CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Department of Planning, Building and Code Enforcement
HARRY FREITAS, DIRECTOR

ADDENDUM TO THE SAN JOSE LOWE'S STORE FINAL ENVIRONMENTAL IMPACT REPORT (SCH#2006012115)

Pursuant to Section 15164 of the CEQA Guidelines, the City of San Jose has prepared an Addendum to the San Jose Lowe's Final Environmental Impact Report and Addenda there to (FEIR), because minor changes made to the project, as described below, do not raise important new issues about the significant impacts on the environment.

PROJECT DESCRIPTION

File Nos. PDC17-003 & PD17-001: Planned Development Rezoning of approximately 17 gross acre site to allow a drive through restaurant, and a Planned Development Permit to allow construction of a 3,867 square foot In-N-Out Burger restaurant with drive through, on an approximately 2.4 gross acre site, located at 5550 Cottle Road

Location: The project is located at 5550 Cottle Road. **Council District:** 2.

The environmental impacts of this project were addressed by a Final EIR entitled, "The San Jose Lowe's Final Environmental Impact Report," and findings were adopted by City Council Resolution No. 73814, and Addenda there to. The proposed project is eligible for an addendum pursuant to CEQA Guidelines §15164, which states that "A lead agency or responsible agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in CEQA Guidelines §15162 calling for preparation of a subsequent EIR have occurred." Circumstances which would warrant a subsequent EIR include substantial changes in the project or new information of substantial importance which would require major revisions of the previous EIR due to the occurrence of new significant impacts and/or a substantial increase in the severity of previously identified significant effects.

The following impacts were reviewed and found to be adequately considered by the EIR:

☒ Aesthetics	☒ Agriculture Resources	☒ Air Quality
☒ Biological Resources	☒ Cultural Resources	☒ Geology and Soils
☒ Greenhouse Gas Emissions	☒ Hazardous Materials	☒ Hydrology & Water Quality
☒ Land Use	☒ Mineral Resources	☒ Noise
☒ Population and Housing	☒ Public Services	☒ Recreation
☒ Transportation	☒ Utilities & Service Systems	☒ Mandatory Findings of Significance

ANALYSIS

The FEIR for the San Jose Lowe's Store was certified by the San José City Council under Resolution No. 73814 on June 5, 2007. A subsequent Addendum was prepared, to allow a retail building (Autozone) on a portion of the Lowe's site, on October 15, 2015. Since adoption of the FEIR, the project is proposing changes to the site which are the subject of this Addendum. The purpose of this Addendum is to analyze the impacts which may result from the proposed project. Attached is additional discussion and analysis that describes the environmental impacts of the proposed project compared to the impacts of the previously approved project, as addressed in the FEIR. Specifically it addresses those resource areas which would be potentially affected by the proposed changes to the previously approved project which include: air quality, noise, and transportation.

This Addendum will not be circulated for public review, but will be attached to the San Jose Lowe's Store FEIR, pursuant to CEQA Guidelines §15164(c).

Dipa Chundur
Environmental Project Manager

5/31/17
Date

Harry Freitas, Director
Planning, Building and Code Enforcement

Deputy

Attachment: IS/Addendum to the San Jose Lowe's Store EIR, May 2017

ADDENDUM TO THE
FINAL ENVIRONMENTAL IMPACT REPORT
SAN JOSE LOWE'S STORE (SCH 2006012115)

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IN-N-OUT BURGER COTTLE ROAD
City File Nos. PDC17-003, PD17-001

CITY OF SAN JOSÉ
CALIFORNIA

May 2017

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Chapter 1. Background Information

PROJECT DATA

1. **Project Title**: In-N-Out Burger Cottle Road

2. **Lead Agency Name and Address:** City of San José Planning, Building and Code Enforcement, 200 E. Santa Clara Street, San José, CA 95113

3. **Property Owner:** Lowe's Companies, Inc., 1605 Curtis Bridge Road, Wilkesboro, NC 28697

4. **Project Proponent:** In-N-Out Burger, 13502 Hamburger Lane, Baldwin Park, CA 91706

5. **Project Location:** The In-N-Out Burger restaurant will be located on the south side of the larger Lowe's site, on a 2.4 gross acre portion of 5550 Cottle Road.

Assessor's Parcel Number (APN): 706-06-019
City Council District: 2

6. **Project Description Summary:** The project is an application for a Planned Development (PD) rezoning of the approximately 17 acre existing Lowe's shopping center site (Lowe's site), and a PD permit to allow construction of an approximately 3,867 square foot In-N-Out Burger restaurant on the site with drive-thru service on the southern portion of the site.

7. **Envision 2040 San José General Plan Designation**: *Commercial Industrial/Commercial*

8. **Zoning Designation**: A(PD)

9. **Habitat Conservation Plan Designation**: The following designations apply to the entirety of the approximately 17-acre Lowe's shopping center:

Area 4: Urban Development Equal to or Greater than 2 Acres Covered
Land Cover: Urban-Suburban
Land Cover Fee Zone: Urban Areas (No Land Cover Fee)

10. **Surrounding Land Uses**:

- North: Commercial (Lowe's)
- East: Recreational (park)
- West: Commercial and senior center
- South: Commercial (Target)

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Chapter 2. Project Description

INTRODUCTION

The California Environmental Quality Act (CEQA) recognizes that between the date an environmental document is completed and the date the project is fully implemented, one or more of the following changes may occur: 1) the project may change; 2) the environmental setting in which the project is located may change; 3) laws, regulations, or policies may change in ways that impact the environment; and/or 4) previously unknown information can arise. Before proceeding with a project, CEQA requires the lead agency to evaluate these changes to determine whether or not they effect the conclusion in the environmental document.

This Addendum has been prepared by the City of San José as the Lead Agency, in conformance with the California Environmental Quality Act (CEQA), the CEQA Guidelines (Title 14, California Code of Regulations §15000 et. seq.) and the regulations and policies of the City San José. The purpose of this Addendum is to provide objective information regarding the environmental consequences of the proposed project to the decision makers who will be reviewing and considering the project.

Lowe's Store Project Final Environmental Impact Report (FEIR)

The original Lowe's project was proposed in 2003, and included 222,673 square feet of commercial on the project site. An EIR was completed for the project and certified on December 3, 2003. On January 16, 2004, the Preservation Action Council of San José filed suit against the City of San José and Lowe's HIW, Inc. The action challenged the adequacy of the Draft EIR as it related to the demolition of IBM Building 025 and alternatives that would allow for the preservation of this building. On July 14, 2004, a California State Superior Court judge ruled in favor of the Preservation Action Council. In 2007, an updated EIR was prepared as described below. The 2003 EIR for the original Lowe's project is incorporated by reference into this Addendum.

In 2007, the Lowe's Store Project was evaluated in an updated EIR that addressed the redevelopment of an 18.75-acre site occupied by vacant research buildings associated with the previous IBM campus. After improvements to Endicott Boulevard as part of the Hitachi project, the Lowe's site was reduced to 17.5 acres. The Lowe's project consisted of demolition of 89,364 square feet of existing buildings and construction of the Lowe's store and garden center (approximately 180,000 square feet). The project also included three separate retail/restaurant pads, on-site parking, and associated site improvements.

The Lowe's project was proposed in two phases. The first phase included the Lowe's Store and Garden Center, parking, landscaping and utility infrastructure. The second phase includes the construction of the three other building pads for retail and restaurant uses. Since the City's approval of the original Lowe's project, the Hitachi project has been approved and a road circulation system developed to support the redevelopment of the Hitachi site.

The FEIR for the San Jose Lowe's Store was certified by the San José City Council under Resolution No. 73814 on June 5, 2007. In 2015, an Addendum to the Lowe's EIR was prepared to allow the construction of a 6,815 square foot retail building (Autozone) on a portion of the Lowe's site (File No. PD15-020).

This Addendum is prepared to provide CEQA clearance for the project as described below under Project Description.

PROJECT LOCATION

The project is proposed within the City limits of San José, in Santa Clara County (refer to Figure 1). The proposed In-N-Out Burger restaurant and drive-thru is located on Assessor's Parcel Number (APN) 706-06-019, on an approximately 2.4 gross acre site that lies on a portion of the approximately 17 acre Lowe's shopping center property. This portion of the Lowe's site is currently vacant. An aerial photograph showing the proposed restaurant site and surrounding area is presented in Figure 2. Site photos are presented in Figure 7.

PROJECT DESCRIPTION

The project proposes a Planned Development Rezoning of the entire ±17 acre Lowe's shopping center property to allow an In-N-Out Burger fast-food restaurant with drive-thru. The project also proposes a Planned Development Permit to allow the construction of the approximately 3,867 square foot restaurant with drive-thru that includes 1,298 square feet of indoor dining with 77 seats and an outdoor patio with seating for 48. The building will be a maximum of 23 feet in height (top of parapet). The restaurant is proposed on an approximately 2.4 gross acre portion of the larger Lowe's site; the project includes a parcel map to create a separate parcel for the proposed restaurant.

The restaurant will operate seven days a week, with hours from 10:30 AM - 1:00 AM Sunday through Thursday, and 10:30 AM - 1:30 AM on Friday and Saturday. The restaurant, drive-thru, and adjacent parking lot will be well-lit and regularly maintained. The restaurant will have a staff of 10 to 12 employees per shift, with three shifts per day, for a total of approximately 60 employees.

The site plan is provided in Figure 3 and elevations are shown in Figure 4. Details of the proposed project are described below.

Access and Parking. Two driveways that currently provide access to the Lowe's site will provide access to the project site. These consist of a signalized full access driveway on Great Oaks Parkway and a right-turn only driveway on Cottle Road. Based on the site plan, two points of access to the east and west project parking lots would be provided along the east-west oriented drive aisle.

The drive-thru lane is proposed along the western and southern boundaries of the project site. A drive aisle will provide access to the drive-thru lane entrance on the western end of the site, adjacent to the west parking lot. The drive-thru lane circles the restaurant building in a counterclockwise direction and exits onto a drive aisle on the east side of the restaurant.

A total of 46 surface parking spaces will be provided around the restaurant. The project also proposes bike racks located next to the building as well as new pedestrian paths, benches, and crosswalks on and adjacent to the project site.

Lighting. Exterior lighting would be provided using building-mounted light fixtures and parking lot light poles. New parking lot lighting consists of LED fixtures and is designed to minimize light spillover; however, the project site is located in a commercial area that is already well lit at night for

operational and security reasons. All signage shall be required to conform to the City of San José Municipal Code Title 23.

Utilities. The project includes the provision of services and utilities to serve the project, including water, storm drainage, wastewater, and solid waste. The stormwater control plan for the project site is presented in Figure 5. Runoff will be directed to bioretention facilities. Landscaping will provide self-treating areas.

Grading. Development of the project will involve the approximate excavation of 8,800 cubic yards (CY) of cut and 4,300 CY of fill, requiring the export of 4,500 CY of material.

Public Improvements. The project proposes the following public improvements: new cub/gutter, walkways, benches, and crosswalk.

Landscaping/Tree Removal. The project proposes landscaping on the site as shown in the landscape plan in Figure 6. The site contains 67 trees, four of which are ordinance-size. The project proposes to remove 27 existing trees on the project site and replace them in accordance with the City's requirements.

IBM Covenant and Easement. The project area was previous part of a 350-acre IBM campus. Due to historic contamination on the site, a Covenant and Environmental Restriction (Covenant) was signed by the Regional Water Quality Control Board (RWQCB) and Lowe's in 2010. The Covenant identified the areas of capped soil, and described procedures for inspection and maintenance of the caps for soil excavation, handling, and disposal of soil contaminants of concern in the capped areas. The Covenant restricted the uses of the project site, prohibiting residential uses, hospitals, schools, and day care centers. In addition, the project site contains an IBM easement that prohibits Lowe's or future owners from disturbing the easement area (on the south and west portions of the project site) due to the presence of subsurface piping, monitoring wells, remediation systems, and electrical equipment in these areas.

PROJECT SCHEDULE

The proposed In-N-Out Burger restaurant is scheduled to start construction in March 2018 and complete construction within approximately four months, with an opening date in August 2018.

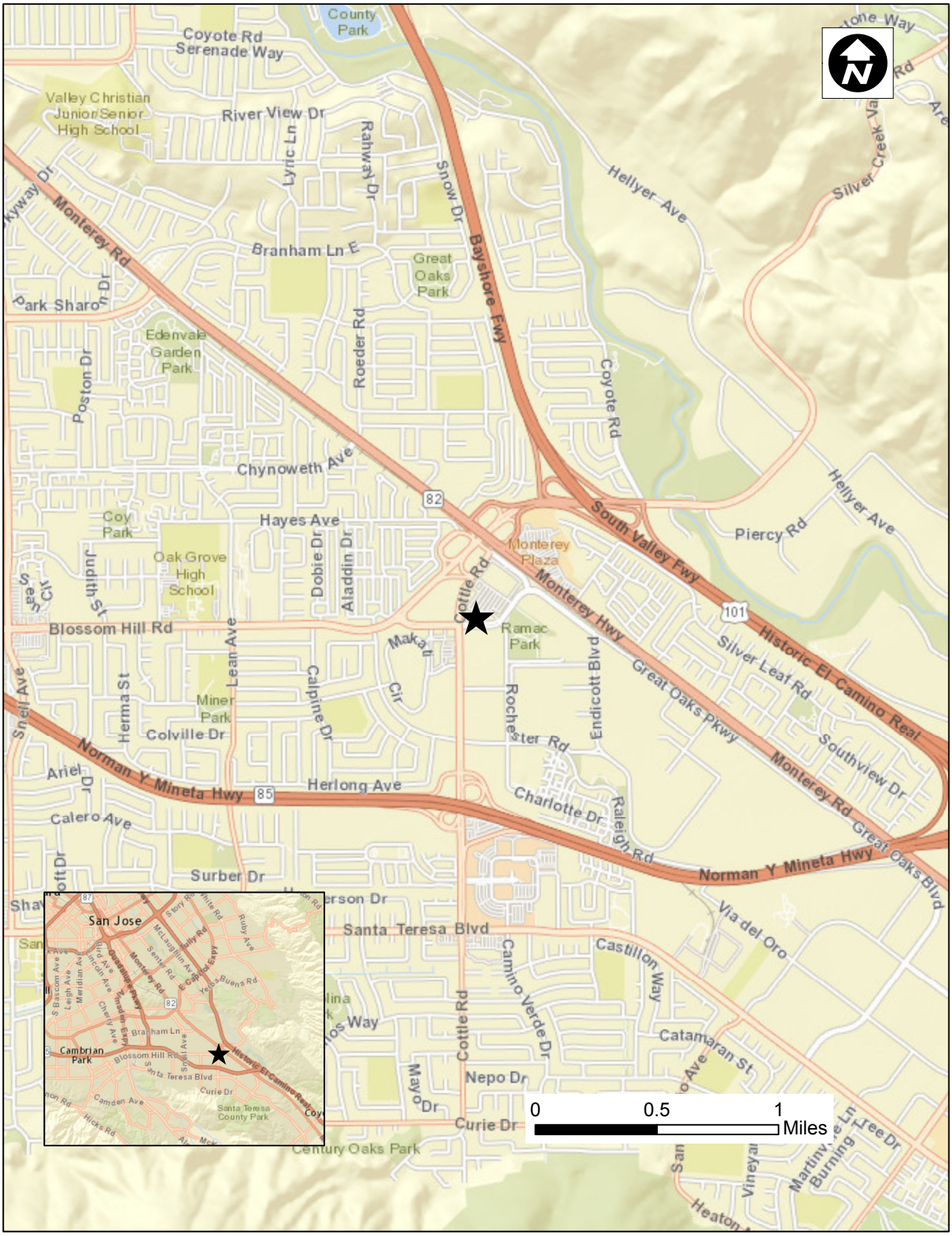
PROJECT OBJECTIVES

The objective of the project is to provide quick service restaurant with drive-thru within the City of San José to meet local demand.

PROJECT APPROVALS

The project will require the following approvals:

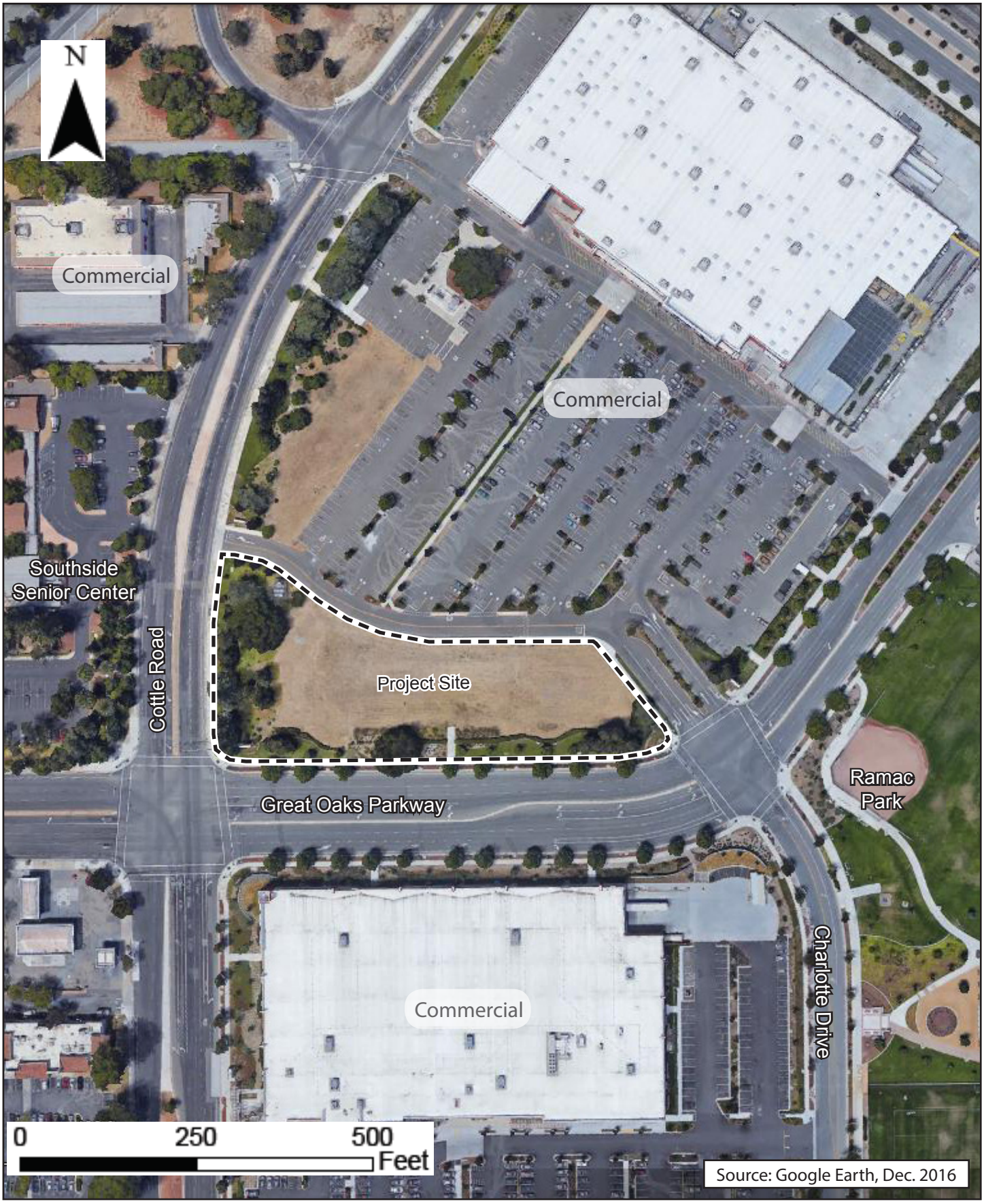
- City of San José – Environmental Clearance, PD Rezoning, PD Permit, Parcel Map, Grading Permit, Building Permit, and Tree Removal Permit.



Location Map

Figure 1

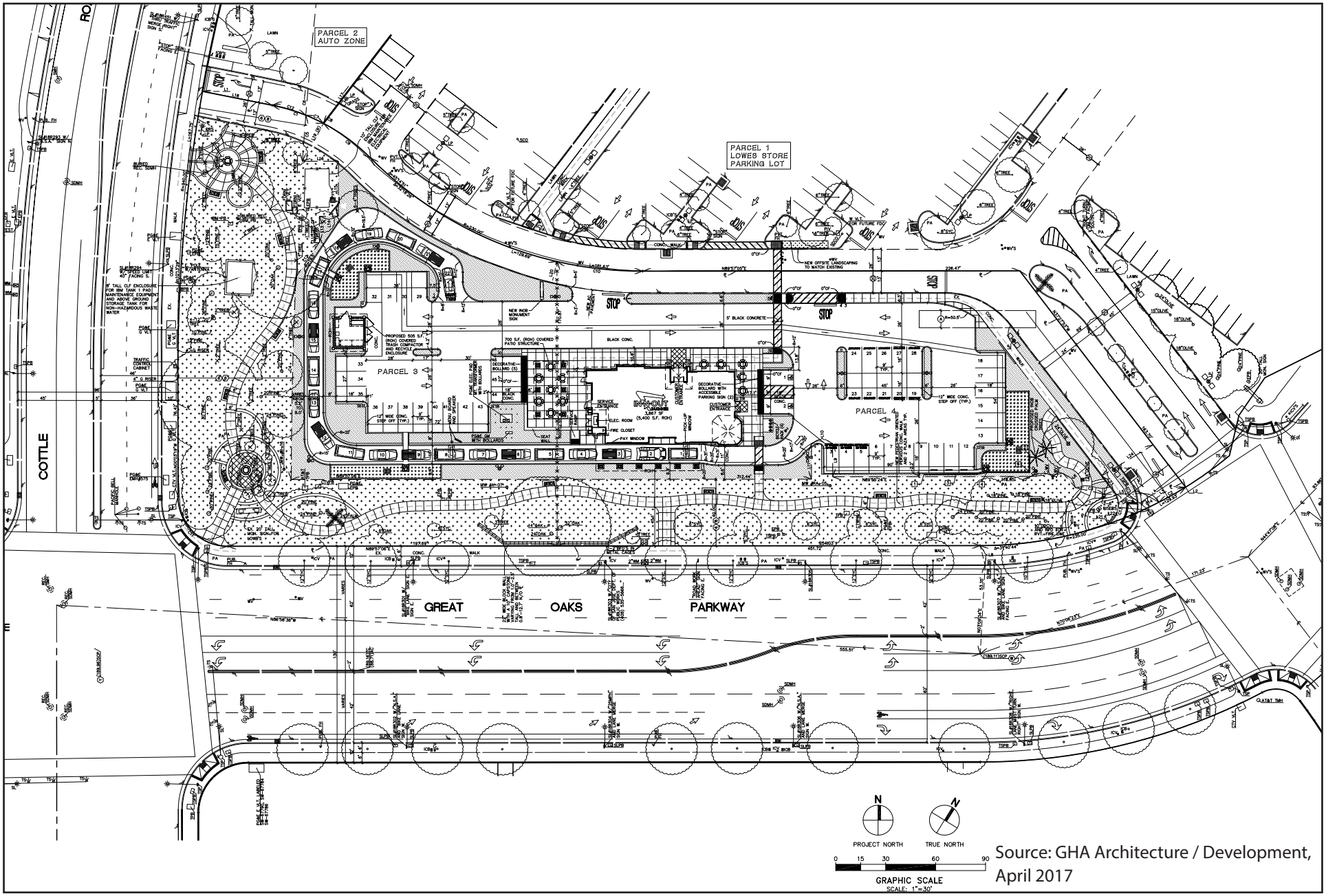
In-N-Out Burger Cottle Road
EIR Addendum



Aerial

Figure
2

In-N-Out Burger Cottle Road
EIR Addendum

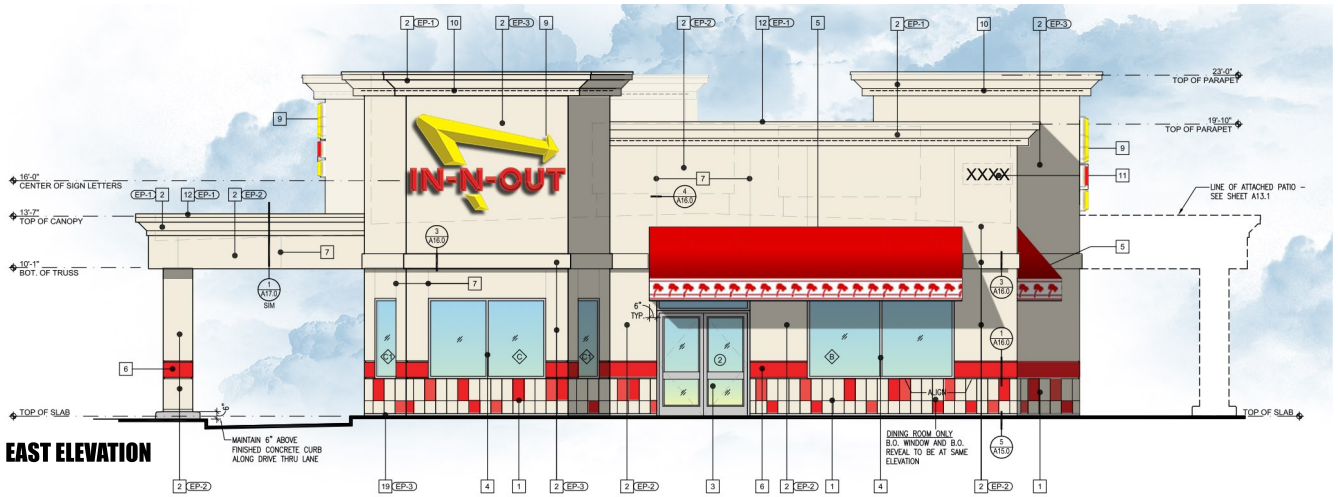


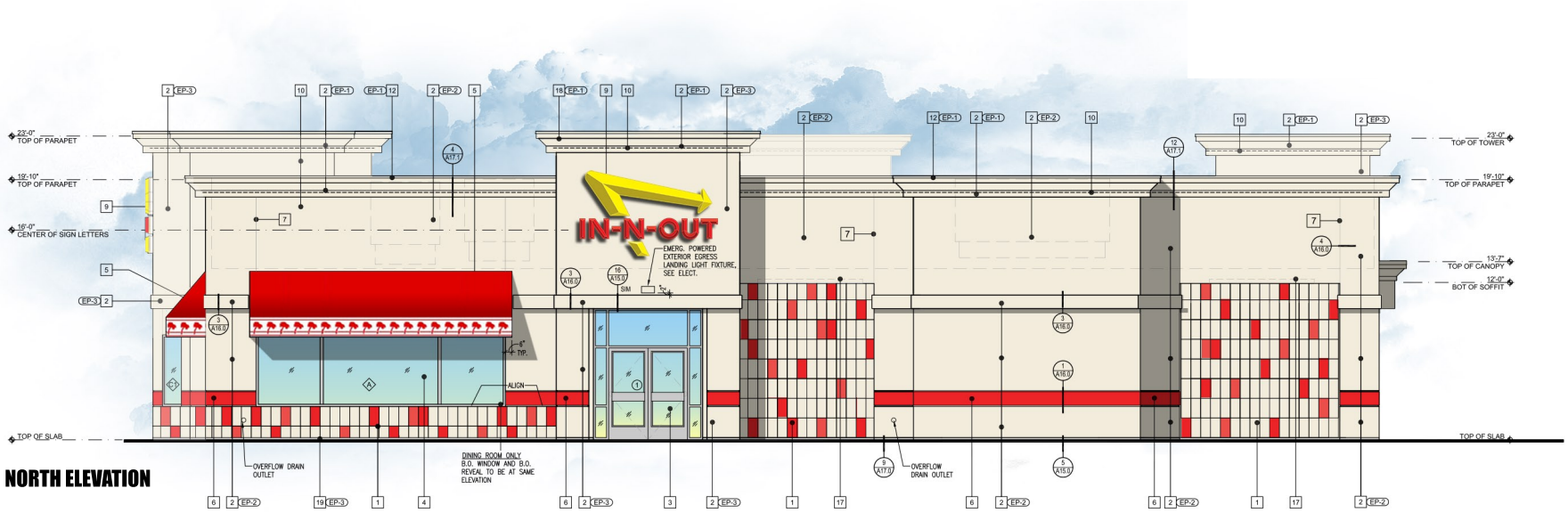
Source: GHA Architecture / Development, April 2017

Conceptual Site Plan

In-N-Out Burger Cottle Road
EIR Addendum

Figure
3



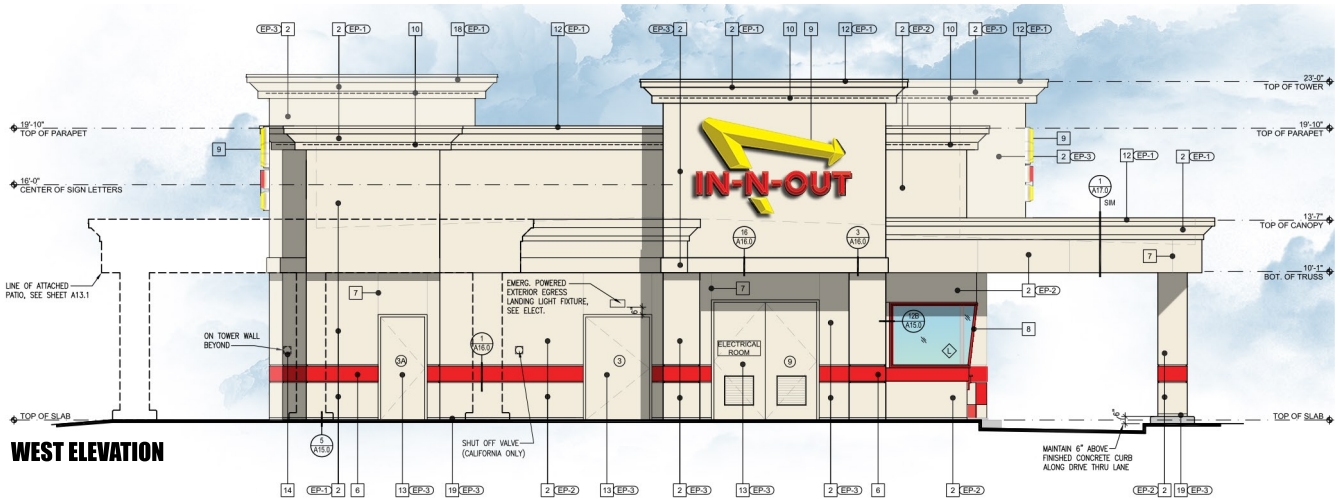


Source: GHA Architecture / Development, April 2017

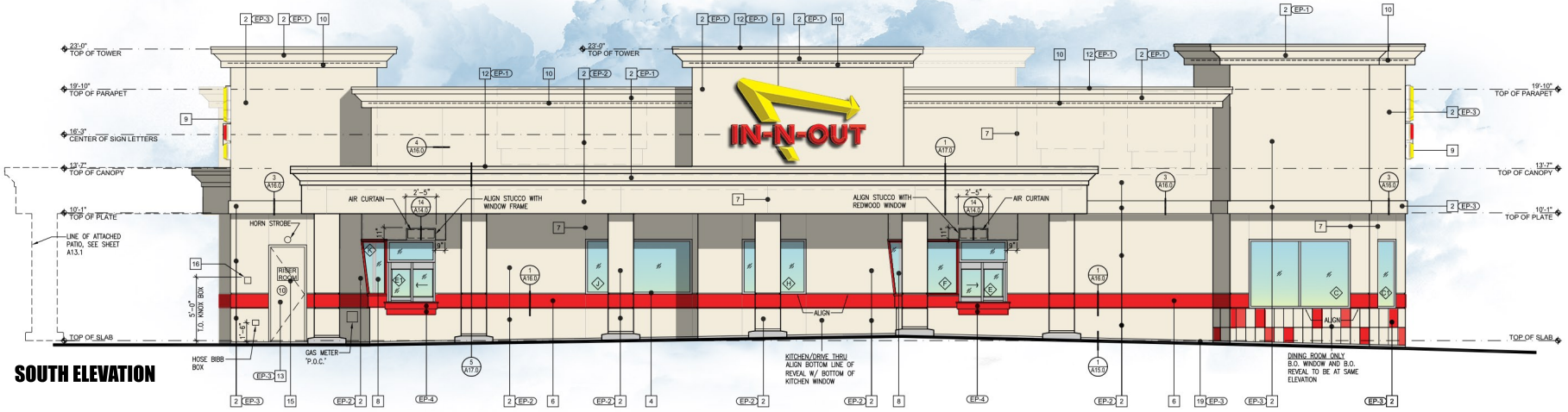
Elevations

In-N-Out Burger Cottle Road
EIR Addendum

Figure
4A



WEST ELEVATION



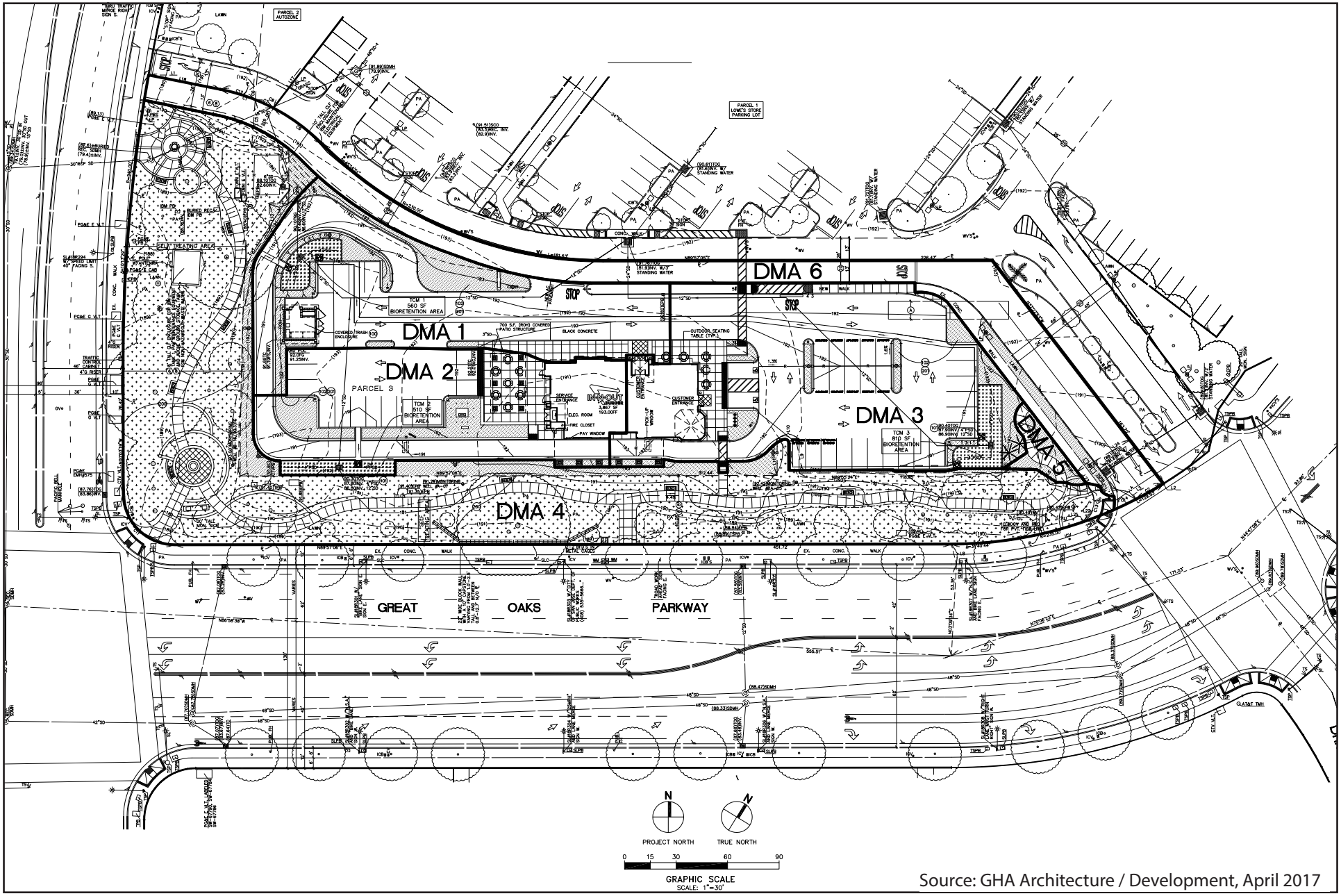
SOUTH ELEVATION

Source: GHA Architecture / Development, April 2017

Elevations

In-N-Out Burger Cottle Road
EIR Addendum

Figure
4B

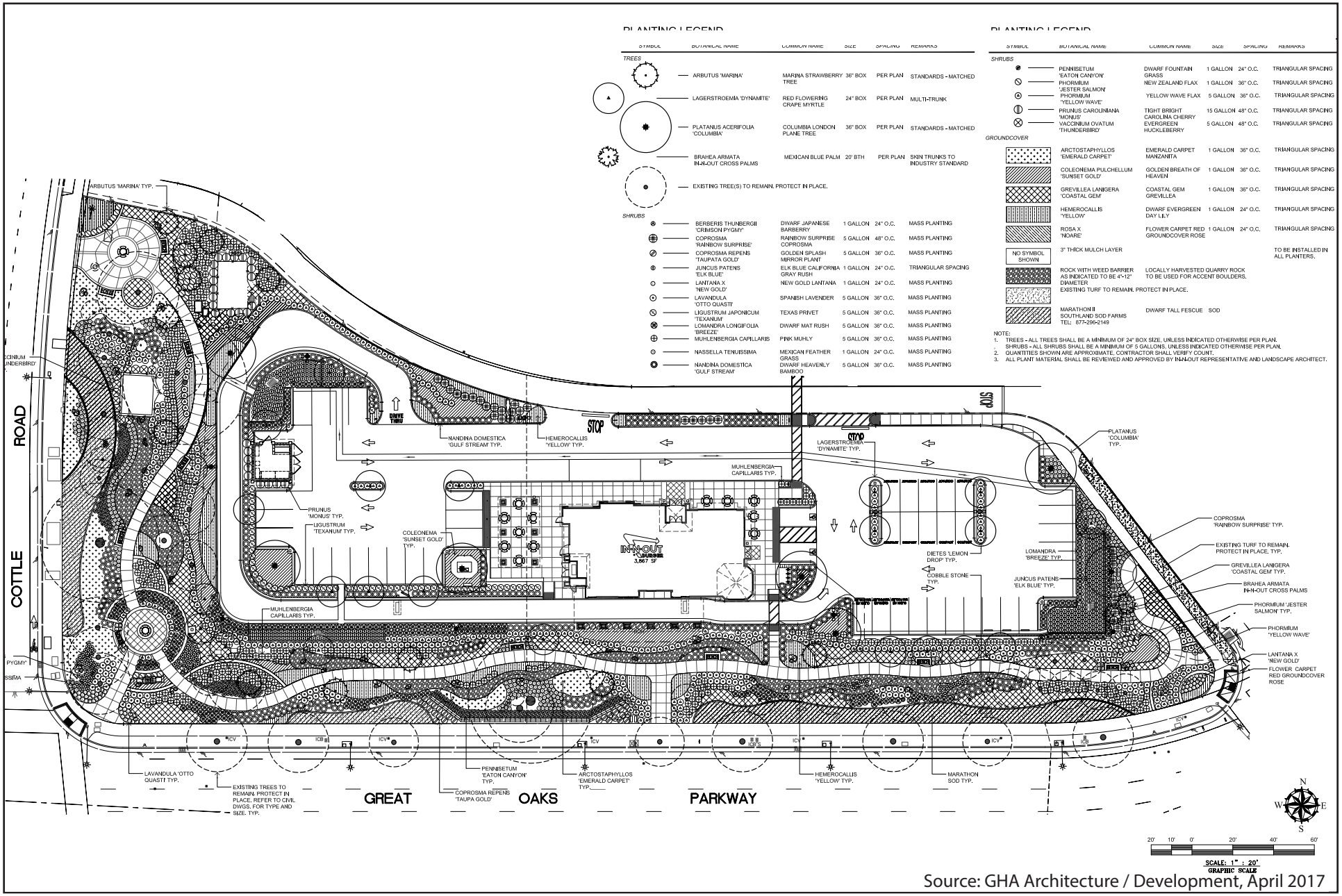


Source: GHA Architecture / Development, April 2017

Stormwater Control Plan

In-N-Out Burger Cottle Road
EIR Addendum

Figure
5



Source: GHA Architecture / Development, April 2017

Landscape Plan

In-N-Out Burger Cottle Road
EIR Addendum

Figure
6

Photo 1. View of site looking northeast.

Photo 2. View of site looking south.

Source: Denise Duffy & Associates, Dec. 2016

Site Photos

In-N-Out Burger Cottle Road
EIR Addendum

Figure
7

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Chapter 3. Environmental Evaluation

ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED

The key environmental factors potentially impacted by the project are identified below and discussed within Chapter 3. Environmental Setting and Impacts. Sources used for analysis of environmental effects are cited in parenthesis after each discussion, and are listed in Chapter 4. References.

☒ Aesthetics	☒ Agricultural Resources	☒ Air Quality
☒ Biological Resources	☒ Cultural Resources	☒ Geology/Soils
☒ Greenhouse Gas Emissions	☒ Hazards/Hazardous Materials	☒ Hydrology/Water Quality
☒ Land Use/Planning	☐ Mineral Resources	☒ Noise
☐ Population/Housing	☒ Public Services	☐ Recreation
☒ Transportation/Traffic	☒ Utilities/Service Systems	☒ Mandatory Findings of Significance

EVALUATION OF ENVIRONMENTAL IMPACTS

1. A brief explanation is required for all answers except “No Impact” answers that are adequately supported by the information sources a lead agency cites in the parentheses following each question. A “No Impact” answer is adequately supported if the referenced information sources show that the impact simply does not apply to projects like the one involved (e.g., the project falls outside a fault rupture zone). A “No Impact” answer should be explained where it is based on project-specific factors as well as general standards (e.g., the project will not expose sensitive receptors to pollutants, based on project-specific screening analysis).

2. All answers must take into account the whole action involved, including offsite as well as onsite, cumulative as well as project-level, indirect as well as direct, and construction as well as operational impacts.

3. Once the lead agency has determined that a particular physical impact may occur, then the checklist answers must indicate whether the impact is potentially significant, less than significant with mitigation, or less than significant. "Potentially Significant Impact" is appropriate if there is substantial evidence that an effect may be significant. If there are one or more "Potentially Significant Impact" entries when the determination is made, an EIR is required.

4. “Negative Declaration: Less Than Significant With Mitigation Incorporated” applies where the incorporation of mitigation measures has reduced an effect from “Potentially Significant Impact” to a “Less Than Significant Impact.” The lead agency must describe the mitigation measures, and briefly explain how they reduce the effect to a less than significant level mitigation measures from Section XVII, “Earlier Analyses,” may be cross-referenced).

5. Earlier analyses may be used where, pursuant to the tiering, program EIR, or other CEQA process, an effect has been adequately analyzed in an earlier EIR or negative declaration. Section 15063(c)(3)(D). In this case, a brief discussion should identify the following:

a) Earlier Analysis Used. Identify and state where they are available for review.

b) Impacts Adequately Addressed. Identify which effects from the above checklist were within the scope of and adequately analyzed in an earlier document pursuant to applicable legal standards, and state whether such effects were addressed by mitigation measures based on the earlier analysis.

c) Mitigation Measures. For effects that are "Less than Significant with Mitigation Measures Incorporated," describe the mitigation measures, which were incorporated or refined from the earlier document and the extent to which they address site-specific conditions for the project.

6. Lead agencies are encouraged to incorporate into the checklist references to information sources for potential impacts (e.g., general plans, zoning ordinances). Reference to a previously prepared or outside document should, where appropriate, include a reference to the page or pages where the statement is substantiated.

7. Supporting Information Sources: A source list should be attached, and other sources used or individuals contacted should be cited in the discussion.

8. This is only a suggested form, and lead agencies are free to use different formats; however, lead agencies should normally address the questions from this checklist that are relevant to a project's environmental effects in whatever format is selected.

9. The explanation of each issue should identify:

a) The significance criteria or threshold, if any, used to evaluate each question; and

b) The mitigation measure identified, if any, to reduce the impact to less than significance.

ENVIRONMENTAL SETTING AND IMPACTS

The following section describes the environmental setting and identifies the environmental impacts anticipated from implementation of the proposed project. The criteria provided in the CEQA environmental checklist was used to identify potentially significant environmental impacts associated with the project. Sources used for the environmental analysis are cited in the checklist and listed in Chapter 4 of this Initial Study.

A. AESTHETICS

Setting

Photographs of the project property are presented in Figure 7, and an aerial photo is provided in Figure 2. The project site is currently vacant. The site does not contain any features that are considered important visual/aesthetic resources. The site is surrounded primarily by commercial uses and roadways. Ramac Park is located just east of the site.

The State Scenic Highways Program is designed to protect and enhance the natural scenic beauty of California highways and adjacent corridors through special conservation treatment. The project site is not located near any scenic highways. In addition, the project is not located along any scenic corridors per the City's Scenic Corridors Diagram.

Impacts and Mitigation

Thresholds per CEQA Checklist

ENVIRONMENTAL IMPACTS	New Potentially Significant Impact	New Less Than Significant With Mitigation Incorporated	New Less Than Significant Impact	Same Impact as Approved Project	Less Impact than Approved Project	Source(s)
1. AESTHETICS. Would the project:						
a) Have a substantial adverse effect on a scenic vista?					X	1, 2
b) Substantially damage scenic resources, including but not limited to trees, rock outcroppings, and historic buildings within a state scenic highway?					X	1, 2
c) Substantially degrade the existing visual character or quality of the site and its surroundings?					X	1, 2
d) Create a new source of substantial light or glare, which would adversely affect day or nighttime views in the area?					X	1, 2

Explanation

a) **Less Impact Than Approved Project**. Because the existing visual character of the project area is that of a commercial shopping center, the visual changes from introduction of a small fast-food restaurant, with a maximum height of 23 feet (top of parapet) will not have a substantial effect on any scenic vistas.

b) **Less Impact Than Approved Project**. The project site is not located within, nor will it affect, any City or state-designated scenic routes. The project will not damage scenic resources, such as rock outcroppings and historic buildings. The site contains 67 trees, four of which are ordinance-size. The project proposes to remove 27 of these trees and replace them in accordance with the City's Tree Replacement Ratio requirements.

c) **Less Impact Than Approved Project**. The project will alter the existing visual character of the site by converting vacant land into a fast-food restaurant. Elevations are shown in Figure 4. The view of the commercial building will be comparable to other similar development in the area. Trees to be removed will be replaced in conformance with the City's requirements, as further described in D. Biological Resources. In addition, landscaping will be provided as part of the project (refer to Figure 6). The project will replace and/or maintain existing landscaping on the site associated with the Lowe's shopping center. Final design plans will be required to conform to the City's Commercial Design Guidelines. The project, therefore,

will not substantially degrade the existing visual character or quality of the site and its surroundings.

d) **Less Impact Than Approved Project**. The project site is located in an area of existing ambient night lighting associated with the surrounding commercial uses. The project does not propose any major sources of lighting or glare. All lighting would conform to the City's Outdoor Lighting Policy (4-3), and be shielded to direct light downwards, consistent with City standards. The project would have a less-than-significant impact on light and glare.

Conclusion: The project will have fewer impacts on aesthetics than those identified in the 2007 Lowe's EIR, which identified significant unavoidable visual (aesthetic) impacts from the larger shopping center related to impacts to scenic resources (trees and a historic structure) and degradation to visual character. The City Council adopted a statement of overriding considerations for the significant unavoidable visual impacts. The project will not result in new or more significant impacts on aesthetics than previously identified in the 2007 Lowe's EIR.

B. AGRICULTURAL AND FOREST RESOURCES

Setting

In California, agricultural land is given consideration under CEQA. According to Public Resources Code §21060.1, "agricultural land" is identified as prime farmland, farmland of statewide importance, or unique farmland, as defined by the U.S. Department of Agriculture land inventory and monitoring criteria, as modified for California. CEQA also requires consideration of impacts on lands that are under Williamson Act contracts. The project area is identified as "urban/built-up land" on the Santa Clara County Important Farmlands Map.

CEQA requires the evaluation of forest and timber resources where they are present. The site does not contain any forest land as defined in Public Resources Code section 12220(g), timberland as defined by Public Resources Code section 4526, or property zoned for Timberland Production as defined by Government Code section 51104(g).

Impacts and Mitigation

Thresholds per CEQA Checklist

ENVIRONMENTAL IMPACTS	New Potentially Significant Impact	New Less Than Significant With Mitigation Incorporated	New Less Than Significant Impact	Same Impact as Approved Project	Less Impact Than Approved Project	Source(s)
2. AGRICULTURAL AND FOREST RESOURCES. In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Department of Conservation as an optional model to use in assessing impacts on agriculture and farmland. In determining whether impacts to forest resources, including timberland, are significant environmental effects, lead agencies may refer to information compiled by the California Department of Forestry and Fire Protection regarding the state's inventory of forest land, including the Forest and Range Assessment Project and the Forest Legacy Assessment project; and forest carbon measurement methodology provided in Forest Protocols adopted by the California Air Resources Board. 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				X		4

	the California Resources Agency, to non-agricultural use?						
b)	Conflict with existing zoning for agricultural use, or a Williamson Act contract?				X		2
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)?				X		2
d)	Result in the loss of forest land or conversion of forest land to non-forest uses?				X		2
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?				X		2, 4

Explanation

a) **Same Impact as Approved Project**. The project site is an infill property and designated as "urban/built-up land" on the Important Farmlands Map for Santa Clara County and does not contain any prime farmland, unique farmland, or farmland of statewide importance. The project will not affect agricultural land.

b) **Same Impact as Approved Project**. The project site is an infill property and is not zoned for agricultural use and does not contain lands under Williamson Act contract; therefore, no conflicts with agricultural uses will occur.

c) **Same Impact as Approved Project**. The project will not impact forest resources since the site does not contain any forest land as defined in Public Resources Code section 12220(g), timberland as defined by Public Resources Code section 4526, or property zoned for Timberland Production as defined by Government Code section 51104(g).

d) **Same Impact as Approved Project**. See c) above. No other changes to the environment will occur from the project that will result in the loss of forest land or conversion of forest land to non-forest uses.

e) **Same Impact as Approved Project**. As per the discussion above, the proposed project will not involve changes in the existing environment which, due to their location or nature, could result in conversion of farmland or forest land, since none are present on this infill property.

Conclusion: The Lowe's EIR did not identify any impacts related to agricultural and forest resources. The project will not result in new or more significant impacts on agricultural and forest resources than previously identified in the 2007 Lowe's EIR.

C. AIR QUALITY

Setting

The project site is located within the San Francisco Bay Area Air Basin. The Bay Area Air Quality Management District (BAAQMD) is the local agency authorized to regulate stationary air quality sources in the Bay Area. The Federal Clean Air Act and the California Clean Air Act mandate the control and reduction of specific air pollutants. Under these Acts, the U.S. Environmental Protection Agency and the California Air Resources Board have established ambient air quality standards for specific "criteria" pollutants, designed to protect public health and welfare. Primary criteria pollutants include carbon monoxide (CO), reactive organic gases (ROG), nitrogen oxides (NO_X), particulate matter (PM_{10}), sulfur dioxide (SO_2), and lead (Pb). Secondary criteria pollutants include ozone (O_3), and fine particulate matter ($PM_{2.5}$).

The U.S. EPA administers the National Ambient Air Quality Standards (NAAQS) under the Federal Clean Air Act. EPA sets the NAAQS and determines if areas meet those standards. Violations of ambient air quality standards are based on air pollutant monitoring data and judged for each air pollutant. Areas that do not violate ambient air quality standards are considered to have attained the standard. EPA has classified the region as a nonattainment area for the 8-hour O_3 standard and the 24-hour $PM_{2.5}$ standard. The Bay Area has met the CO standards for over a decade and is classified as an attainment area by the U.S. EPA. The U.S. EPA has deemed the region as attainment/unclassified for all other air pollutants, which include PM_{10}. At the State level, the Bay Area is considered nonattainment for ozone, PM_{10} and $PM_{2.5}$.

The BAAQMD is primarily responsible for assuring that the federal and state ambient air quality standards are attained and maintained in the Bay Area. In 2011, the BAAQMD revised the CEQA Air Quality Guidelines, which outline BAAQMD recommended procedures for evaluating regional air pollutants including criteria air pollutants, greenhouse gases (evaluated in a following section), local risk and hazards (from toxic air contaminants and fine particulate matter), carbon monoxide, odor, and air pollutants associated with construction activities.

The BAAQMD is primarily responsible for assuring that the federal and state ambient air quality standards are attained and maintained in the Bay Area. The BAAQMD's 2011 CEQA Guidelines provide recommendations for evaluating air pollution emissions, including BAAQMD's CEQA Thresholds Options and Justification Report (2009), and are based on substantial evidence. Recommended procedures are identified for evaluating regional air pollutants including criteria air pollutants, greenhouse gases, local risk and hazards (from toxic air contaminants and fine particulate matter), carbon monoxide, odor, and air pollutants associated with construction activities. The City of San José relies on the thresholds of significance and screening criteria established by the BAAQMD 2011 CEQA Guidelines. The BAAQMD screening levels are based on project size for air pollutant emissions.

The BAAQMD, along with other regional agencies (e.g., ABAG and MTC), develop plans to reduce air pollutant emissions. The BAAQMD adopted and implements the Bay Area 2010 Clean Air Plan (CAP). The 2010 CAP is a multi-pollutant air quality plan that addresses four categories of air pollutants:

- Ground-level ozone and the key ozone precursor pollutants (reactive organic gases and NOx)
- Particulate matter, primarily $PM_{2.5}$, as well as the precursors to secondary $PM_{2.5}$
- Toxic air contaminants
- Greenhouse gases

Toxic air contaminants (TACs) are a broad class of compounds known to cause morbidity or mortality (usually because they cause cancer). TACs are found in ambient air, especially in urban areas, and are caused by industry, agriculture, 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 near a freeway). Because chronic exposure can result in adverse health effects, TACs are regulated at the regional, state, and federal level.

The BAAQMD defines sensitive receptors as facilities where sensitive population groups are located, including residences, schools, childcare centers, convalescent homes, and medical facilities. The nearest sensitive residential receptors to the project site are located more than 700 feet to the southwest. In addition, the San José Recreation Preschool at Southside Community Center is located about 500 feet west of the project site.

Impacts and Mitigation

Thresholds per CEQA Checklist

ENVIRONMENTAL IMPACTS	New Potentially Significant Impact	New Less Than Significant With Mitigation Incorporated	New Less Than Significant Impact	Same Impact as Approved Project	Less Impact Than Approved Project	Source(s)
3. AIR QUALITY. Where available, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make the following determinations. Would the project:						
a) Conflict with or obstruct implementation of the applicable air quality plan?				X		2, 5
b) Violate any air quality standard or contribute to an existing or projected air quality violation?				X		2, 5
c) 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 (including releasing emissions, which exceed quantitative thresholds for ozone precursors)?				X		2, 5
d) Expose sensitive receptors to substantial pollutant concentrations?				X		2, 5
e) Create objectionable odors affecting a substantial number of people?				X		2

Explanation

a) **Same Impact as Approved Project**. The project will not increase regional population growth or cause changes in vehicle travel that will affect implementation of the Bay Area 2010 Clean Air Plan (CAP).

b) **Same Impact as Approved Project**. The City of San José uses the thresholds of significance established by the BAAQMD to assess air quality impacts of proposed development. The BAAQMD CEQA Guidelines include screening levels and thresholds for evaluating air quality impacts in the Bay Area. In the 2011 update to the CEQA Air Quality Guidelines, the BAAQMD identifies screening criteria based on the size of proposed projects. For the "fast-food restaurant with drive-thru" use, the screening size for operational impacts is 6,000 square feet and the screening size for construction impacts is 277,000 square feet. The proposed development is smaller than the defined screening thresholds and, therefore, no significant impacts are anticipated.

Substantial amounts of dust can be generated during excavation, grading, and construction activities. Most of this dust would be generated during grading. The amount of dust generated would be highly variable and depend on the size of the area disturbed at any given time, amount of activity, soil conditions, and meteorological conditions. To address fugitive dust emissions that lead to elevated PM_{10} and $PM_{2.5}$ levels near construction sites, the BAAQMD CEQA Air Quality Guidelines identify best management practices, which are included in the project as standard permit conditions, listed below.

During any construction period ground disturbance, the applicant shall ensure that the project contractor implement the BAAQMD best management practices to control dust and exhaust. Implementation of the standard permit conditions listed below, consistent with the mitigation identified in the 2007 Lowe's EIR, would reduce the air quality impacts associated with grading and construction activities to a less-than-significant level.

Standard Permit Conditions

- All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.

- All haul trucks transporting soil, sand, or other loose material off-site shall be covered.

- 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.

- All vehicle speeds on unpaved roads shall be limited to 15 mph.

- 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.

- Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.

- 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.

- A publicly visible sign shall be posted at the site with the telephone number and person to contact at the Lead Agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.

c) **Same Impact as Approved Project**. See discussion b) above. The project will not result in a cumulatively considerable net increase of any criteria pollutant for which the project region is in non-attainment under an applicable federal or state ambient air quality standard, since the project size is well below BAAQMD screening levels for criteria pollutants.

d) **Same Impact as Approved Project**. Due to the project size, the operational emissions of criteria pollutants would be less-than-significant because the project is below the BAAQMD screening criteria size and the project would implement standard permit conditions as described in b) above. Operation of the project is not expected to cause any localized emissions that could expose sensitive receptors to unhealthy air pollutant levels. No stationary sources of TACs, such as generators, are proposed as part of the project.

Construction activity requires diesel-powered equipment, which emits diesel particulate matter (DPM), a known carcinogen and toxic air contaminant (TAC). DPM is a human carcinogen and that chronic (long-term) inhalation exposure to DPM poses a chronic health risk. The majority of heavy diesel equipment usage would occur during the construction phase, which will have a relatively brief duration (four to five months). The project will implement the BAAQMD's best management practices as required in the standard permit conditions, described in b) above. This includes requirements for reduced idling time and proper equipment maintenance for diesel equipment, which would reduce emissions from this equipment and minimize potential impacts to nearby receptors. Given the short construction period and incorporation of best management practices, the impact from DPM during project construction is considered less-than-significant.

e) **Same Impact as Approved Project**. The proposed restaurant may create new odors from the general operation in the immediate vicinity of the project. Procedures will be in place to control odor, including proper trash disposal facilities. During construction, use of diesel powered vehicles and equipment could temporarily generate localized odors, which will cease upon project completion. Implementation of abatement measures for construction period emissions identified in b) will further assure that this impact is less-than-significant.

Conclusion: The Lowe's EIR concluded that the project would result in significant air quality impacts during construction from dust, exhaust, and organic emissions. The project will implement the BAAQMD's best management practices during construction, consistent with the mitigation in the Lowe's EIR. Therefore, the project will not result in new or more significant air quality impacts than previously identified in the 2007 Lowe's EIR.

D. BIOLOGICAL RESOURCES

Setting

The project site is located within an urbanized area of San José. The existing property is currently vacant and contains weedy vegetation and trees. Due to the disturbed nature of the site, it has a relatively low habitat value.

The City of San José's Municipal Code (Title 13) regulates the removal of trees, including any live or dead woody perennial plant, having a main stem or trunk 56 inches or more in circumference (18 inches in diameter) at a height of 24 inches above the natural grade slope. The site contains 67 trees, four of which are ordinance-size.

City-designated heritage trees are considered sensitive resources. A heritage tree is any tree located on private property, which because of factors including (but not limited to) history, girth, height, species, or unique quality has been found by the City Council to have special significance to the community. It is unlawful to vandalize, mutilate, remove or destroy heritage trees. The project site does not contain any City-designated heritage trees.

Habitat Conservation Plan/Natural Community Conservation Plan

The City of San José has adopted the Santa Clara Valley Habitat Plan/Natural Community Conservation Plan (HCP) developed in partnership with the County of Santa Clara, the City of Morgan Hill, the City of Gilroy, the Valley Transportation Authority and the Santa Clara Valley Water District. The HCP establishes a framework for development projects to comply with several state and federal regulatory processes and standardized avoidance, minimization, mitigation and compensation requirements set forth in federal and state laws. The project site is designated as follows in the HCP:

> Area 4: Urban Development Equal to or Greater than 2 Acres Covered
> Land Cover: Urban-Suburban
> Land Cover Fee Zone: Urban Areas (No Land Cover Fee)

Impacts and Mitigation

Thresholds per CEQA Checklist

ENVIRONMENTAL IMPACTS	New Potentially Significant Impact	New Less Than Significant With Mitigation Incorporated	New Less Than Significant Impact	Same Impact as Approved Project	Less Impact Than Approved Project	Source(s)
4. 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 Game or U.S. Fish and Wildlife Service?				X		1, 2

ENVIRONMENTAL IMPACTS	New Potentially Significant Impact	New Less Than Significant With Mitigation Incorporated	New Less Than Significant Impact	Same Impact as Approved Project	Less Impact Than Approved Project	Source(s)
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 California Department of Fish and Game or U.S. Fish and Wildlife Service?				X		1, 2
c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?				X		1, 2
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?				X		1, 2
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?				X		1, 2
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?			X			1, 2

Explanation

a) **Same Impact as Approved Project**. Mature trees on the project site may provide nesting habitat for migratory birds, including raptors (birds of prey). Raptors and their nests are protected under the Migratory Bird Treaty Act of 1918 and California Fish and Game Code Sections 3503 and 3503.5. These species could be disturbed during tree removal and construction activities. This represents a potentially significant impact that will be reduced to a less-than-significant level with implementation of the mitigation measures included in the Lowe's EIR, as follows:

Mitigation Measure BIO-1

- The project applicant shall schedule construction between September 1st and January 31st (inclusive) to avoid the nesting season for raptors and other migratory birds. If this is not possible, pre-construction surveys for nesting birds shall be conducted by a qualified biologist or ornithologist to identify active nests that may be disturbed during project implementation. Projects that commence construction between February 1st and April 30th shall conduct pre-construction surveys for nesting birds within 14 days of the onset of construction. Between May 1st and August 31st (inclusive), preconstruction surveys shall be conducted no more than 30 days prior to the initiation of construction activities. Pre-construction surveys shall be conducted by a qualified biologist or ornithologist for nesting birds within the onsite trees as

well as all trees within 250 feet of the site. If the survey does not identify any nesting birds that would be affected by construction activities, no further mitigation is required.

If an active nest is found in or close enough to the construction area to be disturbed by these activities, the qualified biologist or ornithologist, in consultation with the California Department of Fish and Wildlife (CDFW), shall determine the extent of a construction-free buffer zone around the nest, typically 250 feet or raptors and 100 feet for non-raptors around the nest, to ensure that raptor or migratory bird nests shall not be disturbed during project construction. The buffer shall remain in place until the breeding season has ended and/or a qualified biologist or ornithologist has determined that the nest is no longer active. The ornithologist/biologist shall submit a report indicating the results of the survey and any designated buffer zones to the satisfaction of the Environmental Supervising Planner of the City of San José Department of Planning, Building, and Code Enforcement prior to the issuance of any grading permits.

b) **Same Impact as Approved Project**. The project site is disturbed and does not contain, or lie adjacent to, any sensitive natural communities or riparian habitat; therefore, the project will not adversely impact any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by the California Department of Fish and Wildlife or USFWS.

c) **Same Impact as Approved Project**. The project site is disturbed and does not contain, or lie adjacent to, any wetland resources; therefore, the project will not adversely affect federally protected wetlands as defined by Section 404 of the Clean Water Act.

d) **Same Impact as Approved Project**. With the inclusion of the permit condition for nesting birds identified in a) above, the project will not substantially interfere 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) **Same Impact as Approved Project**. The project will not conflict with any local policies or ordinances protecting biological resources. The project site contains 67 trees. Based on the site plan, it is anticipated that up to 27 trees will require removal for development of the project. These trees are listed in Table 1 below.

Table 1
Trees to be Removed by Project

No.	Common Name	Botanical Name	Diameter (inches)
1	Olive Tree	*Olea Europa*	24
2	Olive Tree	*Olea Europa*	24
3	Olive Tree	*Olea Europa*	18
4	California Fan Palm	*Washingtonia Filifera*	24
5	Strawberry Tree	*Arbutus 'Marina'*	3
6	Purple Leaf Plum	*Prunus Cerasifera*	4
7	Purple Leaf Plum	*Prunus Cerasifera*	3

Table 1 Trees to be Removed by Project			
No.	**Common Name**	**Botanical Name**	**Diameter (inches)**
8	Purple Leaf Plum	*Prunus Cerasifera*	8
9	Unknown	--	4
10	Unknown	--	1
11	Privet	*Ligustrum spp.*	1
12	Privet	*Ligustrum spp.*	1
13	Privet	*Ligustrum spp.*	2
14	Privet	*Ligustrum spp.*	1
15	Privet	*Ligustrum spp.*	2
16	Privet	*Ligustrum spp.*	2
17	Privet	*Ligustrum spp.*	2
18	Privet	*Ligustrum spp.*	2
19	Privet	*Ligustrum spp.*	2
20	Privet	*Ligustrum spp.*	2
21	Privet	*Ligustrum spp.*	2
22	Privet	*Ligustrum spp.*	2
23	Privet	*Ligustrum spp.*	2
24	Privet	*Ligustrum spp.*	2
25	Privet	*Ligustrum spp.*	2
26	Privet	*Ligustrum spp.*	2
27	Privet	*Ligustrum spp.*	2
Source: Brandon Petrunio, Landscape Architecture & Planning, February 2017.			

Of the 27 tree to be removed, four exceed 18 inches in diameter and are subject to the City's Tree Removal Ordinance. All trees to be removed will be replaced in accordance with the ratios set forth by the City. If sufficient area is not available onsite within the project for all of the replacement trees, a contribution would be made to Our City Forest where the funds would be used to plant trees within the City. The project will implement the following updated versions of mitigation measures included in the Lowe's EIR, which will be included as development standard permit conditions.

Standard Permit Conditions

- Any tree to be removed will be replaced with new trees in accordance with the City's Tree Replacement Ratios, as set forth below.

Diameter of Tree to be Removed	Type of Tree to be Removed			Minimum Size of Each Replacement Tree
	Native	Non-Native	Orchard	
18 inches or greater	5:1	4:1	3:1	24-inch box
12-17 inches	3:1	2:1	none	24-inch box
Less than 12 inches	1:1	1:1	none	15-gallon container
x:x = tree replacement to tree loss ratio Note: Trees greater than 18" diameter shall not be removed unless a tree removal permit, or equivalent, has been approved for the removal of such trees. Replacement trees are to be above and beyond standard landscaping; required street trees do not count as replacement trees.				

In the event 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 City's Environmental Supervising Planner, prior to issuance of a Planned Development permit:

- The size of a 15-gallon replacement tree can be increased to 24-inch box and count as two replacement trees.

- Identify an alternative site(s) for additional tree planting. Alternative sites may include local parks or schools or installation of trees on adjacent properties for screening purposes to the satisfaction of the Director of the Department of Planning, Building, and Code Enforcement. Contact PRNS Landscape Maintenance Manager for specific park locations in need of trees.

- Donate $300 per mitigation tree to Our City Forest for in-lieu off-site tree planting in the community. These funds will be used for tree planting and maintenance of planted trees for approximately three years. A donation receipt for off-site tree planting shall be provided to the Planning Project Manager prior to issuance of a development permit.

- To safeguard the health of any trees to be retained, the project contractor shall follow the tree protection guidelines provided in Section 13.32.130 of the San José Municipal Code during all phases of development.

f) **New Less Than Significant Impact**. The project site is located within the boundaries of the Santa Clara Valley HCP, which was adopted subsequent to certification of the 2007 Lowe's EIR. The greater Lowe's site is designated in the HCP as follows:

Area 4: Urban Development Equal to or Greater than 2 Acres Covered
Land Cover: Urban-Suburban
Land Cover Fee Zone: Urban Areas (No Land Cover Fee)

Nitrogen deposition is known to have damaging effects on many of the serpentine plants in the HCP area including the host plants that support the federally endangered Bay checkerspot butterfly. Nitrogen tends to be efficiently recycled by the plants and microbes in infertile soils such as those derived from serpentine, so that fertilization impacts could persist for

years and result in cumulative habitat degradation. Mitigation for the impacts of nitrogen deposition on serpentine habitat and the Bay checkerspot butterfly can be correlated under the HCP by charging fees for new vehicle trips that can be used to purchase conversation land for the butterfly. The project may be required to pay nitrogen deposition fees to account for indirect impacts to sensitive habitats from vehicle emissions in compliance with the HCP.

Standard Permit Condition

- The project applicant is required to submit the Santa Clara Valley Habitat Plan Coverage Screening Form to the Supervising Environmental Planner of the City of San José Department of Planning, Building, and Code Enforcement for approval and payment of the nitrogen deposition fee prior to the issuance of a grading permit.

Conclusion: The Lowe's EIR identified impacts to biological resources as follows: 1) bats in buildings and trees, 2) burrowing owls, 3) nesting birds, 4) loss of trees and impacts to retained trees. The project site no longer provides habitat for bats or burrowing owls due to disturbance from development of the Lowe's shopping center. The project would include mitigation measures as described above, consistent with the mitigation in the Lowe's EIR. The EIR concluded that the combined impacts of the tree removal at various sites in the City would result in a significant unavoidable cumulative impact and the City Council adopted a statement of overriding considerations for the impact. The project will not result in new or more significant impacts on biological resources than previously identified in the 2007 Lowe's EIR.

E. CULTURAL RESOURCES

Setting

Historic aerials and topographic maps indicate that no structures have ever existed on the project site. The project site does not contain any structures that would qualify as historical resources. Review of historic topographic maps dated 1955, 1962, 1967, 1975, and 1980 as well as aerials dated 1948, 1956, 1968, 1980, 1987, 1993, 1998, 2002 and 2005 were examined as a part of the Phase I Assessment. The project site is shown as undeveloped up to the 1969 photograph. In 1975 the project site consisted of a parking lot that served the Building 25 at IBM's Cottle Road campus. Building 25 was demolished prior to the construction of the Lowe's Home Improvement Center in 2009. No improvements associated with the former use remain on the site with the exception of groundwater monitoring data within an IBM easement.

Impacts and Mitigation

Thresholds per CEQA Checklist

ENVIRONMENTAL IMPACTS	New Potentially Significant Impact	New Less Than Significant With Mitigation Incorporated	New Less Than Significant Impact	Same Impact as Approved Project	Less Impact Than Approved Project	Source(s)
5. CULTURAL RESOURCES. Would the project:						
a) Cause a substantial adverse change in the significance of a historical resource as defined in CEQA 15064.5?					X	1, 2, 7

ENVIRONMENTAL IMPACTS	New Potentially Significant Impact	New Less Than Significant With Mitigation Incorporated	New Less Than Significant Impact	Same Impact as Approved Project	Less Impact Than Approved Project	Source(s)
b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to CEQA 15064.5?				X		1, 2, 7
c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?				X		1, 2
d) Disturb any human remains, including those interred outside of formal cemeteries?				X		1, 2

Explanation

a) **Less Impact Than Approved Project**. The project site is vacant and does not contain any historic structures. The Lowe's EIR identified an unavoidable impact from removal of a historically significant building on the site (Building 025), which has since been demolished. The project, therefore, will not have a substantial adverse change in the significance of a historical resource as defined in CEQA Section 15064.5.

b) **Same Impact as Approved Project**. No known prehistoric archaeological resources exist within the project area. The project site has been extensively graded and disturbed over the years by previous excavation and disturbance. Therefore, the likelihood of encountering archaeological resources during construction activities is low. No significant archaeological or paleontological resources were encountered during the construction of the adjacent Lowe's shopping center. As part of the development permit approval, the project will conform to the following standard permit conditions to avoid impacts associated with disturbance to buried archaeological resources in the unlikely event that they are encountered during construction. The project will implement the following updated versions of the mitigation measures identified in the Lowe's EIR, which will be included as development standard permit conditions.

Standard Permit Conditions

- In the event that prehistoric, historic, or cultural resources are encountered during excavation and/or grading of the site, all activities within a 50-foot radius of the find shall be stopped, the Supervising Environmental Planner of the Department of Planning, Building and Code Enforcement shall be notified, and a qualified archaeologist shall examine the find and make appropriate recommendations 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 during monitoring shall be submitted to the Supervising Environmental Planner of the Department of Planning, Building and Code Enforcement prior to issuance of building permits.

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

amended per Assembly Bill 2641, shall be followed. In the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The project applicant shall immediately notify the Supervising Environmental Planner of the City of San José Department of Planning, Building, and Code Enforcement and the qualified archaeologist, who will 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: 1) the Native American Heritage Commission is unable to identify a most likely descendant or the most likely descendent failed to make a recommendation within 24 hours after being notified by the commission; 2) the descendant identified fails to make a recommendation; or 3) the landowner or his authorized representative rejects the recommendation of the descendant, the mediation by the Native American Heritage Commission fails to provide measures acceptable to the landowner.

c) **Same Impact as Approved Project**. No paleontological resources have historically been identified in the project area and, therefore, it is unlikely that the project will destroy a unique paleontological resource or unique geologic feature.

d) **Same Impact as Approved Project**. Though unlikely, human remains may be encountered during construction activities. Implementation of standard permit conditions, identified in b) above, will avoid impacts associated with disturbance to human remains.

Conclusion: The Lowe's EIR identified potentially significant impacts related to historic resources, archaeological resources, and human remains. The EIR identified an unavoidable impact from removal of a historically significant building on the site (Building 025), which has since been demolished. The project will implement standard permit conditions consistent with the mitigation in the Lowe's EIR to avoid impacts to archaeological resources and human remains. The project will not result in new or more significant impacts on cultural resources than previously identified in the 2007 Lowe's EIR.

F. GEOLOGY AND SOILS

Setting

The City of San José is located in the Santa Clara Valley, a broad alluvial-covered plain lying between the Santa Cruz Mountains to the west and the Diablo Range to the east. The Valley and the entire San Francisco Bay region are within an area known as the Coast Range Geomorphic Province, an area where the geology is dominated by the deformation of the earth's surface due to the movement of the Pacific and North American tectonic plates; the San Andreas Fault system lies along the intersection of these two plates.

San José is part of the seismically-active coastal area of California. The area is classified as Seismic Zone 4, the most seismically-active in the United States. Resulting from earthquakes occurring along the San Andreas Fault system, which includes the Hayward Fault and Calaveras Fault zones, the region is subject to strong ground shaking. However, the project site is located in an area that is designated as a low liquefaction zone.

The site is currently vacant and consists of weedy vegetation and several trees. The project site is located at elevations ranging from approximately 193 feet above mean sea level (msl). The site and surrounding area are located on relatively flat terrain with the street section sloping gently in the north-northeasterly direction. Geological units mapped at the surface and identified in the area include Urban land-El palo alto complex soils.

Impacts and Mitigation

Thresholds per CEQA Checklist

ENVIRONMENTAL IMPACTS	New Potentially Significant Impact	New Less Than Significant With Mitigation Incorporated	New Less Than Significant Impact	Same Impact as Approved Project	Less Impact Than Approved Project	Source(s)
6. GEOLOGY AND SOILS. Would the project:						
a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:						
i) 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?				X		1, 2
ii) Strong seismic ground shaking?				X		1, 2
iii) Seismic-related ground failure, including liquefaction?				X		1, 2
iv) Landslides?				X		1, 2
b) Result in substantial soil erosion or the loss of topsoil?				X		1, 2
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?				X		1, 2
d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property?				X		1, 2
e) Have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available for the disposal of wastewater?				X		1, 2

Explanation

ai) **Same Impact as Approved Project**. The site is not located within a State of California Earthquake Fault Hazard Zone and no known active faults cross the site. The risk of ground rupture within the site is considered low. The project is not mapped within an Alquist-Priolo Earthquake Fault Zone. The project will be designed and developed in accordance with the California Building Code guidelines to avoid or minimize potential damage from seismic shaking on the project site as described below.

aii) **Same Impact as Approved Project**. Due to its location in a seismically active region, the proposed development would be subject to strong seismic ground shaking during its design life, in the event of a major earthquake on any of the region's active faults. This poses a risk to proposed structures and infrastructure. Seismic impacts will be minimized by implementation of standard engineering and construction techniques in compliance with the requirements of the California and Uniform Building Codes for Seismic Zone 4.

The project will implement the following updated versions of the mitigation measures identified in the Lowe's EIR, which will be included as development standard permit conditions.

Standard Permit Conditions

- Prior to the issuance of any site-specific grading or building permits, a design-level geotechnical investigation shall be prepared and submitted to the City of San José Public Works Department for review and confirmation that the proposed development complies with the California Building Code and the requirements of applicable City Ordinance 25015 and Building Division Policy SJMC 24.02.310-4-94. The report shall determine the project site's surface geotechnical conditions and address potential seismic hazards such as seismicity, expansive soils, and liquefaction. The report shall identify building techniques appropriate to minimize seismic damage. In addition, the following requirement for the geotechnical and soils report shall be met:

    - Analysis presented in the geotechnical report shall conform to the California Division of Mines and Geology recommendations presented in the "Guidelines for Evaluating Seismic Hazards in California."

aiii) **Same Impact as Approved Project**. See aii) above. The project will be designed and constructed in accordance with a design-level geotechnical investigation to avoid potentially significant impacts from geotechnical hazards.

aiv) **Same Impact as Approved Project**. The project site has no appreciable vertical relief and will not be subject to landsliding. The project will be designed and constructed in accordance with a design-level geotechnical investigation to avoid potentially significant impacts from geotechnical hazards.

b) **Same Impact as Approved Project**. Development of the project will require minor grading that could result in a temporary increase in erosion. The project will implement the standard

measures identified in Section I. Hydrology and Water Quality section of this Initial Study to minimize erosion.

c) **Same Impact as Approved Project**. The project site is relatively flat and not subject to landslides. The project will be designed and constructed in accordance with a design-level geotechnical investigation, as identified in the standard permit condition in aii) above, to avoid potentially significant impacts from geotechnical hazards.

d) **Same Impact as Approved Project**. The project will be designed and constructed in accordance with a design-level geotechnical investigation to avoid potentially significant impacts from geotechnical hazards, including expansive soils. These recommendations will be consistent with the mitigation for expansive soils that was identified in the Lowe's EIR.

e) **Same Impact as Approved Project**. The project does not include any septic systems. The proposed project will tie into the City's existing sanitary sewer system.

Conclusion: The Lowe's EIR identified significant impacts related to seismic hazards and expansive soils. Mitigation was presented in the form of required geotechnical evaluation and appropriate engineering techniques. The project will implement permit conditions consistent with this mitigation. The project will not result in new or more significant impacts on geology and soils than previously identified in the 2007 Lowe's EIR.

G. GREENHOUSE GAS EMISSIONS

Setting

Various gases in the earth's atmosphere, classified as atmospheric greenhouse gases (GHGs), play a critical role in determining the earth's surface temperature. Solar radiation enters the atmosphere from space and a portion of the radiation is absorbed by the earth's surface. The earth emits this radiation back toward space, but the properties of the radiation change from high-frequency solar radiation to lower-frequency infrared radiation. Greenhouse gases, which are transparent to solar radiation, are effective in absorbing infrared radiation. As a result, this radiation that otherwise would have escaped back into space is retained, resulting in a warming of the atmosphere. This phenomenon is known as the greenhouse effect. Among the prominent GHGs contributing to the greenhouse effect, or climate change, are carbon dioxide (CO_2), methane (CH_4), ozone (O_3), water vapor, nitrous oxide (N_2O), and chlorofluorocarbons (CFCs). Human-caused emissions of these GHGs in excess of natural ambient concentrations are responsible for enhancing the greenhouse effect. In California, the transportation sector is the largest emitter of GHGs, followed by electricity generation.

On December 15, 2015, the San José City Council certified a Supplemental Program Environmental Impact Report to the Envision San José 2040 Final Program Environmental Impact Report and re-adopted the City's GHG Reduction Strategy in the General Plan. Projects that conform to the General Plan Land Use/Transportation Diagram and supporting policies are considered consistent with the City's GHG Reduction Strategy. The GHG Reduction Strategy identifies GHG emissions reduction measures to be implemented by development projects in 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. Voluntary measures could be incorporated as mitigation measures for proposed projects, at the City's discretion.

Impacts and Mitigation

Thresholds per CEQA Checklist

ENVIRONMENTAL IMPACTS	New Potentially Significant Impact	New Less Than Significant With Mitigation Incorporated	New Less Than Significant Impact	Same Impact as Approved Project	Less Impact Than Approved Project	Source(s)
7. GREENHOUSE GAS EMISSIONS. Would the project:						
a) Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?			X			1, 3
b) Conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing the emissions of greenhouse gases?			X			1, 3

Explanation

a) **New Less Than Significant Impact**. Evaluation of GHG emissions was not required at the time that the 2007 Lowe's EIR was prepared. The City implements the GHG Reduction Strategy. Projects that conform to the General Plan Land Use/Transportation Diagram and supporting policies are considered consistent with the City's GHG Reduction Strategy, and considered to have a less-than-significant impact related to GHG emissions. The project is consistent with the site's *Combined Industrial/Commercial* General Plan land use designation, and thus complies with the City's re-adopted GHG Reduction Strategy. For this reason, the project is considered to have a less-than-significant impact related to GHG emissions.

b) **New Less Than Significant Impact**. See above. The project would not conflict with any applicable plan, policy, or regulation adopted for the purpose of reducing the emissions of greenhouse gases, since the proposed project will not substantially increase GHG emissions and is consistent with the City's GHG Reduction Strategy and General Plan land use designation as outlined above. The project will provide pedestrian access and bicycle storage, and will meet applicable GHG Reduction Strategy mandatory criteria to the extent feasible.

Conclusion: Evaluation of GHG emissions was not required at the time that the 2007 Lowe's EIR was prepared. The General Plan EIR and 2015 Supplemental EIR concluded that build-out of the General Plan would considerably contribute to GHG emissions, resulting in a significant unavoidable cumulative impact related to global climate change. The project will not result in new or more significant impacts on GHG emissions than previously identified in the General Plan EIR and 2015 General Plan SEIR.

H. HAZARDS AND HAZARDOUS MATERIALS

Setting

The Phase I Assessment was performed for the project site by Partner Engineering and Science, Inc. (December 5, 2016). This report is contained in Appendix A. The Phase I included 1) site inspection; 2) interviews with key personnel; 3) review of historical sources; 4) review of regulatory agency records; and 5) a regulatory database search.

According to available historical sources, the subject property was formerly agricultural land from at least 1939 to 1950; vacant, cleared land in 1956; vacant land and a parking lot associated with the adjacent IBM facility (5550 Cottle Road) from at least 1962 to 1968; vacant land and an asphalt-paved driveway from at least 1974 to 1982; a paved parking lot with landscaped areas from at least 1993 to 2009; and vacant, cleared land since at least 2010. IBM utilized the subject property area for office and manufacturing purposes from at least 1956 until the 1990s. The immediately surrounding properties consist of Lowe's (5550 Cottle Road) and a parking lot to the north across a driveway; Target (5630 Cottle Road) beyond Great Oaks Parkway; a driveway and intersection of Great Oaks Parkway and Charlotte Drive to the east, with a parking lot and Ramac Park farther east; and Southside Senior Center (5585 Cottle Road) beyond Cottle Road.

According to multiple groundwater monitoring reports for IBM (5550 Cottle Road), the depth and direction of groundwater adjacent to the subject property was observed to be approximately 26-42 feet below ground surface (bgs) and flows toward the west.

A recognized environmental condition (REC) refers to the presence or likely presence of any hazardous substances or petroleum products in, on, or at a property: due to release to the environment; under conditions indicative of a release to the environment; or under conditions that pose a material threat of a future release to the environment. The Phase I did not identify any recognized environmental conditions for the site.

A controlled recognized environmental condition (CREC) refers to a REC resulting from a past release of hazardous substances or petroleum products that has been addressed to the satisfaction of the applicable regulatory authority, with hazardous substances or petroleum products allowed to remain in place subject to the implementation of required controls.

The subject property and surrounding properties to the north, south and east were historically part of an approximately 350-acre facility developed with an IBM manufacturing facility (5550/5600 Cottle Road) from 1956 until the 1990s. The subject property is part of a larger parcel (Parcel A) that was developed with three buildings (Buildings 24, 25 and 30). Building 30 was historically located along the northern perimeter of the subject property and was used as offices. Building 25 was located northeast of the subject property and was historically use for offices and laboratory. These buildings were demolished in 2009, and the existing Lowe's home improvement store, parking lots and driveways were constructed in 2010. The project site was historically utilized as a parking lot, driveway, and contained landscaped areas dating back to 1956. Investigations conducted in the late 1970s on the larger 350-acre parcel indicated that releases of volatile organic compounds (VOCs) had impacted soil and groundwater. Extensive soil and groundwater remediation was conducted, portions of the site capped, and groundwater continues to be monitored (by IBM). For more information on the history of the remediation efforts, refer to Appendix A.

According to a Soil Management Plan (SMP) prepared by Golder Associates in 2009, an area of capped soil is located on the northeastern portion of the subject property, which is in the approximate location of the proposed parking lot. The proposed restaurant building is not located in an area identified as containing capped soils. The Regional Water Quality Control Board (RWQCB) approved the SMP on December 23, 2009. A Covenant and Environmental Restriction (Covenant) was signed by the RWQCB and Lowe's on May 27, 2010. The Covenant identified the areas of capped soil, and described procedures for inspection and maintenance of the caps for soil excavation, handling, and disposal of soil contaminants of concern in the capped areas. The Covenant restricted the uses of the project site, prohibiting residential uses, hospitals, schools, and day care centers. A previously prepared easement agreement between IBM and Lowe's prohibits Lowe's or future owners from disturbing the easement area (on the southern and western portion of the project site) due to the presence of subsurface piping, monitoring wells, remediation systems and electrical equipment in these areas.

Inspection of the project site indicated that it is vacant and contains grass, shrubs, and trees. One 55-gallon drum was identified near the northwestern corner of the site and is dated August 19, 2016. The drum likely contains purge water associated with sampling of the adjacent monitoring well. No apparent environmental concerns were identified in connection with this drum. The Easement Agreement between IBM and Lowe's indicated that the vacant land on the south and west portions of the subject property is used by IBM for the purposes of groundwater monitoring and remediation. Groundwater monitoring and extraction wells, groundwater remediation system (including a 5,000-gallon aboveground holding tank), piping, plumbing and electrical equipment are located in the easement area. Partner observed two groundwater monitoring wells along the southern and western easement area (MW RA-05 and MW B-16, respectively) as well as a currently inactive groundwater remediation compound and electrical equipment compound.

In conclusion, the Phase I assessment has not revealed evidence of any recognized environmental conditions or environmental issues or historical recognized environmental conditions in connection with the project site. Although the site has controlled recognized environmental conditions described above, these conditions are being monitored and, by definition, do not require any Phase II investigation.

Impacts and Mitigation

Thresholds per CEQA Checklist

ENVIRONMENTAL IMPACTS	New Potentially Significant Impact	New Less Than Significant With Mitigation Incorporated	New Less Than Significant Impact	Same Impact as Approved Project	Less Impact Than Approved Project	Source(s)
8. HAZARDS AND HAZARDOUS MATERIALS. Would the project:						
a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?				X		1, 2, 6

ENVIRONMENTAL IMPACTS	New Potentially Significant Impact	New Less Than Significant With Mitigation Incorporated	New Less Than Significant Impact	Same Impact as Approved Project	Less Impact Than Approved Project	Source(s)
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?				X		1, 2, 6
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within ¼ mile of an existing or proposed school?				X		1, 2, 6
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?				X		1, 2, 6
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?				X		1, 2
f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?				X		1, 2
g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?				X		1, 2
h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?				X		1, 2

Explanation

a) **Same Impact as Approved Project**. The project will not entail the routine use and/or transport of hazardous materials. The proposed restaurant will use common chemicals such as cleaners and disinfectants. These materials will not be of a type or quantity to pose a significant hazard to the public and safety or the environment. These products will be handled and stored in accordance with the manufacturer's specifications.

b) **Same Impact as Approved Project**. The project will not 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. The In-N-Out Burger restaurant will be constructed in accordance with the SMP and Covenant restrictions on the

greater Lowe's property, as described in the setting. This represents a less-than-significant impact.

c) **Same Impact as Approved Project**. The nearest school to the project site is Oak Grove High School located 0.85 mile west of the project. In addition, the project will not result in the release of hazardous materials into the environment as described in a) and b) above.

d) **Same Impact as Approved Project**. The project site is located on a portion of the Lowe's property that is included on a list of hazardous materials sites as per Government Code Section 65962.5 (Cortese List), from contamination associated with the former IBM campus. The project site is identified as the southern portion of "Parcel A" in the State Water Resources Control Board's GeoTracker data management system.[1] GeoTracker identifies the site as a Cleanup Program Site. As described previously, a Covenant and Environmental Restriction was signed by the RWQCB and Lowe's in May 2010. The Covenant identifies areas of capped soil and describes procedures for inspection and maintenance of the caps for soil excavation, handling, and disposal of soil contaminants of concern in the capped areas. The Covenant restricts the uses of the project site, prohibiting residential uses, hospitals, schools, and day care centers.

The project will be required to comply with the requirements of the RWQCB-approved SMP for those capped areas subject to the SMP and with the Covenant restrictions. If project development will result in the disturbance of capped soils subject to the SMP, then the procedures outlined in the SMP must be followed in accordance with the following permit condition.

Standard Permit Condition

- The applicant shall share the site development plans with RWQCB and include a detailed summary of the risk of potential impacts to construction workers, future employees, and/or the environmental during earth working activities and implement the approved SMP as applicable for work affecting any capped soils. Requirements of the SMP include: 1) a work plan, 2) a site-specific health and safety plan, 3) dust control measures, 4) runoff management measures, and 5) appropriate soil disposal methods.

e) **Same Impact as Approved Project**. The nearest airport to the project site is the Reid-Hillview Airport, located approximately 5.3 miles north from the project site. The proposed project will not result in a safety hazard for people residing or working within two miles of an airport.

f) **Same Impact as Approved Project**. The project site is not located within the vicinity of a private airstrip and will not result in a safety hazard to airstrip operations.

[1] GeoTracker contains sites that require groundwater cleanup (Leaking Underground Storage Tanks, Department of Defense, and Site Cleanup Program) as well as permitted facilities that could impact groundwater (Irrigated Lands, Oil and Gas Production, Operating USTs and Land Disposal sites).

g) **Same Impact as Approved Project**. The proposed project will not interfere with any adopted emergency or evacuation plans. The project will not create any barriers to emergency or other vehicle movement in the area and will be designed to incorporate all Fire Code requirements.

h) **Same Impact as Approved Project**. The project will not expose people or structures to risk of loss, injury or death from wildland fires as it is located in a highly developed area that is not prone to such events.

Conclusion: The Lowe's EIR identified impacts related to the presence and potential release of hazardous materials (e.g., lead-based paint, asbestos) in existing buildings to be demolished. All buildings on the site have since been removed and the project site is vacant. The project will not result in new or more significant impacts on hazards and hazardous materials than previously identified in the 2007 Lowe's EIR.

I. HYDROLOGY AND WATER QUALITY

Setting

There are no surface waterways on the project site or within about a mile of the project site. The project site is not located within an area of historic flooding, and according to the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps, the site is within Zone D. Zone D is defined as an area of undetermined but possible flood hazard outside the 100-year floodplain. The City does not have any floodplain restrictions for development in Zone D.

Stormwater runoff flows from the project site are currently discharged to a 12-inch City of San José storm drain in Cottle Road and conveyed via a 36-inch pipe to a 48-inch pipe in Blossom Hill Road, which carries the flow west to Canoas Creek.

Any construction or demolition activity that results in land disturbance equal to or greater than one acre must comply with the Construction General Permit (CGP), administered by the State Water Resources Control Board (SWRCB). The CGP requires the installation and maintenance of Best Management Practices (BMPs) to protect water quality until the site is stabilized. The project is expected to require CGP coverage based on area of land disturbed.

Prior to the commencement of construction or demolition, the project must file a Notice of Intent (NOI) with the SWRCB and develop, implement and maintain a Storm Water Pollution Prevention Plan (SWPPP) to control the discharge of stormwater pollutants associated with construction activities.

All development projects, whether subject to the CGP or not, shall comply with the City of San José's Grading Ordinance, which requires the use of erosion and sediment controls to protect water quality while the site is under construction. Prior to the issuance of a permit for grading activity occurring during the rainy season, the project will submit to the Director of Public Works an Erosion Control Plan detailing BMPs that will prevent the discharge of stormwater pollutants.

The City of San José is required to operate under a Municipal Stormwater NPDES Permit to discharge stormwater from the City's storm drain system to surface waters. On October 14, 2009, the San Francisco Bay Regional Water Quality Control Board adopted the San Francisco Bay Region

Municipal Regional Stormwater NPDES Permit (MRP) for 76 Bay Area municipalities, including the City of San José. The Municipal Regional Permit mandates the City of San José use its planning and development review authority to require that stormwater control measures are included in new and redevelopment projects to minimize and properly treat stormwater runoff. Provision C.3 of the MRP regulates the following types of development projects:

- Projects that create or replace 10,000 square feet or more of impervious surface.
- Special Land Use Categories that create or replace 5,000 square feet or more of impervious surface.

The MRP requires regulated projects to include Low Impact Development (LID) practices, such as pollutant source control measures and stormwater treatment features aimed to maintain or restore the site's natural hydrologic functions. The MRP requires that stormwater treatment measures are properly installed, operated, and maintained.

The City has developed policies that implement Provision C.3, consistent with the MRP. The City's Post-Construction Urban Runoff Management Policy (6-29) establishes specific requirements to minimize and treat stormwater runoff from new and redevelopment projects. The City's Post-Construction Hydromodification Management Policy (8-14) establishes an implementation framework for incorporating measures to control hydromodification impacts from development projects.

The proposed project would increase the amount of impervious surfaces on the site compared to existing conditions by approximately 50,000 square feet. Based on its size and land use, the project will be required to comply with the LID stormwater control requirements of Provision C.3 of the MRP. The City of San José's Policy No. 6-29 requires all new and redevelopment projects to implement post-construction Best Management Practices (BMPs) and Treatment Control Measures (TCMs) such as Low Impact Development (LID) measures to treat stormwater runoff. These measures are also utilized to reduce the total amount of stormwater runoff from a site. This policy also established specific design standards for post-construction TCMs for projects that create, add, or replace 10,000 square feet or more of impervious surfaces.

The MRP also requires regulated projects to include measures to control hydromodification impacts where the project would otherwise cause increased erosion, silt pollutant generation, or other adverse impacts to local rivers and creeks. In addition, development projects that create and/or replace one acre or more of impervious surface and are located in a subwatershed or catchment that is less than 65% impervious must manage increases in runoff flow and volume so that post-project runoff shall not exceed estimated pre-project rates and durations. Since the project site is located in a catchment/subwatershed area that is greater than or equal to 65% impervious, it is not subject to the hydromodification control requirements under the MRP's C.3 Provision and City Council Policy 8-14.

Impacts and Mitigation

Thresholds per CEQA Checklist

ENVIRONMENTAL IMPACTS	New Potentially Significant Impact	New Less Than Significant With Mitigation Incorporated	New Less Than Significant Impact	Same Impact as Approved Project	Less Impact Than Approved Project	Source(s)
9. HYDROLOGY AND WATER QUALITY. Would the project:						
a) Violate any water quality standards or waste discharge requirements?				X		1, 2
b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local ground water table level (for example, the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?				X		1, 2
c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site.				X		1, 2
d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner that would result in flooding on- or off-site?				X		1, 2
e) Create or contribute runoff water which would exceed the capacity of existing or planned storm water drainage systems or provide substantial additional sources of polluted runoff?				X		1, 2
f) Otherwise substantially degrade water quality?				X		1, 2
g) Place housing within a 100-year flood-hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?				X		1, 2
h) Place within a 100-year flood-hazard area structures, which would impede or redirect flood flows?				X		1, 2
i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?				X		1, 2
j) Inundation by seiche, tsunami, or mudflow?				X		1, 2

Explanation

a) **Same Impact as Approved Project**. The proposed development will not violate any water quality standards or waste discharge requirements as described in c) and e) below.

b) **Same Impact as Approved Project**. The project will not deplete or otherwise affect groundwater supplies because it would not access groundwater. In addition, the project would not deplete/otherwise affect groundwater recharge, since the project is not located within a groundwater recharge area.

c) **Same Impact as Approved Project**. Construction of the project would require grading activities that could result in a temporary increase in erosion affecting the quality of storm water runoff. This increase in erosion is expected to be minimal, due to the small size and flatness of the site. The project will implement the standard measures identified below to minimize erosion and water quality impacts. As a part of the development permit approval, the project will conform to the following conditions, consistent with the mitigation identified in the 2007 Lowe's EIR.

Standard Permit Conditions

Construction Measures

Prior to the commencement of any clearing, grading or excavation, the project shall comply with the State Water Resources Control Board's National Pollutant Discharge Elimination System (NPDES) General Construction Activities Permit, to the satisfaction of the Director of Public Works, as follows:

1. The applicant shall develop, implement and maintain a Storm Water Pollution Prevention Plan (SWPPP) to control the discharge of stormwater pollutants including sediments associated with construction activities.
2. The applicant shall file a Notice of Intent (NOI) with the State Water Resources Control Board (SWRCB).

The project shall incorporate Best Management Practices (BMPs) into the project to control the discharge of stormwater pollutants including sediments associated with construction activities. Examples of BMPs are contained in the publication *Blueprint for a Clean Bay*, and include preventing spills and leaks, cleaning up spills immediately after they happen, storing materials under cover, and covering and maintaining dumpsters. Prior to the issuance of a grading permit, the applicant may be required to submit an Erosion Control Plan to the City Project Engineer, Department of Public Works, 200 E. Santa Clara Street, San José, California, 95113. The Erosion Control Plan may include BMPs as specified in ABAG's *Manual of Standards Erosion & Sediment Control Measures* for reducing impacts on the City's storm drainage system from construction activities.

The project applicant shall comply with the City of San José Grading Ordinance, including erosion and dust control during site preparation and with the City of San José Zoning Ordinance requirements for keeping adjacent streets free of dirt and mud during construction.

The following specific BMPs will be implemented to prevent stormwater pollution and minimize potential sedimentation during construction:

1. Restriction of grading to the dry season (April 30 through October 1) or meet City requirements for grading during the rainy season;
2. Utilize on-site sediment control BMPs to retain sediment on the project site;
3. Utilize stabilized construction entrances and/or wash racks;
4. Implement damp street sweeping;
5. Provide temporary cover of disturbed surfaces to help control erosion during construction; and
6. Provide permanent cover to stabilize the disturbed surfaces after construction has been completed.

Post-Construction

The project shall comply with applicable provisions of the following City Policies: City Council Policy 6-29 Post-Construction Urban Runoff Management and City Council Policy 8-14 Post-Construction Hydromodification Management.

Details of specific Site Design, Pollutant Source Control, Stormwater Treatment Control, and Hydromodification Control measures demonstrating compliance with Provision C.3 of the MRP (NPDES Permit Number CAS612008), shall be included in the project design, to the satisfaction of the Director of Planning, Building and Code Enforcement.

d) **Same Impact as Approved Project**. The project will increase the amount of impervious area on the project site by approximately 50,000 square feet. The project proposes to implement a stormwater control plan to manage runoff (see Figure 5), that includes bioretention and landscape areas.

e) **Same Impact as Approved Project**. The project proposes to connect to the City's existing storm drainage system. The project is not expected to contribute runoff that will exceed the capacity of existing or planned stormwater drainage systems or result in substantial additional sources of polluted runoff. See also c) above.

f) **Same Impact as Approved Project**. Surface runoff from the site may contain urban pollutants. Runoff from the site could include oil, grease, and trace metals from the driveways and parking areas. The project could also generate urban pollutants related to the use of fertilizers, pesticides, and herbicides on landscaped areas. The project will implement a stormwater control plan to treat runoff. See also c) and d) above.

g) **Same Impact as Approved Project**. The project is not located within a 100-year floodplain or flood hazard zone as mapped by FEMA (site is within Zone D).

h) **Same Impact as Approved Project**. The project site is located outside the 100-year floodplain (Zone D) and will not significantly impede or redirect flood flows.

i) **Same Impact as Approved Project**. See g) and h) above. The project is not subject to flooding from failure of a dam. The project site is not protected by any levees. The project site is within the dam failure inundation zone of the Anderson Dam. However, complete dam

failure is unlikely with implementation of management measures taken by the Santa Clara Valley Water District.

j) **Same Impact as Approved Project**. The project site is not located in an area subject to significant seiche, tsunami, or mudflow risk.

Conclusion: The Lowe's EIR identified impacts related to storm drainage and degradation of surface water quality during construction. Mitigation was identified in the form of storm drain improvements for the project, and implementation of regulatory requirements and best management practices during construction. The project will implement permit conditions consistent with this mitigation. The project will not result in new or more significant impacts on hydrology and water quality than previously identified in the 2007 Lowe's EIR.

J. LAND USE

Setting

The project site is located in an urbanized area within the City of San José corporate limits. The project site is designated *Combined Industrial/Commercial* in the City's Envision San José 2040 General Plan. The project site is currently zoned PD. The project proposes a Planned Development Rezoning of the entire ±17 acre Lowe's property and a Planned Development Permit on the 2.4 (gross) acre project site to allow the construction of the In-N-Out Burger restaurant with drive-thru.

Impacts and Mitigation

Thresholds per CEQA Checklist

ENVIRONMENTAL IMPACTS	New Potentially Significant Impact	New Less Than Significant With Mitigation Incorporated	New Less Than Significant Impact	Same Impact as Approved Project	Less Impact Than Approved Project	Source(s)
10. LAND USE AND PLANNING. Would the project:						
a) Physically divide an established community?				X		1, 2
b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?				X		1, 3
c) Conflict with any applicable Habitat Conservation Plan or Natural Community Conservation Plan?				X		1

Explanation

a) **Same Impact as Approved Project**. The project is proposed on an infill site in an urban area that is currently developed. The proposed commercial development will not physically divide an established community.

b) **Same Impact as Approved Project**. The project site is designated *Combined Industrial/Commercial* on the Envision San José 2040 General Plan Land Use/Transportation Diagram. This category allows a significant amount of flexibility for the development of a varied mixture of compatible commercial and industrial uses.

The site is currently vacant. The Lowe's Home Improvement Center was constructed immediately north of the proposed site in 2008/2009 pursuant to PD 07-063. The 2.4 gross acre proposed restaurant is designated as Future Pad 2 in the existing PD permit. The project applicant is seeking approval of a zoning change in order to allow for the drive-thru use, as well as approval of a Parcel Map to create the In-N-Out Burger restaurant parcel. Approval of this zoning change will ensure that the project and zoning are consistent.

The proposed use is consistent with the City's General Plan land use designation. The project will not conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project adopted for the purpose of avoiding or mitigating an environmental effect.

c) **Same Impact as Approved Project**. Please refer to D. Biological Resources for a discussion of the project's consistency with the Santa Clara Valley HCP.

Conclusion: The Lowe's EIR did not identify any land use impacts. The project will not result in new or more significant land use impacts than previously identified in the 2007 Lowe's EIR.

K. MINERAL RESOURCES

Setting

Under the Surface Mining and Reclamation Act of 1975 (SMARA), the State Mining and Geology Board has designated only the Communications Hill Area of San José as containing mineral deposits of regional significance for aggregate (Sector EE). There are no mineral resources in the project area. Neither the State Geologist nor the State Mining and Geology Board has classified any other areas in San José as containing mineral deposits that are of statewide significance or for which the significance requires further evaluation. Other than the Communications Hill area cited above, San José does not have mineral deposits subject to SMARA. The project site lies outside of the Communications Hill area.

Impacts and Mitigation

Thresholds per CEQA Checklist

ENVIRONMENTAL IMPACTS	New Potentially Significant Impact	New Less Than Significant With Mitigation Incorporated	New Less Than Significant Impact	Same Impact as Approved Project	Less Impact Than Approved Project	Source(s)
11. 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 the residents of the state?				X		1, 2
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?				X		1, 2

Explanation

a), b) **Same Impact as Approved Project**. The project site is located outside the Communications Hill area, the only area in San José containing mineral deposits subject to SMARA; therefore, the project will not result in a significant impact from the loss of availability of a known mineral resource.

Conclusion: The Lowe's EIR did not identify any impacts related to mineral resources. The project will not result in new or more significant impacts on mineral resources than previously identified in the 2007 Lowe's EIR.

L. NOISE

Setting

Noise is measured in decibels (dB), and is typically characterized using the A-weighted sound level or dBA. This scale gives greater weight to the frequencies to which the human ear is most sensitive. The City's Envision San José 2040 General Plan applies the Day-Night Level (DNL) descriptor in evaluating noise conditions. The DNL represents the average noise level over a 24-hour period and penalizes noise occurring between the hours of 10 PM and 7 AM by 10 dB.

San José General Plan

The City's Envision San José 2040 General Plan includes goals and policies pertaining to noise and vibration. Community Noise Levels and Land Use Compatibility (commonly referred to as the Noise Element) of the General Plan utilizes the DNL descriptor and identifies interior and exterior noise standards for residential uses. The Envision San José 2040 General Plan and the San José Municipal Code include the following criteria for land use compatibility and acceptable noise levels in the City.

EXTERIOR NOISE EXPOSURE (DNL IN DECIBELS DBA) FROM GENERAL PLAN TABLE EC-1: Land Use Compatibility Guidelines for Community Noise in San José							
Land Use Category	**Exterior DNL Value In Decibels**						
	55	**60**	**65**	**70**	**75**	**80**	
1. Residential, Hotels and Motels, Hospitals and Residential Care							
2. Outdoor Sports and Recreation, Neighborhood Parks and Playgrounds							
3. Schools, Libraries, Museums, Meeting Halls, and Churches							
4. Office Buildings, Business Commercial, and Professional Offices							
5. Sports Arenas, Outdoor Spectator Sports							
6. Public and Quasi-Public Auditoriums, Concert Halls, and Amphitheaters							
	Normally Acceptable: Specified land use is satisfactory, based upon the assumption that any buildings involved are of normal conventional construction, without any special noise insulation requirements.						
	Conditionally Acceptable: Specified land use may be permitted only after detailed analysis of the noise reduction requirements and noise mitigation features included in the design.						
	Unacceptable: New construction or development should generally not be undertaken because mitigation is usually not feasible to comply with noise element policies. (Development will only be considered when technically feasible mitigation is identified that is also compatible with relevant design guidelines.)						

- Policy EC-1.1 of the General Plan calls for locating 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 exterior noise exposure standards and guidelines for land uses in San José are described in the table above. The City's standard for interior noise levels in residences, hotels, motels, residential care facilities, and hospitals is 45 dBA DNL. Development should include appropriate site and building design, building construction and noise attenuation techniques to meet this standard.

- Policy EC-1.2 of the General Plan considers noise impacts significant if a project would increase noise levels on adjacent sensitive land uses including residences as follows:

    - Cause the DNL at noise sensitive receptors to increase by five dBA DNL or more where the noise levels would remain "Normally Acceptable"; or

    - Cause the DNL at noise sensitive receptors to increase by three dBA DNL or more where noise levels would equal or exceed the "Normally Acceptable" level.

- Policy EC-1.3: of the General Plan requires mitigation of noise generation of new nonresidential land uses 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-1.7 of the General Plan requires construction operations to use best available noise suppression devices and techniques and limit construction hours near residential uses per the City's Municipal Code. The City considers significant construction noise impacts to occur if a project located within 500 feet of residential uses or 200 feet of commercial or office uses would:

    - Involve substantial noise generating activities (such as building demolition, grading, excavation, pile driving, use of impact equipment, or building framing) continuing for more than 12 months.

    For large or complex projects, a construction noise logistics plan is required 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, to be in place prior to the start of construction and implemented during construction to reduce noise impacts on neighboring residents and other uses.

- Policy EC-2.3 of the General Plan requires new development to minimize vibration impacts to adjacent uses during demolition and construction. For sensitive historic structures, a vibration limit of 0.08 in/sec PPV (peak particle velocity) will be used to minimize the potential for cosmetic damage to a building. A vibration limit of 0.20 in/sec PPV will be used to minimize the potential for cosmetic damage at buildings of normal conventional construction.

San José Municipal Code

Per the San José Municipal Code Title 20 (Zoning Ordinance) Noise Performance Standards, the sound pressure level generated by any use or combination of uses on a property shall not exceed the decibel levels indicated in the table below at any property line, except upon issuance and in compliance with a Special Use permit as provided in Chapter 20.100.

City of San José Zoning Ordinance Noise Standards	
Land Use Types	**Maximum Noise Levels in Decibels at Property Line**
Commercial or industrial uses adjacent to a property used or zoned for residential purposes	55
Commercial or industrial uses adjacent to a property used or zoned for commercial or other non-residential purposes	60
Industrial use adjacent to a property used or zoned for industrial or other use other than commercial or residential purposes	70

Noise Environment

The project site is located near existing commercial and residential land uses. The nearest noise sensitive receptors are residences located more than 700 feet southwest of the site. Based on the General Plan FEIR, noise levels around the project site range from 65 to 70 dBA. Estimated future traffic volumes associated with planned growth and redevelopment in the project area would remain between 65 to 70 dBA.

Impacts and Mitigation

Thresholds per CEQA Checklist

ENVIRONMENTAL IMPACTS	New Potentially Significant Impact	New Less Than Significant With Mitigation Incorporated	New Less Than Significant Impact	Same Impact as Approved Project	Less Impact Than Approved Project	Source(s)
12. NOISE. Would the project result in						
a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance or applicable standards of other agencies?				X		1, 2, 7
b) Exposure of persons to or generation of excessive ground borne vibration or ground borne noise levels?				X		1, 2
c) Substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?				X		1, 2, 7
d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?				X		1, 2, 7
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?				X		1, 2
f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?				X		1, 2

Explanation

a) **Same Impact as Approved Project**. During the operational phase of the project, potential noise impacts could result from on-site activities. The Lowe's EIR indicated that operational noise would be typical for a commercial center and would be considered as isolated peak noise occurrences. The EIR concluded that operational noise would not expose persons to excessive noise and would be less-than-significant.

For informational purposes, the following discussion of noise is provided, based in part on the analysis provided in the Initial Study/Mitigated Negative Declaration prepared for the Cottle Road Chick-fil-A (City of San José, July 2014) formerly proposed on the project site.

Noise generated by the proposed fast-food restaurant use typically includes use of a speaker system at the drive-thru window, increases in traffic, outdoor mechanical equipment, and truck deliveries. Policy EC-1.2 of the 2040 General Plan states that a significant noise impact would occur if the proposed project would cause the noise at sensitive receptors to increase by 5 dBA or more where the noise levels would remain at "Normally Acceptable" levels, or cause the noise at sensitive receptors to increase by 3 dBA or more where noise levels would equal or exceed the "Normally Acceptable" level.

Drive-Thru. During the day, the speaker would not exceed a noise level of 54 dBA. The drive-thru speaker (menu) board will be located more than 800 feet from the southeastern

boundary of the closest residences. At this distance, and with intervening fencing and vegetation, the sound level from the speaker is expected to be substantially less than the "Normally Acceptable" noise standard of 60 dBA.

Rooftop Mechanical Equipment. Specific details were not available for the rooftop forced air units. Noise impacts from rooftop mechanical equipment are anticipated to be at a level of 59.5 dBA at a distance of 10 feet. Since there are no sensitive receptors within 50 feet of the restaurant, the noise effects from rooftop forced air units are considered less-than-significant.

Parking/Patio Areas. Sources of parking lot noise are primarily generated by engine and tire noise, slamming of doors, use of trash receptacles, and patron's conversations. The proposed patio dining also generates noise from patron's conversations. The existing traffic noise from the adjacent streets will mask the noise from short-term, single event occurrences from the parking lot and outdoor patio areas.

The proposed trash compactor and enclosure is located on the western portion of the site, over 800 feet from the nearest residential uses to the southwest. Garbage/recycling collection is anticipated up to three times a week. Trash and recycling pick-up could occur any time between 6:00 a.m. and 4:00 p.m. Although the pick-up would be audible, it would only a few minutes to perform and will not be a continuous source of noise.

Deliveries. Deliveries from semi-trailer trucks could occur two or three times per week while deliveries from smaller trucks could occur daily. However, the noise evaluation accounts for a greater number of truck trips to overestimate noise in order to evaluate a worst case conservative scenario. Onsite deliveries are expected to occur early in the day and last for no more than 15 minutes. Based on noise monitoring events at similar facilities, the loading/unloading activities associated with the deliveries are projected to generate noise levels of up to 75 dBA at a distance of 50 feet. At an approximate distance of 1,000 feet (location of trucks within parking lot), the maximum noise level would be approximately 31.34 dBA. As discussed previously, buildings and vegetation would further shield the residences from noise generated from the project site.

b) **Same Impact as Approved Project**. The metric for measuring ground borne noise and vibration is peak ground velocity (measured in inches per second). The commonly accepted perception threshold for ground vibration is 0.01 inch per second. During the construction phase, groundborne vibration and groundborne noise may occur. However, general construction activities such as grading are not known to induce strong vibration effects. Additionally, there are no buildings in the immediate vicinity that would be affected by construction vibration. This represents a less-than-significant impact.

c) **Same Impact as Approved Project**. The noise increases from operation of the project are evaluated in a) above. Noise will be generated on the site in the short-term during construction activities as described in d) below.

d) **Same Impact as Approved Project**. Construction activities generate considerable amounts of noise, especially during earth-moving activities when heavy equipment is used. The construction of the project will involve grading, foundation placement, building development, and paving. The hauling of excavated materials will generate truck trips and

associated noise along local roadways. Given that certain pieces of construction equipment can generate noise levels of 85 dBA or louder at a distance of 50 feet, project-related construction activities would temporarily raise ambient noise levels in the project vicinity. The project will implement the following updated versions of the mitigation measures identified in the Lowe's EIR to minimize noise during construction, which will be included as development standard permit conditions.

Standard Permit Conditions

- Construction activities shall be limited to the hours between 7:00 am and 7:00 pm, Monday through Friday, unless permission is granted with a development permit or other planning approval. No construction activities are permitted on the weekends at sites within 500 feet of a residence.

- Construct solid plywood fences around ground level construction sites adjacent to operational businesses, residences, or other noise-sensitive land uses.

- Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment.

- Unnecessary idling of internal combustion engines shall be strictly prohibited. Locate stationary noise-generating equipment such as air compressors or portable power generators as far as possible from sensitive receptors. Construct temporary noise barriers to screen stationary noise-generating equipment when located near adjoining sensitive land uses. Temporary noise barriers could reduce construction noise levels by 5 dBA.

- Utilize "quiet" air compressors and other stationary noise sources where technology exists.

- Control noise from construction workers' radios to a point where they are not audible at existing residences bordering the project site.

- Notify all adjacent business, residences, and other noise-sensitive land uses of the construction schedule, in writing, and provide a written schedule of "noisy" construction activities to the adjacent land uses and nearby residences.

- Erect a temporary noise control blanket barrier, if necessary, along building façades facing construction sites. This mitigation would only be necessary if conflicts occurred that were irresolvable by proper scheduling. Noise control blanket barriers can be rented and quickly erected.

- Designate a "disturbance coordinator" responsible for responding to any complaints about construction noise. The disturbance coordinator will determine the cause of the noise complaint (e.g., bad muffler, etc.) and will require that reasonable measures be implemented to correct the problem. Conspicuously post a telephone number for the disturbance coordinator at the construction site and include in it the notice sent to neighbors regarding the construction schedule.

e), f) **Same Impact as Approved Project**. The project is not located within the vicinity of any airports.

Conclusion: The Lowe's EIR identified significant noise impacts during construction and presented mitigation in the form of standard noise abatement measures during construction activities. The project will not result in new or more significant noise impacts than previously identified in the 2007 Lowe's EIR.

M. POPULATION AND HOUSING

Setting

The population of the City of San José is approximately 1,026,908 (U.S. Census Bureau, 2015). The proposed fast-food restaurant is intended to meet the demand for such uses in the local San José community.

Impacts and Mitigation

Thresholds per CEQA Checklist

ENVIRONMENTAL IMPACTS	New Potentially Significant Impact	New Less Than Significant With Mitigation Incorporated	New Less Than Significant Impact	Same Impact as Approved Project	Less Impact Than Approved Project	Source(s)
13. POPULATION AND HOUSING. Would the project:						
a) Induce substantial 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)?				X		1, 2
b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?				X		1, 2
c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?				X		1, 2

Explanation

a) **Same Impact as Approved Project**. Construction of the proposed restaurant would not result in any substantial population growth, as no residential use is proposed. The project would create very limited job opportunities. In addition, the project does not propose any off-site improvements that would result in population growth. Development of the project would not result in any project-level impacts related to substantial population growth during the short-term construction phase or long-term project operation.

b) **Same Impact as Approved Project**. The proposed restaurant is proposed on a vacant lot and will not displace existing housing or require the construction of replacement housing.

c) **Same Impact as Approved Project**. See b) above.

Conclusion: The Lowe's EIR did not identify any impacts related to population and housing. The project will not result in new or more significant impacts on population and housing than previously identified in the 2007 Lowe's EIR.

N. PUBLIC SERVICES

Setting

Fire Protection: Fire protection services are provided to the project site by the San José Fire Department (SJFD). The closest fire station to the project site is Station 35, located approximately 0.1 miles from the project site at 135 Poughkeepsie Road.

Police Protection: Police protection services are provided to the project site by the San José Police Department (SJPD). The San José Police Department is headquartered in downtown San José.

Parks: The nearest park is Ramac Park, located about 0.1 miles (528 feet) from the project site at Charlotte Drive.

Impacts and Mitigation

Thresholds per CEQA Checklist

ENVIRONMENTAL IMPACTS	New Potentially Significant Impact	New Less Than Significant With Mitigation Incorporated	New Less Than Significant Impact	Same Impact as Approved Project	Less Impact Than Approved Project	Source(s)
14. PUBLIC SERVICES. Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities or 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?				X		1, 2
b) Police protection?				X		1, 2
c) Schools?				X		1, 2
d) Parks?				X		1, 2
e) Other public facilities?				X		1, 2

Explanation

a) **Same Impact as Approved Project**. The project will result in an incremental increase in the demand for fire protection services. The final project design will incorporate the appropriate fire safety measures in consultation with the San José Fire Department. The project will not significantly impact fire protection services or require the construction of new or remodeled facilities.

b) **Same Impact as Approved Project**. The project will result in an incremental increase in the demand for police protection services. The final project design will incorporate the appropriate security measures in consultation with the San José Police Department. The project will not significantly impact police protection services or require the construction of new or remodeled facilities.

c) **Same Impact as Approved Project**. The proposed project does not include residential development and, thus, will not generate student demand for school services.

d) **Same Impact as Approved Project**. The proposed project does not include residential development and, thus, is not subject to the City's Parkland Dedication Ordinance and Park Impact Ordinance, which are not applicable to the commercial use.

e) **Same Impact as Approved Project.** The proposed project does not include residential development and, thus, will not impact other public services, including library services.

Conclusion: The Lowe's EIR did not identify any impacts to public services. The project will not result in new or more significant impacts on public services than previously identified in the 2007 Lowe's EIR.

O. RECREATION

Setting

The nearest park is Ramac Park located about 0.1 miles (528 feet) east of the project site on Charlotte Drive.

Impacts and Mitigation

Thresholds per CEQA Checklist

ENVIRONMENTAL IMPACTS	New Potentially Significant Impact	New Less Than Significant With Mitigation Incorporated	New Less Than Significant Impact	Same Impact as Approved Project	Less Impact Than Approved Project	Source(s)
15. 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?				X		1, 2
b) Include recreational facilities or require the construction or expansion of recreational facilities, which might have an adverse physical effect on the environment?				X		1, 2

Explanation

a), b) **Same Impact as Approved Project**. The development of the restaurant use on the project site will not increase the use of parks or other recreational facilities. The City's Parkland Dedication Ordinance and Park Impact Ordinance require residential developers to dedicate public park land or pay in-lieu fees (or both) to compensate for the increase in demand for neighborhood parks. However, the proposed commercial/industrial use is not subject to these ordinances.

Conclusion: The Lowe's EIR did not identify any impacts related to recreation. The project will not result in new or more significant impacts on recreational facilities than previously identified in the 2007 Lowe's EIR.

P. TRANSPORTATION

Setting

The following section is based on a traffic study prepared for the project by Hexagon Transportation Consultants, Inc. (May 4, 2017). This report is contained in Appendix B. The 2.4-acre project site is located within a portion of the 17.4-acre Lowe's property. This area has environmental clearance for use as a restaurant as part of the Lowe's EIR. Accordingly, the project is in conformance with the City of San José's Transportation Level of Service Policy (Council Policy 5-3) and will not require preparation of a comprehensive transportation impact analysis. A traffic operations study was prepared for the project that focuses on trip generation, site access, circulation, parking, and drive-thru operations.

Regional access to the project site is provided by US 101 and SR 85. Local site access is provided by Monterey Road, Blossom Hill Road, Cottle Road, Poughkeepsie Road, and Great Oaks Parkway. Traffic conditions were observed in the field during the PM peak period in order to identify any existing operational deficiencies in the immediate vicinity of the project site. The field observations did not reveal any significant traffic-related issues.

Pedestrian facilities in the study area consist of sidewalks along all of the surrounding streets and crosswalks at all of the intersections in the area. All signalized intersections in the area include pedestrian signal heads with push buttons and ADA compliant curb ramps. Overall the existing sidewalks have good connectivity and provide pedestrians with safe routes to the surrounding land uses in the area.

Class II bicycle facilities (striped bike lanes) are provided along the following roadways in the study area: Monterey Road; Cottle Road; Poughkeepsie Road; and Great Oaks Parkway.

Santa Clara Valley Transportation Authority (VTA) bus routes and a light rail station are located within walking distance of the project site. The project is located near the VTA bus lines 27, 42, and 68. The VTA also operates a light rail system. The Alum Rock-Santa Teresa light rail line operates along SR-85. The Cottle Road light rail station is located approximately half mile south of the project site.

Impacts and Mitigation

Thresholds per CEQA Checklist

ENVIRONMENTAL IMPACTS	New Potentially Significant Impact	New Less Than Significant With Mitigation Incorporated	New Less Than Significant Impact	Same Impact as Approved Project	Less Impact Than Approved Project	Source(s)
16. TRANSPORTATION/TRAFFIC. Would the project:						
a) Conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the circulation system, taking into account all modes of transportation including mass transit and non-motorized travel and relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit?				X		1, 2, 8
b) Conflict with an applicable congestion management program, including but not limited to level of service standards and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways?				X		1, 2, 8
c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?				X		1, 2
d) Substantially increase hazards due to a design feature (for example, sharp curves or dangerous intersections) or incompatible uses (for example, farm equipment)?				X		1, 2, 8
e) Result in inadequate emergency access?				X		1, 2
f) Conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities?				X		1, 2

Explanation

a) **Same Impact as Approved Project.** A traffic operations study was prepared for the project that focuses on trip generation, site access, circulation, parking, and drive-thru operations (see Appendix B). New driveway traffic counts were conducted during the existing weekday PM peak hour at Cottle Road/Great Oaks Parkway, Charlotte Drive/Great Oaks Parkway, and Cottle Road/Project Driveway. Although the weekday lunchtime peak hour is often the busiest time period of the day for fast food restaurants, the adjacent street traffic volume is noticeably lower during the midday time period than during either the AM or PM peak commute periods. Note also that the In-N-Out Burger restaurant will not be open in the morning; therefore, the weekday AM and midday time periods were not analyzed in the traffic study.

Trips generated by new development are typically estimated based on counts of existing developments of the same land use as that proposed. To determine the trips generated by the proposed project, trips were counted at two In-N-Out Burger restaurants located at 5611 Santa Teresa Boulevard and 2950 E. Capitol Expressway. These two locations were chosen because they are located in areas similar to the project. Based on the counts, a typical In-N-Out Burger restaurant in San José can be expected to generate 239 gross vehicle trips during the weekday PM peak hour, with 123 inbound trips and 116 outbound trips. According to the ITE Trip Generation Handbook, half of the trips generated by a fast-food restaurant with a drive-thru lane are pass-by trips. Pass-by-trips are trips that would already be on the adjacent roadways (and are thus already counted in the existing traffic) but visit the site while passing by. After applying the standard pass-by trip reduction, the project would generate 62 new inbound and 58 new outbound trips during the PM peak hour (see Table 2).

Table 2
Project Trip Generation Estimates

Land Use	Size[1]	PM Peak Hour Rate[2]	PM Peak Hour Trips		
			In	Out	Total
In-N-Out Burger Restaraunt[3]	3.87 ksf	61.68	123	116	239
50% Pass-by Trip Reduction[4]			-61	-58	-119
Net Project Trips			62	58	120

[1]KSF =1,000 square foot gross leasable area.
[2]Rate is expressed in trips per 1,000 square feet.
[3]Based on counts of 2 In-N-Out Burger restaurants (5611 Santa Teresa Blvd & 2950 E. Capitol Expressway) conducted on Wednesday, January 25, 2017.
[4] Pass-by reduction based on data for a Fast Food Restaurant with Drive-Through contained in the ITE *Trip Generation Handbook.*

The intersections of Cottle Road/Great Oaks Parkway, Cottle Road/Concord Drive, and Charlotte Drive/Great Oaks Parkway were evaluated for vehicle queuing issues for the left-turn movements where the project would add trips. The 95th percentile queue length value indicates that during the peak PM hour, a queue of this length or less would occur on 95 percent of the signal cycles. The intersection queuing analysis indicates that the existing left-turn pocket storage capacities are adequate to accommodate the existing maximum left-turn vehicle queues at all three intersections during the PM peak hour and that adequate left-turn pocket vehicle storage would continue to be provided with the addition of project traffic combined with other approved development in the area.[2]

The San José City Council Policy 6-10 contains guidelines for the development of establishments with drive-thru facilities within the City of San José. The Policy sets forth criteria (specifically Traffic Criteria A through E) relating to drive-thru location, vehicular ingress and egress, and vehicle stacking. The traffic study evaluated the proposed drive-thru design for consistency with Council Policy 6-10 and concluded that it meets the Policy's guidelines and will provide adequate vehicle stacking. No operational issues are expected to occur on or off the site as a result of the drive-thru lane.

[2] Note that the calculated vehicle queue for the westbound left-turn movement at the intersection of Cottle Road and Great Oaks Parkway increases significantly under background conditions due to the additional trips that are estimated to occur from buildout of the approved Hitachi Site Master Plan project.

The traffic study evaluated site access and determined that the site plan shows adequate site access and on-site circulation for passenger vehicles, trucks, pedestrians and bicyclists. The proposed drive-thru design would provide adequate on-site vehicle stacking, adequate parking would be provided on-site, and no operational issues are expected to occur on or off the site as a result of the proposed In-N-Out Burger restaurant.

In conclusion, the project will not conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the circulation system.

b) **Same Impact as Approved Project**. The project would not conflict with an applicable congestion management program, including but not limited to, level of service standards and travel demand measures. See discussion a) above.

c) **Same Impact as Approved Project**. The proposed In-N-Out Burger restaurant will not affect air traffic.

d) **Same Impact as Approved Project**. The project will not substantially increase hazards due to a design feature (for example, sharp curves or dangerous intersections) or incompatible uses (for example, farm equipment). The traffic study for the project concluded that the site plan shows adequate site access and on-site circulation for passenger vehicles, trucks, pedestrians and bicyclists.

e) **Same Impact as Approved Project**. The project will not result in inadequate emergency access since it will comply with all Fire Department codes and regulations regarding access. See also d) above.

f) **Same Impact as Approved Project**. The project will not conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities.

The project is proposing to construct a 6-foot wide meandering paved walkway along the south and west sides of the site between the property line and the existing sidewalks on Great Oaks Parkway and Cottle Road. The walkway would include benches for public use, as well as two plaza areas with benches and tables, and would tie into the sidewalks along Great Oaks Parkway and Cottle Road. The Great Oaks Parkway sidewalk connection would include a short crosswalk at the drive-thru exit near the southeast corner of the building. A typical location for a pedestrian crossing at a drive-thru lane is at or near the drive-thru exit. The project would also add a crosswalk on-site near the northeast corner of the restaurant building. The new crosswalk would connect to an existing crosswalk located on the main east-west drive aisle, thereby providing a safe pedestrian link between the project site and the Lowe's site.

The site plan shows that all the ramps at the on-site pedestrian crossings would be ADA compliant and would include truncated domes in their design. Truncated domes are the standard design requirement for detectable warnings which enable people with visual disabilities to determine the boundary between the sidewalk and the street.

The project will also provide a bike rack located near the restaurant building and adjacent to the pedestrian crossing at the drive-thru lane exit. Cottle Road and Poughkeepsie Road/Great

Oaks Parkway provide direct access to the project site and both have striped bike lanes. The site plan exhibits good pedestrian and bicycle access and circulation. The project also has good access to public transit and will not adversely affect these services.

Conclusion: The Lowe's EIR identified impacts to level of service at two intersections. Implementation of the Evergreen Development Policy Area gateway transportation improvements were identified as mitigation for the impacts. The project will not result in new or more significant impacts on transportation than previously identified in the 2007 Lowe's EIR.

Q. UTILITIES AND SERVICE SYSTEMS

Setting

Utilities and services are furnished to the project site by the following providers:

- Wastewater Treatment: treatment and disposal provided by the San José/Santa Clara Water Regional Wastewater Facility (RWF); sanitary sewer lines maintained by the City of San José
- Water Service: Great Oaks Water Company
- Storm Drainage: City of San José
- Solid Waste: Republic Services
- Natural Gas & Electricity: PG&E

Impacts and Mitigation

Thresholds per CEQA Checklist

ENVIRONMENTAL IMPACTS	New Potentially Significant Impact	New Less Than Significant With Mitigation Incorporated	New Less Than Significant Impact	Same Impact as Approved Project	Less Impact Than Approved Project	Source(s)
17. UTILITIES AND SERVICE SYSTEMS. Would the project:						
a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?				X		1
b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction or which could cause significant environmental effects?				X		1
c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?				X		1
d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?				X		1

ENVIRONMENTAL IMPACTS	New Potentially Significant Impact	New Less Than Significant With Mitigation Incorporated	New Less Than Significant Impact	Same Impact as Approved Project	Less Impact Than Approved Project	Source(s)
e) Result in a determination by the wastewater treatment provider, which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?				X		1
f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?				X		1
g) Comply with federal, state, and local statutes and regulations related to solid waste?				X		1

Explanation

a) **Same Impact as Approved Project**. The proposed project would not generate wastewater such as industrial or agricultural effluent. The proposed project would have a seating capacity of 125, and is not expected to result in a significant increase in wastewater generation. The proposed project, therefore, is not expected to cause the RWF to exceed applicable requirements set by the Regional Water Quality Board.

b) **Same Impact as Approved Project**. The proposed project will incrementally increase water demands and wastewater generation; however, this increase is not expected to require or result in the construction of new water or wastewater treatment facilities or any expansion of existing facilities. The project area currently receives sanitary sewer service provided by the RWF. The project will be accommodated by the existing water supply, sanitary sewer, and wastewater treatment infrastructure on the project site.

The RWF currently treats 110 million gallons of wastewater per day and has the capacity to treat 167 million gallons per day. In addition, water demand associated with the proposed project will be within the future water demand as outlined in the Urban Water Management Plan. Therefore, the proposed project will not require the expansion of existing or construction of new water treatment facilities. Since the proposed development is consistent with the General Plan FEIR's planned growth for the project area, the project would not result in the need to expand existing wastewater treatment facilities, resulting in a less-than-significant impact.

c) **Same Impact as Approved Project**. The project proposes to connect to the City's existing storm drainage system and is not expected to contribute runoff that will exceed the capacity of existing or planned storm water drainage systems. A storm water control plan will be implemented to manage storm water drainage on the project site (see Figure 5). In addition, the standard permit conditions are identified in Section I. Hydrology and Water Quality will further reduce the potential for impacts to drainage facilities.

d) **Same Impact as Approved Project**. See b) above. Sufficient water supplies are available to serve the project from existing entitlements and resources.

e) **Same Impact as Approved Project**. The project will not impact wastewater treatment services, since adequate capacity is available to serve the project demand.

f) **Same Impact as Approved Project**. The project will not generate substantial solid waste that would adversely affect any landfills.

g) **Same Impact as Approved Project**. The project will comply with federal, state, and local statutes and regulations related to solid waste.

Conclusion: The Lowe's EIR did not identify any impacts related to utilities. The project will not result in new or more significant impacts on utilities and services than previously identified in the 2007 Lowe's EIR.

R. MANDATORY FINDINGS OF SIGNIFICANCE

ENVIRONMENTAL IMPACTS	New Potentially Significant Impact	New Less Than Significant With Mitigation Incorporated	New Less Than Significant Impact	Same Impact as Approved Project	Less Impact Than Approved Project	Source(s)
18. MANDATORY FINDINGS OF SIGNIFICANCE. Does the project:						
a) Have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?				X		1, 2
b) Have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of the past projects, the effects of other current projects, and the effects of probable future projects.				X		1, 2
c) Have environmental effects that will cause substantial adverse effects on human beings, either directly or indirectly?				X		1, 2

Explanation

a) **Same Impact as Approved Project**. Based on the analysis provided in this Addendum, the proposed project will not have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory. Standard permit conditions are identified for potential impacts of the project on special status species and potential disturbance to buried archaeological resources during construction to

reduce these effects to a less-than-significant level. The project will not result in new or more significant impacts than previously identified in the 2007 Lowe's EIR.

b) **Same Impact as Approved Project**. Based on the analysis provided in this Addendum, the proposed project will not significantly contribute to cumulative impacts since no significant developments are proposed in the project vicinity. The Lowe's EIR identified significant unavoidable cumulative impacts related to biological, historic, and visual resources. The City Council adopted a statement of overriding considerations for these impacts. The project will not result in new or more significant cumulative impacts than previously identified in the 2007 Lowe's EIR.

c) **Same Impact as Approved Project**. Based on the analysis provided in this Addendum, the proposed project will not result in environmental effects that will cause substantial adverse effects on human beings, either directly or indirectly. The project will not result in new or more significant impacts than previously identified in the 2007 Lowe's EIR.

SUMMARY OF CONCLUSIONS PER CEQA GUIDELINES SECTIONS 15162 AND 15164

The proposed project is eligible for an Addendum pursuant to CEQA Guidelines §15164, which states that "A lead agency or responsible agency shall prepare an Addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in CEQA Guidelines §15162 which call for the preparation of a subsequent EIR have occurred." Circumstances that would warrant a subsequent EIR include substantial changes in the project or new information of substantial importance that would require major revisions of the previous EIR due to the occurrence of new significant impacts and/or a substantial increase in the severity of previously identified significant effects.

As described in this Addendum, the proposed project would not result in new or more significant environmental impacts than those identified in the 2007 Lowe's EIR. The project would not result in significant environmental effects or increase the severity of environmental impacts beyond those already identified in this EIR. Since certification of the Lowe's EIR, conditions in the project area have not changed such that implementation of the project would result in new significant environmental effects or substantially increase the severity of environmental effects already identified in the EIR. For these reasons, a supplemental or subsequent FEIR is not required and an Addendum to the Lowe's EIR has been prepared for the proposed project.

In summary, no new information of substantial importance has been identified in regard to the project or the project site such that the proposed development would result in: 1) significant environmental effects not identified in the EIR, or 2) more severe environmental effects than shown in the EIR, or 3) require mitigation measures that were previously determined not to be feasible or mitigation measures that are considerably different from those recommended in the EIR. This Addendum will not be circulated for public review, but will be attached to the 2007 Lowe's EIR pursuant to CEQA Guidelines §15164(c).

Chapter 4. References

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San José, City of, *Cottle Road Chick-fil-A Initial Study/Mitigated Negative Declaration*, July 2014.

San José, City of, *San Jose Lowe's Store Draft Environmental Impact Report*, September 2006.

San José, City of, *San José 2040 Envision San José General Plan*, adopted November 2012.

CHECKLIST SOURCES

1. CEQA Guidelines and professional expertise of consultant
2. Project Plan and Site Review
3. 2040 Envision San José General Plan
4. Important Farmlands Map
5. BAAQMD CEQA Guidelines, 2011
6. Phase I Assessment, 2016
7. Cottle Road Chick-fil-A IS/MND, 2014
8. Traffic Operations Study, 2017