</sup></b>	<b>Avg. Delay<sup>1</sup></b>	<b>LOS<sup>2</sup></b>	<b>Avg. Delay<sup>1</sup></b>	<b>LOS<sup>2</sup></b>
Oakland Rd. & US-101 (N)	D	AM PM	24.9 23.5	C C	27.0 23.8	C C	21.5 17.9	C B
Oakland Rd. & US-101 (S)	D	AM PM	29.9 24.8	C C	31.8 24.4	C C	9.3 10.7	A B
Berryessa Rd. & US-101 (N)	D	AM PM	-- --	-- --	-- --	-- --	29.8 26.7	C C
Berryessa Rd. & US-101 (S)	D	AM PM	-- --	-- --	-- --	-- --	27.3 43.2	C D
US-101 & Mabury Rd. (E)	D	AM PM	114.2 174.6	F F	56.4 104.0	E F	-- --	-- --
US-101 & Mabury Rd. (W)	D	AM PM	26.3 38.1	C D	24.9 31.3	C C	-- --	-- --
Eleventh St. & Taylor St.	D	AM PM	71.6 76.3	E E	36.4 43.9	D D	33.2 43.2	C D
Tenth St. & Taylor St.	D	AM PM	78.8 91.9	E F	45.4 61.2	D E	46.7 58.0	D E
Tenth St. & Hedding St.	D	AM PM	47.3 41.9	D D	28.8 40.9	C D	29.8 40.3	C D
Eleventh St. & Hedding St.	D	AM PM	27.7 34.6	C C	22.6 25.0	C C	21.4 24.5	C C
Oakland Rd. & Hedding St.	D	AM PM	50.2 50.1	D D	40.3 49.9	D D	43.0 46.5	D D
Oakland Rd. & Commercial St.	D	AM PM	45.7 67.3	D E	42.0 66.4	D E	37.5 55.0	D E
Commercial St. & Berryessa Rd.	D	AM PM	129.5 36.9	F D	75.5 30.6	E C	30.1 34.4	C C
Sierra Rd. & Berryessa Rd.	D	AM PM	54.0 51.7	D D	36.5 36.4	D D	35.5 37.0	D D
Flea Market & Berryessa Rd.	D	AM PM	20.0 20.6	C C	24.1 32.9	C C	26.8 34.3	C C
BART Entrance & Berryessa Rd.	D	AM PM	10.4 17.0	B B	10.8 17.1	B B	10.9 18.4	B B
Lundy Ave. & Sierra Rd.	D	AM PM	48.4 123.1	D F	32.1 29.3	C C	31.3 27.6	C C
Lundy Ave. & Berryessa Rd.	D	AM PM	47.1 47.2	D D	42.3 42.0	D D	42.0 44.4	D D



Flickinger Ave. & Berryessa Rd.	D	AM PM	41.9 45.0	D D	38.1 37.6	D D	35.9 35.7	D D
Jackson Ave. & Berryessa Rd.	D	AM PM	49.9 38.9	D D	36.8 32.9	D C	35.6 34.7	D C
King Rd. & Mabury Rd.	D	AM PM	72.0 39.5	E D	38.2 32.5	D C	34.6 32.3	C C
Lenfest Rd. & Mabury Rd.	D	AM PM	19.5 25.2	B C	19.2 23.3	B C	19.3 21.6	B C
Flea Market & Mabury Rd.	D	AM PM	32.1 25.6	C C	34.9 28.2	C C	<b>111.3</b> <b>115.9</b>	<b>F</b> <b>F</b>
King Rd. & McKee Rd.	D	AM PM	46.8 49.0	D D	39.5 42.4	D D	41.8 42.8	D D
Berryessa Rd. & Mabury Rd.	D	AM PM	23.3 25.9	C C	20.6 19.6	C B	27.1 21.1	C C
<sup>1</sup> Average delay time is in seconds. <sup>2</sup> Values in <i>italics</i> indicate unacceptable levels of service. Values in <b><i>bold italics</i></b> indicate an adverse effect.								

The level of service analysis results show that the following intersections are projected to operate at an unacceptable level of service during at least one peak hour under Year 2040 conditions with development of the Option 2 project:

Mabury Interchange Alternative:

- US-101 and Mabury Road (E) during AM and PM peak hours
- Tenth Street and Taylor Street during the PM peak hour
- Oakland Road and Commercial Street during the PM peak hour
- Commercial Street and Berryessa Road during the AM peak hour

Berryessa Interchange Alternative:

- Tenth Street and Taylor Street during the PM peak hour
- Oakland Road and Commercial Street during the PM peak hour
- Flea Market Entrance and Mabury Road during the AM and PM peak hours

All other intersections are projected to meet the City's LOS D standard. Based on City guidelines, an adverse effect would occur under Option 2 development at the Flea Market Entrance/Mabury Road intersection.<sup>77</sup>

### Intersection Operation Effects and Potential Improvements

Hexagon Transportation Consultants identified potential improvements to intersections that would experience adverse effects with development of both the Option 1 and Option 2 project. Some locations were found to have no feasible improvements. As the City redevelops to higher densities, especially around transit nodes such as the Berryessa BART Station, the ability of intersections to achieve a certain level of service becomes less relevant to overall mobility. Therefore, other modes of

<sup>77</sup> For the Option 2 intersection and freeway evaluations, the City's MTIP goal-based mode-share adjustments were applied Citywide. As a result, although Option 2 would result in more project vehicle trips, there would be fewer non-project trips.

travel must be considered when recommending changes to improve an intersection's motor vehicle LOS.

**US-101 Intersections and Oakland Road/Commercial Street:** The US-101/Oakland/Mabury Area Development Policy (ADP) area, for which a Transportation Development Policy (TDP) exists, has been established to alleviate traffic congestion at the US-101 interchange area. The proposed project would be required to pay applicable TDP traffic fees. See Appendix H for calculation of TDP fees. The implementation of this roadway improvement is undergoing environmental review.

**Eleventh Street/Taylor Street and Tenth Street/Taylor Street:** Vehicular capacity improvements at these intersections would require narrowing sidewalks and removing bus stops along Taylor Street. However, these types of improvements are not consistent with the City's transportation policies and would inhibit improvement of multi-modal facilities. Thus, there are no feasible improvements at these intersections due to right-of-way restrictions, and the adverse effect is determined to be unavoidable. The project would be required to provide offsetting multi-modal improvements within the Berryessa BART Urban Village area. Possible offsetting improvements may include contribution towards or construction of improvements included in the draft Berryessa BART Urban Village Multi-Modal Transportation Improvement Plan..

**Flea Market Entrance/Mabury Road:** The planned Berryessa BART Urban Village transportation system will facilitate multimodal circulation within the Urban Village, establish roadway network design guidelines, and prioritize non-auto travel modes. The Urban Village Plan will also require the implementation of Transportation Demand Management (TDM) measures and parking management policies to reduce projected traffic volumes. TDM measures could require reductions in on-site parking and project-generated traffic by as much as 50 percent. Most of the operational issues identified for each of the project options and interchange alternative scenarios would be alleviated with reduction of project traffic by approximately 50 percent.

### Freeway Segment Evaluation

The City is required to conform to the requirements of the VTA, which establishes a uniform program for evaluating the transportation impacts of land use decisions on the designated CMP roadway system. The CMP defines an acceptable level of service for freeway segments as LOS E or better.

Freeway segments included in the Transportation Analysis were selected based on their proximity to the project site and include 58 segments along SR 87, US-101, I-280, I-680, and I-880. Vehicle density inputs and calculations are included in Appendix H.

Under Year 2040 conditions, the following freeway segments are projected to operate at an unacceptable LOS F.

- All of the directional mixed-flow segments and none of the high-occupancy vehicle (HOV) segments on SR 87 are projected to operate at an unacceptable LOS F during at least one peak hour under both the Option 1 and Option 2 development options and both interchange alternatives.

- All of the directional mixed-flow segments and none of the HOV segments on I-280 are projected to operate at an unacceptable LOS F during at least one peak hour under both development options and interchange alternatives.
- At most, 11 of the 16 directional mixed-flow segments and none of the HOV segments on I-680 are projected to operate at an unacceptable LOS F during at least one peak hour under Option 1 for both interchange alternatives. Under Option 2, both interchange alternatives would have 10 mixed-flow segments operating at LOS F during at least one peak hour.
- At most, nine of the 10 directional mixed-flow segments and two of the HOV segments on I-880 are projected to operate at an unacceptable LOS F during at least one peak hour under Option 1 for both interchange alternatives. Under Option 2, both interchange alternatives would have one HOV segment operating at LOS F during at least one peak hour.
- At most, 17 of the 18 directional mixed-flow segments and seven of the HOV segments on US-101 are projected to operate at an unacceptable LOS F during at least one peak hour under Option 1 for both interchange alternatives. Under Option 2, both interchange alternatives would have 16 mixed-flow segments and six HOV segments operating at LOS F during at least one peak hour.

In summary, of the 58 freeway segments analyzed in Appendix H, at most, 49 directional mixed-flow freeway segments and nine directional HOV segments would operate at an unacceptable level of service with development of both the Option 1 and Option 2 project, based on the CMP's level of service standards.

#### On-Site Roadway Segment Daily Volumes

The projected Average Daily Traffic (ADT) volumes for the on-site roadways are summarized in Appendix H. The City has identified a maximum capacity of 16,000 daily trips for a two-lane roadway. Volumes greater than 16,000 daily trips would require roadway widening to four or more lanes. The daily trips along Sierra Road are projected to be greater than 16,000 daily trips along segments immediately south of Berryessa Road and just north of Mabury Road. The projected volumes indicate the need for four lanes on the segments to adequately serve projected volumes. However, it is anticipated that the Berryessa BART Urban Village Plan will require the implementation of TDM measures and parking management policies that would significantly reduce the project's projected traffic volumes to reduce adverse effects.

#### Queuing Analysis

Traffic operations analyses at the Berryessa Road and Mabury Road site access points, as well as each of the primary on-site intersections along the Sierra Road extension and the new roadway, were completed for the Option 1 and Option 2 projects. Peak hour traffic volumes for project conditions at the on-site roadways and intersections were developed, and project trips assigned to the intersections along the Sierra Road extension and new roadway based upon the conceptual building and parking layout of the site.

**Sierra Road and Berryessa Road:** The LOS analysis indicates that this intersection would operate at an acceptable LOS D or better during the AM and PM peak hours under each of the project options and interchange alternative scenarios. However, the projected volumes would result in lengthy

vehicle queues. The westbound left-turn queue is projected to exceed the storage capacity during the AM peak hour under Option 1 with the Berryessa interchange alternative. Providing additional capacity at the intersection is not feasible. However, reduction of project trips could be achieved through TDM measures. Additionally, the layout of the site's internal roadways could be amended to provide additional storage space for the northbound queues at the Sierra Road and Berryessa Road intersection. The Transportation Analysis (see Appendix H) identified the following vehicle queues that would extend through the on-site intersection of Sierra Road and Street 1, located approximately 250 feet south of Berryessa Road:

- A maximum vehicle queue of 325 to 400 feet is projected for the northbound left-turn movement.

The maximum queue for the shared northbound and right-turn lane is projected to be 250 to 500 feet.

**Green Street and Berryessa Road:** The LOS analysis indicates that the intersection of Green Street and Berryessa Road is projected to operate at an acceptable LOS D or better during the AM and PM peak hours under each of the project options and interchange alternative scenarios. The Transportation Analysis (see Appendix H) identified the following vehicle queues that would require additional intersection capacity:

- The westbound left-turn queue is projected to exceed the left-turn storage capacity during the AM and PM peak hours under each of the project options and interchange alternative scenarios, with the exception of the Option 2 project with the Mabury Road interchange alternative.

**Sierra Road and Mabury Road:** The LOS analysis indicates that the intersection of Sierra Road and Mabury Road is projected to operate at an acceptable LOS D or better during the AM and PM peak hours under each of the project options with the Mabury Road interchange alternative scenario. The intersection is projected to operate at an unacceptable LOS E or worse during the AM and PM peak hours under each of the project options with the Berryessa Road interchange alternative scenario. In addition, the projected volumes would result in lengthy vehicle queues that would require additional intersection capacity. The Transportation Analysis (see Appendix H) identified the following vehicle queues that would extend through the on-site intersection of Sierra Road and Private Street 4, located approximately 250 feet north of Mabury Road::

- The eastbound left-turn queue is projected to exceed the left-turn storage capacity during the AM and PM peak hours under each of the project options and interchange alternative scenarios.
- The southbound queues would exceed the planned storage space between Mabury Road and Private Street 4. Turn movements to and from Private Street 4 should be restricted to right turns only.

The Transportation Analysis (see Appendix H) recommends that two inbound lanes be constructed to receive dual eastbound left-turn lanes. Three outbound lanes (one left-turn and two right-turn lanes) should be constructed on the southbound approach. These improvements would require the widening of Mabury Road to four lanes west of Sierra Road.

**On-Site Intersections:** The Sierra road extension and Green Street are assumed to be primarily two-lane roadways through the site. The Transportation Analysis (see Appendix H) includes the following recommendation for these intersections:

- A peak hour signal warrant check (see Appendix H) concluded that a maximum of four out of the 11 on-site intersections would warrant installation of a traffic signal under each of the project and interchange alternative scenarios. However, a traffic signal is not recommended at the Sierra Road/Private Street 4 intersection because of the queuing issues and close spacing with the Sierra Road/Mabury Road intersection. The planned roundabouts would be adequate in place of traffic signals at the Sierra Road/Private Street 1 and Sierra Road/Green Street intersections. Therefore, a traffic signal would be recommended only at the Green Street/Private Street 1 intersection.

### 3.18 TRIBAL CULTURAL RESOURCES

The following discussion is based, in part, on the Results of a CEQA Archaeological Literature Search prepared by Holman & Associates on February 7, 2020. This report is on file with the City of San José Department of Planning, Building and Code Enforcement.

As shown in Table 1.2-1, two comments were received on the Notice of Preparation (NOP) regarding tribal cultural resources. The Northern Valley of Yokut/Ohlone/Bay Miwuke Tribe (NVYT) on the NOP requested consultation on the project, and Ed Ketchum suggested consultation with the Muwekma Tribal Band. Tribal consultation is discussed under checklist question a) below.

#### 3.18.1 **Environmental Setting**

##### 3.18.1.1 ***Regulatory Framework***

###### **State**

###### **Assembly Bill 52**

Assembly Bill (AB) 52, effective July 2015, established a new category of resources for consideration by public agencies called Tribal Cultural Resources (TCRs). AB 52 requires lead agencies to provide notice of projects to tribes that are traditionally and culturally affiliated with the geographic area if they have requested to be notified. Where a project may have a significant impact on a tribal cultural resource, consultation is required until the parties agree to measures to mitigate or avoid a significant effect on a tribal cultural resource or until it is concluded that mutual agreement cannot be reached.

Under AB 52, TCRs are defined as follows:

- Sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe that are also either:
  - Included or determined to be eligible for inclusion in the California Register of Historical Resources, or
  - Included in a local register of historical resources as defined in Public Resources Code Section 5020.1(k).
- A resource determined by the lead agency to be a TCR.

###### **Envision San José 2040 General Plan**

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

<b>General Plan Policies – Tribal Cultural Resources</b>	
<b>Archaeology and Paleontology</b>	
Policy ER-9.2	Recognizing that Native American human remains may be encountered at unexpected locations, impose a requirement on all development permits and tentative subdivision maps that upon their discovery during construction, development activity will cease until professional archaeological examination

<b>General Plan Policies – Tribal Cultural Resources</b>	
	confirms whether the burial is human. If the remains are determined to be Native American, applicable state laws shall be enforced.
Policy ER-10.1	For proposed development sites that have been identified as archaeologically or paleontologically sensitive, require investigation during the planning process in order to determine whether potentially significant archeological or paleontological information may be affected by the project and then require, if needed, that appropriate mitigation measures be incorporated into the project design.
Policy ER-10.3	Ensure that City, State, and Federal historic preservation laws, regulations, and codes are enforced, including laws related to archaeological and paleontological resources, to ensure the adequate protection of historic and pre-historic resources.

### **3.18.1.2      *Existing Conditions***

The project site is located at the confluence of Coyote Creek and Upper Penitencia Creek, with Coyote Creek located along the western site boundary and Upper Penitencia Creek along the northern site boundary. This area is considered sensitive for prehistoric and archaeological deposits, including tribal cultural objects. No tribal cultural features, including sites, features, places, cultural landscapes, or sacred places, have been identified on the site. In addition, any prehistoric surface features or landscapes have been modified due to development of the project site and area.

In 2017, the City sent a letter to tribal representatives in the area to welcome participation in consultation process for all ongoing, proposed, or future projects within the City’s Sphere of Influence or specific areas of the City. The tribal representatives for tribes known to have traditional lands and cultural places within the City of San José were sent the Notice of Preparation for the proposed project in July 2018 in compliance with AB 52.

### **3.18.2      Impact Discussion**

For the purpose of determining the significance of the project’s impact on tribal cultural resources, would the project cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code Section 21074 as either a site, feature, place, cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American tribe, and that is:

- a) Listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code Section 5020.1(k)?
- b) A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code Section 5024.1? In applying this criteria, the significance of the resource to a California Native American tribe shall be considered.



### 3.18.2.1 *Project Impacts*

- 
- a) **Would the project cause a substantial adverse change in the significance of a tribal cultural resource that is listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code Section 5020.1(k)?**
- 

#### **Option 1 and Option 2**

Due to the project site's proximity to Coyote Creek and Upper Penitencia Creek, the proposed project site has moderate to high potential for prehistoric and archaeological deposits, including tribal cultural objects and artifacts, as discussed in Section 3.5 Cultural Resources.

Assembly Bill 52 requires lead agencies to complete formal consultations with California Native American tribes during the CEQA process to identify tribal cultural resources that may be subject to significant impacts by a project. Where a project may have a significant impact on a tribal cultural resource, the lead agency's environmental document must discuss the impact and whether feasible alternatives or mitigation measures could avoid or substantially lessen the impact. This consultation requirement applies only if the tribes have sent written requests for notification of projects to the Lead Agency.

The tribal representatives for tribes known to have traditional lands and cultural places within the City of San José were sent the Notice of Preparation for the proposed project in July 2018. As noted in Table 1.2-1, NVYT requested consultation of the proposed project along with a qualified archeological firm. Although no tribal cultural resources have been identified on the project site, NVYT expect this project to yield burials, as they have been involved in burial recovery just south of the project site. A consultation meeting with NVYT tribal representative Katherine Perez was scheduled for Friday, August 7, 2020, accessible via Zoom and phone. Tribal representatives did not attend the meeting. City staff followed up with the representatives; no response was provided. Due to the lack of response, it was presumed that consultation was declined.

Any subsurface artifacts found on-site would be addressed in accordance with the standard measures identified in the City's General Plan. Mitigation measures listed in Section 3.5 Cultural Resources, including MM CUL-2.1 and MM CUL-2.2, would be implemented. Therefore, the proposed project (both Option 1 and Option 2) would have a less than significant impact on tribal cultural resources. **(Less than Significant Impact with Mitigation Incorporated)**

- 
- b) **Would the project cause a substantial adverse change in the significance of a tribal cultural resource that is determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code Section 5024.1?**
- 

#### **Option 1 and Option 2**

See discussion under checklist question a) above. **(Less than Significant Impact with Mitigation Incorporated)**

### 3.18.2.2 *Cumulative Impacts*

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

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#### **Option 1 and Option 2**

Cumulative impacts to unknown tribal cultural resources could occur as a result of ground-disturbing activities from construction of projects within the vicinity of the proposed project site. With implementation of mitigation measures and standard measures listed in Section 3.5 Cultural Resources, the proposed project (both Option 1 and Option 2) would have a less than significant impact. **(Less than Significant Cumulative Impact with Mitigation Incorporated)**

### **3.19 UTILITIES AND SERVICE SYSTEMS**

The following section was written in part based on a Water Supply Assessment (WSA) completed by the San José Water Company in October 2018, which is included as Appendix I of this document.

#### **3.19.1 Environmental Setting**

##### **3.19.1.1 *Regulatory Framework***

#### **State**

##### **State Water Code**

Pursuant to the State Water Code, water suppliers providing water for municipal purposes to more than 3,000 customers or supplying more than 3,000 acre-feet (approximately 980 million gallons) of water annually must prepare and adopt an urban water management plan (UWMP) and update it every five years. As part of a UWMP, water agencies are required to evaluate and describe their water resource supplies and projected needs over a 20-year planning horizon, water conservation, water service reliability, water recycling, opportunities for water transfers, and contingency plans for drought events. The San José Water Company adopted its most recent UWMP in June 2016.

##### **Assembly Bill 939**

The California Integrated Waste Management Act of 1989, or Assembly Bill (AB) 939, established the Integrated Waste Management Board, required the implementation of integrated waste management plans, and mandated that local jurisdictions divert at least 50 percent of solid waste generated (from 1990 levels), beginning January 1, 2000, and divert at least 75 percent by 2010. Projects that would have an adverse effect on waste diversion goals are required to include waste diversion mitigation measures.

##### **Assembly Bill 341**

AB 341 sets forth the requirements of the statewide mandatory commercial recycling program. Businesses that generate four or more cubic yards of garbage per week and multi-family dwellings with five or more units in California are required to recycle. AB 341 sets a statewide goal for 75 percent disposal reduction by the year 2020.

##### **Senate Bill 1383**

Senate Bill (SB) 1383 establishes targets to achieve a 50 percent reduction in the level of the statewide disposal of organic waste from the 2014 level by 2020 and a 75 percent reduction by 2025. The bill grants the California Department of Resources Recycling and Recovery (CalRecycle) the regulatory authority required to achieve the organic waste disposal reduction targets and establishes an additional target that at least 20 percent of currently disposed edible food is recovered for human consumption by 2025.

## Envision San José 2040 General Plan

The Envision San José 2040 General Plan includes the following policies for the purpose of reducing or avoiding impacts associated with utilities and service systems.

<b>General Plan Policies - Utilities &amp; Service Systems</b>	
<b>Water Conservation and Quality Policies</b>	
Policy MS-3.1	Require water-efficient landscaping, which conforms to the State’s Model Water Efficient Landscape Ordinance, for all new commercial, institutional, industrial, and developer-installed residential development unless for recreation needs or other area functions.
Policy MS-3.2	Promote use of green building technology or techniques that can help reduce the depletion of the City’s potable water supply as building codes permit. For example, promote the use of captured rainwater, graywater, or recycled water as the preferred source for non-potable water needs such as irrigation and building cooling, consistent with Building Codes or other regulations.
Policy MS-3.3	Promote the use of drought tolerant plants and landscaping materials for non-residential and residential uses.
<b>Water Conservation Policies</b>	
Policy MS-18.5	Reduce per capita water consumption by 25 percent by 2040 from a baseline established using the 2010 Urban Water Management Plans of water retailers in San José.
Policy MS-18.6	Achieve by 2040, 50 million gallons per day of water conservation savings in San José, by reducing water use and increasing water use efficiency.
<b>Water Recycling Policies</b>	
Policy MS-19.1	Require new development to contribute to the cost-effective expansion of the recycled water system in proportion to the extent that it receives benefit from the development of a fiscally and environmentally sustainable local water supply.
Policy MS-19.3	Expand the use of recycled water to benefit the community and the environment.
Policy MS-19.4	Require the use of recycled water wherever feasible and cost-effective to serve existing and new development.
<b>Water Resources</b>	
Policy ER-9.3	Utilize water resources in a manner that does not deplete the supply of surface or groundwater or cause overdrafting of the underground water basin.
Policy ER-9.5	Protect groundwater recharge areas, particularly creeks and riparian corridors.
<b>General Provision of Infrastructure Policies</b>	
Policy IN-1.5	Require new development to provide adequate facilities or pay its fair share of the cost for facilities needed to provide services to accommodate growth without adversely impacting current service levels.

<b>General Plan Policies - Utilities &amp; Service Systems</b>	
<b>Water Supply, Sanitary Sewer, and Storm Drainage Policies</b>	
Policy IN-3.3	Meet the water supply, sanitary sewer and storm drainage level of service objectives through an orderly process of ensuring that, before development occurs, there is adequate capacity. Coordinate with water and sewer providers to prioritize service needs for approved affordable housing projects.
<b>Wastewater Treatment and Water Reclamation Policies</b>	
Policy IN-4.1	Monitor and regulate growth so that the cumulative wastewater treatment demand of all development can be accommodated by San José's share of the treatment capacity at the San José/Santa Clara Regional Wastewater Facility.
Policy IN-4.2	Maintain adequate operational capacity for wastewater treatment and water reclamation facilities to accommodate the City's economic and population growth.
<b>Solid Waste – Materials Recovery/Landfill Policies</b>	
Policy IN-5.3	Use solid waste reduction techniques, including source reduction, reuse, recycling, source separation, composting, energy recovery and transformation of solid wastes to extend the life span of existing landfills and to reduce the need for future landfill facilities and to achieve the City's Zero Waste goals.

### **3.19.1.2      *Existing Conditions***

The project site and surrounding area is a developed urban environment and is currently served by existing utility and service systems.

#### **Existing Water Supply System**

Water service to the project site is provided by San José Water Company (SJW). Existing water mains in the project area include a 17-inch line in Berryessa Road and a 25-inch line in Mabury Road. Recycled water in San José is provided by South Bay Water Recycling. A recycled water supply connection is located less than one mile west of the project site in Berryessa Road, approximately 400 feet east of US 101.

#### **Groundwater**

SJW draws water from the Santa Clara Valley Subbasin in the north part of Santa Clara County. The basin is 22 miles long and 15 miles wide with an operational storage capacity estimated to be 350,000 acre-feet. Groundwater is a substantial source of water for SJW. In 2014, groundwater accounted for about 57 percent of SJW's total potable supply.

#### **Surface Water**

SJW has "pre-1914 surface water rights" to raw water in Los Gatos Creek and local watersheds in the Santa Cruz Mountains. Prior to 1872, appropriative water rights could be acquired by simply taking and beneficially using water. In 1914, the Water Code was adopted, grandfathering in all existing water entitlements to license holders. SJW filed for a license in 1947, and in 1976 was granted a license allowing it to draw 6,240 acre-feet per year (AFY) from Los Gatos Creek. SJW has since

upgraded the collection and treatment system that draws water from this watershed, which has increased the capacity of this entitlement to approximately 11,200 AFY for an average rain year.

### Recycled Water

South Bay Water Recycling (SBWR) has been serving Silicon Valley communities since 1993. In 1997, SJW entered into a Wholesaler-Retailer Agreement with the City of San José to provide recycled water to SJW's existing and new customers near SBWR recycling water distribution facilities. In accordance with the terms of this agreement, SJW allowed SBWR to construct recycled water pipelines in its service area; SJW would only own the recycled water meters while SBWR would own, operate, and maintain the recycled water distribution system.

In 2010, the Wholesaler-Retailer Agreement was amended to allow SJW to construct recycled water infrastructure that would be owned, operated, and maintained by SJW. In 2012, the agreement was again amended to allow SJW to construct additional recycled water infrastructure.

### **Wastewater/Sanitary Sewer System**

The City's sanitary sewer/wastewater treatment system has two distinct components: 1) a network of sewer mains/pipes that conveys effluent from its source to the treatment plant; and 2) the water pollution control plant that treats the effluent, including a system of mains/pipes that transports a portion of the treated wastewater for non-potable uses (e.g., irrigation of landscaping, agricultural irrigation, dust suppression during construction, etc.).

Sanitary sewer lines in the project area are owned and maintained by the City of San José. Wastewater generated on the Flea Market site flows north through the existing 18-inch line on the site and connects to a 21-inch sewer main that flows west beneath Berryessa Road. To provide capacity for the development proposed under the 2007 Planned Development Zoning (PDC03-108), a dual six-inch and eight-inch barrel siphon structure was proposed for the 21-inch main. Based on the increased size of the proposed project (both Option 1 and Option 2), the capacity study concluded that the proposed siphon structure should be upsized to dual eight-inch and 10-inch barrels.

Wastewater treatment service for the project area is provided by the City of San José through the San José-Santa Clara Regional Wastewater Facility (RWF). The RWF is located in Alviso and serves over 1,500,000 people in San José, Santa Clara, Milpitas, Campbell, Cupertino, Los Gatos, Saratoga, and Monte Sereno. The RWF treats approximately 110 million gallons per day (mgd) of sewage during dry weather flow, and has a capacity of 167 mgd.<sup>78</sup> The City of San José generates approximately 69.8 mgd of dry weather average flow.<sup>79</sup> Fresh water flow from the RWF is discharged to the South San Francisco Bay or delivered to the South Bay Water Recycling Project for distribution.

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<sup>78</sup> City of San José. "San José/Santa Clara Regional Wastewater Facility." Accessed April 29, 2020. <https://www.sanjoseca.gov/your-government/environment/water-utilities/regional-wastewater-facility>.

<sup>79</sup> City of San José. *Envision San José 2040 General Plan FEIR*. September 2011. Page 648.

### **Existing Solid Waste Disposal System**

Santa Clara County's Integrated Waste Management Plan (IWMP) was approved by the California Integrated Waste Management Board (CIWMB) in 1996 and was reviewed in 2004, 2007, 2011, and 2016. Each jurisdiction in the county has a diversion requirement of 50 percent for 2000 and each year thereafter. Each jurisdiction in the County has a landfill diversion requirement of 50 percent per year. According to the IWMP, the County has adequate disposal capacity beyond 2030.<sup>80</sup> Solid waste generated within the County is landfilled at Guadalupe Mines, Kirby Canyon, Newby Island, and Zanker Road landfills.

### **Existing Storm Drainage System**

The project site is served by underground storm drainage systems with outfalls that discharge to both Coyote Creek and Upper Penitencia Creek.

#### **3.19.2      Impact Discussion**

For the purpose of determining the significance of the project's impact on utilities and service systems, would the project:

- a) Require or result in the relocation or construction of new or expanded water, wastewater treatment or stormwater drainage, electric power, natural gas, or telecommunications facilities, the construction or relocation of which could cause significant environmental effects?
- b) Have insufficient water supplies available to serve the project and reasonably foreseeable future development during normal, dry and multiple dry years?
- c) Result in a determination by the wastewater treatment provider which serves or may serve the project that it does not have adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?
- d) Generate solid waste in excess of state or local standards or in excess of the capacity of local infrastructure, or otherwise impair the attainment of solid waste reduction goals?
- e) Negatively impact the provision of solid waste services or impair the attainment of solid waste reduction goals?
- f) Be noncompliant with federal, state, and local management and reduction statutes and regulations related to solid waste?

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<sup>80</sup> Santa Clara County. *Five-Year CIWMP/RAIWMP Review Report*. June 2016.



### 3.19.2.1 *Project Impacts*

- 
- a) **Would the project require or result in the relocation or construction of new or expanded water, wastewater treatment or stormwater drainage, electric power, natural gas, or telecommunications facilities, the construction or relocation of which could cause significant environmental effects?**
- 

#### **Option 1 and Option 2**

The proposed project would continue to connect to the City's existing stormwater, electric, natural gas, telecommunications, waste, and wastewater system infrastructure. The proposed project would incrementally increase the demand on existing facilities in the City of San José. The analysis in the following sections discusses the potential impacts of the project on existing facilities. Based on the following analysis, no relocation of existing or construction of new facilities are needed to serve the proposed project (both Option 1 and Option 2); therefore, there would be a less than significant impact. **(Less than Significant Impact)**

- 
- b) **Would the project have insufficient water supplies available to serve the project and reasonably foreseeable future development during normal, dry and multiple dry years?**
- 

Per CEQA Guidelines Section 15155, a Water Supply Assessment is required for projects that demand an amount of water equivalent to the amount of water required by a 500-unit residential development, which would have a water demand of approximately 53 million gallons of water per year (approximately 145,500 gallons per day [gpd]).<sup>81</sup> SJW prepared a WSA in October 2018 for the applicant's proposed project (Option 1) and maximum development option City staff would consider recommending to City Council (Option 2). Table 3.19-1 below shows the water demand projections for the applicant's proposed project and maximum development option. The water demand associated with the Flea Market development on the north side of Berryessa Road has been accounted for in prior WSAs completed for the General Plan Update in 2010, and that demand is reflected in the cumulative water demand estimates generated for the 2018 WSA.

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<sup>81</sup> CalEEMod. Appendix D: Default Data Tables. Table 9.1: Water Use Rates. October 2017.

Apartment land use calculations:

Indoor water use: 65,146 gallons X 500 dwelling units = 32,573,000 gallons/year = 89,241 gpd

Outdoor water use: 41,075 gallons X 500 dwelling units = 20,537,500 gal/year = 56,267 gpd

<b>Table 3.19-1: Net Potable Water Demand Estimated for Option 1 and Option 2</b>					
<b>Option 1 – Total Demand (AFY)</b>	<b>Option 2 – Total Demand (AFY)</b>	<b>Recycled Water South Side Demand (AFY)<sup>1</sup></b>	<b>Option 1 – Net Demand (AFY)</b>	<b>Option 2 – Net Demand (AFY)</b>	<b>2005 South Side Demand (AFY)<sup>2</sup></b>
1,852.7	2,188.7	77.7	1,775	2,111	677.3
<sup>1</sup> Recycled water demand was based on the entire 120-acre Flea Market property and the 2011 Update to the SJWC Recycled Water Master Plan. This value was calculated based on subdividing the entire Flea Market property into a south side and a north side and comparing that to the total estimated recycled water demand of 148.1 AFY. <sup>2</sup> The 2005 potable water demand estimate was based on the entire 120-acre property and is presented for comparison. This value was calculated based on subdividing the entire Flea Market property into a south side and a north side and comparing that to the total estimated potable water demand of 1,290 AFY.					

### **Option 1**

The applicant's proposed project (Option 1) includes 3,450 dwelling units and 2.2 million square feet of commercial space, including office and retail uses. The proposed project's net water demand increase was calculated to be approximately 1,775 AFY, equivalent to 1,584,617 gpd. Water usage associated with Option 1 represents a 1.21 percent increase over the system-wide water production of 146,776 AFY. Although the projected water demand is large, this increase was accounted for in SJW's 2015 Urban Water Management Plan and in the Envision San José 2040 General Plan EIR, along with the demand related to the Flea Market development on the north side of Berryessa Road. Additionally, the project area is located in one of SJW's highest producing groundwater zones, and SJW has no concern regarding the concentration of demand in the project area. Therefore, the applicant's proposed project (Option 1) would have a less-than-significant impact. **(Less than Significant Impact)**

### **Option 2**

The maximum development option City staff would consider recommending to City Council (Option 2) includes 3,450 dwelling units and 3.4 million square feet of commercial space, including office and retail uses. Option 2's net water demand increase was calculated to be approximately 2,111 AFY, equivalent to 1,884,579 gpd. Water usage associated with Option 2 represents a 1.44 percent increase over the system-wide water production of 146,776 AFY. This increase was accounted for in SJW's 2015 Urban Water Management Plan and in the Envision San José 2040 General Plan EIR. Additionally, the project area is located in one of SJW's highest producing groundwater zones, and SJW has no concern regarding the concentration of demand in the project area. Therefore, the maximum development option (Option 2) would have a less-than-significant impact. **(Less than Significant Impact)**

- 
- c) **Would the project result in a determination by the wastewater treatment provider which serves or may serve the project that it does not have adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?**
- 

#### **Option 1**

The applicant's proposed project is estimated to generate a maximum of approximately 1,346,924 gpd of wastewater sewage.<sup>82</sup> Wastewater sewage generation for the Flea Market development north of Berryessa Road is approximately 464,936 gpd. Given the City's existing remaining capacity at the RWF (167 mgd), there is sufficient capacity at the RWF to accommodate project flows. The Envision San José 2040 General Plan EIR concluded that the sewage generated by the buildout of the General Plan would not exceed the City's allocated capacity at the RWF. The proposed project is consistent with buildout of the General Plan; therefore, the applicant's proposed project (Option 1) would be adequately served by wastewater treatment facilities. **(Less than Significant Impact)**

#### **Option 2**

The maximum development option (Option 2) is estimated to generate a maximum of approximately 1,601,892 gpd of wastewater sewage. Wastewater sewage generation for the Flea Market development north of Berryessa Road is approximately 464,936 gpd. Given the City's existing remaining capacity at the RWF (167 mgd), there is sufficient capacity at the RWF to accommodate project flows. The Envision San José 2040 General Plan EIR concluded that the sewage generated by the buildout of the General Plan would not exceed the City's allocated capacity at the RWF. The maximum development option is consistent with buildout of the General Plan; therefore, the maximum development option (Option 2) would be adequately served by wastewater treatment facilities. **(Less than Significant Impact)**

- 
- d) **Would the project generate solid waste in excess of state or local standards, or in excess of the capacity of local infrastructure, or otherwise impair the attainment of solid waste reduction goals?**
- 

#### **Option 1**

Solid waste generation was calculated using standard solid waste rates from the California Emissions Estimator Model (CalEEMod). The proposed project would generate approximately 3,791 tons per year of solid waste.<sup>83</sup> Solid waste generation for the Flea Market development north of Berryessa Road is approximately 570 tons per year. Despite the increase in annual solid waste production, the proposed development would be served by a landfill with adequate capacity to serve the project site. The Envision San José 2040 General Plan EIR indicates that at full buildout, the City's solid waste generation would result in less than three percent of the total capacity of the City's available landfill facilities. Option 1 would be consistent with buildout of the General Plan. Additionally, the proposed

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<sup>82</sup> Assumes wastewater is equal to 85% of potable water used.

<sup>83</sup> CalEEMod Appendix D: Default Data Tables. Table 10.1: Solid Waste Disposal Rates.

Apartment land use: 0.46 tons x 3,450 proposed dwelling units = 1,587 tons per year

General Office Building land use: 0.93 tons / 1,000 square feet x 2,200,000 square feet proposed = 2,046 tons per year

Strip Mall land use: 1.05 tons / 1,000 square feet x 150,000 square feet proposed = 157.5 tons per year

uses would be required to direct and recycle waste consistent with federal, state, and local requirements. Therefore, the applicant's proposed project (Option 1) would not impair the attainment of solid waste reduction goals. **(Less than Significant Impact)**

### **Option 2**

Solid waste generation was calculated using standard solid waste rates from CalEEMod. The maximum development option (Option 2) would generate approximately 4,907 tons per year of solid waste.<sup>84</sup> Solid waste generation for the Flea Market development north of Berryessa Road is approximately 570 tons per year. Despite the increase in annual solid waste production, the proposed development would be served by a landfill with adequate capacity to serve the project site. The Envision San José 2040 General Plan EIR indicates that at full buildout, the City's solid waste generation would result in less than three percent of the total capacity of the City's available landfill facilities. Option 2 would be consistent with buildout of the General Plan. Additionally, the proposed uses would be required to direct and recycle waste consistent with federal, state, and local requirements. Therefore, the maximum development option (Option 2) would not impair the attainment of solid waste reduction goals. **(Less than Significant Impact)**

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#### **e) Would the project be noncompliant with federal, state, or local management and reduction statutes and regulations related to solid waste?**

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### **Option 1 and Option 2**

The construction and operation of the project would comply with federal, state, and local regulations related to diversion of materials and appropriate disposal of solid waste. Therefore, the proposed project (both Option 1 and Option 2) would have a less-than-significant impact. **(Less than Significant Impact)**

#### **3.19.2.2 Cumulative Impacts**

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#### **Would the project result in a cumulatively considerable contribution to a significant cumulative utilities and service systems impact?**

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### **Option 1 and Option 2**

The geographic area for cumulative utility and service systems is the City boundaries, or the service area for the San José Water Company.

#### Water Supply

A WSA was prepared for the project in October 2018. As discussed under checklist question a) above, the project would increase water usage at the project site by 1,775 AFY under Option 1 or

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<sup>84</sup> CalEEMod Appendix D: Default Data Tables. Table 10.1: Solid Waste Disposal Rates.

Apartment land use: 0.46 tons x 3,450 proposed dwelling units = 1,587 tons per year

General Office Building land use: 0.93 tons / 1,000 square feet x 3,400,000 square feet proposed = 3,162 tons per year

Strip Mall land use: 1.05 tons / 1,000 square feet x 150,000 square feet proposed = 157.5 tons per year

2,111 AFY under Option 2. The project's water usage increase was accounted for in SJW's 2015 Urban Water Management Plan and in the Envision San José 2040 General Plan EIR, and the project would not significantly impact SJW's water supplies or usage. The projected water demand is considered within normal growth projections for water demand. Therefore, the proposed project (both Option 1 and Option 2) would not contribute considerably to a significant cumulative water supply impact. **(Less than Significant Cumulative Impact)**

#### Wastewater Treatment/Sanitary Sewer System

As discussed under checklist question b) above, there is sufficient capacity at the RWF to accommodate project flows. Moreover, the Envision San José 2040 General Plan EIR concludes that the sewage generated by the buildout of the General Plan would not exceed the City's allocated capacity at the RWF. As a result, the proposed project (both Option 1 and Option 2) would not contribute considerably to a significant cumulative wastewater conveyance or treatment impact. **(Less than Significant Cumulative Impact)**

#### Solid Waste

Buildout of the Envision San José 2040 General Plan, including the proposed project, would generate solid waste that would need to be disposed of appropriately. Option 1 and Option 2 would, respectively, generate about 4,315 and 5,803 tons of solid waste per day, which would be adequately served by the City's services and waste disposal facilities and would not contribute considerably to a significant cumulative solid waste impact. **(Less than Significant Cumulative Impact)**

## 3.20 WILDFIRE

### 3.20.1 Environmental Setting

#### 3.20.1.1 *Regulatory Framework*

The California Department of Forestry and Fire Protection (CAL FIRE) is required by law to map areas of significant fire hazards based on fuels, terrain, weather, and other relevant factors. Referred to as Fire Hazard Severity Zones (FHSZ), these maps influence how people construct buildings and protect property to reduce risk associated with wildland fires. The project site is not located in a FHSZ.<sup>85</sup>

#### 3.20.2 Impact Discussion

For the purpose of determining the significance of the project's impact on wildfire, if located in or near state responsibility areas or lands classified as very high fire hazard severity zones, would the project:

- a) Substantially impair an adopted emergency response plan or emergency evacuation plan?
- b) Due to slope, prevailing winds, and other factors, exacerbate wildfire risks, and thereby expose project occupants to, pollutant concentrations from a wildfire or the uncontrolled spread of a wildfire?
- c) Require the installation or maintenance of associated infrastructure (such as roads, fuel breaks, emergency water sources, power lines or other utilities) that may exacerbate fire risk or that may result in temporary or ongoing impacts to the environment?
- d) Expose people or structures to significant risks, including downslope or downstream flooding or landslides, as a result of runoff, post-fire slope instability, or drainage changes?

##### 3.20.2.1 *Project Impacts*

#### **Option 1 and Option 2**

The project site is not located in or near state responsibility areas or lands classified as very high fire hazard severity zones; therefore, the proposed project (both Option 1 and Option 2) would not result in wildfire impacts. **(No Impact)**

##### 3.20.2.2 *Cumulative Impacts*

#### **Option 1 and Option 2**

The project site is not located in or near state responsibility areas or lands classified as very high fire hazard severity zones; therefore, the proposed project (both Option 1 and Option 2) would not result in cumulative wildfire impacts. **(No Cumulative Impact)**

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<sup>85</sup> California Board of Forestry and Fire Protection. *Fire Hazard Severity Zone Viewer*. Accessed August 22, 2020. <https://gis.data.ca.gov/datasets/789d5286736248f69c4515c04f58f414>.

## SECTION 4.0      GROWTH-INDUCING IMPACTS

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### **Would the project foster or stimulate significant economic or population growth in the surrounding environment?**

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The California Environmental Quality Act (CEQA) Guidelines require that an Environmental Impact Report (EIR) identify the likelihood that a proposed project could “foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment (Section 15126.2[d]). This section of the Draft EIR is intended to evaluate the impacts of such growth in the surrounding environment. Examples of projects likely to have significant growth-inducing impacts include removing obstacles to population growth, for example by extending or expanding infrastructure beyond what is needed to serve the project. Other examples of growth inducement include increases in population that may tax existing community service facilities, requiring construction of new facilities that could cause significant environmental effects.

The proposed project is considered “infill,” meaning that the project site is within the City’s existing urban boundaries and is already served by existing infrastructure and roads. The project proposes development on underutilized parcels that are surrounded by both existing and planned development. Most of the project site is designated as Urban Village (UV) in the Envision San José 2040 General Plan, and the creek corridors are designated Open Space, Parklands and Habitat (OSPH). The project site is in the A(PD) Planned Development Zoning District (PDC03-108), which encompasses both the north and south sides of Berryessa Road. The proposed project would require a PD rezoning for the project site on the south side of Berryessa Road.

Although the project would require a PD rezoning, the project would not induce substantial growth in the City as it is consistent with residential density and commercial growth envisioned for the site in the Envision San José 2040 General Plan and Berryessa BART Urban Village Plan. The project would fulfill the City’s goal of providing high density mixed-use commercial and residential developments in areas that are near transit facilities. The project would be compatible with the neighboring land uses and would not pressure adjacent properties to redevelop with new or different land uses, in a manner inconsistent with the General Plan. Option 2 includes substantial addition office space beyond what is proposed in Option 1, in order to accommodate additional employment. The additional employment proposed in Option 2 is in keeping with the forecasted jobs envisioned in the General Plan and with the Berryessa BART Urban Village Plan goals. For these reasons, the project would not foster or stimulate substantial economic or population growth in the surrounding environment. Finally, due to the project site’s proximity to the Berryessa BART Station, transit-oriented development and growth that would occur near the transit station would be a beneficial impact, compared to a scenario in which that growth occurred elsewhere in San José or the Bay Area at a location not well served by transit.



## **SECTION 5.0      SIGNIFICANT AND IRREVERSIBLE ENVIRONMENTAL CHANGES**

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This section was prepared pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15126.2(c), which requires a discussion of the significant irreversible changes that would result from the implementation of a proposed project. Significant irreversible changes include the use of nonrenewable resources, the commitment of future generations to similar use, irreversible damage resulting from environmental accidents associated with the project, and irreversible commitments of resources. Applicable environmental changes are described in detail below.

### **5.1                      USE OF NONRENEWABLE RESOURCES**

During construction and operation, the project would require the use and consumption of nonrenewable resources. Unlike renewable resources, nonrenewable resources cannot be regenerated over time. Nonrenewable resources include fossil fuels and metals. Renewable resources, such as lumber and other wood byproducts, would also be used.

Energy, as discussed in more detail in Section 3.6, would be consumed during both the construction and operational phases of the project (for both Option 1 and Option 2). The construction phase would require the use of nonrenewable construction materials such as concrete, metals, plastics, and glass. Nonrenewable resources and energy would also be consumed during the manufacturing and transportation of building materials, preparation of the site, and construction of the buildings. The operational phase would consume energy for multiple purposes including building heating and cooling, lighting, appliances, and electronics. Energy, in the form of fossil fuels, would be used to fuel vehicles traveling to and from the project site.

The project would result in an increase in demand for nonrenewable resources. The project, however, is subject to the standard California Code of Regulations Title 24 Part 6 and California Green Building Standards Code (CALGreen) energy efficiency requirements. As discussed in Section 3.6 Energy, the project would not wastefully use energy resources. As discussed in Section 3.8 Greenhouse Gas Emissions, the project would emit GHGs at levels that comply with state greenhouse gas (GHG) reduction goals for 2030 under Senate Bill (SB) 32. Lastly, the project would provide an increase in jobs and housing in proximity to existing transportation networks. The proposed project would, therefore, facilitate a more efficient use of resources over the lifetime of the project.

### **5.2                      COMMITMENT OF FUTURE GENERATIONS TO SIMILAR USE**

The project proposes construction of residential and commercial uses. Development of the proposed project would commit a substantial amount of resources to prepare the site, construct the site improvements including roadways, parks, and buildings, and operate them. The buildings are expected to have an economic life extending into the next century, thereby committing future generations to similar uses for the foreseeable future.

### **5.3                    IRREVERSIBLE DAMAGE RESULTING FROM ENVIRONMENTAL ACCIDENTS ASSOCIATED WITH THE PROJECT**

The project does not propose any new or uniquely hazardous uses, and its operation would not be expected to cause environmental accidents that would impact other areas. As discussed in Section 3.9 Hazards and Hazardous Materials, there would be no significant immitigable on- or off-site sources of contamination (such as soil or groundwater contamination) that would substantially affect the proposed residential and commercial development.

The project site is located within a seismically active region. There would be no significant geology and soils impacts from implementation of the project. Conformance with the standard engineering practices in the California Building Standards Code (CBC) and implementation of the recommended conditions in the project-specific geotechnical report would not result in significant geological impacts (refer to Section 3.7 Geology and Soils).

The project, with the implementation of the identified mitigation measures to reduce hazards and hazardous materials impacts and standard measures to reduce geology and soils impacts, would not result in irreversible damage that may result from environmental accidents.

## SECTION 6.0      SIGNIFICANT AND UNAVOIDABLE IMPACTS

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A significant unavoidable impact is an impact that cannot be mitigated to a less-than-significant level if the project is implemented as it is proposed. The following significant unavoidable impacts have been identified to result from the proposed project under both Option 1 and Option 2:

**Impact AIR-2:** Operational period emissions would exceed Bay Area Air Quality Management District (BAAQMD) thresholds for reactive organic gases (ROG; Option 1 and Option 2), nitrogen oxide (NO<sub>x</sub>; Option 1 and Option 2), and coarse particulate matter (PM<sub>10</sub>; Option 2 only). **(Significant Impact)**

**Impact CUL-1:** The project would demolish the Flea Market structures and open space, which are eligible for listing in the California Register of Historical Resources (CRHR) and eligible for local listing as a City Landmark. **(Significant Impact)**

The operational period air quality emissions would be greater under Option 2 than Option 1 due to the additional 1.2 million square feet of commercial office development. The impacts from the loss of the Flea Market would be the same under Option 1 and Option 2. All other significant impacts of the proposed project (both Option 1 and Option 2) would be reduced to a less-than-significant level with the implementation of the mitigation measures identified in this Environmental Impact Report (EIR).

## SECTION 7.0      ALTERNATIVES

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The California Environmental Quality Act (CEQA) requires that an Environmental Impact Report (EIR) identify and evaluate alternatives to a project as it is proposed. Two key provisions from the CEQA Guidelines pertaining to the discussion of alternatives are provided below:

**Section 15126.6(a).** Consideration and Discussion of Alternatives to the Proposed Project. An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. An EIR need not consider every conceivable alternative to a project. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decision making and public participation. An EIR is not required to consider alternatives which are infeasible. The lead agency is responsible for selecting a range of project alternatives for examination and must publicly disclose its reasoning for selecting those alternatives. There is no ironclad rule governing the nature or scope of the alternatives to be discussed other than the rule of reason.

**Section 15126.6(b).** Purpose. Because an EIR must identify ways to mitigate or avoid the significant effects that a project may have on the environment (Public Resources Code Section 21002.1), the discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project, even if those alternatives would impede to some degree the attainment of the project objectives, or be more costly.

Other elements of the Guidelines discuss that alternatives should include enough information to allow a meaningful evaluation and comparison with the proposed project. The CEQA Guidelines state that if an alternative would cause one or more additional impacts, compared to the proposed project, the discussion should identify the additional impact, but in less detail than the significant effects of the proposed project. The CEQA Guidelines emphasize a common sense approach – the alternatives should be reasonable, “foster informed decision making and public participation,” and focus on alternatives that avoid or substantially lessen the significant impacts. The range of alternatives necessary to permit a reasoned choice.

The three critical factors to consider in selecting and evaluating alternatives are, therefore: 1) the significant impacts from the proposed project which could be reduced or avoided by an alternative, 2) the project’s objectives, and 3) the feasibility of the alternatives available. Each of these factors is discussed below.

### 7.1                      SIGNIFICANT IMPACTS OF THE PROJECT

As mentioned above, the CEQA Guidelines advise that the alternatives analysis in an EIR should be limited to alternatives that would avoid or substantially lessen any of the significant impacts of the project and would achieve most of the project objectives. The project has significant unavoidable impacts related to:

- Air quality (operational emissions of reactive organic gases [ROG], nitrogen oxide [NO<sub>x</sub>], and coarse particulate matter [PM<sub>10</sub>]). The magnitude of the air quality impact is increased for Option 2, which includes additional office square footage, although both Option 1 and Option 2 would result in significant unavoidable impacts.
- Cultural resources (demolition of the Flea Market development, which is eligible for listing in the California Register of Historical Resources [CRHR]). Both Option 1 and Option 2 would result in the same impact to cultural resources by demolishing the Flea Market.

Alternatives may also be considered if they would further reduce impacts that are already less than significant because the project is proposing mitigation. Impacts that would be significant under both Option 1 and Option 2 but would be reduced by mitigation include impacts to air quality, biology, cultural resources, hazardous materials, noise, and tribal cultural resources. The alternatives discussion does not focus on project impacts that are less than significant.

## 7.2 PROJECT OBJECTIVES

While CEQA does not require that alternatives meet all of the project objectives, their ability to meet most of the objectives is considered relevant to their consideration.

As identified in Section 2.3, the applicant's objectives for the project (Option 1) are as follows:

1. Construct residential development with connections to public transit, open space and creeks, and existing neighborhoods;
2. Utilize the area adjacent to the Berryessa BART Station for Transit Oriented Development;
3. Provide accessibility to alternative forms of transportation including public transit, walking, and cycling;
4. Enhance pedestrian-oriented design and urban design by providing residential uses proximate to commercial development;
5. Achieve sustainability policies, goals, and standards of the Berryessa BART Urban Village Plan;
6. Enhance, protect, and preserve habitat along Upper Penitencia and Coyote Creeks; and
7. Increase access to local and regional trail systems.

The City's objectives for Option 2 include objectives 1 through 7 above, and also consider additional office square footage compared to the applicant's development objectives, consistent with the Berryessa BART Urban Village Plan density goals. The City's additional objective for Option 2 is listed below.

8. Provide for enhanced opportunities for job creation via additional commercial development as identified and consistent in the Berryessa BART Urban Village Plan requirements.

## 7.3 FEASIBILITY OF ALTERNATIVES

CEQA, the CEQA Guidelines, and the case law on the subject have found that feasibility can be based on a wide range of factors and influences. The CEQA Guidelines advise that such factors can include (but are not necessarily limited to) the suitability of an alternative site, economic viability, availability of infrastructure, consistency with a general plan or with other plans or regulatory

limitations, jurisdictional boundaries, and whether the project proponent can “reasonably acquire, control or otherwise have access to the alternative site (Section 15126.6[f][1]).”

## **7.4 SELECTION OF ALTERNATIVES**

### **7.4.1 Alternatives Considered but Rejected**

#### **7.4.1.1 *Alternative Location***

CEQA encourages consideration of an alternative site when the significant effects of the project might be avoided or substantially reduced. Some of the project’s significant impacts (e.g., air quality and noise) result because of the large size of the project and would not be reduced by locating the project at another site. Other significant impacts (e.g., biological resources, cultural resources, and hazards and hazardous materials) are related to conditions specific to the project site.

The project is intended to provide high-density commercial office and multi-family residential uses on a currently underdeveloped site near mass public transit. Alternative locations considered for the project include sites within the Berryessa BART Urban Village Plan and Diridon Station Area Plan. Both areas contain underdeveloped sites near major transit hubs.

#### **Location Alternative 1: Diridon Station Area**

One alternative location is the underdeveloped and underutilized land in the vicinity of the Diridon Caltrain Station. This location is comprised of multiple parcels under multiple ownerships, which would make it difficult for a non-government entity to acquire and develop a site comparable in size to the project site (61.5 acres). The Diridon Station area is also exposed to higher levels of noise and hazardous materials contamination compared to the project site. Although the Diridon Station area is well served by mass transit (i.e., Caltrain, light rail, and bus) and is closer to the job center of downtown San José, this location is not considered feasible because it is not under the applicant’s control and is currently the subject of a pending application for the Downtown West Mixed Use Plan project. For these reasons, an alternative location in the Diridon Station area was considered but rejected.

#### **Location Alternative 2: Berryessa BART Urban Village**

There are several sites in the project vicinity developed with low-density and industrial uses, which could be considered for higher-density and more intense development. However, the sites are smaller than the project site and could only accommodate a portion of the proposed development. In addition, locating the project on a different site conflicts with the City’s objective to develop all sites that are adjacent to major transit nodes with Transit Oriented Development. Therefore, even if an alternative site were available and could feasibly be developed with the proposed project, not allowing the Transit Oriented Development on the project site would not meet the project’s objective to develop the area adjacent to the Berryessa BART Station with Transit Oriented Development (objective 2). For these reasons, an alternative site within the Berryessa BART Urban Village was considered but rejected.

#### **7.4.1.2      *Design Alternative***

The proposed project would require a riparian setback exception during the Habitat Plan application process for encroachment into the 100-foot Coyote Creek and Upper Penitencia Creek riparian buffers.<sup>86</sup> The project proposes 10.2 acres of hardscape within the riparian corridors, including construction of arterial roads. The project would also require dewatering and riparian tree removal for demolition of existing outfalls and bridges and construction of outfalls and two vehicle bridges over Upper Penitencia Creek.

In order to avoid these biological impacts, a design alternative avoiding construction within the riparian corridors was considered. Because the project site is bounded to the north and west by Upper Penitencia Creek and Coyote Creek, respectively, and to the east by the Berryessa BART Station and elevated tracks, all vehicular traffic would enter and exit the site via Mabury Road to the south under this alternative.<sup>87</sup> However, reducing vehicular access points from three to one would not provide adequate emergency vehicle access for the 61.5-acre site. A single access point would not be feasible for the proposed development of 3,450 residential units and 2.2 million square feet (under Option 1) or 3.4 million square feet (under Option 2) of proposed office development. For these reasons, a design alternative avoiding riparian corridor encroachment was considered but rejected.

#### **7.4.2      Analyzed Alternatives**

In addition to a “No Project” alternative, the CEQA Guidelines advise that the range of alternatives discussed in the EIR should be limited to those that “would avoid or substantially lessen any of the significant effects of the project” (Section 15126.6[f]). The discussion below addresses alternatives which could reduce project impacts and are feasible from a physical land use and infrastructure perspective. This Draft EIR does not evaluate the financial or economic feasibility of the alternatives presented.

The following evaluation of possible alternatives to the project as it is proposed includes:

- No Project Alternative as required by CEQA (Section 15126.6[e]),
- Existing Entitlement Alternative, and
- Reduced Footprint Alternative.

The components of these alternatives are described below, followed by a discussion of their impacts and how they would differ from those of the proposed project. A summary of the environmental impacts of the proposed project and the analyzed project alternatives is provided at the end of this section in Table 7.5-1.

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<sup>86</sup> The minimum proposed setback between the edge of the riparian canopy and the closest non-exempt use would be 18 feet.

<sup>87</sup> An existing vehicle bridge provides Flea Market access via Berryessa Road. However, the existing bridge (which would be removed under both the Option 1 and Option 2 proposed project) was not considered for continued use under any of the project alternatives due to capacity and structural concerns.



## **7.5 PROJECT ALTERNATIVES**

### **7.5.1 No Project Alternative**

The CEQA Guidelines specifically require consideration of a “No Project” alternative. The purpose of including the No Project Alternative is to allow decision makers to compare the impacts of approving the project with the impacts of not approving the project. The CEQA Guidelines specifically advise that the No Project Alternative is “what would reasonably be expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services.” The CEQA Guidelines emphasize that an EIR should take a practical approach, and not “...create and analyze a set of artificial assumptions that would be required to preserve the existing physical environment” (Section 15126.6[e][3][B]).

The No Project Alternative assumes that the project site would remain as it is today with predominantly impervious surfaces (surface parking lots) and would continue to operate as the San José Flea Market.

#### **7.5.1.1 *Comparison of Environmental Impacts for the No Project Alternative***

The No Project Alternative would avoid all of the project’s environmental impacts, including the significant unavoidable impacts related to air quality (operational emissions of ROG, NO<sub>x</sub>, and PM<sub>10</sub>) and cultural resources (demolition of the Flea Market development, which is eligible for listing in the CRHR). Project impacts that would be less than significant with mitigation measures, including air quality, biology, cultural resources, hazardous materials, noise, and tribal cultural resources impacts, would also be avoided under the No Project Alternative.

#### **7.5.1.2 *Relationship to Project Objectives for the No Project Alternative***

The No Project Alternative would not meet any of the project’s objectives. The No Project Alternative would not construct a residential development with connections to public transit, open space and creeks, and existing neighborhoods (objective 1). The applicant’s and City’s objective to utilize the area adjacent to the Berryessa BART Station for Transit Oriented Development would not be met by this alternative (objective 2). The No Project Alternative would not enhance pedestrian-oriented design, reduce parking, or increase access to trail systems and alternative transportation (objectives 3, 4, and 7). This alternative would not meet the applicant’s objective of developing park and open space improvements along Upper Penitencia and Coyote Creeks, and would not achieve the goals of the Berryessa BART Urban Village Plan (objectives 5, 6, and 8).

#### **7.5.1.3 *Conclusion***

Because the No Project Alternative would not result in any new development on the site, this alternative would avoid all environmental impacts of the project. This alternative would not, however, meet any of the applicant’s or City’s project objectives. The No Project Alternative is an environmentally superior alternative to the proposed project. Any future proposals for the site would require additional review and approval by the City of San José.

## **7.5.2      Existing Entitlement Alternative**

An “Existing Entitlement” Alternative would allow for the redevelopment of the site consistent with the existing capacity and density permitted by the A(PD) Zoning District on-site. This alternative would not require a Planned Development Rezoning. In 2007, the City of San José approved a General Plan land use designation of Urban Village (UV) and a Planned Development Rezoning (established by File No. PDC03-108) on the 120-acre Flea Market property (both north and south of Berryessa Road) allowing a total of 2,818 dwelling units and 365,622 square feet of commercial uses. Since the 2007 approval, the property north of Berryessa Road has been developed with 1,000 dwelling units and 118,580 square feet of commercial uses. The remaining development capacity for the project site (south of Berryessa Road) is 1,818 residential units and 247,042 square feet of commercial development. A Planned Development Permit would require review and approval by the City of San José for the specific design of the remaining growth permitted under the existing A(PD) Zoning District.

### **7.5.2.1      *Comparison of Environmental Impacts for the Existing Entitlement Alternative***

The existing entitlement allows the construction of up to 1,818 residential units and 247,042 square feet of commercial development on the site. Due to its smaller size, less construction activity would be needed and this alternative would reduce impacts related to construction air quality emissions, fugitive dust, and construction noise to a less-than-significant level. Operational air quality emissions would be reduced to a less-than-significant level with mitigation incorporated under this alternative.

Development under the existing entitlement would still require mitigation related to biological resources (invasive species and nesting birds), cultural resources (subsurface archaeological resources), and hazards and hazardous materials (soil and groundwater contamination and facility closure). In addition, this alternative would continue to result in the significant unavoidable impact caused by removal of the San José Flea Market, which is eligible for listing in the CRHR and eligible for local listing as a City Landmark.

### **7.5.2.2      *Relationship to Project Objectives for the Existing Entitlement Alternative***

The Existing Entitlement Alternative would meet many of the project objectives since it would allow for construction of 1,818 residential units and 247,042 square feet of commercial development. This alternative would provide residential development with connections to public transit, open space and creeks, and existing neighborhoods, and proximate to commercial development (objectives 1, 4, 6, and 7). The Existing Entitlement Alternative would also provide accessibility to alternative forms of transportation (objective 3). However, this lower-density alternative would not meet the objective of fully utilizing the area adjacent to the Berryessa BART Station for Transit Oriented Development to Urban Village Plan goals (objectives 2, 5, 8, and 9).

### **7.5.2.3      *Conclusion***

Because the Existing Entitlement Alternative would provide lower-density residential and commercial development on-site, many of the project objectives would be met while avoiding and reducing several environmental impacts. Specifically, this alternative would result in reduced impacts related to construction and operational air quality, fugitive dust, and construction noise.

The Existing Entitlement Alternative includes the same mix of uses as the proposed project, and would therefore meet project objectives related to connecting residential and commercial development, open space and creeks, and public transit. However, the objective of providing Transit Oriented Development adjacent to the BART station would not be met to the same degree as under the proposed project (both Option 1 and Option 2). This alternative would not be consistent with the development densities of the Berryessa BART Urban Village Plan.

### **7.5.3      Reduced Footprint Alternative**

The Reduced Footprint Alternative would allow for the same types of uses as proposed by the project but would reduce the development site to the surface parking lots south of the Flea Market buildings. The portion of the 61.5-acre project site utilized under this alternative would be approximately 16 acres in size. This alternative would allow the Flea Market to continue operations retain all existing buildings on the site. Impacts to the Upper Penitencia Creek corridor and northern portion of the Coyote Creek corridor would be avoided. The existing Flea Market surface parking would be reduced by approximately one-half under this alternative. Project development would be limited to the locations of residential building H4 and office buildings O4, O5, and O6 with associated parking structures (see Figure 2.2-4) for a total of 395 residential units and up to 1.875 million square feet of commercial office development. Under this alternative, site access would be provided via Mabury Road only.

#### **7.5.3.1      *Comparison of Environmental Impacts for the Reduced Footprint Alternative***

Under the Reduced Footprint Alternative, construction air quality impacts and construction noise impacts would be reduced due to the reduced size of the project; however, this alternative would still result in a significant unavoidable operational air quality impact. Construction duration would be shorter because of the alternative's smaller size, and the development site would be farther from sensitive residential uses to the north. In addition, due to its location on the southern portion of the site, this alternative would avoid project impacts to Upper Penitencia Creek including dewatering and riparian corridor encroachment, and would reduce impacts related to bird strikes and tree removal. The Reduced Footprint Alternative would eliminate the significant unavoidable impact caused by removal of the San José Flea Market, which is eligible for listing in the CRHR. Mitigation would still be required for hazards and hazardous materials impacts, including soil and groundwater contamination and facility closure.

#### **7.5.3.2      *Relationship to Project Objectives for the Reduced Footprint Alternative***

The Reduced Footprint Alternative would meet several project objectives with construction of 395 residential units and up to 1.875 million square feet of commercial space. This alternative would provide some residential and commercial development with connections to public transit and open space (objectives 1, 3, and 4). The development area (the southern portion of the site, consisting of approximately 16 acres) would be utilized for Transit Oriented Development, and habitat along the creek corridors would be preserved (objective 2). However, the northern half of the 61.5-acre site south of Berryessa Road would not be utilized for Transit Oriented Development and would not meet the density goals of the Berryessa BART Urban Village Plan (objectives 5, 8, and 9). The Reduced Footprint Alternative would not include habitat enhancement or trails along Upper Penitencia Creek or the northern portion of Coyote Creek (objectives 6 and 7).

### **7.5.3.3 Conclusion**

The Reduced Footprint Alternative would reduce the project size to 395 residential units and up to 1.5 million square feet of commercial space on the southern portion of the project site, allowing continued operation of the San José Flea Market. This alternative would avoid biological impacts to Upper Penitencia Creek and cultural impacts to the Flea Market. Construction-related impacts would also be reduced. Despite its smaller size, this alternative would support several of the project objectives including construction of Transit Oriented Development adjacent to the Berryessa BART Station. However, this alternative would not support the objectives to the same degree as both Option 1 and Option 2, and Flea Market operations could be limited due to the removal of one-half of the existing surface parking.

### **7.5.4 Environmentally Superior Alternative**

The CEQA Guidelines state that an EIR shall identify an environmentally superior alternative. Based on the above discussion, the environmentally superior alternative to the proposed project is the No Project Alternative because all of the project's significant environmental impacts would be avoided. However, Section 15126(e)(2) states that "if the environmentally superior alternative is the No Project Alternative, the EIR shall also identify an environmentally superior alternative among the other alternatives. In addition to the No Project Alternative, the Reduced Footprint Alternative would avoid the project's significant unavoidable cultural resources impact<sup>88</sup> and would meet some of the proposed project's objectives. These alternatives, however, would not fully realize the project objective and Berryessa BART Urban Village Plan's goals to develop a Transit Oriented Development adjacent to the Berryessa BART Station.

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<sup>88</sup> The project's significant unavoidable operational air quality impact would not be avoided under the Reduced Footprint Alternative.

<b>Table 7.5-1: Summary of Project and Project Alternative Impacts</b>				
<b>Impacts</b>	<b>Proposed Project</b>	<b>No Project Alternative</b>	<b>Existing Entitlement Alternative</b>	<b>Reduced Footprint Alternative</b>
Aesthetics	LTS	<b>NI</b>	LTS	LTS
Agricultural and Forestry Resources	NI	NI	NI	NI
Air Quality	SU	<b>NI</b>	<b>SM</b>	SU
Biological Resources	SM	<b>NI</b>	SM	SM
Cultural Resources	SU	<b>NI</b>	SU	<b>SM</b>
Energy	LTS	<b>NI</b>	LTS	LTS
Geology and Soils	LTS	<b>NI</b>	LTS	LTS
Greenhouse Gas Emissions	LTS	<b>NI</b>	LTS	LTS
Hazards and Hazardous Materials	SM	<b>NI</b>	SM	SM
Hydrology and Water Use	LTS	<b>NI</b>	LTS	LTS
Land Use	LTS	<b>NI</b>	LTS	LTS
Mineral Resources	NI	NI	NI	NI
Noise and Vibration	SM	<b>NI</b>	SM	SM
Population and Housing	LTS	<b>NI</b>	LTS	LTS
Public Services	LTS	<b>NI</b>	LTS	LTS
Recreation	LTS	<b>NI</b>	LTS	LTS
Transportation	LTS	<b>NI</b>	LTS	LTS
Tribal Cultural Resources	SM	<b>NI</b>	SM	SM
Utilities and Service Systems	LTS	<b>NI</b>	LTS	LTS
Wildfire	NI	NI	NI	NI
Meets City's Objectives?	Yes	No	Partially	Partially
Notes: SU = Significant unavoidable impact; SM = Significant impact, but can be mitigated to a less than significant level; LTS = Less than significant impact; and NI = No impact.				
<b>Bold</b> text indicates being environmentally superior to the proposed project.				

## SECTION 8.0 REFERENCES

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## **SECTION 9.0 LEAD AGENCY AND CONSULTANTS**

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### **9.1 LEAD AGENCY**

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## SECTION 10.0 ACRONYMS AND ABBREVIATIONS

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AB	Assembly Bill
ABAG	Association of Bay Area Governments
ACM	Asbestos containing material
ActivateSJ	Activate San José Strategic Plan
ADP	Area Development Policy
ADT	Average Daily Traffic
AFY	Acre-feet per year
AIA	Airport Influence Area
ALUC	Airport Land Use Commission
APN	Assessor's Parcel Number
AST	Aboveground storage tank
ATCM	Air toxic control measure
BAAQMD	Bay Area Air Quality Management District
BART	Bay Area Rapid Transit
Basin Plan	Water Quality Control Plan for the San Francisco Bay Basin
BMP	Best management practice
BTU	British thermal unit
BUSD	Berryessa Union School District
CalARP	California Accidental Release Prevention
CalEEMod	California Emissions Estimator Model
CalEPA	California Environmental Protection Agency
CAL FIRE	California Department of Forestry and Fire Protection
CALGreen	California Green Building Standards Code
Cal/OSHA	California Department of Industrial Relations, Division of Occupational Safety and Health
CalRecycle	California Department of Resources Recycling and Recovery
Caltrans	California Department of Transportation
CAP	Clean Air Plan
CARB	California Air Resources Board
CARE	Community Air Risk Evaluation
CBC	California Building Standards Code
CCC	Central California Coast

CCR	California Code of Regulations
CDFW	California Department of Fish and Wildlife
CEQA	California Environmental Quality Act
CFC	Chlorofluorocarbon
CFR	Code of Federal Regulations
cfs	Cubic feet per second
CGS	California Geological Survey
CH <sub>4</sub>	Methane
CIWMB	California Integrated Waste Management Board
CLOMR	Conditional Letter of Map Revision
CLUP	Comprehensive Land Use Plan
CMP	Congestion Management Program
CNDDDB	California Natural Diversity Database
CNEL	Community Noise Equivalent Level
CNPS	California Native Plant Society
CO	Carbon monoxide
CO <sub>2</sub>	Carbon dioxide
CO <sub>2</sub> e	Carbon dioxide equivalent
CRHR	California Register of Historical Resources
CUPA	Certified Unified Program Agency
CWA	Clean Water Act
dB	Decibel
dBA	A-weighted decibel
DEIR	Draft Environmental Impact Report
DNL	Day-Night Level
DPM	Diesel particulate matter
DTSC	Department of Toxic Substances Control
EIR	Environmental Impact Report
EMFAC	Emissions Factors
EO	Executive Order
EPA	Environmental Protection Agency
ESA	Environmental Site Assessment
ESL	Environmental Screening Level

ESUHSD	East Side Union High School District
EV	Electric vehicle
EVA	Emergency vehicle access
FAA	Federal Aviation Administration
FAR	Federal Aviation Regulations
FAR	Floor area ratio
FEMA	Federal Emergency Management Agency
FHSZ	Fire Hazard Severity Zones
FIRM	Flood Insurance Rate Map
FIS	Flood Insurance Study
FMMP	Farmland Mapping and Monitoring Program
FTA	Federal Transit Administration
GHG	Greenhouse gas
GHGRS	Greenhouse Gas Reduction Strategy
gpd	Gallons per day
GWh	Gigawatt hour
GWP	Global Warming Potential
Habitat Plan	Santa Clara Valley Habitat Plan/Natural Community Conservation Plan
HABS/HAER	Historic American Building Survey/Historic American Engineering Record
HFC	Hydrofluorocarbon
HI	Hazard Index
HMP	Hydromodification Management Plan
HOV	High-occupancy vehicle
HRI	Historic Resources Inventory
HSP	Health and safety plan
I	Interstate
IWMP	Integrated Waste Management Plan
KNR	Kiss-and-ride
kW	Kilowatt
kWh	Kilowatt-hour
LAMP	Levee Analysis and Mapping Procedure
L <sub>eq</sub>	Continuous noise level
LID	Low Impact Development

L <sub>max</sub>	Maximum noise level
LOMR	Letter of Map Revision
LOS	Level of service
LRT	Light rail transit
LSAA	Lake and Streambed Alteration Agreement
LUST	Leaking underground storage tank
MBTA	Migratory Bird Treaty Act
MEI	Maximally exposed individual
mgd	Million gallons per day
MLD	Most Likely Descendant
MMT	Million metric ton
mpg	Miles per gallon
mph	Miles per hour
MRP	Municipal Regional Permit
msl	Mean sea level
MT	Metric ton
MTC	Metropolitan Transportation Commission
MTIP	Multi-Modal Transportation Improvement Plan
N <sub>2</sub> O	Nitrous oxide
NAHC	Native American Heritage Commission
NAVD88	North American Vertical Datum of 1988
NESHAP	National Emission Standards for Air Pollution
NFIP	National Flood Insurance Program
NHPA	National Historic Preservation Act
NO <sub>2</sub>	Nitrogen dioxide
NOD	Notice of Determination
NOI	Notice of Intent
NOP	Notice of Preparation
NO <sub>x</sub>	Nitrogen oxide
NPDES	National Pollutant Discharge Elimination System
NRHP	National Register of Historic Places
NVYT	Northern Valley of Yokut/Ohlone/Bay Miwuke Tribe
O <sub>3</sub>	Ozone



OCP	Organochlorine pesticide
OHWM	Ordinary high water mark
OITC	Outdoor-Indoor Transmission Class
OPR	Governor's Office of Planning and Research
OSPH	Open Space, Parklands and Habitat
PCB	Polychlorinated biphenyl
PD	Planned Development
PDA	Priority Development Area
PDO	Parkland Dedication Ordinance
PFC	Perfluorocarbon
PG&E	Pacific Gas and Electric Company
PIO	Park Impact Ordinance
PM	Particulate matter
PM <sub>2.5</sub>	Fine particulate matter
PM <sub>10</sub>	Coarse particulate matter
PNR	Park-and-ride
ppm	Parts per million
PPV	Peak Particle Velocity
PRNS	City of San José Parks, Recreation, and Neighborhood Service Department
RAP	Removal Action Plan
RCRA	Resource Conservation and Recovery Act
RHNA	Regional Housing Need Allocation
ROG	Reactive organic gas
RWF	San José-Santa Clara Regional Wastewater Facility
RWQCB	Regional Water Quality Control Board
SB	Senate Bill
SBWR	South Bay Water Recycling
SCCDEH	Santa Clara County Department of Environmental Health
SCS	Sustainable Communities Strategy
SEIR	Supplemental Environmental Impact Report
SF <sub>6</sub>	Sulfur hexafluoride
SFHA	Special Flood Hazard Area
SHMA	Seismic Hazards Mapping Act

SJC	Norman Y. Mineta San José International Airport
SJCE	San José Clean Energy
SJFD	San José Fire Department
SJPD	San José Police Department
SJW	San José Water Company
SMARA	Surface Mining and Reclamation Act
SMGB	State Mining and Geology Board
SMP	Site Management Plan
SO <sub>x</sub>	Sulfur oxide
SQG	Small Quantity Generator
SR	State Route
STC	Sound Transmission Class
Superfund	Comprehensive Environmental Response, Compensation, and Liability Act
SVBX	Silicon Valley BART Extension
SWPPP	Stormwater Pollution Prevention Plan
SWRCB	State Water Resources Control Board
TAC	Toxic air contaminant
TCM	Treatment Control Measure
TCR	Tribal Cultural Resource
TDF	Transportation Demand Forecasting
TDM	Transportation Demand Management
TDP	Transportation Development Policy
TOD	Transit Oriented Development
TPH <sub>d</sub>	Total petroleum hydrocarbons as diesel
TPH <sub>g</sub>	Total petroleum hydrocarbons as gasoline
TPH <sub>o</sub>	Total petroleum hydrocarbons as oil
TPP	Tree Protection Plan
TPZ	Tree Protection Zone
µg/m <sup>3</sup>	Micrograms per cubic meter
UPRR	Union Pacific Railroad
USACE	United States Army Corps of Engineers
USFWS	United States Fish and Wildlife Service
USGS	United States Geological Survey

UST	Underground storage tank
UV	Urban Village
UWMP	Urban Water Management Plan
Valley Water	Santa Clara Valley Water District
V/C	Volume-to-capacity ratio
VdB	Vibration decibel
VMT	Vehicle miles traveled
VOC	Volatile organic compound
VTa	Santa Clara Valley Transportation Authority
WSA	Water Supply Assessment
ZNE	Zero Net Carbon Emissions