INITIAL STUDY

4962 Almaden Expressway Retail Project

File Number: H20-017

Prepared for

City of San José

April 21, 2021

Prepared by

Baseline Environmental Consulting

With Hexagon Transportation Consultants, Inc

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4962 Almaden Expressway Retail Project

File Number: H20-017

Prepared for:

City of San José

Department of Planning, Building, and Code Enforcement

200 East Santa Clara Street, Third Floor

San José, California 95113

(408) 535-5624

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Emeryville, California 94608

(510) 420-8686

April 21, 2021

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LIST OF ABBREVIATIONS AND ACRONYMS

ACM	Asbestos Containing Material
BAAQMD	Bay Area Air Quality Management District
Cal/EPA	California Environmental Protection Agency
Cal/OSHA	California OSHA
Caltrans	California Department of Transportation
CBC	California Building Code
CCR	California Code of Regulations
CDFW	California Department of Fish and Wildlife
CEQA	California Environmental Quality Act
City	City of San José
Cornerstone	Cornerstone Earth Group
CRHR	California Register of Historical Resources
CUPA	Certified Unified Program Agency
dBA	A-weighted decibels
DHS	Department of Health Services
DIR	California Department of Industrial Relations
DOSH	Division of Occupational Safety and Health
DOT	United States Department of Transportation
DTSC	Department of Toxic Substances Control
Envision San José 2040 General Plan	General Plan
ESLs	Environmental Screening Levels
FEMA	Federal Emergency Management Agency
GHGRS	Greenhouse Gas Reduction Strategy
GSPs	Groundwater Sustainability Plans
Habitat Plan	Santa Clara Valley Habitat Plan/Natural Conservation Plan
HVAC	Heating, ventilation and air conditioning
IS	Initial Study
IS/MND	Initial Study/Mitigated Negative Declaration
ITE	Institute of Transportation Engineers
LBP	lead-based paint
LID	low impact development

LTA	Local Transportation Analysis
MLD	Most Likely Descendant
mph	miles per hour
MRP	Municipal Regional Permit
M_w	Moment Magnitude
NAHC	Native American Heritage Commission
NESHAP	National Emission Standards for Air Pollution
NPDES	National Pollutant Discharge Elimination System
OCPs	organochlorine pesticides
OSHA	US Department of Labor, Occupational Safety and Health Administration
Ldn	Day/Night Noise Level
PBCE	Planning, Building and Code Enforcement
Phase I	Phase I Environmental Site Assessment
PPV	peak particle velocity
proposed project	4962 Almaden Expressway Retail Project
RCRA	Resource Conservation and Recovery Act
REC	Recognized Environmental Condition
SCCDEH	Santa Clara County Department of Environmental Health
SDS	Safety Data Sheet
SGMA	Sustainable Groundwater Management Act
SJFD	San José Fire Department
SJPD	San José Police Department
SVP	Society of Vertebrate Paleontology
USGS	United States Geological Survey
UST	Underground storage tank
VdB	vibration decibels
VOCs	volatile organic compounds

1.0 INTRODUCTION AND PROJECT INFORMATION

1.1 Introduction and Purpose of the Initial Study

This Initial Study (IS) has been prepared for the City of San José (City), as the Lead Agency, for the 4962 Almaden Expressway Retail Project (proposed project) in compliance with the California Environmental Quality Act (CEQA), the CEQA Guidelines (California Code of Regulations [CCR] Section 15000 et. Seq.) and the regulations and policies of the City of San José, California.

The proposed project is sponsored by Brereton Architects (Applicant) and includes the demolition of an existing gas station building of 4,470 square feet, pumps and canopy structure, the removal of underground tanks, and the construction of a new 7,800-square foot retail building. This IS evaluates the potential environmental impacts that might reasonably be anticipated to result from implementation of the proposed project.

This IS and all documents referenced in it are available for public review on the City's website at www.sanjoseca.gov/negativedeclarations.

Publication of this IS identifies the beginning of a 20-day public review and comment period. During this period, the IS will be available to local, state and federal agencies and to interested organizations and individuals for review. Written comments concerning the environmental review and contents of the IS during the 20-day public review period should be sent to:

Bethelhem Telahun
City of San José, Department of Planning, Building and Code Enforcement
200 East Santa Clara Street, Third Floor
San José, California 95113
(408) 535-5624
Bethelhem.Telahun@sanjoseca.gov

Following the conclusion of the public review period, the City will consider the adoption of the Initial Study/Mitigated Negative Declaration (IS/MND) for the project at a regularly scheduled Director's Hearing. The City shall consider the IS/MND together with any comments received during the public review process. Upon adoption of the MND, the City may proceed with project approval actions.

1.2 Project Information

1. **Project Title:** 4962 Almaden Expressway Retail Project

2. Lead Agency Name and Address:

City of San José
Department of Planning, Building and Code Enforcement
Planning Division, City Hall
Third Floor, 200 East Santa Clara Street,
San José, CA 95113

Environmental Review

Bethelhem Telahun
Environmental Planning, City of San José, Department of Planning, Building and Code Enforcement
(408) 535-5624
Bethelhem.Telahun@sanjoseca.gov

5. Project Applicant's Name and Address:

Michael J. Castro, Brereton Architects
909 Montgomery Street, Suite 260
San Francisco, California 94133
(415) 963-4626
MCastro@brereton.com

4. Project Location: Assessor's Parcel Number 458-17-022.The project site is located at 4962 Almaden Expressway, on the northeast corner of the intersection of Almaden Expressway and Cherry Avenue, in the City of San José, **Figure 1** shows the location of the project site and surrounding uses.

6. General Plan Designation: The project site has an Envision San José 2040 General Plan (General Plan) land use designation of Regional Commercial.

7. Zoning: The project site is located in the General Commercial (CG) zoning district.

8. Habitat Plan Designation:

Land Cover Designation: Urban-Suburban

Fee Zone: Urban Areas (No Land Cover Fee)

Wildlife Survey Area: N/A

Source: Santa Clara Habitat Agency, 2020

9. Description of Project, Summary: The proposed project includes the demolition of an existing gas station building, pumps and canopy structure, the removal of underground

tanks, and the construction of a new 7,800-square foot retail building. See Section 2.0 Project Description for more information.

10. **Surrounding Land Uses and Setting:** The site is located at the southwest corner of an existing suburban retail center (the Almaden Plaza Shopping Center) that is anchored by a Safeway and contains other commercial uses. Commercial uses are also located west of Almaden Expressway and south of Cherry Avenue.

11. **Other Public Agencies Whose Approval is Required (i.e., permits, financial approval, or participation agreements.):**

    The project would require:

- Site Development Permit
- Demolition Permit
- Tree Removal Permit
- Department of Transportation Street Tree Planting Permit
- Public Works Grading and Street Improvement Permit
- County of Santa Clara Roads and Airports Division Encroachment Permits

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2.0 PROJECT DESCRIPTION

This Initial Study (IS) provides project-level CEQA review for the demolition of an existing Rotten Robbie gas station building, fuel islands and canopy, the removal of underground tanks, and construction of a retail building on a site located at 4962 Almaden Expressway (APN 458-17-022). The following section describes the existing site conditions and the proposed project.

2.1 Existing Setting, Project Site Location and Characteristics

The project site is located at 4962 Almaden Expressway, an approximately 0.6-acre lot on the northeast corner of the intersection of Almaden Expressway and Cherry Avenue, in the City of San José. The Assessor's Parcel Number is 458-17-022. The project site is located within a suburban shopping center (the Almaden Plaza Shopping Center which is 11.58 acres in size) which is anchored by a Safeway. **Figure 1** shows the location of the project site and surrounding uses.

As shown on **Figure 1**, the project site is located along the Almaden Expressway corridor that is developed with various commercial uses. The project site is bounded to the north by the shopping center parking lot, to the east by the main shopping center buildings, to the south by Cherry Avenue and to the west by Almaden Expressway. Existing gas stations are currently operating on the northwest and southwest corners of the Almaden Expressway and Cherry Avenue intersection.

The site currently is entirely paved and contains a Rotten Robbie gas station consisting of a retail building of 4,470 square feet, six fuel dispenser islands, a canopy, underground fuel storage tanks, and a parking area. Landscape trees are located within planters in the parking area and along the exterior sidewalk. An existing site plan is shown on **Figure 2**. There are approximately up to four employees at the gas station site.

The past and on-going use of the site as a gas station is considered a recognized environmental condition. Additionally, there was a detection of petroleum hydrocarbon contamination in the soil at the site in 1996 during the removal of former underground storage tanks (USTs) and fuel piping. However, the leaking UST (LUST) case at the site was closed in 1998. Because the site has a closed LUST case, it is included on the list of hazardous materials release sites compiled pursuant to Government Code Section 65962.5, commonly referred to as the "Cortese List". Prior to being developed as a gas station, the site supported agricultural uses (orchards) from at least 1939 through 1968.

One curb cut on Cherry Avenue directly accesses the gas station. Other access to the site is provided by the access points for the shopping mall, one located north of the site on Almaden Expressway and one to the west on Cherry Avenue. While the site is located in the southeastern corner of the shopping mall, there are parking spaces located within the site.

The project site has an Envision San José 2040 General Plan (General Plan) land use designation of Regional Commercial and is located in the Commercial General (CG) zoning district.

2.2 Proposed Project

The discussion of the proposed project is based on the application the project Applicant (Brereton Architects) resubmitted to the City on June 19, 2020 and as revised and resubmitted on December 18, 2020 in response to City review and comments.

A. Site Design

The proposed project includes the: 1) demolition of the existing 4,470 square-foot gas station building, the gas pumps and canopy structure, 2) the removal of three underground fuel storage tanks, and 3) the construction of a new 7,800-square foot retail building, landscaping and reconfiguration of the parking area. The proposed site plan for the project that identifies the proposed access and parking areas is shown on **Figure 3**. There are approximately four employees currently at the gas station site, and it is assumed that approximately ten employees would be associated with the new retail building.

The retail building floor plan would allow for two commercial spaces, as shown on **Figure 4,** and a patio area with tables and seating is proposed on the eastern side of the building. The building would be 24 feet and 6 inches in height. **Figure 5** shows proposed building elevations, and finish materials. **Figures 6** and **7** provide conceptual views of the retail building and landscaping. To provide articulation and interest on the Almaden Expressway façade (west elevation), the building includes vertical windows, corrugated metal panel joint lines, and a perforated corrugated metal pattern that will have a PVDF (Kynar/Hylar) painted coil coating. Paint color and sheen will be selected to limit substantial glare.

Nine trees (all flowering cherry trees) are proposed to be removed within the landscape planters, none of which are ordinance-sized trees.[1] As shown on **Figure 8**, the project proposes additional landscaping along the frontages of Almaden Expressway and Cherry Avenue and within the patio area associated with the retail building. The project also includes the planting of 19 new trees on the site, and the installation of benches, bike racks and patio seating. Additionally, as required by the City, the locations and type of the five street trees to be replaced along Cherry Avenue will be determined at the street improvement stage, and the Applicant will install street trees within the public right-of-way along the entire project street frontage per City standards (i.e., the current “Guidelines for Planning, Design, and Construction of City Streetscape Projects”). Street trees will also be installed in the park strip, and the Applicant will obtain a Department of Transportation street tree planting permit for the street tree plantings.

[1] All of the trees to be removed are single-trunk trees, and an ordinance-sized tree is 38 inches or more in circumference measured at 54 inches above the ground. www.sanjoseca.gov/treepermit.

The project includes the closure of the driveway on Cherry Avenue that currently accesses the site. The proposed retail building would be accessed from within the existing parking lot. Parking for the retail building would be provided to the north and east within the existing parking area. Based on a parking analysis for the shopping center prepared by Brereton Architects[2] with construction of the new retail building, 609 parking spaces would be required and 617 (of which 16 spaces are accessible spaces) are provided. For the new retail building, one motorcycle parking space is required and two are provided. Two bicycle parking spaces are required and ten would be provided. The project's Almaden Expressway frontage improvements will require a permit from the Santa Clara County Roads and Airports Division.

B. Utilities and Infrastructure

The project site is located in an urban area and is currently served and will continue to be served by existing utilities, including: water, sanitary sewer, storm drainage, electricity, and telecommunications infrastructure. **Figure 9** provides a utility plan. Electricity and gas would continue to be provided by Pacific Gas & Electric and solid waste would continue to be collected by Republic Services, the local provider. As shown, the project includes a 10-foot wide public service easement on the portion of the site fronting Almaden Expressway and Cherry Avenue. **Figure 10** shows a stormwater control plan that meets City requirements and contains overland flow areas, underground storm drain systems, drainage management areas and treatment control measures including bioretention areas and flow-through planters. The stormwater evaluation takes into account the total area of the shopping center (11.58 acres) of which approximately 0.71 acres would be disturbed for demolition of the gas station, construction of the retail building and reconfiguration of a portion of the shopping center parking area. After construction there would be a small increase of 4,445 square feet of pervious areas due to the inclusion of additional landscaping and stormwater treatment areas (i.e., pre-project existing pervious areas 47,626 square feet and post-project pervious areas 52,071).[3]

C. Demolition and Construction

The existing three (3) underground storage tanks (UST) and associated fuel piping and dispensers containing diesel fuel products are proposed to be removed and disposed of under a permit and with oversight from the Santa Clara County Department of Environmental Health. Removal of any petroleum hydrocarbon impacted soil, if present, would be performed during removal of the UST systems.

The project Applicant proposes that demolition, grading and construction of the project would be completed in approximately eight months. A proposed grading plan is shown on **Figure 11**. The new retail building is proposed to be operational in December of 2021. **Table 1** provides

[2] Brereton Architects, 2020. 4962 Almaden Expressway – Retail Building, Site Development Permit Resubmittal, Sheet 03A Site Plan – Architectural. December 18.

[3] Brereton Architects, 2020. 4962 Almaden – Retail Building, Site Development Permit Resubmittal, Sheet 05B Stormwater Control Plan, Sheet 05C Stormwater Control Notes. December 18.

additional information regarding construction activities, type of equipment to be used and the duration of use in hours.

Table 1: Project Construction Activities and Equipment

Construction Phase	Equipment	Total Hours of Operation
Demolition	Concrete/Industrial Saws	24
Demolition	Excavators	80
Demolition	Rubber Tired Dozers	80
Demolition	Tractors/Loaders/Backhoes	120
Demolition	Crane	40
Site Preparation	Graders	24
Site Preparation	Tractors/Loaders/Backhoes	40
Grading	Concrete/Industrial Saws	1
Grading	Excavators	16
Grading	Rubber Tired Dozers	40
Grading	Tractors/Loaders/Backhoes	8
Building Construction	Cranes	16
Building Construction	Forklifts	120
Building Construction	Tractors/Loaders/Backhoes	40
Building Construction	Trenchers	24
Building Construction	Cement and Mortar Mixers	40
Paving	Pavers	16
Paving	Rollers	16
Paving	Tractors/Loaders/Backhoes	16
Architectural Coating	Air Compressors	40

Note: The equipment to be used for the Site Preparation, Grading and Paving phases would be used for the minor off-site public improvements such as sidewalk expansion and tree planting. Minor construction activities associated with the off-site public improvements are included in the total hours identified in Table 1.
Source: Michael Castro, Brereton Architects via Email September 22, 2020

2.3 Discretionary Actions

The information contained in this IS will be used by the City of San José as it considers whether or not to approve the proposed project. If the project is approved, the IS would be used by the City and responsible and trustee agencies in conjunction with various approvals and permits. These actions include, but may not be limited to, the following:

- Site Development Permit
- Demolition Permit
- Grading Permit
- Tree Removal Permit
- Department of Transportation Street Tree Planting Permit
- Public Works Grading and Street Improvement Permit
- County of Santa Clara Roads and Airports Division Encroachment Permits

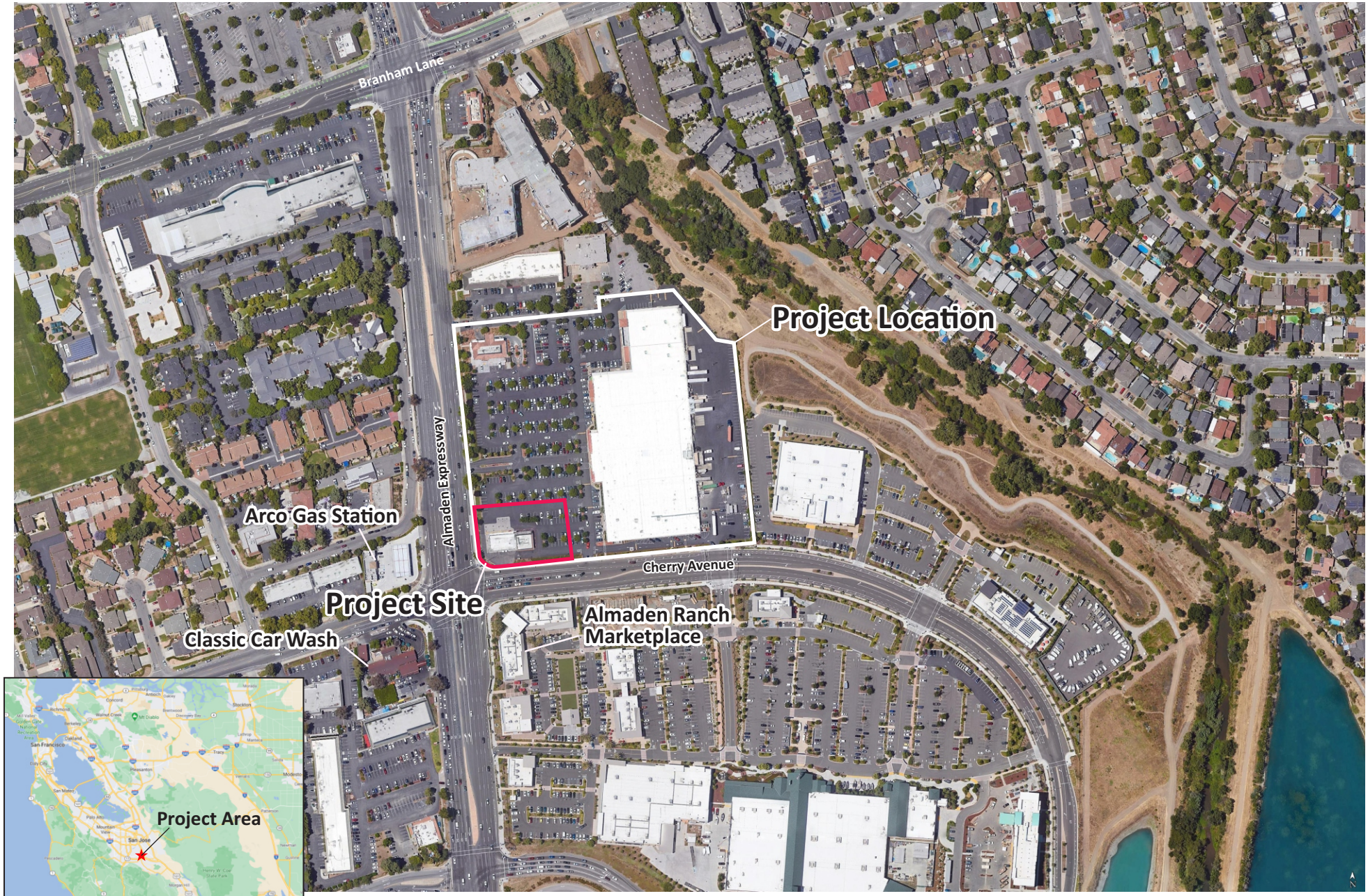

Figure 1
Project Site Location and Surrounding Uses

4962 Almaden Expressway Retail Project, File No. H20-017
Source: BASELINE, 2020

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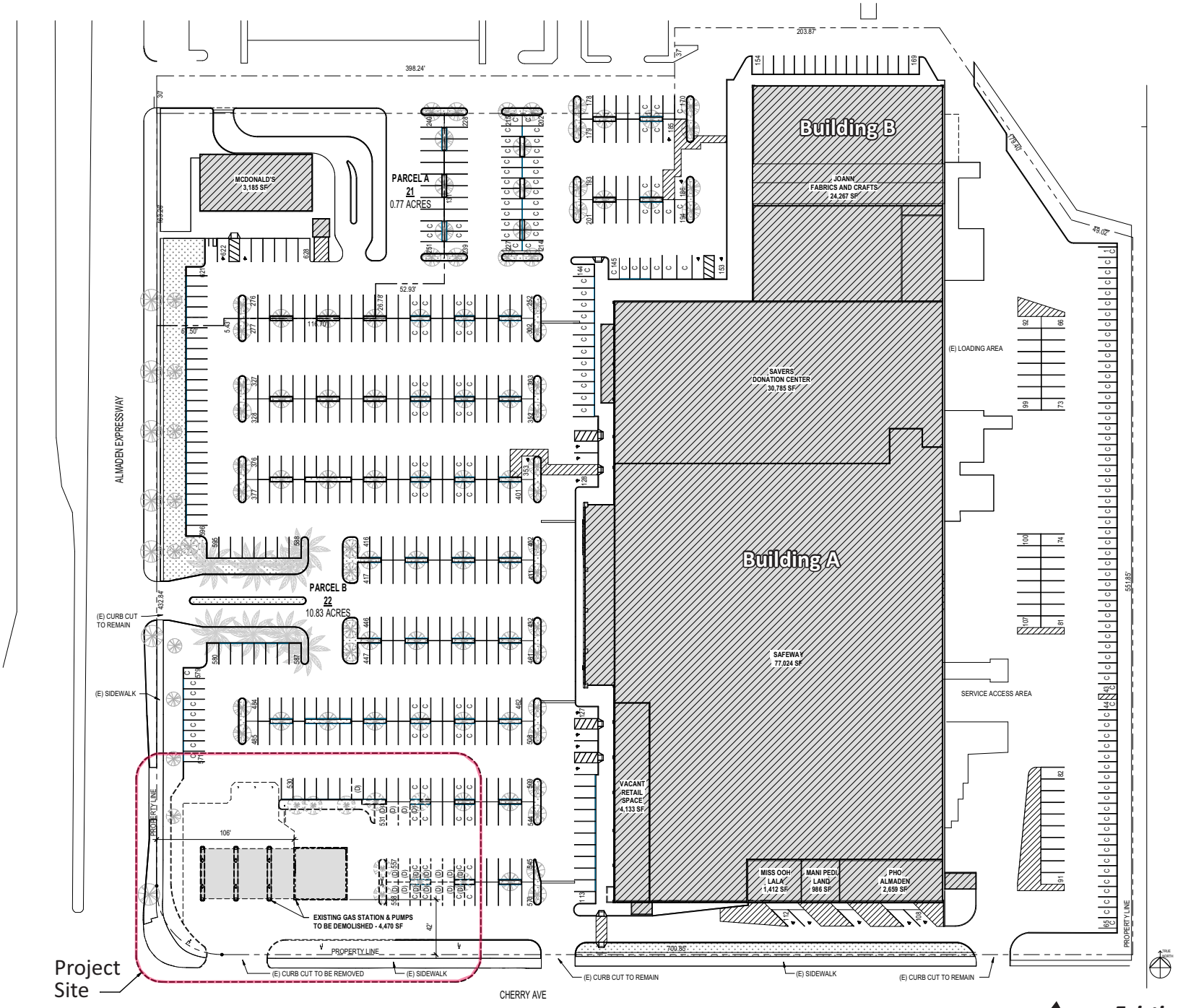

Figure 2
Existing Site Plan

4962 Almaden Expressway Retail Project, File No. H20-017
Source: Brereton, 10/15/2020.

0 105 Feet

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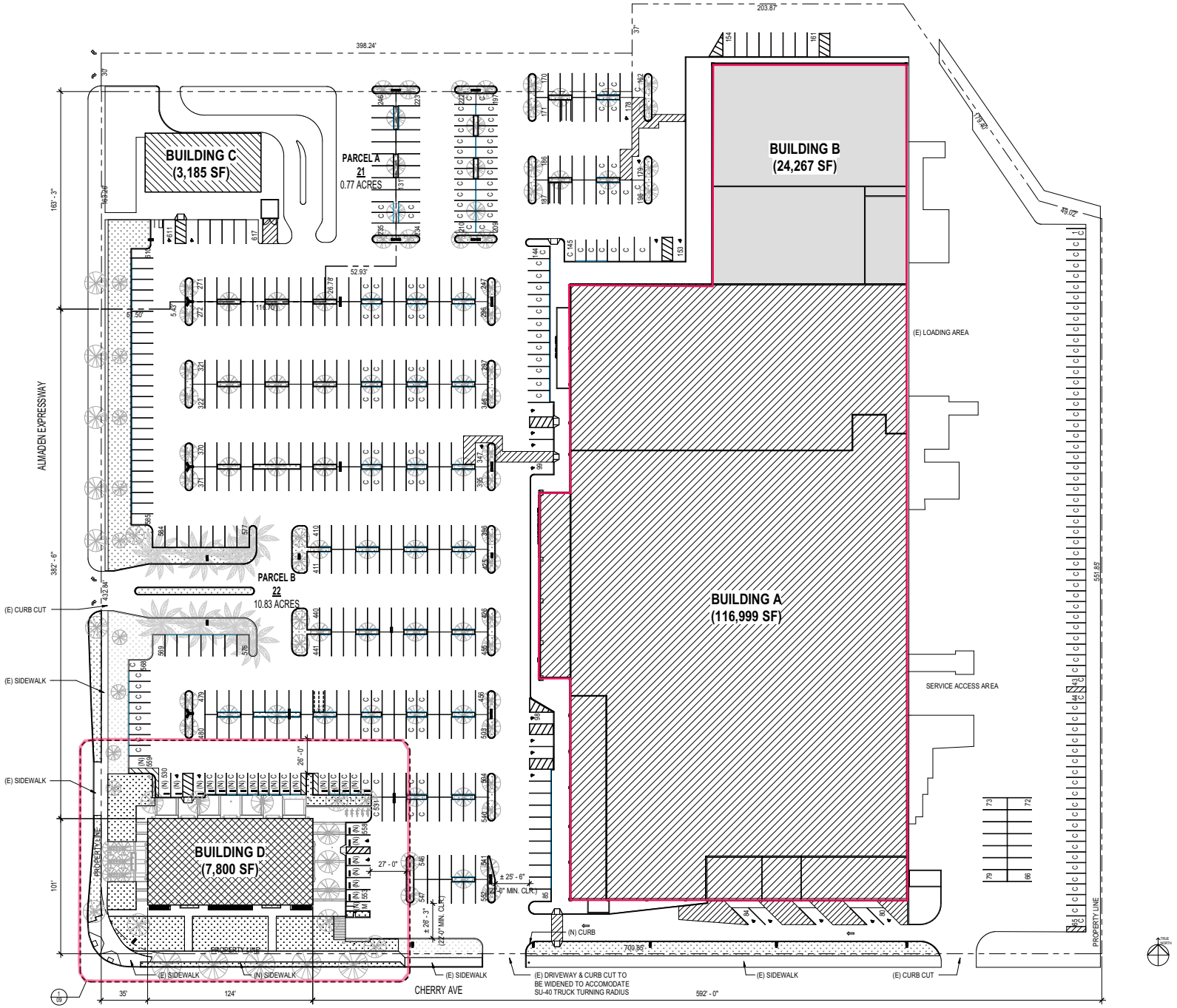

Figure 3
Proposed Site Plan

4962 Almaden Expressway Retail Project, File No. H20-017
Source: Brereton, 12/18/2020.

0 105 Feet

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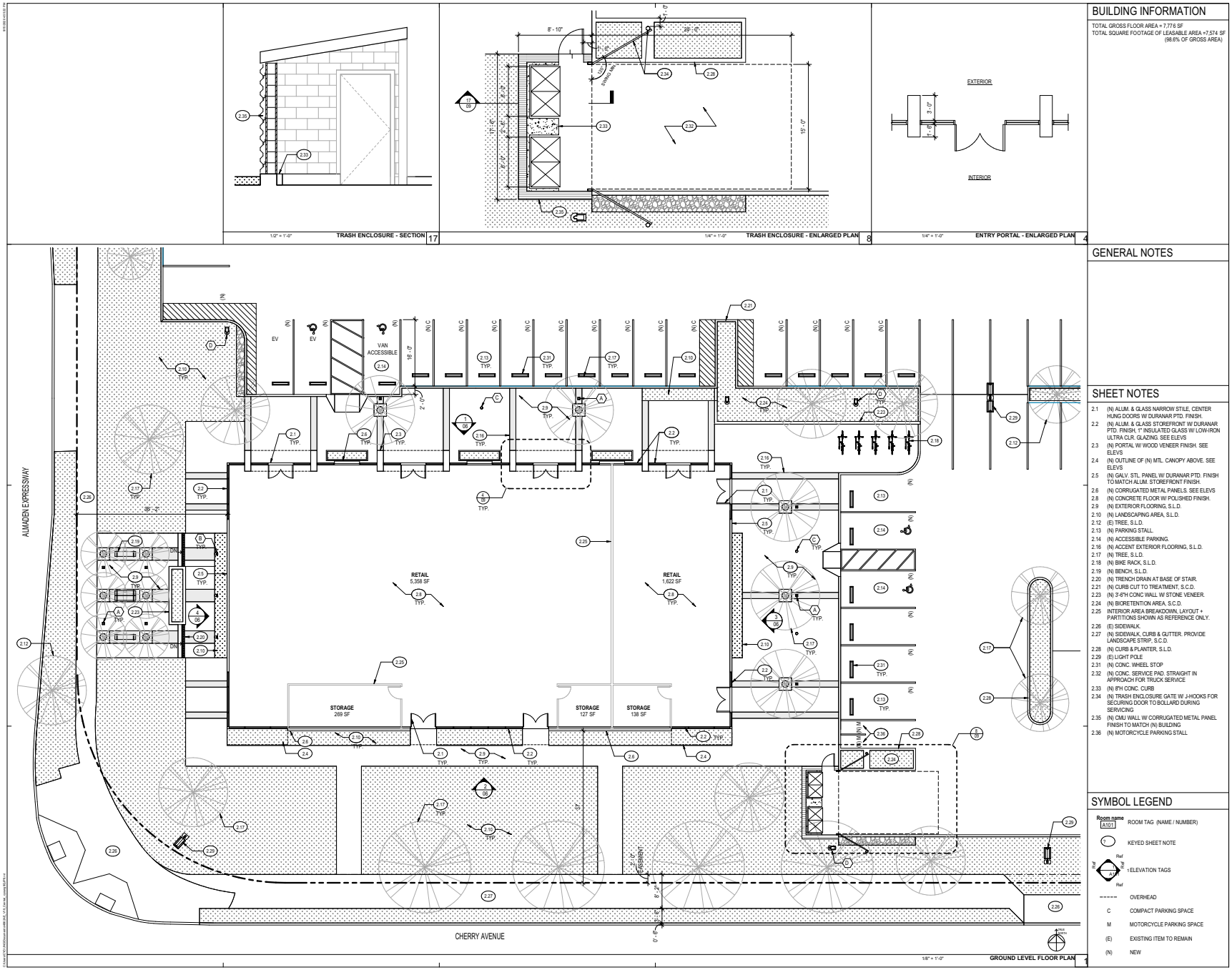

Figure 4

Proposed Retail Building Floor Plan

4962 Almaden Expressway Retail Project, File No. H20-017

Source: Brereton, 10/15/2020

0 33 Feet

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FINISH MATERIAL BOARD

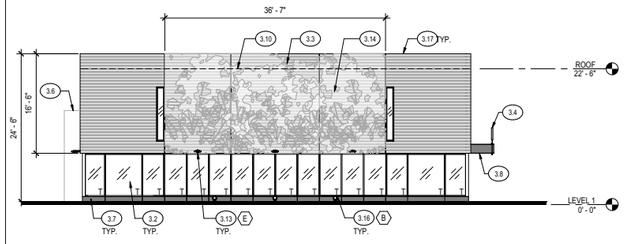
CORRUGATED METAL PANEL

GLASS STOREFRONT

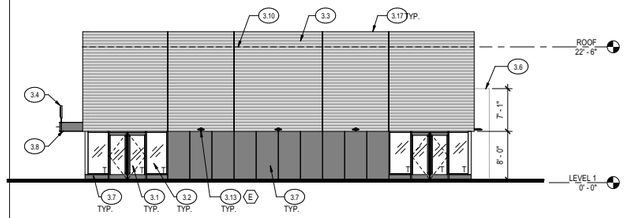
METAL PANEL W/ PTD FINISH

WOOD ENTRY PORTAL

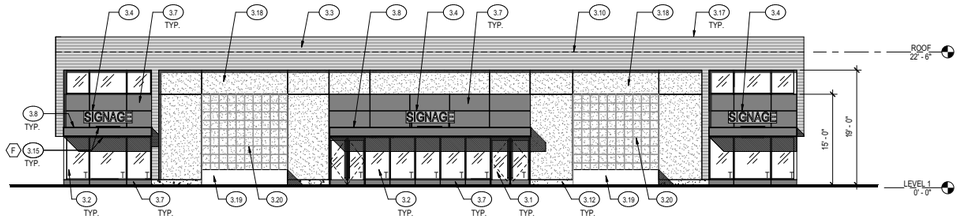
PERFORATED CORRUGATED PANEL PATTERN



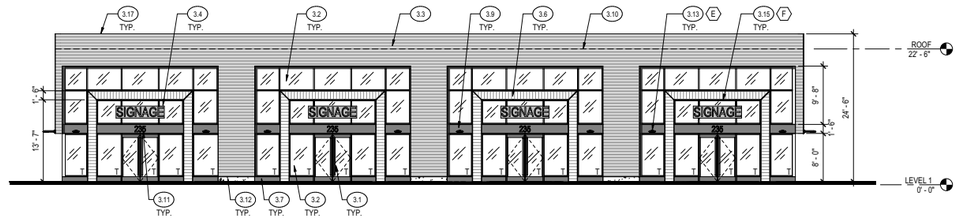
1/8" = 1'-0" ALMADEN EXPRESSWAY - WEST ELEVATION 4



1/8" = 1'-0" SAFEWAY - EAST ELEVATION 3



1/8" = 1'-0" CHERRY AVENUE - SOUTH ELEVATION 2



1/8" = 1'-0" FRONT ENTRY - NORTH ELEVATION 1

Figure 5
Building Elevations

4962 Almaden Expressway Retail Project, File No. H20-017
Source: Brereton, 10/15/2020

0 25 Feet

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Conceptual View looking southwest

Conceptual View looking northeast

Figure 6
Conceptual Views A

4962 Almaden Expressway Retail Project, File No. H20-017
Source: Brereton, 10/15/2020

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Conceptual View looking east

Conceptual View looking north

Figure 7
Conceptual Views B

4962 Almaden Expressway Retail Project, File No. H20-017
Source: Brereton, 10/15/2020

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Figure 8
Landscape Plan

4962 Almaden Expressway Retail Project, File No. H20-017
Source: Brereton, 10/15/2020

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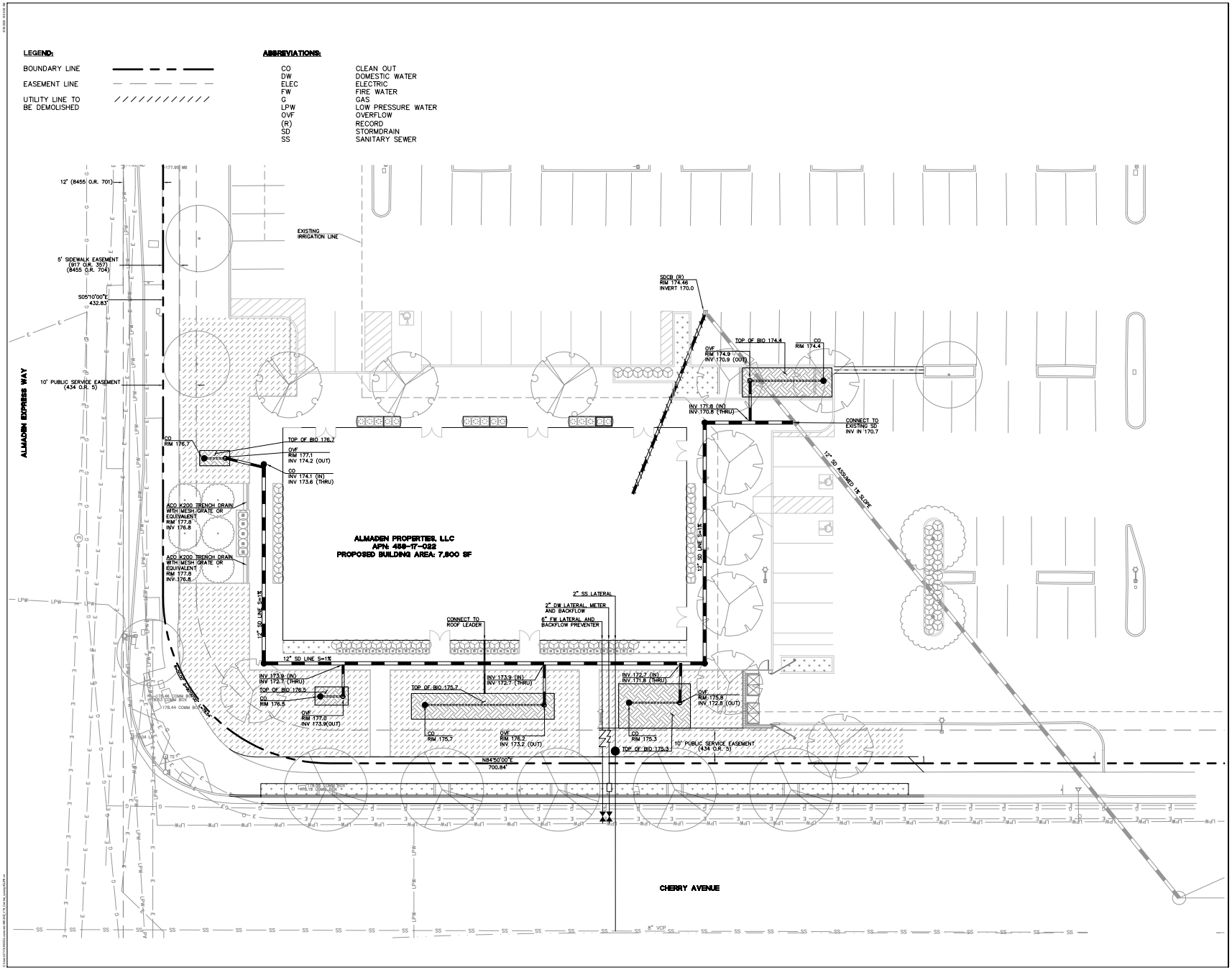

Figure 9
Utility Plan

4962 Almaden Expressway Retail Project, File No. H20-017
Source: Brereton, 10/15/2020

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ALMADEN EXPRESS WAY

UT 1

UT 2

TCM 4

CURB CUT

DMA 5

TCM 5

DMA 4

DMA 1

EQ 1

CONNECT TO ROOF LEADER

DMA 3

DMA 2

TCM 2

TCM 1

TCM 3

CURB CUT

DMA 6

DMA 7

UT 3

DMA 8

DMA 9

CHERRY AVENUE

LEGEND:

BOUNDARY LINE

EASEMENT LINE

BIOTREATMENT CELL — TCM

DRAINAGE MANAGEMENT AREA (SEE SIZING CALCULATIONS ON SHEET 05B) — DMA

ABBREVIATIONS:

DMA	DRAINAGE MANAGEMENT AREA
EQ	EQUIVALENT TREATMENT AREA
TCM	TREATMENT CONTROL MEASURE
UT	UNTREATED

FORM #138 - Stormwater Evaluation Form — page 2 of 4

2. AREA DATA

2.a Enter the Project Phase Number (1, 2, 3, etc. or N/A if Not Applicable):		
2.b Total area of site:	11.58	acres
2.c Total area of site that will be disturbed:	.71	acres

COMPARISON OF IMPERVIOUS AND PERVIOUS AREAS AT PROJECT SITE:

2.d IMPERVIOUS AREAS - IA	Pre-Project Existing IA sq. ft.	Existing IA Retained As-Is[1] sq. ft.	Existing IA Replaced with IA[2] sq. ft.	New IA Created[2] sq. ft.	Total Post Project IA sq. ft.
Site Totals					
Total IA	d.1 457,810	d.2 429,596	d.3 22,969	d.4 0	d.5 (d.2+d.3+d.4) 452,565
Total New and Replaced IA			d.6 (d.3+d.4) 22,969		
Public Street Totals					
Total Public Streets IA[3]	d.8 0	d.9 0	d.10 0	d.11 0	d.12 (d.9+d.10+d.11) 0
Total New and Replaced Public Streets IA			d.13 (d.10+d.11) 0		
Total Site and Public Streets IA	d.14 (d.2+d.8) 457,810				d.15 (d.5+d.12) 452,565
Percent Replacement of IA in Redevelopment Projects (d.3+d.11) x 100:					d.16 5.10 %

2.e PERVIOUS AREAS - PA	Pre-Project Existing PA sq. ft.	Total Post Project PA sq. ft.
Total PA[4]	n.1 47,626	n.2 52,071
2.f Total Area (IA + PA)	f.1 (d.14 + n.1) 504,836	f.2 (d.15 + n.2) 504,636

FOOTNOTES

1. "Retained" in box 2.d.2 means to leave existing IA in place. An IA that goes through maintenance (e.g., pavement resurfacing/slurry seal/grind), but no change in grade is considered "retained."
2. The "replaced" and "new" IA in boxes 2.d.3. and 2.d. 4 are based on the total area of the site and not specific locations on site. For example, impervious parking created over a pervious area is not "new" IA if an equal amount of pervious area replaces IA somewhere else on the site. Constructed IA on a site that does not exceed the Total Pre-Project IA in box 2.d.1. will be considered "replaced" IA. **A site will have "new" IA only if the Total Post-Project IA in box 2.d.5. exceeds the Total Pre-Project IA (2.d.5 > 2.d.1 = 2.d.4).**
3. These areas are locations of the public street that are being dedicated (sidewalk or street easement) to the City of San José.
4. Include bioretention areas, infiltration areas, green roofs, and pervious pavement in PA calculations.

0 25 Feet

Figure 10
Stormwater Control Plan

4962 Almaden Expressway Retail Project, File No. H20-017
Source: Brereton, 12/18/2020

BASELINE ENVIRONMENTAL CONSULTING

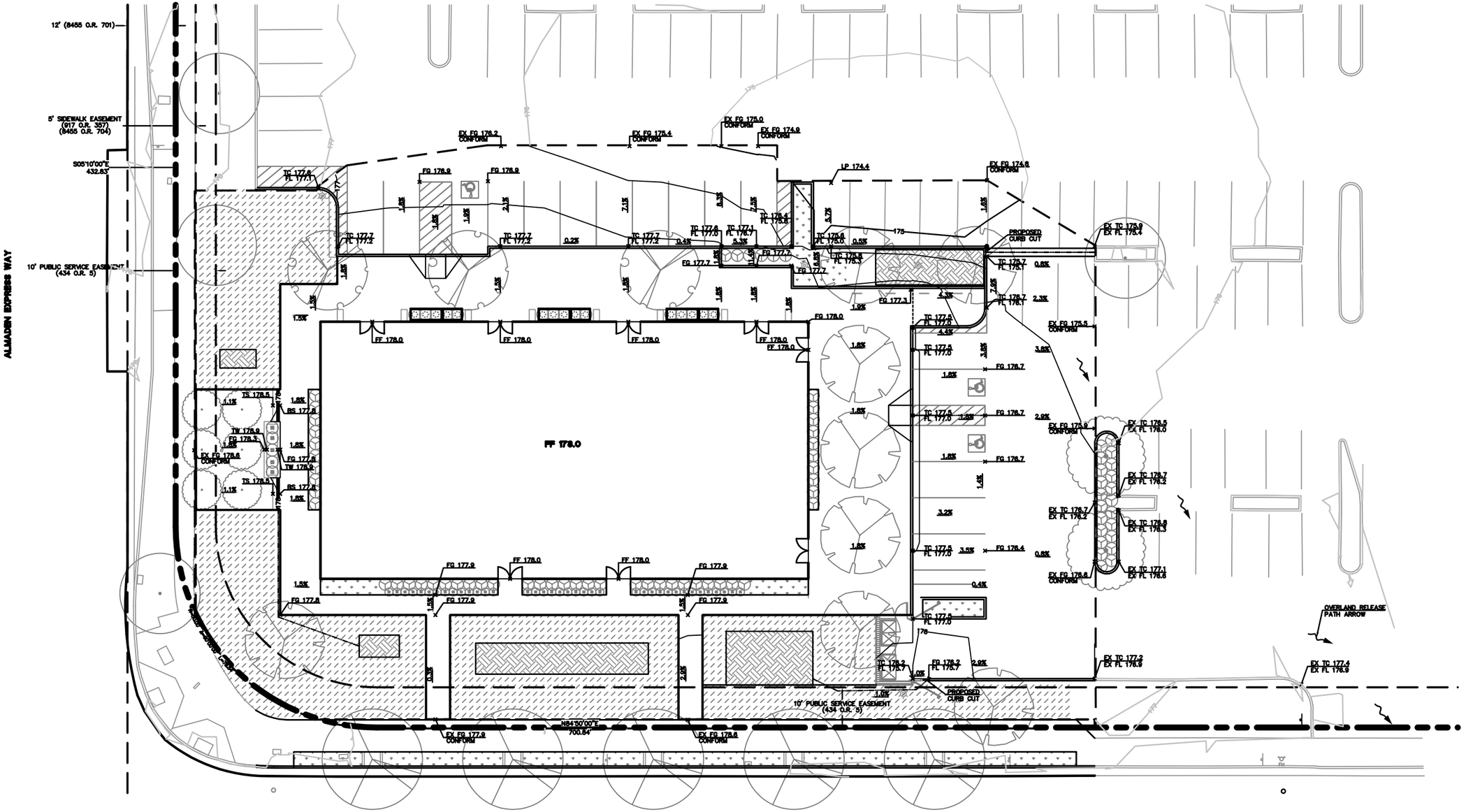
P:\Base\20207-00 Brereton 4962 Almaden Expwy CEQA and Phase I\Products\CEQA\Admin IS\Figures\CDR AND PDFS\Figure 10 RV_RV .cdr 2/12/2021

LEGEND:

BOUNDARY LINE

EASEMENT LINE

OVERLAND RELEASE PATH



0 17 Feet

Figure 11
Grading Plan

4962 Almaden Expressway Retail Project, File No. H20-017
Source: Brereton, 10/15/2020

BASELINE ENVIRONMENTAL CONSULTING

3.0 ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED

The environmental factors checked below would be potentially affected by this project, involving at least one impact that is a “Potentially Significant Impact” as indicated by the checklist on the following pages.

- ❒ Aesthetics
- ❒ Biological Resources
- ❒ Geology and Soils
- ❒ Hydrology and Water Quality
- ❒ Noise
- ❒ Recreation
- ❒ Utilities and Service Systems
- ❒ Agricultural and Forestry Resources
- ❒ Cultural Resources
- ❒ Greenhouse Gas Emissions
- ❒ Land Use and Planning
- ❒ Population and Housing
- ❒ Transportation
- ❒ Wildfire
- ❒ Air Quality
- ❒ Energy
- ❒ Hazards and Hazardous Materials
- ❒ Mineral Resources
- ❒ Public Services
- ❒ Tribal Cultural Resources
- ❒ Mandatory Findings of Significance

Determination. (To be completed by the Lead Agency.)

On the basis of this initial evaluation:

❒ I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.

■ I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.

❒ I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.

❒ I find that the proposed project MAY have a “potentially significant impact” or “potentially significant unless mitigated” impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.

❒ I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.

4.0 ENVIRONMENTAL SETTING, CHECKLIST AND IMPACT DISCUSSION

This section presents the discussion of impacts related to the Checklist below that addresses 20 environmental topics. Whenever a potentially significant impact is identified, a mitigation measure is identified. At the end of each mitigation measure, the level of significance of the impact after mitigation is shown as "Less than Significant" (LTS) or "Potentially Significant" (PS).[4]

4.1 Aesthetics

	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporated	Less Than Significant Impact	No Impact
Except as provided in Public Resources Code Section 21099, would the project:				
a) Have a substantial adverse effect on a scenic vista?	❒	❒	❒	■
b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a State scenic highway?	❒	❒	❒	■
c) In non-urbanized areas, substantially degrade the existing visual character or quality of public views of the site and its surroundings? (Public views are those that are experienced from publicly accessible vantage points.) If the project is in an urbanized area, would the project conflict with applicable zoning and other regulations governing scenic quality?	❒	❒	❒	■
d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?	❒	❒	■	❒

[4] This Mitigated Negative Declaration (MND) includes a discussion of impacts of the environment on the project, which, pursuant to recent California Supreme Court authority, are not California Environmental Quality Act (CEQA) impacts.

A. Environmental Setting

Existing Conditions

The project site is located in a commercial and residential urban area adjacent to the Almaden Expressway a wide and highly traveled arterial. The site is developed with a Rotten Robbie gas station, a convenience store, parking and landscaping. A total of 12 ornamental trees are on the project site. The project site is not located in or near any State scenic highways, nor is it located along any scenic corridors. The closest scenic corridor, designated in the General Plan, is a rural scenic corridor located along Almaden Road starting at Coleman Road, approximately 3 miles southwest of the project site. The nearest state-designated scenic highway is State Route 9, approximately 6 miles southwest of the project site.

Scenic resources in the City of San José include the broad sweep of the Santa Clara Valley, the hills and mountains which frame the Valley floor, the baylands and the urban skyline, particularly highrise development.

Regulatory Framework

State Scenic Highways Program

The State Scenic Highways Program is under the jurisdiction of the California Department of Transportation (Caltrans). The program is intended to protect and enhance the natural scenic beauty of California highways and adjacent corridors through special conservation treatment. State laws governing the Scenic Highway Program are found in the Streets and Highway Code, Sections 260 through 263. There are no state-designated scenic highways in San José. SR 280 from the San Mateo County line to SR17, which includes segments in San José, is an eligible, but not officially designated, State Scenic Highway.

Local

Any development allowed by each respective proposed land use designation in the City would be subject to the visual and aesthetic policies listed in the General Plan, as well as the San José Outdoor Lighting Policy and the Commercial Design Guidelines.

The General Plan includes Community Design Goals, Policies, and Implementation Actions that guide the form of future development in the City and help tie individual projects to a vision for the surrounding area and City as a whole. The following policies are specific to aesthetic resources and would apply to the demolition of the gas station and construction of the proposed retail project.

- **Policy CD-1.1**: Require the highest standards of architectural and site design, and apply strong design controls for all development projects, both public and private, for the enhancement and development of community character and for the proper transition between areas with different types of land uses.
- **Policy CD-1.7**: Require developers to provide pedestrian amenities, such as trees, lighting, recycling and refuse containers, seating, awnings, art, or other amenities, in

pedestrian areas along project frontages. When funding is available, install pedestrian amenities in public right-of-ways.

- **Policy CD-1.8**: Create an attractive street presence with pedestrian-scaled building and landscaping elements that provide an engaging, safe, and diverse walking environment. Encourage compact, urban design, including use of smaller building footprints, to promote pedestrian activity throughout the City.
- **Policy CD-1.13**: Use design review to encourage creative, high-quality, innovative, and distinctive architecture that helps to create unique, vibrant places that are both desirable urban places to live, work, and play and that lead to competitive advantages over other regions.
- **Policy CD-1.16**: Strongly discourage gates and fences at the frontage of commercial properties to maintain an open and inviting commercial character and avoid the inhospitable appearance of security barriers.

B. Impact Evaluation

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

No Impact

The proposed project includes the demolition of an existing gas station building of 4,470 square feet, along with the gas pumps and canopy, and the construction of a 7,800 square foot retail building that is 24 feet and 6 inches in height. The project is located in a developed area and bounded by existing roadways and development on all sides, and is not located in an area considered to be "scenic." There are currently no scenic viewpoints, vistas or open spaces that can be seen in or from the project site, and therefore construction of the proposed building would have no impact on a scenic vista.

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

No Impact

The project site is located within a suburban shopping center adjacent to the urbanized Almaden Expressway commercial corridor. The site is currently developed with a gas station. There are no scenic resources or State scenic highways in the vicinity of the project site, or that would be obscured after construction of the retail building. The project would have no impact on scenic resources or a State scenic highway. The nine trees proposed for removal are located within landscape medians near the existing building and parking area. Twenty-four new trees would be planted, in accordance with the City's tree replacement ratios which require 17 replacement trees, to offset trees to be removed.

c) In non-urbanized areas, would the project substantially degrade the existing visual character or quality of public views of the site and its surroundings? (Public views are those that are experienced from publicly accessible vantage points.) If the project is in an urbanized area, would the project conflict with applicable zoning and other regulations governing scenic quality?

No Impact

The project site is located within a shopping center at 4962 Almaden Expressway, an eight–lane expressway in the City of San José, within a highly urbanized area. The site is currently developed with a gas station and is proposed to be redeveloped with a commercial building both of which are consistent with the General Commercial (CG) zoning district. The existing retail building is one-story in height and the proposed retail building is also one-story in height. The proposed height and design of the proposed commercial building also conform to the zoning and policy regulations concerning scenic quality.

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

Less Than Significant Impact

The proposed project is the replacement of a gas station and convenience store with a new retail building. The proposed project would be in conformance with adopted policies and regulations and with General Plan policies and would avoid substantial light and glare impacts. The project, in compliance with these policies, would not substantially increase nighttime light levels. The proposed project would comply with the City Council's Private Outdoor Lighting Policy 4-3, which requires private development to use energy-efficient outdoor lighting that is fully shielded and not directed skyward. The final lighting plans would be reviewed subsequent to approval of the Conditional Use Permit. As a result, the proposed project would not significantly impact adjacent land uses with increased nighttime light levels or daytime glare from building materials.

The building includes vertical windows, corrugated metal panels with a perforated corrugated metal pattern (see **Figures 6** and **7** which show conceptual views of the building and landscaping). The metal panels will have a PVDF (Kynar/Hylar) painted coil coating, and paint color and sheen will be selected to limit substantial glare.

The proposed building and security lighting would not create a new source or substantially increase light and glare leading to adverse effects on day or nighttime views. Lighting would be consistent with City requirements and similar to what is currently experienced on the project site.

4.2 Agriculture and Forestry Resources

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
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 Dept. 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 the California Resources Agency, to a non-agricultural use?	❒	❒	❒	■
b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?	❒	❒	❒	■
c) Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code section 12220(g)), timberland (as defined by Public Resources Code section 4526), or timberland zoned Timberland Production (as defined by Government Code section 51104(g))?	❒	❒	❒	■
d) Result in the loss of forest land or conversion of forest land to non-forest use?	❒	❒	❒	■
e) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland to non-agricultural use or conversion of forest land to non-forest use?	❒	❒	❒	■

A. Environmental Setting

Existing Conditions

The project site is currently developed with commercial uses and is located in an urban area of the City of San José and is not subject to a Williamson Act contract. The site is designated as

Urban and Built-up Land according to the Farmland Mapping and Monitoring Program.[5] Urban Built-up Land is defined as residential land with a density of at least 6 units per 10-acre parcel, as well as land used for industrial and commercial purposes, golf courses, landfills, airports, sewage treatment and water control structures. No forest land or timberland, as defined in Public Resources Code Section 12220(g), is located on or near the project site.

Regulatory Framework

State
In California, agricultural land is given consideration under CEQA. According to PRC § 21060.1, "agricultural land" is identified as prime farmland, farmland of state-wide importance, or unique farmland, as defined by the U.S. Department of Agriculture (USDA) land inventory and monitoring criteria, as modified for California. CEQA also requires consideration of impacts on lands that are under Williamson Act contract. The project site does not contain any agricultural land or lands under Williamson Act contract.

CEQA requires the evaluation of forest and timber resources where they are present. The project site is located in an urban area has been used for commercial uses. The project site does not contain any forest land as defined in PRC § 12220(g), timberland as defined by PRC § 4526, or property zoned for timberland production as defined by Government Code § 51104(g).

Local
Locally, the General Plan includes Land Use Goals, Policies, and Implementation Actions that guide the form of future development in the City and help tie individual projects to the vision for the surrounding area and City as a whole. The following policy is specific to agriculture and forest resources and applies to the proposed project.

- **Policy LU-12.3**: Protect and preserve the remaining farmlands within the City's sphere of influence that are not planned for urbanization in the timeframe of the General Plan through the following means.
    - Limit residential uses in agricultural areas to those which are incidental to agriculture
    - Restrict and discourage subdivision of agricultural lands
    - Encourage contractual protection for agricultural lands, such as Williamson Act contracts, agricultural conservation easements, and transfers of development rights

[5] California Department of Conservation. "Farmland Mapping and Monitoring Program." http://www.conservation.ca.gov/dlrp/fmmp/Pages/Index.aspx. Accessed on September 29, 2020.

- Prohibit land uses within or adjacent to agricultural lands that would compromise the viability of these lands for agricultural uses
- Strictly maintain the Urban Growth Boundary in accordance with other goals and policies in this Plan [General Plan]

B. Impact Evaluation

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

No Impact

The project site is located within an urbanized area of the City. There are no agricultural uses located within or adjacent to the project site. Additionally, the project site is classified as "Urban and Built-Up Land" by the State Department of Conservation. Therefore, the proposed project would not involve the conversion of agricultural land to a non-agricultural use. The proposed project would not result in the conversion of Prime Farmland, Unique Farmland, or Farmland of Statewide Importance to a non-agricultural use and there will be no impact.

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

No Impact

The project site is zoned General Commercial and is within an existing shopping center. There are no agricultural uses or land under a Williamson Act contract in the vicinity of the project site, and there would be no impact.

c) Would the project 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))?

No Impact

The project site is zoned General Commercial and is within an existing shopping center. There is no forest land, timberland in the vicinity of the project site, and there would be no impact.

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

No Impact

The project site is currently developed as a gas station and would not result in the loss of forest land or conversion of forest land, and there would be no impact.

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

No Impact

Refer to subsections 4.2.a and 4.2.c. The project site is located within an existing urban environment and would not result in the extension of infrastructure into an undeveloped area, the development of urban uses on a previously undeveloped greenfield site, or other physical changes that would result in the conversion of farmland to non-agricultural uses or forest land to non-forest uses. The proposed project would not adversely affect agricultural or forestry resources.

4.3 AIR QUALITY

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
Where available, the significance criteria established by the applicable air quality management district 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?	❒	❒	■	❒
b) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or State ambient air quality standard?	❒	❒	■	❒
c) Expose sensitive receptors to substantial pollutant concentrations?	❒	❒	■	❒
d) Result in other emissions (such as those leading to odors) adversely affecting a substantial number of people?	❒	❒	■	❒

A. Environmental Setting

Existing Conditions

The project is located within the San Francisco Bay Area Air Basin (SFBAAB). The SFBAAB has natural characteristics that limit the ability of natural processes to either dilute or transport air pollutants. The major determinants of air pollution transport and dilution are climatic and topographic factors such as wind, atmospheric stability, terrain that influences air movement,

and sunshine. Wind and terrain can combine to transport pollutants away from upwind areas, while solar energy can chemically transform pollutants in the air to create secondary photochemical pollutants such as ozone. The City of San José is within a climatological subregion defined by the Santa Clara Valley. Pollution sources are plentiful and complex in this subregion. The Santa Clara Valley has a high concentration of industry at the northern end, in the Silicon Valley. Some of these industries are sources of air toxics as well as criteria air pollutants. In addition, Santa Clara Valley's large population and many work-site destinations generate the highest mobile source emissions of any subregion in the SFBAAB.

Criteria Air Pollutants

The California Air Resources Board (CARB) and United States Environmental Protection Agency (EPA) focus on the following air pollutants as regional indicators of ambient air quality:

- Ozone
- Respirable particulate matter (PM_{10})
- Fine particulate matter ($PM_{2.5}$)
- Nitrogen dioxide
- Carbon monoxide (CO)
- Sulfur dioxide
- Lead

Because these are the most prevalent air pollutants known to be harmful to human health, based on extensive criteria documents, they are referred to as “criteria air pollutants.” In the SFBAAB, the primary criteria air pollutants of concern are ground-level ozone formed through reactions of oxides of nitrogen (NOx) and reactive organic gases (ROG), PM_{10}, and $PM_{2.5}$.

In addition to criteria air pollutants, local emissions of toxic air contaminants (TACs), such as diesel particulate matter (DPM), are a concern for nearby receptors. 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). Because chronic exposure can result in adverse health effects, TACs are regulated at the regional, State, and federal levels.

Regulatory Framework

Federal and State

The federal Clean Air Act and the California Clean Air Act mandate the control and reduction of specific air pollutants. Under these Acts, USEPA and CARB have established ambient air quality standards for criteria air pollutants, designed to protect public health and welfare. The USEPA has classified the SFBAAB region as a nonattainment area for ozone and $PM_{2.5}$. The

USEPA has deemed the region as attainment/unclassified for all other air pollutants. At the State level, the SFBAAB is considered nonattainment for ozone, PM_{10} and $PM_{2.5}$.[6]

Local

BAAQMD. The Bay Area Air Quality Management District (BAAQMD) is primarily responsible for ensuring that the federal and State ambient air quality standards are attained and maintained in the SFBAAB. The BAAQMD fulfills this responsibility by adopting and enforcing rules and regulations concerning air pollutant sources, issuing permits, inspecting stationary sources of air pollutants, responding to citizen complaints, and monitoring ambient air quality and meteorological conditions. The BAAQMD CEQA Air Quality Guidelines include thresholds of significance for emissions of ROG, NOx, PM_{10}, $PM_{2.5}$, local CO, and TACs to assist lead agencies in evaluating and mitigating air quality impacts under CEQA.[7] The scientific soundness of the thresholds is supported by substantial evidence presented in the BAAQMD's Revised Draft Options and Justification Report.[8] The BAAQMD's project-level thresholds are used in this CEQA analysis in conjunction with the BAAQMD's current CEQA Air Quality Guidelines. The thresholds of significance used in this CEQA analysis are summarized in **Table 2**, below.

In accordance with the California Clean Air Act, the BAAQMD is required to prepare and update an air quality plan that outlines measures by which both stationary and mobile sources of pollutants can be controlled to achieve the federal and State ambient air quality standards in areas designated as nonattainment. In April 2017, the BAAQMD adopted the 2017 Clean Air Plan: Spare the Air, Cool the Climate (2017 CAP), which includes 85 control measures to reduce ROG, NOx, PM_{10}, $PM_{2.5}$, TACs, and greenhouse gases (GHGs).[9]

The 2017 CAP was developed based on a multi-pollutant evaluation method that incorporates well-established studies and methods on quantifying the health benefits and air quality regulations, computer modelling and analysis of existing air quality monitoring data and emission inventories, and growth projections prepared by the Metropolitan Transportation Commission and the Association of Bay Area Governments.

[6] Bay Area Air Quality Management District, 2020. Air Quality Standards and Attainment Status. Available at: https://www.baaqmd.gov/about-air-quality/research-and-data/air-quality-standards-and-attainment-status. Accessed on December 4, 2020.

[7] Bay Area Air Quality Management District, 2017. CEQA Air Quality Guidelines, May.

[8] Bay Area Air Quality Management District (BAAQMD), 2009. Revised Draft Options and Justification Report; California Environmental Quality Act Thresholds of Significance, October.

[9] Bay Area Air Quality Management District (BAAQMD), 2017. 2017 Clean Air Plan: Spare the Air, Cool the Climate, April 19.

Table 2: BAAQMD Project-Level Thresholds of Significance

Impact Analysis	Pollutant	Threshold of Significance
Regional Air Quality (Construction)	ROG	54 pounds/day (average daily emission)
	NO_x	54 pounds/day (average daily emission)
	Exhaust PM_{10}	82 pounds/day (average daily emission)
	Exhaust $PM_{2.5}$	54 pounds/day (average daily emission)
	Fugitive Dust (PM_{10} and $PM_{2.5}$)	Best management practices
Regional Air Quality (Operation)	ROG	54 pounds/day (average daily emission) 10 tons/year (maximum annual emission)
	NO_x	54 pounds/day (average daily emission) 10 tons/year (maximum annual emission)
	Exhaust PM_{10}	82 pounds/day (average daily emission) 15 tons/year (maximum annual emission)
	Exhaust $PM_{2.5}$	54 pounds/day (average daily emission) 10 tons/year (maximum annual emission)
Local Community Risks and Hazards (Operation and/or Construction)	CO	9.0 ppm (8-hour average) 20.0 ppm (1-hour average)
	Exhaust $PM_{2.5}$ (project)	0.3 $\mu g/m^3$ (annual average)
	Exhaust $PM_{2.5}$ (cumulative)	0.8 $\mu g/m^3$ (annual average)
	TACs (project)	Cancer risk increase > 10 in 1 million Chronic hazard index > 1.0
	TACs (cumulative)	Cancer risk > 100 in 1 million Chronic hazard index > 10.0

Note: ppm = part per million; $\mu g/m^3$ = micrograms per cubic meter
Source: Bay Area Air Quality Management District (BAAQMD), 2017.

General Plan. Locally, the General Plan includes Land Use Goals, Policies, and Implementation Actions that guide the form of future development in the City and help tie individual projects to the vision for the surrounding area and City as a whole. The following policies are specific to air quality and apply to the project.

- **Policy MS-10.1:** Assess projected air emissions from new development in conformance with the BAAQMD CEQA Guidelines and relative to State and federal standards. Identify and implement feasible air emission reduction measures.
- **Policy MS-10.2:** Consider the cumulative air quality impacts from proposed developments for proposed land use designation changes and new development, consistent with the region's CAP and State law.
- **Policy MS-11.1:** Require completion of air quality modeling for sensitive land uses such as new residential developments that are located near sources of pollution such as

freeways and industrial uses. Require new residential development projects and projects categorized as sensitive receptors to incorporate effective mitigation into project designs or be located an adequate distance from sources of TACs to avoid significant risks to health and safety.

- **Policy MS-11.2:** For projects that emit toxic air contaminants, require project proponents to prepare health risk assessments in accordance with BAAQMD-recommended procedures as part of environmental review and employ effective mitigation to reduce possible health risks to a less-than-significant level. Alternatively, require new projects (such as, but not limited to, industrial, manufacturing, and processing facilities) that are sources of TACs to be located an adequate distance from residential areas and other sensitive receptors.
- **Policy MS-11.4:** Encourage the installation of appropriate air filtration at existing schools, residences, and other sensitive receptor uses adversely affected by pollution sources.
- **Policy MS-11.5:** Encourage the use of pollution absorbing trees and vegetation in buffer areas between substantial sources of TACs and sensitive land uses.
- **Policy MS-13.1:** Include dust, PM, and construction equipment exhaust control measures as conditions of approval for subdivision maps, site development and planned development permits, grading permits, and demolition permits. At a minimum, conditions shall conform to construction mitigation measures recommended in the current BAAQMD CEQA Guidelines for the relevant project size and type.
- **Policy CD-3.3:** Within new development, create and maintain a pedestrian-friendly environment by connecting the internal components with safe, convenient, accessible, and pleasant pedestrian facilities and by requiring pedestrian connections between building entrances, other site features, and adjacent public streets.
- **Policy TR-9.1:** Enhance, expand, and maintain facilities for walking and bicycling, particularly to connect with and ensure access to transit and to provide a safe and complete alternative transportation network that facilitates non-automobile trips.

B. Impact Evaluation

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

Less Than Significant Impact

Based on the BAAQMD's current CEQA Air Quality Guidelines, the following criteria should be considered to determine if a project would conflict with or obstruct implementation of the 2017 CAP:

- Does the project include applicable control measures from the air quality plan?

- Does the project disrupt or hinder implementation of any air quality plan control measures?
- Does the project support the primary goals of the air quality plan?

The 2017 CAP includes control measures that aim to reduce air pollution and GHGs from stationary, area, and mobile sources. The control measures are organized into nine categories: stationary sources, transportation, buildings, energy, agriculture, natural and working lands, waste, water, and super-GHG pollutants (e.g., methane, black carbon, and fluorinated gases). As described in **Table 3**, the project would be consistent with applicable control measures from the 2017 CAP. Because the project would not result in any significant and unavoidable air quality impacts related to emissions, ambient concentrations, or public exposures (see subsections b-d below and Section 4.7, Greenhouse Gas Emissions), the project supports the primary goals of the 2017 CAP and the impact would be less than significant.

Table 3: Project Consistency with BAAQMD's 2017 CAP

Control Measures	Project Consistency
Stationary Source	The stationary source measures, which are designed to reduce emissions from stationary sources, are incorporated into rules adopted by the BAAQMD and then enforced by the BAAQMD's Permit and Inspection programs. Since the project would not create any new stationary sources on the project site, the stationary source control measures of the 2017 CAP are not applicable to the project.
Transportation	The transportation control measures are designed to reduce vehicle trips, use, miles traveled, idling, or traffic congestion for the purpose of reducing vehicle emissions. The proposed retail project would result in fewer trips compared to the existing conditions (a gas service station). Therefore, the project would be consistent with the goals for transportation control in the 2017 CAP. Additionally, the project provides bicycle parking, and will share trips associated with the shopping center within which project site is located.
Energy	The energy control measures are designed to reduce emissions of criteria air pollutants, TACs, and GHGs by decreasing the amount of electricity consumed in the Bay Area, as well as decreasing the carbon intensity of the electricity used by switching to less GHG-intensive fuel sources for electricity generation. Since these measures apply to electrical utility providers and local government agencies (and not individual projects), the energy control measures of the 2017 CAP are not applicable to the project. However, the project's electricity is supplied by Pacific Gas and Electric Company (PG&E), which would supply at least 70 percent of the electric power mix from a combination of renewable and greenhouse-gas free sources.[a]
Buildings	The BAAQMD has authority to regulate emissions from certain sources in buildings such as boilers and water heaters, but has limited authority to regulate buildings themselves. Therefore, the building control measures focus on working with local governments that have authority over local building codes to facilitate adoption of best practices and policies to control GHG emissions. The project will comply with the local building codes and indoor lighting systems would meet the minimum code efficiency requirements for Title-24 2019 Building Energy Efficiency Standards. Therefore, the project would be consistent with the buildings control measures of the 2017 CAP.

Table 3: Project Consistency with BAAQMD's 2017 CAP	
Control Measures	**Project Consistency**
Agriculture	The agriculture control measures are designed to primarily reduce emissions of methane. Since the project does not include any agricultural activities, the agriculture control measures of the 2017 CAP are not applicable to the project.
Natural and Working Lands	The control measures for the natural and working lands sector focus on increasing carbon sequestration on rangelands and wetlands, as well as encouraging local governments to adopt ordinances that promote urban-tree plantings. Since the project does not include the disturbance of any rangelands or wetlands, the natural and working lands control measures of the 2017 CAP are not applicable to the project. In compliance with the Tree Ordinance, the project would include replacing nine trees that would be removed and planting an additional 10 trees to contribute to the urban forest.
Waste Management	The waste management measures focus on reducing or capturing methane emissions from landfills and composting facilities, diverting organic materials away from landfills, and increasing waste diversion rates through efforts to reduce, reuse, and recycle. The project would comply with local requirements for waste management (e.g., recycling and composting services), including recycling and reusing demolition-related asphalt. Therefore, the project would be consistent with the waste management control measures of the 2017 CAP.
Water	The water control measures to reduce emissions from the water sector will reduce emissions of criteria pollutants, TACs, and GHGs by encouraging water conservation, limiting GHG emissions from publicly owned treatment works (POTWs), and promoting the use of biogas recovery systems. Since these measures apply to POTWs and local government agencies (and not individual projects), the water control measures of the 2017 CAP are not applicable to the project. The project's landscaping would comply with the State's Model Water Efficiency Ordinance.
Super GHGs	The super-GHG control measures are designed to facilitate the adoption of best GHG control practices and policies through the BAAQMD and local government agencies. Since these measures do not apply to individual projects, the super-GHG control measures of the 2017 CAP are not applicable to the project.

[a] Pacific Gas and Electric (PG&E), 2017. Clean Energy Solutions, https://www.pge.com/en_US/about-pge/environment/what-we-are-doing/clean-energy-solutions/clean-energy-solutions.page, accessed October 30, 2017.
Source: Bay Area Air Quality Management District (BAAQMD), 2017. CEQA Air Quality Guidelines, May. Baseline Environmental Consulting, 2020.

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

Less Than Significant Impact

Construction and operation of the project would generate criteria air pollutant emissions that could potentially impact regional air quality. During construction, the primary pollutant emissions of concern would be ROG, NOx, PM_{10}, and $PM_{2.5}$ from the exhaust of off-road construction equipment and on-road construction vehicles (worker vehicles, vendor trucks, and haul trucks).

In addition, fugitive dust emissions of PM_{10} and $PM_{2.5}$ would be generated by soil disturbance activities, and fugitive ROG emissions would result from the application of architectural coatings and paving during construction. During operation, the primary pollutant emissions of concern would be ROG, NOx, and exhaust PM_{10} and $PM_{2.5}$ from mobile sources, energy use and area sources (e.g., consumer products, architectural coatings, and landscape maintenance equipment).

The BAAQMD CEQA Air Quality Guidelines include screening levels for criteria air pollutant emissions based on the size of the proposed land use. As shown in **Table 4**, the proposed land use size would be below the BAAQMD's screening levels for construction and operational emissions of criteria air pollutants. Therefore, the project's NOx, ROG, and exhaust PM_{10} and $PM_{2.5}$ emissions would not be considered significant during construction or operation.

Table 4: Criteria Air Pollutant and Precursor Screening Level Sizes

Land Use Type	Project Size	Operational Criteria Pollutant Screening Size	Construction Criteria Pollutant Screening Size
Regional Shopping Center	7,800 square feet	99,000 square feet	277,000 square feet
Exceeds screening levels?		No	No

Sources: BAAQMD, 2017. CEQA Air Quality Guidelines, May. Baseline Environmental Consulting, 2020.

The BAAQMD does not have a quantitative threshold of significance for fugitive dust PM_{10} and $PM_{2.5}$ emissions; however, the BAAQMD considers implementation of best management practices (BMPs) to control dust during construction sufficient to reduce potential impacts to a less-than-significant level. The project is required to comply with the City of San José's Standard Permit Condition – Air Quality,[10] which are also the BMPs recommended by BAAQMD to reduce fugitive dust and exhaust emissions during all phases of construction at the project site, as stated below:

Standard Permit Condition

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

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

[10] City of San José. 2020. DRAFT Standard Permit Conditions – Environmental. September 22.

- Remove visible mud or dirt track-out onto adjacent public roads using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.).
- Pave new or improved roadways, driveways, and sidewalks as soon as possible.
- Lay building pads as soon as possible after grading unless seeding or soil binders are used.
- Replant vegetation in disturbed areas as quickly as possible.
- Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
- Minimize idling times either by shutting off equipment when not in use, or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations). Provide clear signage for construction workers at all access points.
- Maintain and property tune construction equipment in accordance with manufacturer's specifications. Check all equipment by a certified mechanic and record a determination of running in proper condition prior to operation.
- Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints.

Because implementation of dust-control measures under this Standard Permit Condition would satisfy the BAAQMD's threshold of significance, the air quality impact from dust generated during project construction would be less than significant.

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

Less Than Significant Impact

The term "sensitive receptor" refers to a location where individuals are more susceptible to poor air quality. Sensitive receptors include schools, convalescent homes, and hospitals because the very young, the old, and the infirm are more susceptible than the rest of the public to air-quality-related health problems. Residential areas are also considered sensitive to poor air quality because people are often at home for extended periods, thereby increasing the duration of exposure to potential air contaminants. The BAAQMD recommends evaluating the potential impacts to sensitive receptors located within 1,000 feet of a project. The project's potential impacts to sensitive receptors from emissions of CO and TACs are discussed below.

Localized Carbon Monoxide Concentrations

The occurrence of localized CO concentrations, also known as "hotspots," can impact nearby sensitive receptors. The source of local CO emissions is often associated with heavy traffic congestion, which most frequently occurs at signalized intersections of high-volume roadways. The BAAQMD's threshold of significance for local CO concentrations is equivalent to the 1- and

8-hour California Ambient Air Quality Standards (CAAQS) of 20.0 and 9.0 parts per million, respectively, because these represent levels that are protective of public health.

As discussed in Section 4.17, Transportation, the retail project would generate fewer trips compared to the existing conditions (a gas service station). Therefore, the project would not be expected to cause or contribute to local CO levels above the CAAQS, and would have a less-than-significant impact on nearby sensitive receptors.

Toxic Air Contaminants from Construction

Project construction would generate DPM and $PM_{2.5}$ emissions from the exhaust of off-road diesel construction equipment. DPM and $PM_{2.5}$ from diesel-powered engines are a complex mixture of soot, ash particulates, metallic abrasion particles, volatile organic compounds, and other components that can penetrate deeply into the lungs and contribute to a range of health problems. In 1998, CARB identified DPM from diesel-powered engines as a TAC based on its potential to cause cancer and other adverse health effects.[11] Long-term exposure to $PM_{2.5}$ has been linked to premature death, particularly in people who have chronic heart or lung diseases, and reduced lung function growth in children.[12] DPM and $PM_{2.5}$ emissions could affect nearby sensitive receptors. For this analysis, emissions of exhaust PM_{10} were conservatively used as a surrogate for DPM.

To estimate construction emissions of PM_{10} and $PM_{2.5}$, the BAAQMD currently recommends using the most recent version of the California Emissions Estimator Model (CalEEMod Version 2016.3.2). CalEEMod utilizes widely accepted models for emission estimates combined with appropriate default data for a variety of land use projects that can be used if site-specific information is not available. The default data (e.g., type and power of construction equipment) are supported by substantial evidence provided by regulatory agencies and a combination of Statewide and regional surveys of existing land uses. The primary input data used to estimate TAC emissions associated with construction of the project are summarized in **Table 5**. A copy of the CalEEMod report for the project, which summarizes the input parameters, assumptions, and findings, is provided in Appendix A.

[11] California Air Resources Board (CARB), 1998. Initial Statement of Reasons for Rulemaking; Proposed Identification of Diesel Exhaust as a Toxic Air Contaminant, June.

[12] California Air Resources Board (CARB), 2020. Inhalable Particulate Matter and Health (PM2.5 and PM10). Available at: https://ww2.arb.ca.gov/resources/inhalable-particulate-matter-and-health. Accessed on December 9.

Table 5: Summary of CalEEMod Construction Input Parameters

CalEEMod Input Category	Construction Assumptions and Changes to Default Data
Construction Equipment	Construction schedule, equipment, and associated total hours of operation were provided by the project Applicant. It was assumed that construction phases would not overlap, and that construction would begin as early as June 2021 and last approximately 8 months.
Material Movement	According to the project Applicant, approximately 2,000 cubic yards of cut and 1,000 cubic yards of fill would be needed to balance the project site. It was conservatively assumed that the cut and fill volumes are the same as export and import volumes, respectively.
Demolition	Approximately 4,470 square feet of an existing gas station building would be demolished and the associated underground storage tanks would be removed and hauled off-site.

Source: Baseline Environmental Consulting, 2020. California Emissions Estimator Model (CalEEMod) Analysis, Appendix A.

The annual average concentrations of DPM and exhaust $PM_{2.5}$ during construction were estimated within 1,000 feet of the project using the U.S. Environmental Protection Agency's Industrial Source Complex Short Term (ISCST3) air dispersion model. The input parameters and assumptions used for estimating emission rates of DPM and $PM_{2.5}$ from off-road diesel construction equipment are included in Appendix A.

Daily emissions from construction were assumed to occur from 7a.m. to 7p.m., Monday through Friday. The exhaust from off-road equipment was represented in the ISCST3 model as a series of volume sources with a release height of 5 meters to represent the mid-range of the expected plume rise from frequently used construction equipment.

The model assumes a uniform grid of receptors spaced 20 meters apart around the project site with receptor heights of 1.8 meters (approximately 5 feet, 11 inches, for ground-level receptors) for developing isopleths (i.e., concentration contours) that illustrate the air dispersion pattern from the various emission sources. The ISCST3 model input parameters included 3 years of the BAAQMD meteorological data from Station 7801 located about 4.7 miles southeast of the project site.

Based on the annual average concentrations of DPM and $PM_{2.5}$ estimated using the air dispersion model (Appendix A), potential health risks were evaluated for the maximally exposed individual resident (MEIR) located approximately 300 feet northwest of the project site. In accordance with guidance from the BAAQMD[13] and Office of Environmental Health Hazard

[13] Bay Area Air Quality Management District (BAAQMD), 2012. Recommended Methods for Screening and Modeling Local Risks and Hazards. May.

Assessment (OEHHA),[14] the health risk assessment calculated the incremental increase in cancer risk and chronic hazard index (HI) to the MEIR from DPM emissions during construction. The acute HI for DPM was not calculated because an acute reference exposure level has not been approved by OEHHA and CARB, and the BAAQMD does not recommend analysis of acute non-cancer health hazards from construction activity. The annual average concentration of DPM at the MEIR was used to conservatively assess potential health risks to nearby sensitive receptors.

The incremental increase in cancer risk from on-site DPM emissions during construction was assessed for an infant of 0 to 2 years of age exposed to DPM at the MEIR location. This exposure scenario represents the most sensitive individual who could be exposed to adverse air quality conditions in the vicinity of the project. It was also assumed that the infant at the MEIR location would be exposed to an annual average DPM concentration over the entire estimated duration of construction, which is about 24 months. The input parameters and results of the health risk assessment are included in Appendix A.

Table 6 summarizes the estimated health risks at the MEIR due to DPM and $PM_{2.5}$ emissions from project construction and compares them to the BAAQMD's thresholds of significance. The estimated excess cancer risk and chronic HI for DPM and annual average $PM_{2.5}$ concentrations from construction emissions were below the BAAQMD's thresholds of significance. Therefore, the impact on nearby sensitive receptors exposed to concentrations of DPM and $PM_{2.5}$ from project construction emissions would be less than significant.

Table 6: Health Risks at MEIR During Project Construction

	Diesel Particulate Matter		Exhaust $PM_{2.5}$
Sensitive Receptor	Cancer Risk (per million)	Chronic Hazard Index	Annual Average Concentration ($\mu g/m^3$)
Maximally Exposed Individual Resident	1.2	<0.1	0.02
Thresholds of Significance	10	1	0.3
Exceed Thresholds?	No	No	No

Note: $\mu g/m^3$ = micrograms per cubic meter
Source: Baseline Environmental Consulting, 2020. See Appendix A.

Toxic Air Contaminants from Operation

The project would not introduce any emergency diesel generator or other stationary sources of TAC emissions. In addition, the project would remove an existing stationary source of TAC emissions (Plant 108735 Rotten Robbie Gas Dispensing Facility). Therefore, project operations

[14] Office of Environmental Health Hazard Assessment (OEHHA), 2015. Air Toxics Hot Spots Program Guidance Manual for Preparation of Health Risk Assessments, May.

would not have any impact on nearby sensitive receptors related to substantial pollutant concentrations.

Cumulative TAC Emissions

In addition to a project's individual TAC emissions during construction and operation, the potential cumulative health risks to the MEIR from existing and reasonably foreseeable future sources of TACs were evaluated. The BAAQMD's online screening tools were used to provide conservative estimates of how much existing and foreseeable future TAC sources would contribute to cancer risk, HI, and $PM_{2.5}$ concentrations at the MEIR. The individual health risks associated with each source were summed to find the cumulative health risk at the MEIR. The supporting health risk calculations are included in Appendix A.

Based on the BAAQMD's Permitted Stationary Sources Risks and Hazards Screening Tool, there are three existing stationary sources of TAC emissions within 1,000 feet of the MEIR that could pose health risks to the MEIR (see **Table 7**).[15] The BAAQMD's Diesel Internal Combustion Engine Distance Multiplier Tool and Gasoline Dispensing Facility Multiplier Tool were used to refine the screening values associated with the existing stationary sources to represent the attenuated health risks that can be expected with increasing distance from diesel engines and gasoline fueling facilities and diesel engines, respectively. There is no foreseeable future development within 1,000 feet of the MEIR that may include an emergency diesel generator or other stationary sources of TAC emissions.[16]

Health risk at the MEIR from exposure to mobile sources of TACs was estimated based on the BAAQMD's Bay Area modeling of health risks from highways, railroads, and major roadways with an average annual daily traffic (AADT) volume greater than 30,000 vehicles per day.[17] In addition, health risks from the Almaden Expressway, which was excluded from the BAAQMD's modeling, were estimated using 2017 AADT volumes[18] and BAAQMD's Roadway Screening

[15] Bay Area Air Quality Management District (BAAQMD), 2020. Permitted Stationary Sources Risks and Hazards Screening Tool. Available at https://baaqmd.maps.arcgis.com/apps/webappviewer/index.html?id=2387ae674013413f987b1071715daa65. Last updated on January 2, 2020.

[16] City of San José, 2020. Email Communication from Bethelhem Telahun at City of San José to Judith Malamut at Baseline Environmental Consulting, titled: H20-017 4962 Almaden Expressway Retail Building. November 3, 2020.

[17] Bay Area Air Quality Management District (BAAQMD), 2014. BAAQMD Planning Healthy Places Highway, Major Street, and Rail health risk raster files.

[18] California Department of Transportation, 2020. 2017 Traffic Volumes: Route 87-91. Available at https://dot.ca.gov/programs/traffic-operations/census/traffic-volumes/2017/route-87-91:. Accessed on: December 7, 2020.

Analysis Calculator.[19] The cancer risks were adjusted using a factor of 1.374 to account for the most recent health risk parameters recommended by OEHHA.[20]

Estimates of the cumulative health risks at the MEIR are summarized and compared to the BAAQMD's cumulative thresholds of significance in **Table 7**. As shown in **Table 7**, the cumulative cancer risks and chronic HI at the MEIR are below the BAAQMD's cumulative threshold; however, the cumulative $PM_{2.5}$ concentrations at the MEIR exceeded the BAAQMD's cumulative threshold because the contribution from existing mobile sources already exceed the threshold. The project's contribution to $PM_{2.5}$ concentrations at the MEIR would be less than 0.5 percent of the total $PM_{2.5}$ concentrations from the existing TAC sources. Therefore, the project's excess $PM_{2.5}$ concentrations would not result in a substantial contribution or adverse change to the existing air quality and, therefore, would not result in a cumulatively considerable impact.

[19] Bay Area Air Quality Management District (BAAQMD), 2015. Roadway Screening Analysis Calculator, April 16.

[20] Bay Area Air Quality Management District (BAAQMD), 2018. Personal communication between Patrick Sutton from Baseline Environmental Consulting and Areana Flores from the BAAQMD, February 5.

Table 7: Cumulative Health Risks at MEIR

Source	Source Type	Method Reference	Cancer Risk (10^{-6})	Chronic Hazard Index	$PM_{2.5}$ ($\mu g/m^3$)
Project					
Construction Equipment	Diesel Exhaust		1.21	<0.01	0.02
Existing Stationary Sources					
ARCO Facility #02114 (Plant 112186)	Gas Dispensing Facility	1,2	1.95	0.01	<0.01
The Bass Pro Shops (Plant 22983)	Diesel Generator	1,3	0.10	<0.01	<0.01
Classic Car Wash (Plant 103830)	Gas Dispensing Facility	1,2	<0.01	<0.01	<0.01
Existing Mobile Sources					
Highways	Mobile	4	3.02	NA	0.19
Major Roadways	Mobile	4	20.51	NA	0.69
Railroads	Mobile	4	0.55	NA	<0.01
Almaden Expressway (156,500 AADT)	Mobile	5,6	58.63	NA	1.18
Cumulative Health Risks			86	<0.1	2.1
BAAQMD's Cumulative Thresholds			100	10.0	0.8
Exceed Thresholds?			No	No	Yes

Notes: $\mu g/m^3$ = micrograms per cubic meter; NA = not applicable; AADT=annual average daily traffic

Health risk screening values derived using the following BAAQMD tools and methodologies:

1) BAAQMD's 2018 stationary source emissions data.

2) BAAQMD's Risk and Hazards Emissions Screening Calculator (Beta Version 4.0) Gasoline Dispensing Facility Distance Multiplier Tool.

3) BAAQMD's Risk and Hazards Emissions Screening Calculator (Beta Version 4.0) Diesel Internal Combustion Engine Distance Multiplier Tool.

4) BAAQMD's Highway, Major Street, and Rail health risk raster files.

5) BAAQMD's Roadway Screening Analysis Calculator.

6) BAAQMD's recommended Office of Environmental Health Hazard Assessment cancer risk adjustment factor.

Source: Baseline Environmental Consulting, 2020.

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

Less Than Significant Impact

As a retail development, the project would not be expected to frequently generate significant odors for a substantial duration. Therefore, project impacts related to odors would be less than significant.

4.4 BIOLOGICAL RESOURCES

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
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?	❒	■	❒	❒
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 Wildlife or U.S. Fish and Wildlife Service?	❒	❒	❒	■
c) Have a substantial adverse effect on State or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?	❒	❒	❒	■
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?	❒	❒	❒	■
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?	❒	❒	■	❒
f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan or other approved local, regional, or State habitat conservation plan?	❒	❒	❒	■

A. Environmental Setting

Existing Conditions

The project site is currently developed with a gas station, convenience store, and service station. Landscaping on the project site is limited to individual trees, primarily flowering cherry trees. There are no native, sensitive, or wetland habitats on the site which is almost completely paved or covered with buildings. Due to the lack of these habitats and the extent of human disturbance and development on the project site, special-status plant and animal species are not expected to occur.

Regulatory Framework

Federal and State

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

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

Migratory Bird Treaty and Nesting Bird Protections. The federal Migratory Bird Treaty Act (MBTA) prohibits killing, possessing, or trading in migratory birds except in accordance with regulations prescribed by the Secretary of the Interior. This act encompasses whole birds, parts of birds, and bird nests and eggs. Construction disturbance during the breeding season could result in the incidental loss of fertile eggs or nestlings, or otherwise lead to nest abandonment, a violation of the MBTA. California Fish and Game Code Subsections 3503, 3503.5, and 3800 prohibit the possession, incidental take, or needless destruction of birds, their nests, and eggs.

Most special-status animal species occurring in the Bay Area use habitats that are not present on the project site, such as salt marsh, freshwater marsh, and serpentine grassland habitats. Since the native vegetation of the area is no longer present, native wildlife species have been supplanted by species that are more compatible with an urbanized area; however, there is still

the potential for nesting birds to be located in trees located on or in the area surrounding the project site.

Local

Santa Clara Valley Habitat Plan/Natural Community Conservation Plan. The project site is located within the boundaries of the Santa Clara Valley Habitat Plan/Natural Conservation Plan (SCVHP). The SCVHP is intended to promote the recovery of endangered species and enhance ecological diversity and function, while accommodating planned growth in approximately 519,000 acres of Santa Clara County. The project is subject to applicable SCVHP conditions and fees (including a nitrogen deposition fee) prior to issuance of any grading permits. The project applicant would be required to submit the Santa Clara Valley Habitat Plan Coverage Screening Form to the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee for approval and payment of the nitrogen deposition fee prior to the issuance of a grading permit. The project site is located on land designated as Urban - Suburban, which is land that has been developed with one structure per 2.5 or fewer acres. The project site is currently in Urban Area Land Cover Fee Zones which indicate no land cover fees are required.

City of San José Street Tree Ordinance Municipal Code Section 13.28. The City of San José promotes the health, safety and welfare of the City by regulating the planting, removal and maintenance of the community forest (San José Municipal Code Section 13.28). A permit is required for the planting or installation of a street tree and for the pruning or removal of a street tree.

City of San José Tree Ordinance Municipal Code Section 13.32. The City of San José maintains the urban landscape partly by promoting the health, safety, and welfare of the City by controlling the removal of ordinance trees on private property (San José Municipal Code Section 13.32). A Tree Removal Permit is required for the removal of trees of any size within a commercial property, such as the project site. Nine on-site trees, all flowering cherry trees, are proposed for removal from the existing planter areas along the east and south boundaries of the project site**.** All nine of the trees to be removed are less than 12 inches at breast height.

In addition, any tree found by the City Council to have special significance based on factors including, but not limited to, its history, girth, height, species, or unique quality, can be designated as a “Heritage tree” (San José Municipal Code Section 13.32). It is unlawful to vandalize, mutilate, remove, or destroy such heritage trees. There are no heritage trees on-site.

General Plan. Locally, the General Plan includes Land Use Goals, Policies, and implementation Actions that guide the form of future development in the City and help tie individual projects to the vision for the surrounding area and City as a whole. The following policy is specific biological resources and applies to the proposed project.

- **ER-4.4**: Require that development projects incorporate mitigation measures to avoid and minimize impacts to individuals of special-status species.
- **ER-5.1**: Avoid implementing activities that result in the loss of active native birds' nests, including both direct loss and indirect loss through abandonment, of native birds. Avoidance of activities that could result in impacts to nests during the breeding season or maintenance of buffers between such activities and active nests would avoid such impacts.
- **ER-5.2**: Require that development projects incorporate measures to avoid impacts to nesting migratory birds.
- **ER-6.5**: Prohibit use of invasive species, Citywide, in required landscaping as part of the discretionary review of proposed development.
- **MS-21.4**: Encourage the maintenance of mature trees, especially natives, on public and private property as an integral part of the community forest. Prior to allowing the removal of any mature tree, pursue all reasonable measures to preserve it.
- **MS-21.5**: As part of the development review process, preserve protected trees (as defined by the City Municipal Code), and other significant trees. Avoid any adverse effect on the health and longevity of protected or other significant trees through appropriate design measures and construction practices. Special priority should be given to the preservation of native oaks and native sycamores. When tree preservation is not feasible, include appropriate tree replacement, both in number and spread of canopy.
- **MS-21.6**: As a condition of new development, require the planting and maintenance of both street trees and trees on private property to achieve a level of tree coverage in compliance with and that implements City laws, policies, or guidelines.

B. Impact Evaluation

a) Would the project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?

Less Than Significant with Mitigation Incorporated

The project site is located within a suburban shopping center adjacent to the urbanized Almaden Expressway commercial corridor, and the proposed project. The trees on and adjacent to the project site could provide nesting habitat for birds, including migratory birds. Nesting birds are among the species protected under provisions of the Migratory Bird Treaty Act and California Department of Fish and Wildlife (CDFW) Code Sections 3503, 3503.5, and 2800.

Impact BIO-1: Project construction, including tree removals, that occur during the breeding season could result in a significant impact to nesting birds and other protected migratory bird species.

Construction disturbance during the breeding season could result in the incidental loss of fertile eggs or nestlings, or otherwise lead to nest abandonment. However, the area around the project site is heavily urbanized and nesting birds would already be accustomed to a relatively high ambient noise environment. Disturbance that causes abandonment and/or loss of reproductive effort is considered a taking by the CDFW. Construction activities, such as tree removal, that disturb a nesting bird on-site or immediately adjacent to the construction zone would constitute a significant impact. With the implementation of Mitigation Measure BIO-1 below, this impact would be reduced to a less-than-significant level.

> Mitigation Measure BIO-1*:* Prior to the issuance of any grading, building, or demolition permits, the project applicant shall schedule demolition and construction activities to avoid the nesting season. The nesting season for most birds, including most raptors in the San Francisco Bay area, extends from February 1st through August 31st (inclusive), as amended.
>
> If demolition and construction cannot be scheduled to occur between September 1st and January 31st (inclusive) to avoid the nesting season, pre-construction surveys for nesting raptors and other migratory nesting birds shall be conducted by a qualified ornithologist to identify active nests that may be disturbed during project implementation on-site and within 250 feet of the site. Projects that commence demolition and/or construction activities between February 1st and April 30th (inclusive) shall conduct a pre-construction survey for nesting birds no more than 14 days prior to initiation of construction, demolition activities, or tree removal. Between May 1 and August 31 (inclusive), the pre-construction survey shall be conducted no more than 30 days prior to initiation of construction, demolition, or tree removal activities. Nesting bird surveys are not required for construction activities occurring between August 31 and February 1, inclusive.
>
> If an active nest is found in or close enough to the project area to be disturbed by construction activities, a qualified ornithologist, in consultation with the California Department of Fish and Wildlife (CDFW), shall determine the extent of a construction free buffer zone (typically 250 feet for raptors and 100 feet for other birds) around the nest, to ensure that raptor or migratory bird nests would not be disturbed during ground disturbing activities. The construction-free buffer zones shall be maintained until after the nesting season has ended and/or the ornithologist has determined that the nest is no longer active.
>
> The ornithologist shall submit a report indicating the results of the survey and any designated buffer zones to the satisfaction of the Supervising Environmental Planner of the City of San José Department of Planning, Building and Code Enforcement prior to any

tree removal activities or issuance of any demolition, grading or building permits (whichever occurs first).

With implementation of the identified General Plan policies and mitigation measures, the project's impact to nesting birds and raptors or their habitats would be less than significant.

b) Would the project have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?

No Impact

The Guadalupe River is located over 200 feet to the northeast from the edge of the project site behind the Safeway and shopping center buildings. Pursuant to the City's Riparian Corridor Policy,[21] the project is located outside of the 100-foot setback from the riparian corridor required for urban infill projects. Lighting associated with the project will be directed downward on the parking area and is not anticipated to cause additional glare in the riparian corridor beyond existing conditions. While there will be glass windows on the retail building, there will be an overhang above the windows, they will be used as advertising space and will not appear as pass through areas to flying birds. Therefore, the project is in compliance with the City's Riparian Corridor Policy and not anticipated to have any impact on the riparian corridor.

c) Would the project have a substantial adverse effect on State or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) Through direct removal, filling, hydrological interruption, or other means?

No Impact

The project site is not located on or adjacent to a federally protected wetland.

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

No Impact

The project site is located in an urban area and is not currently used as a migratory wildlife corridor. The project site does not contain a native wildlife nursery site. As described above, there are no wetlands on or adjacent to the project site, and therefore, the project would not impact the movement of migratory fish. Major roadways and other commercial developments border or are in the project site vicinity. Therefore, wildlife is largely restricted from accessing

[21] City of San José, *Riparian Corridor Policy* (Policy Number 6-34)

the project site and movement is already severely limited; the proposed retail project would not further impact wildlife movement. The proposed project would, therefore, not impact the movement of native or migratory wildlife through the project area nor impede the use of a native wildlife nursery site.

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

Less Than Significant Impact

Sensitive Habitats. No sensitive habitats were identified on the project site; however, within the City of San José, the urban forest (including on-site trees) as a whole is considered an important biological resource because most mature trees provide nesting, cover, and foraging habitat for a variety of species that are tolerant of humans. The City's General Plan identifies local conservation strategies; however, the project site is not within an area of concern for conservation.

Tree Removal and Replacement. Development of the proposed project would result in the loss of nine ornamental trees on the site. Consistent with City ordinances and requirements, trees removed as a result of the project would be required to be replaced in accordance with all applicable laws, policies or guidelines, including:

- City of San José Tree Protection Ordinance 13.31;
- San José Municipal Code Section 13.28; and
- General Plan Policies MS-21.4, MS-21.5, and MS-21.6.

Pursuant to Chapter 13.28 of the Municipal Code, none of the proposed trees to be removed are heritage trees. The removed trees would be replaced according to tree replacement ratios required by the City, as provided in **Table 8** below, as amended.

As shown in **Table 9**, eight onsite trees would be removed and would be replaced at a 2:1 ratio and one onsite tree to be removed would be replaced at a 1:1 ratio. In total, nine trees onsite would be removed and 17 trees would be planted on site, as required by the Tree Protection Ordinance and in conformance with the Tree Replacement Standard Permit Condition. As mentioned previously, there are no native or heritage trees on the site. The landscape plan (see **Figure 8**) also shows an additional two trees would be planted on the site for a total of 19 new trees.

Table 8: Tree Replacement Ratios

Circumference of Tree to Be Removed	Type of Tree to be Removed			Minimum Size of Each Replacement Tree
	Native	Non-Native	Orchard	
38 inches or more	5:1	4:1	3:1	15-gallon
19 up to 38 inches	3:1	2:1	None	15-gallon
Less than 19 inches	1:1	1:1	None	15-gallon

Notes:
x:x tree replacement to tree loss ratio.
Trees greater than or equal to 38-inch circumference shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees. For Multi-Family residential, Commercial and Industrial properties, a permit is required for removal of trees of any size.
A 38-inch tree equals 12.1 inches in diameter.
A 24-inch box tree = two 15-gallon trees.
Single-Family and Two-dwelling properties may be mitigated at a 1:1 ratio.
Source: City of San José Tree Protection Ordinance 13.31.

Table 9: Inventory of Onsite Trees to be Removed and Replaced

Total Diameter at Breast Height Trees to Be Removed	Common Name	Trees to Be Removed	Tree Replacement Ratio	Number of Replacement Trees
6”-12”	Flowering Cherry	8	1:2	16
<6”	Flowering Cherry	1	1:1	1

Source: Jett Landscape. 2020. Tree Removal Plan, Sheet 10A, Response to Plan Check. October 15.

Standard Permit Condition

Tree Replacement. The removed trees would be replaced according to tree replacement ratios required by the City, as provided in **Table 8**, as amended.

- Since nine trees onsite would be removed, 8 trees would be replaced at a 2:1 ratio, and one tree would be replaced at a 1:1 ratio. As mentioned previously, there are no native trees on-site. The total number of replacement trees required to be planted would be 17 trees. The species of trees to be planted would be determined in consultation with the City Arborist and the Department of Planning, Building and Code Enforcement.
- In the event the project site does not have sufficient area to accommodate the required tree mitigation, one or more of the following measures will be implemented, to the satisfaction of the Director of Planning, Building and Code Enforcement, at the development permit stage:
- The size of a 15-gallon replacement tree may be increased to 24-inch box and count as two replacement trees to be planted on the project site, at the development permit stage.
- Pay Off-Site Tree Replacement Fee(s) to the City, prior to the issuance of Public Works grading permit(s), in accordance to the City Council approved Fee Resolution. The City will use the off-site tree replacement fee(s) to plant trees at alternative sites.

Because a driveway on Cherry Avenue to access the existing gas station would be removed as part of the project, the applicant would replace the driveway with a curb, gutter, 12-foot detached sidewalk and street trees to be located in the parkstrip. The number, locations and type of designated street tree will be determined by the City at the street improvement stage in consultation with the City Arborist and the Department of Planning, Building and Code Enforcement. The street trees will be installed within the public right-of-way along the entire project street frontage, including along Cherry Avenue where the existing gas station driveway will be removed, per City standards and the Guidelines for Planning, Design, and Construction of City Streetscape Projects. The applicant will obtain a Department of Transportation street tree planting permit for the approved street tree plantings.

With adherence to the Standard Permit Condition, impacts related to tree removals would be less than significant.

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

No Impact

No sensitive habitats were identified on the project site, and there are no local policies or ordinances protecting biological resources that would be in conflict with the proposed project. The project site does not offer habitat capable of supporting special-status species identified in the SCVHP. The City's Standard Permit Condition related to the SCVHP states:

Standard Permit Condition

> **Santa Clara Valley Habitat Plan**. The project is subject to applicable SCVHP conditions and fees (including the nitrogen deposition fee) prior to issuance of any grading permits. The project applicant would be required to submit the Santa Clara Valley Habitat Plan Coverage Screening Form to the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee for approval and payment of the nitrogen deposition fee prior to the issuance of a grading permit. The Habitat Plan and supporting materials can be viewed at www.scv-habitatplan.org.

The proposed retail project falls under an exemption from development fees as a private activity within the City planning limits (i.e., as land type urban-suburban, less than 0.5 acres). Based on a trip generation analysis conducted by Hexagon Transportation Consultants,[22] it was determined that replacement of the gas station with a retail building would result in 301 fewer vehicle trips associated with the proposed project (516-215, respectively). Therefore, the project

[22] Hexagon Transportation Consultants. 2020. Memorandum, Retail Development at 4962 Almaden Expressway in San José, California. December 21.

would not be subject to the Habitat Plan Nitrogen Deposition Fee. The project would not conflict with the provisions of the Habitat Plan and there would be no impact.

4.5 CULTURAL RESOURCES

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
Would the project:				
a) Cause a substantial adverse change in the significance of a historical resource pursuant to Section 15064.5?	❒	❒	■	❒
b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to Section 15064.5?	❒	❒	■	❒
c) Disturb any human remains, including those interred outside of dedicated cemeteries?	❒	❒	■	❒

A. Environmental Setting

Existing Conditions

The project site is located in Santa Clara Valley, where Native American occupation extended over 5,000 to 8,000 years and possibly longer. Prehistoric resources are resources that have significance in prehistory, which is defined as events of the past occurring prior to the advent of written records. For a cultural resource to be considered a historical resource (i.e., eligible for listing in the California Register of Historical Resources), it generally must be 50 years or older. Under CEQA, historical resources can include precontact (i.e., Native American) archaeological deposits, historic-period archaeological deposits, historic buildings, and historic districts. Per the CEQA Guidelines Appendix G criteria, the project would have a significant impact on the environment if ground-disturbing activities or removal of a historically significant building(s) would cause a substantial adverse change in the significance of a historical resource. A substantial adverse change in the significance of a historical resource would occur from its demolition, destruction, relocation, or alteration such that the significance of the resource would be materially impaired (CEQA Guidelines Section 15064.5(b)(1)).

The project site is located near the eastern foothills of Santa Clara County and approximately 1,030 feet to the west of the Guadalupe River. Native American archaeological sites and burials in the area are typically found adjacent to springs, at the base of hills near waterways, and on terraces adjacent to naturally flowing waterways, especially near the confluences with other creeks. Given the project site's location near the Guadalupe River, the site has the potential for buried archaeological Native American artifacts and human remains. While the project site has

not been studied, in July of 1996, a reputable archeological consultant conducted an archeological field inspection[23] for the 43.5-acre "Arcadia Property" located on Almaden Expressway and Highway 85 and west of the Guadalupe River. The Arcadia Property, currently developed with commercial and residential uses, is also located immediately south of the project site and Cherry Avenue. The 1996 report and a subsequent report in August of 1997 identifying the findings of subsurface testing for archeological testing at the Arcadia Property form the basis of the impact analysis for the proposed project. Both reports are on file with the Department of Planning Building and Code Enforcement. The 1996 report included a literature survey and record search at the Sonoma State University. The surface reconnaissance conducted in 1996 did not discover any archaeological materials on the property, nor were any resources previously recorded on or in the vicinity (which includes the project site at 4926 Almaden Expressway) identified during the record search for the Arcadia Property. Additionally, no evidence of archeological resources was found during the 1997 mechanical subsurface testing of the entire 43.5-acre site via 69 backhoe trenches; materials from which were screened for resources. The finding of the report was that "The areas was thoroughly investigated enough to indicate that no evidence of prehistoric cultural activity is present other than the one anomalous artifact. No additional cultural resources research is recommended…"

Based on a review of aerial photographs and City records, the site and surrounding areas were historically used for agricultural (primarily orchards) from at least 1939 to 1968. The proposed project site is almost entirely covered by pavement and buildings and contains an existing Rotten Robbie fuel station and convenience store constructed in approximately 1973. The existing 4,470-square-foot convenience store structure on the site is not listed on the City's Historic Resource Inventory.

Regulatory Setting

Federal

National Historic Preservation Act. Federal protection is legislated by the National Historic Preservation Act (NHPA) of 1966 and the Archaeological Resource Protection Act of 1979. These laws maintain processes for determination of the effects on historical properties eligible for listing in the National Register of Historic Places (NRHP). Section 106 of the NHPA and related regulations (36 Code of Federal Regulations Part 800) constitute the primary federal regulatory framework guiding cultural resources investigations and require consideration of effects on properties that are listed or eligible for listing in the NRHP. Impacts to properties listed in the NRHP must be evaluated under CEQA. The NRHP is the nation's master inventory of historic resources that are considered significant at the national, state, or local level.

State

[23] As this field inspection and its findings are associated with potential identification of archeological resources, this report is considered to be sensitive and is available from the City on a need to know basis.

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

Criterion 1: Associated with events that have made a significant contribution to the broad patterns of California's history and cultural heritage.

Criterion 2: Associated with the lives of persons important in our past.

Criterion 3: Embodying the distinctive characteristics of a type, period, region, or method of construction, or representing the work of an important creative individual, or possessing high artistic values.

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

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

California Environmental Quality Act. CEQA applies to all discretionary projects undertaken or subject to approval by the state's public agencies (14 CCR Section 15002(i)). Under the provisions of CEQA, "A project with an effect that may cause a substantial adverse change in the significance of a historical resource is a project that may have a significant effect on the environment" (14 CCR Section 15064.5(b)).

CEQA Guidelines Section 15064.5(a) defines a "historical resource" as a resource that meets one or more of the following criteria:

- Listed in, or eligible for listing in, the California Register of Historical Resources (as defined under California Public Resources Code [PRC], Section 5024.1; 14 CCR Section 4850, *et seq.*);
- Listed in a local register of historical resources (as defined at PRC Section 5020.1(k));
- Identified as significant in a historical resource survey meeting the requirements of PRC Section 5024.1(g); or
- Determined to be a historical resource by a project's lead agency (14 CCR Section 15064.5(a)).

A historical resource consists of "Any object, building, structure, site, area, place, record, or manuscript which a lead agency determines to be historically significant or significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, or cultural annals of California…Generally, a resource shall be considered by the lead agency to be 'historically significant' if the resource meets the criteria for listing in the California Register of Historical Resources" (14 CCR Section 15064.5(a)(3)).

If an impact on a historical or archaeological resource is significant, CEQA requires feasible measures to minimize the impact (14 CCR Section 15126.4 (a)(1)). Mitigation of significant impacts must lessen or eliminate the physical impact that the project would have on the resource. Generally, a project that follows the Secretary of the Interior's *Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings* (Weeks and Grimmer, 1995) shall be considered mitigated to a level of a less-than-significant impact on the historical resource (14 CCR Section 15064.5(b)(3)). The use of drawings, photographs, and/or displays does not typically mitigate the physical impact on the environment caused by demolition or destruction of a historical resource. However, CEQA requires that all feasible mitigation be undertaken even if it does not mitigate impacts to less-than-significant levels (14 CCR Section 15126.4(a)(1)).

California Assembly Bill 52 (AB 52). Assembly Bill 52, which became law on January 1, 2015, provides for consultation with California Native American tribes during the CEQA process, and equates significant impacts to "tribal cultural resources" with significant environmental impacts. AB 52 also establishes a formal consultation process for California tribes regarding those resources. The consultation process must be completed before a CEQA document can be certified. Under AB 52, Lead Agencies are required to "begin consultation with a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project." Native American tribes to be included in the process are those that have requested notice of projects proposed within the jurisdiction of the Lead Agency.

Local

General Plan. The General Plan provides environmental policies and goals related to cultural resources. The following applicable policies relate to cultural resources.

- **Policy ER-10.1**: For proposed development sites that have been identified as archaeologically or paleontologically sensitive, require investigation during the planning process in order to determine whether potentially significant archaeological or paleontological information may be affected by the project and then require, if needed, that appropriate mitigation measures be incorporated into the project design.
- **Policy ER-10.2**: Recognizing that Native American human remains may be encountered at unexpected locations, impose a requirement on all development permits and tentative subdivision maps that upon discovery during construction, development activity will cease until professional archaeological examination confirms whether the burial is human. If the remains are determined to be Native American, applicable State laws shall be enforced.

- **ER-10.3**: Ensure that City, State, and federal historic preservation laws, regulations, and codes are enforced, including laws related to archaeological and paleontological resources, to ensure the adequate protection of historic and pre-historic resources.
- **LU-14.4**: Discourage demolition of any building or structure listed on or eligible for the Historic Resources Inventory as a Structure of Merit by pursuing the alternatives of rehabilitation, re-use on the subject site, and/or relocation of the resource.

City Landmarks. The City of San José maintains a landmark registry with over 200 designated City Landmarks. The individual landmarks represent a physical connection with significant persons, activities, or events from the past. In addition to serving as visible reminders of the City's historical and cultural heritage, City Landmarks contribute to San José's unique character and sense of place. Any historic property may be nominated for designation as a City Landmark by either the City Council or the Historic Landmarks Commission. A property owner may also apply for nomination, and consideration by the Historic Landmarks Commission.

B. Impact Evaluation

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

Less Than Significant Impact

The existing 4,470-square-foot convenience store/gas station structure on the site is less than 50 years old, is of vernacular (i.e., common) construction and is not a distinguished representation of any particular style or type of building construction from the mid-twentieth century period. As noted above, a resource less than 50 years old may be considered for listing in the California Register if it can be demonstrated that it meets any of the criteria. The project site and existing building do not meet any of the criteria and, therefore, does not qualify for the California Register or as a San José City Landmark for its architecture. The site and structure are not associated with persons or events which are important to California history. There are no known historic resources on or adjacent to the project site. Based on a review of the City's historic evaluation criteria, the project site does not qualify for listing on the City's Historic Resources Inventory. The proposed project would have a less-than-significant impact on historical cultural resources.

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

Less Than Significant Impact

As described above, the project site is located approximately 1,030 feet to the west of the Guadalupe River which has a high potential of containing prehistoric and historic cultural resources. While no cultural resources studies have been conducted at the .6-acre project site, an immediately adjacent site to the south, the Arcadia (now Almaden) Property currently developed with commercial and residential uses, has been studied extensively and no evidence

of archeological resources was found on or in the vicinity of that site or identified in the literature search conducted for that site.

The proposed project site has been heavily disturbed and is currently completely developed with a gas station. Although it is highly unlikely that unknown archeological resources are located on the site and could be impacted during demolition of the gas station, removal of the fuel tanks and pumps and construction of the retail building, nevertheless the project shall comply with the following City Standard Permit Conditions to reduce and avoid impacts to unidentified archeological and paleontological resources.

Standard Permit Conditions

- **Subsurface Cultural Resources**. If prehistoric or historic resources are encountered during excavation and/or grading of the site, all activity within a 50-foot radius of the find shall be topped, the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee and the City's Historic Preservation Officer shall be notified, and a qualified archaeologist shall examine the find. The archaeologist shall 1) evaluate the find(s) to determine if they meet the definition of a historical or archaeological resource; and (2) make appropriate recommendations regarding the disposition of such finds prior to issuance of building permits. Recommendations could include collection, recordation, and analysis of any significant cultural materials. A report of findings documenting any data recovery shall be submitted to Director of PBCE or the Director's designee and the City's Historic Preservation Officer and the Northwest Information Center (if applicable). Project personnel shall not collect or move any cultural materials.
- **Human Remains**. If any human remains are found during any field investigations, grading, or other construction activities, all provisions of California Health and Safety Code §§ 7054 and 7050.5 and PRC §§ 5097.9 through 5097.99, as amended per AB 2641, shall be followed. If human remains are discovered during construction, there shall be no further excavation or disturbance of the project site or any nearby area reasonably suspected to overlie adjacent remains. The Applicant shall immediately notify the Director of PBCE or the Director's designee and the qualified archaeologist, who shall then notify the Santa Clara County Coroner, who shall make a determination as to whether the remains are Native American. If the remains are believed to be Native American, the Coroner shall contact the Native American Heritage Commission (NAHC) within 24 hours. The NAHC shall then designate a Most Likely Descendant (MLD). The MLD shall inspect the remains and make a recommendation on the treatment of the remains and associated artifacts. If one of the following conditions occurs, the landowner or his authorized representative shall work with the Santa Clara County Coroner to reinter the Native American human remains and associated grave goods with appropriate dignity in a location not subject to further subsurface disturbance.
    - The NAHC is unable to identify a MLD or the MLD failed to make a recommendation within 48 hours after being given access to the site.

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

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

Less Than Significant Impact

The proposed project would include grading and ground-disturbing activities. While the potential is low, there is always the possibility that ground-disturbing activities could uncover human remains. Compliance with the Standard Permit Conditions identified above, would reduce impacts to human remains to a less-than-significant level.

4.6 ENERGY

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
Would the project:				
a) Result in a potentially significant environmental impact due to wasteful, inefficient, or unnecessary consumption of energy resources, during project construction or operation?	❒	❒	■	❒
b) Conflict with or obstruct a State or local plan for renewable energy or energy efficiency?	❒	❒	■	❒

A. Environmental Setting

Existing Conditions

The project consists of construction and operation of a retail building in the City of San José. The project site is located in a commercial and residential urban area within City limits. The project would be designed and constructed in compliance with the existing land use and zoning designations of the subject property, as found in the City's General Plan.[24]

[24] City of San José, 2020. Envision San José 2040, General Plan. Adopted November 1, 2011; amended on March 16, 2020.

Regulatory Framework

State

State Energy Conservation Regulations. Development on the project site would be required to comply with State of California energy conservation regulations (Energy Efficiency Standards for Residential and Nonresidential Buildings, Title 24, Part 6, of the California Code of Regulations). These regulations specify the State of California's minimum energy efficiency standards and apply to new construction of non-residential and residential buildings. The standards regulate energy consumed for heating, cooling, ventilation, water heating, and lighting. Compliance with these standards is verified and enforced through the local building permit process. The City of San José reviews development plans prior to project approval to ensure that Title 24 energy conservation and efficiency standards are met and incorporated into project design.

Code of Regulations Title 13. The California Air Resources Board enforces California Code of Regulations Title 13, Section 2485 (Airborne Toxic Control Measure to Limit Diesel-Fueled Commercial Motor Vehicle Idling). Among other requirements, these regulations limit the idling time of diesel construction equipment to 5 minutes.

Local

General Plan. Policies in the General Plan have been adopted for the purpose of avoiding or mitigating energy resource impacts from development projects. Policies applicable to the project include the following:

- **MS-2.1:** Develop and maintain policies, zoning regulations, and guidelines that require energy conservation and use of renewable energy sources.
- **MS-2.4:** Promote energy efficient construction industry practices.
- **MS-2.11:** Require new development to incorporate green building practices, including those required by the Green Building Ordinance. Specifically, target reduced energy use through construction techniques (e.g., design of building envelopes and systems to maximize energy performance), through architectural design (e.g., design to maximize cross ventilation and interior daylight), and through site design techniques (e.g., orienting buildings on sites to maximize the effectiveness of passive solar design).
- **MS-14.4:** Implement the City's Green Building Policies (see Green Building Section) so that new construction and rehabilitation of existing buildings fully implements industry best practices, including the use of optimized energy systems, selection of materials and resources, water efficiency, sustainable site selection, passive solar building design, and planting of trees and other landscape materials to reduce energy consumption.

City of San José Municipal Code. The City's Municipal Code includes regulations associated with energy efficiency and energy use. City regulations include the following:

- Green Building Ordinance, Chapter 17.84: to foster practices to minimize the use and waste of energy, water, and other resources in the City of San José.

- Chapter 15.10: Water Efficient Landscape Standards for New and Rehabilitated Landscaping.
- Chapter 11.105: Requirements of Transportation Demand Management Programs for employers with more than 100 employees.
- Construction and Demolition Plan Diversion Deposit Program, Chapter 9.10: to foster recycling of construction and demolition materials.

B. Impact Evaluation

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

Less Than Significant Impact

The project would involve demolition of an existing gas station and construction of a retail building on the project site. Energy would be consumed during both the construction and operational phases of the project.

The construction phase would require energy for the manufacture and transportation of building materials, preparation of the project site, and construction of buildings and infrastructure. Since construction activities would be temporary, they would not result in a long-term increase in energy consumption. The construction contractor would have a financial disincentive to waste fuel used by the construction equipment (i.e., excess fuel usage reduces profits). Therefore, it is generally assumed that fuel used during construction would be conserved to the maximum extent feasible. Furthermore, the City's Standard Permit Condition, Air Quality, requires project construction to limit the idling time of diesel construction equipment to 5 minutes and to maintain and properly tune construction equipment. It is anticipated that energy consumption during the construction period would be minimized to the maximum extent practical. This qualitative review therefore finds that the energy intensiveness of construction equipment and construction operations would not be inefficient.

Once in operation, the new retail building would consume energy for multiple purposes, including but not limited to building heating and cooling, lighting, appliances, and electronics. In addition, vehicle trips associated with project operation would consume gasoline, diesel, electricity and other types of fuel. During operation of the proposed retail uses, there would be no unusual project characteristics or processes that would require the use of equipment that would be more energy intensive than is used for comparable activities, or the use of equipment that would not conform to current emissions standards and related fuel efficiencies. Furthermore, the project's Compliance Checklist with the City's Greenhouse Gas Reduction Strategies (GHGRS), included in Appendix A, demonstrates that the project is consistent with the City's GHGRS and is designed to reduce use of traditional energy (i.e., fossil fuels), with project design features such as compliance with the 2019 Green Building Codes, building

orientation to limit heat gain, drought resistant landscaping, a cool roof, bicycle parking and pedestrian-friendly sidewalks, that would reduce inefficient and unnecessary consumption of energy.[25] Therefore, the project operation or construction would not consume energy resources in a wasteful or inefficient manner.

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

Less Than Significant Impact

As discussed under section a), the project is required to comply with the 2019 Green Building Codes and the City's GHGRS. Through the local building permit process, the project would be required to abide by all State of California mandates for energy conservation. The project therefore would not conflict or obstruct a State or local plan for renewable energy or energy efficiency.

4.7 GEOLOGY AND SOILS

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
Would the project:				
a) Directly or indirectly cause 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.	❒	❒	❒	■
ii) Strong seismic ground shaking?	❒	❒	■	❒
iii) Seismic-related ground failure, including liquefaction?	❒	❒	■	❒
iv) Landslides?	❒	❒	❒	■

[25] Brereton, 2020. Greenhouse Gas Reduction Strategy Compliance Checklist. December.

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
b) Result in substantial soil erosion or the loss of topsoil?	❒	❒	■	❒
c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction, or collapse?	❒	❒	■	❒
d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial direct or indirect risks to life or property?	❒	❒	■	❒
e) Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of wastewater?	❒	❒	❒	■
f) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?	❒	❒	■	❒

A. Environmental Setting

Existing Conditions

The project site is located within the central portion of the Coast Ranges geomorphic province,[26] which includes numerous active faults identified by the California Geological Survey (CGS) under the Alquist-Priolo Earthquake Fault Zoning Act. CGS defines an active fault as one that has ruptured during the Holocene Epoch (i.e., the last 11,000 years). The Working Group on California Earthquake Probabilities and the United States Geological Survey (USGS) have estimated probabilities of earthquake occurrence on local faults between 2014 and 2044 as follows: a 6.4 percent probability of a 6.7 magnitude (M_{w}, or Moment Magnitude)[27] or greater earthquake on the Northern San Andreas Fault, a 14.3 percent chance on the Hayward Fault, and a total probability of 72 percent that an earthquake of that magnitude will occur on one of the regional San Francisco Bay Area faults during that time.[28]

[26] A geomorphic province is a naturally defined geologic region that displays a distinct combination of features based on geology, faults, topography, and climate. Eleven geomorphic provinces are recognized in California.

[27] Moment magnitude (M_W) is now commonly used to characterize seismic events as opposed to Richter Magnitude. Moment magnitude is determined from the physical size (area) of the rupture of the fault plane, the amount of horizontal and/or vertical displacement along the fault plane, and the resistance to rupture of the rock type along the fault.

[28] United States Geological Survey (USGS), 2015. UCERF3: A New Earthquake Forecast for California's Complex Fault System, USGS Fact Sheet 2015-3009, March. Accessed September 21, 2020. https://pubs.usgs.gov/fs/2015/3009/pdf/fs2015-3009.pdf.

The project site is located in a liquefaction hazard zone mapped by CGS.[29] A Geotechnical Investigation[30] was prepared by Cornerstone Earth Group (Cornerstone) for the proposed project in October 2020, and is Appendix B to this CEQA analysis. The geotechnical field exploration included two borings drilled with truck-mounted hollow-stem auger drilling equipment and two Cone Penetration Tests (CPTs). The borings were drilled to depths of 25 to 45 feet, and the CPTs were advanced to depths of 50 to 100 feet. The soils encountered at the project site consisted of stiff to hard lean clay with varying amounts of sand and gravel to a depth of 17 feet. Beneath the lean clay, dense clayey sand with gravel and dense clayey gravel with sand was encountered to a depth of 27 feet. The clay was underlain by interbedded layers of very stiff lean clay with varying amounts of sand, very dense to medium dense clayey sand with varying amounts of gravel, and medium dense well graded sand with clay and gravel to a depth of 45 feet. Groundwater was encountered at a depth of 31½ feet in one boring, and groundwater was inferred at depths of 30 feet and 34 feet in the CPTs. Historic high groundwater in the vicinity of the project site is mapped at depths of approximately 18 feet below the ground surface. The Geotechnical Investigation indicated that the groundwater depth used in the geotechnical design is approximately 18 feet below the ground surface. Fluctuations in groundwater levels occur due to many factors including seasonal fluctuation, underground drainage patterns, regional fluctuations, and other factors.[31]

Potential impacts associated with soil and seismic activity at the project site, including fault rupture, ground shaking, ground failure, liquefaction, and landslides are discussed below.

Regulatory Framework

State

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

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

[29] CGS, 2002. Op. cit.

[30] Cornerstone Earth Group, 2020a. Geotechnical Investigation, 4962 Almaden Retail Building, 4962 Almaden Expressway, San José, California, October 26.

[31] Ibid.

hazard zones following site-specific geotechnical investigations to determine if the seismic hazard is present and identify measures to reduce earthquake-related hazards.

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

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

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

Local

General Plan. The following policies and actions of the City of San José's General Plan[32] related to geology, seismicity, and soil would also be applicable to the proposed project:

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

[32] City of San José, 2020. Envision San José 2040 General Plan, Adopted November 2011, Updated 16 March 2020.

State guidelines for evaluating and mitigating seismic hazards and the City-adopted California Building Code will be followed.

- **EC-3.10:** Require that a Certificate of Geologic Hazard Clearance be issued by the Director of Public Works prior to issuance of grading and building permits within defined geologic hazard zones related to seismic hazards.
- **EC-4.1:** Design and build all new or remodeled habitable structures in accordance with the most recent CBC and municipal code requirements as amended and adopted by the City, including provisions for expansive soil, and grading and stormwater controls.
- **EC-4.2:** Approve development in areas subject to soils and geologic hazards, including un-engineered fill and weak soils and landslide-prone areas, only when the severity of hazards have been evaluated and if shown to be required, appropriate mitigation measures are provided. New development proposed within areas of geologic hazards shall not be endangered by, nor contribute to, the hazardous conditions on the site or on adjoining properties. The City Geologist shall review and approve geotechnical and geological investigation reports for projects within these areas as part of the project approval process.
- **EC-4.4:** Require all new development to conform to the City's Geologic Hazard Ordinance.
- **EC-4.5:** Ensure that any development activity that requires grading does not impact adjacent properties, local creeks and storm drainage systems by designing and building the site to drain properly and minimize erosion. An Erosion Control Plan is required for all private development projects that have a soil disturbance of one acre or more, are adjacent to a creek/river, and/or are located in hillside areas. Erosion Control Plans are also required for any grading between October 1 and April 30, which is the City Observed Rainy Season.
- **EC-4.11:** Require the preparation of geotechnical and geological investigation reports for projects within areas subject to soils and geologic hazards, and require review and implementation of mitigation measures as part of the project approval process.
- **EC-4.12:** Require review and approval of grading plans and erosion control plans (if applicable) prior to issuance of a grading permit by the Director of Public Works.

City of San José Municipal Code. Title 24 of the San José Municipal Code includes the current California Building, Plumbing, Mechanical, Electrical, Existing Building, and Historical Building Codes. Chapter 17.10 (Geologic Hazards Regulations) of the City's Municipal Code includes requirements for earthquake hazard reduction. Requirements for grading, excavation, and erosion control are included in Chapter 17.04 (Building Code, Part 6 Excavation and Grading). In accordance with the Municipal Code, the Director of Public Works must issue a Certificate of Geologic Hazard Clearance prior to the issuance of grading and building permits within defined geologic hazard zones, including State Seismic Hazard Zones for Liquefaction. The Applicant must submit a geotechnical report when applying for a Geological Hazard Clearance.

B. Impact Evaluation

a) Would the project directly or indirectly cause 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; ii) Strong seismic ground shaking; iii) Seismic-related ground failure, including liquefaction; iv) Landslides?

Less Than Significant Impact

Fault Rupture

Surface fault rupture occurs when the ground surface is broken due to fault movement during an earthquake. Fault rupture is generally expected to occur along active fault traces. Areas susceptible to fault rupture are delineated by the CGS Alquist-Priolo Earthquake Fault Zones. The Alquist-Priolo Earthquake Fault Zoning Act's (AP Act) main purpose is to prevent the construction of buildings used for human occupancy on the surface trace of active faults. The AP Act requires specific geological investigations prior to certain kinds of development to reduce the threat to public health and safety and to minimize the loss of life and property posed by earthquake-induced ground failure. The project site is not located within or adjacent to an Alquist-Priolo Earthquake Fault Zone,[33] or a Santa Clara County Fault Hazard Zone, and no known surface expression of fault traces is thought to cross the project site.[34] Therefore, the potential for fault rupture to impact people and structures at the project site is less than significant.

Ground Shaking

The Geotechnical Investigation[35] indicates that the project site would be susceptible to strong seismic ground shaking in the event of a moderate to severe (design-level) earthquake. The Geotechnical Investigation provides recommended seismic design parameters based on the site-specific soil type and seismic conditions at the project site. The 2019 CBC contains requirements for structural design, including seismic design specifications. The City would review proposed project plans to ensure that design plans for the proposed project would be developed in accordance with the 2019 CBC. The Standard Permit Conditions related to seismic shaking and the CBC are described below:

Standard Permit Conditions

- **Seismic Shaking.** To avoid or minimize potential damage from seismic shaking, the project shall be constructed using standard engineering and seismic safety design

[33] CGS, 2002. Earthquake Zones of Required Investigation, San José West Quadrangle, February 7.
[34] Cornerstone Earth Group, 2020a. Op. cit.
[35] Cornerstone Earth Group, 2020a. Op. cit.

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

- **Soils Related Hazards.** The project shall be constructed in accordance with the standard engineering practices in the CBC, as adopted by the City of San José. A grading permit from the San José Department of Public Works shall be obtained prior to the issuance of a Public Works clearance. These standard practices would ensure that the future building on the site is designed to properly account for soils-related hazards on the site.

Compliance with the mandatory building code structural specifications and adherence to geotechnical recommendations, as required by the City's General Plan policies, Municipal Code, and Standard Permit Conditions, would result in a structure that would adequately resist adverse effects from seismic ground shaking. Therefore, impacts associated with strong seismic ground shaking would be less than significant.

Seismic-Related Ground Failure and Liquefaction

The potential for different types of seismic-related ground failure to occur during a seismic event is discussed below.

Liquefaction

Soil liquefaction is a phenomenon primarily associated with saturated soil layers located close to the ground surface. During ground shaking, these soils lose strength and acquire a "mobility" sufficient to permit both horizontal and vertical movements. Soils that are most susceptible to liquefaction are clean, loose, uniformly graded, saturated, fine-grained sands that lie relatively close to the ground surface. However, loose sands that contain a significant amount of fines (silt and clay) may also liquefy. The project site is located in a in a State of California Seismic Hazard Zone (liquefaction hazard zone) mapped by CGS.[36] Therefore, a geotechnical investigation report addressing the potential hazard of liquefaction must be submitted to, reviewed, and approved by the City Geologist prior to issuance of a grading permit or Public Works Clearance. The investigation should be consistent with the guidelines published by the State of California (CGS Special Publication 117A) and the Southern California Earthquake Center (SCEC),[37] including exploration and evaluation to a recommended depth of 50 feet.

[36] CGS, 2002. Op. cit.

[37] SCEC, 1999. Recommended Procedures for Implementation of DMG Special Publication 117 Guidelines for Analyzing and Mitigating Liquefaction in California, March.

The Geotechnical Investigation performed for the project site included testing and sampling of potentially liquefiable layers to depths of at least 50 feet, performance of visual classification on sampled materials, evaluation of CPT data, and performance of various tests to further classify soil properties. The Geotechnical Investigation indicates that several layers beneath the project site could potentially experience liquefaction that could result in post-liquefaction total settlement at the ground surface ranging from ¼ to ⅔-inch, and differential settlements are anticipated to be on the order of less than ¼-inch over a horizontal distance of 30 feet.[38]

Compliance with the mandatory building code structural specifications and adherence to geotechnical recommendations, as required by the City's General Plan policies, Municipal Code, and Standard Permit Conditions, would result in a building that resists adverse effects related to estimated liquefaction settlements. Therefore, impacts related to liquefaction would be less than significant.

Lateral Spreading

Lateral spreading is a form of horizontal displacement of soil toward an open channel or other "free" face, such as an excavation boundary or creek bank. In a lateral spread failure, a layer of ground at the surface is carried on an underlying layer of liquefied material over a nearly flat surface toward a river channel or other bank. The lateral spreading hazard tends to mirror the liquefaction hazard for a site (assuming a free face is located nearby).

The site is located approximately 900 feet from the top of the bank of the Guadalupe River, which is approximately 16 feet lower than current site grades. The potentially liquefiable sand layers are thin, non-continuous, and generally located below 30 feet, well below the river bottom. The potential for lateral spreading to affect the proposed project is low.[39] Potential impacts related to lateral spreading at the project site would therefore be less than significant.

Surface Settlement

Settlement can occur when non-saturated, cohesionless soil is densified by earthquake vibrations. The Geotechnical Investigation[40] indicates that the soils encountered at the project site were predominantly stiff to hard clays and medium dense to dense clayey sands, and the potential for significant differential seismic settlement affecting the proposed project is low.

Seismically-induced settlement can occur in undocumented fill material due to inadequate compaction during the previous placement of the fill. Underground storage tanks (USTs) were previously removed from the southeastern portion of the project site and the UST excavation was backfilled with fill material.[41] The Geotechnical Investigation includes recommendations that

[38] Cornerstone Earth Group, 2020a. Op. cit.
[39] Ibid.
[40] Ibid.
[41] Baseline, 2020. Phase I Environmental Site Assessment, Rotten Robbie Gas Station, 4962 Almaden Expressway, San José, California, August 21.

all fills should be completely removed from within the proposed building area, including fills associated with UST excavations, and the fill should be replaced as engineered fill. The Geotechnical Investigation recommends that fills extending into planned pavement and flatwork areas may be left in place provided they are determined to be a low risk for future differential settlement and that the upper 12 to 18 inches of fill below pavement subgrade is re-worked and compacted.[42]

The Geotechnical Investigation recommends that a qualified geotechnical engineer be present to provide geotechnical observation and testing during earthwork and foundation construction to evaluate any conditions differing from those encountered during the investigation and provide supplemental recommendations as necessary. The Geotechnical Investigation indicated that the geotechnical recommendations are contingent on a qualified geotechnical engineer provides observation and testing during construction.[43]

Compliance with the mandatory building code structural specifications and adherence to the geotechnical recommendations, as required by the City's General Plan policies, Municipal Code, and Standard Permit Conditions, would ensure that potential impacts related to seismically-induced settlement would be less than significant.

Landslides
Seismically-induced landslides occur as the rapid movement of large masses of soil on unstable slopes during an earthquake. The project site and surrounding area are relatively flat. Therefore, the project would have no impact related to seismically-induced landslides.

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

Less Than Significant Impact

The topography of the project site and surroundings is relatively level and the majority of the project site is already developed with pavement and a structure. However, soil erosion, which is discussed in detail in Section 4.10, Hydrology and Water Quality, could occur during project grading and construction. As described in Section 4.10, compliance with the City's General Plan policies, Municipal Code, and Standard Permit Conditions would ensure that the proposed project would result in less-than-significant impacts related to erosion or loss of top soil during construction of the project. The Standard Permit Conditions related to erosion or loss of top soil include the following:

[42] Cornerstone Earth Group, 2020a. Op. cit.
[43] Ibid.

Standard Permit Condition

Erosion and Loss of Top Soil reduction measures include, but are not limited to, the following:

- All excavation and grading work shall be scheduled in dry weather months or construction sites shall be weatherized.
- Stockpiles and excavated soils shall be covered with secured tarps or plastic sheeting.
- Ditches shall be installed to divert runoff around excavations and graded areas if necessary.
- Vegetation in disturbed areas shall be replanted as quickly as possible.
- Earthmoving or other dust-producing activities shall be suspended during periods of high winds.

During operation of the project, the project site would be covered in buildings, pavement surfaces, and landscaping, and therefore would not be susceptible to erosion or loss of top soil.

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

Less Than Significant Impact

As previously discussed in subsection a) above, lateral spreading and landslides are not a concern for the project site. Additionally, the project would be designed in accordance with the 2019 CBC and geotechnical recommendations which include measures to address the potential for liquefaction and seismically-induced settlement impacts related to unstable soil.

Subsidence

Subsidence or collapse can result from the removal of subsurface water resulting in either catastrophic or gradual depression of the surface elevation of the project site. The depth to groundwater at the project site has been measured at depths of approximately 21 to 25 feet,[44] and the high groundwater water level is estimated to be 18 feet deep.[45] Therefore, groundwater dewatering is not expected to be required during subsurface construction activities and groundwater dewatering would not be performed during operation and potential impacts related to subsidence would be less than significant.

[44] Environmental Investigation Services Inc., 2016. Phase II Limited Soil & Groundwater Investigation Report 4954 & 4962 Almaden Expressway, San José, California, May 20

[45] Cornerstone Earth Group, 2020a. Op. cit.

Consolidation

Consolidation (or static settlement) of soils is a process by which the soil volume decreases as water is expelled from saturated soils or loose compressible soils consolidate under static loads. As the water moves out from the pore space of the soil, the solid particles realign into a denser configuration which results in settlement. Consolidation typically occurs as a result of new buildings or fill materials being placed over compressible soils. Soils on the project site could be subject to consolidation from the load of the new structure that would be constructed on the project site. The Geotechnical Investigation indicated that total static footing settlement would be on the order of ¾ inch with less than ½ inch of post-construction differential settlement between adjacent foundation elements. The Geotechnical Investigation indicated that the footing loads were assumed, and recommend that a qualified geotechnical engineer be retained to review the final footing layout and loading, and verify the settlement estimates above.[46]

Compliance with the mandatory building code structural specifications and adherence to the geotechnical recommendations, as required by the City's General Plan policies, Municipal Code, and Standard Permit Conditions, would ensure that potential impacts related to consolidation would be less than significant.

d) Would the project be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial direct or indirect risks to life or property?

Less Than Significant Impact

Expansive soils are characterized by the potential for shrinking and swelling as the moisture content of the soil decreases and increases, respectively. Shrink-swell potential is influenced by the amount and type of clay minerals present and can be measured by the percent change of the soil volume. The Geotechnical Investigation indicates that surficial soil on the project site has moderate expansion potential. The Geotechnical Investigation includes grading and foundation recommendations to address the expansive soil, including deeper footing embedment, reducing water infiltration into the expansive soil, and using non-expansive engineered fill.[47]

Compliance with the mandatory building code structural specifications, as well as adherence to the geotechnical recommendations, as required by the City's General Plan policies, Municipal Code, and Standard Permit Conditions, would ensure that potential impacts related to expansive soils would be less than significant.

[46] Ibid.
[47] Ibid.

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

No Impact

The project site is served by a wastewater conveyance system maintained by the City. Development of the project would not involve the use of septic tanks or alternative wastewater disposal systems. Therefore, the project would have no impact related to septic tanks or alternative wastewater disposal systems.

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

Less Than Significant Impact

Paleontological resources include fossilized remains or traces of organisms including plants, vertebrates (animals with backbones), invertebrates (e.g., starfish, clams, ammonites, and marine coral), and microscopic plants and animals (microfossils), including their imprints, from a previous geological period. Collecting localities and the geologic formations containing those localities are also considered paleontological resources as they represent a limited, non-renewable resource and once destroyed, cannot be replaced. The Society of Vertebrate Paleontology (SVP) has established guidelines for the identification, assessment, and mitigation of adverse impacts on non-renewable paleontological resources. The SVP has helped define the value of paleontological resources and, in particular, states that significant paleontological resources are fossils and fossiliferous deposits consisting of identifiable vertebrate fossils, large or small, uncommon invertebrate, plant, and trace fossils, and other data that provide taxonomic, phylogenetic, paleoecologic, stratigraphic, and/or biochronologic information. Paleontological resources are considered to be older than recorded human history and/or older than middle Holocene (i.e., older than about 5,000 years).[48]

The potential to disturb paleontological resources during project construction depends on the types of geologic units (and their fossil-bearing characteristics) that would be encountered. Disturbing artificial fills during project construction would not impact paleontological resources because, due to the disturbed nature of artificial fill, intact fossils are not generally found or well-preserved in artificial fills.

The native geologic formation on the project site have been mapped as Holocene age alluvium.[49] The results of a search of paleontological localities in the fossil collections database

[48] Society of Vertebrate Paleontology (SVP), Standard Procedures for the Assessment and Mitigation of Adverse Impacts to Paleontological Resources, 2010.

[49] Graymer et al., 2006. Geologic Map of the San Francisco Bay Region.

maintained by the University of California Museum of Paleontology identified five localities in Holocene geologic formations within Santa Clara County. No vertebrate fossils were identified; only two invertebrates, one microfossil, and two unidentified fossil types (including one locality named Guadalupe Rio River, which could therefore be near the project site) were identified.[50] Based on the limited fossil localities identified in Holocene geologic formations within Santa Clara County, the project site is considered to have low paleontological sensitivity. The project would involve subsurface construction activities that would extend below fill material and into the native geologic formation. While the potential to encounter fossils in the Holocene geologic formation is low due to its relatively low sensitivity, it is still possible that paleontological resources could be encountered during construction. The following City's Standard Permit Condition addresses paleontological resources.

Standard Permit Condition

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

Compliance with the City's Standard Permit Conditions would ensure that the proposed project would result in less than significant impacts related to paleontological resources.

[50] University of California Museum of Paleontology, 2020. Collections Database, Locality Search. Available at: https://ucmpdb.berkeley.edu/loc.html, accessed on September 24.

4.8 GREENHOUSE GAS EMISSIONS

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
Would the project:				
a) Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?	❒	❒	■	❒
b) Conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing the emissions of greenhouse gases?	❒	❒	■	❒

A. Environmental Setting

Existing Conditions

Climate change refers to change in the Earth's weather patterns, including the rise in temperature due to an increase in heat-trapping greenhouse gases (GHGs) in the atmosphere. According to the California Air Resources Board (CARB), some of the potential effects of increased GHG emissions and the associated climate change may include loss in snow pack (affecting water supply), sea level rise, more frequent extreme weather events, more large forest fires, and more drought years. In addition, climate change may increase electricity demand for cooling, decrease the availability of hydroelectric power, and affect regional air quality and public health.[51]

The primary GHG emissions of concern are carbon dioxide, methane, and nitrous oxide. Other GHGs of concern include hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, but their contribution to climate change is less than 1 percent of the total GHGs that are well mixed (i.e., that have atmospheric lifetimes long enough to be homogeneously mixed in the troposphere).[52] Each GHG has a different global warming potential. For instance, methane traps about 21 times more heat per molecule than carbon dioxide. As a result, emissions of GHGs are reported in metric tons of carbon dioxide equivalents (CO_2e), where each GHG is weighted by its global warming potential relative to carbon dioxide. Carbon dioxide emissions dominate the GHG inventory in the San Francisco Bay Area Air Basin, accounting for more than 90 percent of the total CO_2e emissions reported.[53]

[51] California Air Resources Board (CARB), 2017. The 2017 Climate Change Scoping Plan Update, January 20.

[52] Intergovernmental Panel on Climate Change, 2013. Climate Change 2013, the Physical Science Basis.

[53] Bay Area Air Quality Management District, 2017. Final 2017 Clean Air Plan, Spare the Air, Cool the Climate. April 19.

Regulatory Framework

State

In 2005, Governor Schwarzenegger issued Executive Order S-3-05, which states that California is vulnerable to the effects of climate change, including reduced snowpack in the Sierra Nevada Mountains, exacerbation of California's existing air quality problems, and sea level rise. To address these concerns, the executive order established the following statewide GHG emissions reduction targets:

- By 2010, reduce GHG emissions to 2000 levels.
- By 2020, reduce GHG emissions to 1990 levels.
- By 2050, reduce GHG emissions to 80 percent below 1990 levels.

In 2006, Governor Schwarzenegger signed AB 32, the California Global Warming Solutions Act, which requires California to reduce statewide GHG emissions to 1990 levels by 2020. In December 2008, the CARB adopted the Scoping Plan, which outlines a statewide strategy to achieve AB 32 goals.

In 2015, Governor Brown issued Executive Order B-30-15, which set a statewide GHG emissions reduction target of 40 percent below 1990 levels by 2030. This target is in addition to the previous GHG emissions reduction targets established in Executive Order S-3-05 for 2010, 2020, and 2050. In September 2016, Governor Brown signed SB 32, which codifies the GHG emissions reduction target in Executive Order B-30-15.

As required by Executive Order B-30-15 and SB 32, CARB updated the Scoping Plan to identify measures to meet the 2030 target. The revised scoping plan was adopted December 14, 2017 and builds upon the initial scoping plan initiatives used for achieving 2020 targets, such as implementation of sustainable communities strategies, low-carbon fuel standards, and the renewable portfolio standard. The Plan also supports policies that promote building efficiency; renewable power investment; clean and renewable fuels; vehicle emissions; walkable/bikeable communities with transit; cleaner freight and goods movement; reducing pollutants from dairies, landfills, and refrigerants; and capping emission from transportation, industry, natural gas, and electricity sources.

The State regulates energy consumption under Title 24 Building Standards Code, Part 6 of the California Code of Regulations (also known as the California Energy Code). The Title 24 Building Energy Efficiency Standards were developed by the California Energy Commission and apply to energy consumed for heating, cooling, ventilation, water heating, and lighting in new residential and nonresidential buildings. The California Energy Code is updated every three years, with the most recent iteration (2019) effective as of January 1, 2020.

Title 24 Building Standards Code, Part 11 of the California Code of Regulations is referred to as the California Green Building Standards Code (CALGreen Code). The purpose of the CALGreen Code is to improve public health, safety, and general welfare by enhancing the

design and construction of buildings through the use of building concepts having a positive environmental impact and encouraging sustainable construction practices in the following categories: (1) planning and design; (2) energy efficiency; (3) water efficiency and conservation; (4) material conservation and resource efficiency; and (5) environmental air quality.

Local

2030 Greenhouse Gas Reduction Strategy. In August 2020, the City of San José created the 2030 Greenhouse Gas Reduction Strategy (the 2030 GHGRS)[54] in order to develop a 2030 GHG emissions target, analyze past, present and future GHG emission inventories, identify measures to reduce GHG emissions, provide a roadmap by which the City can reduce its GHG emissions, and serve as a GHG reduction plan to streamline GHG analysis of future development. The 2030 GHGRS serves as a qualified Climate Action Plan for the Reduction of Greenhouse Gases as defined in California's CEQA Guidelines Section 15183.5. The goals of the 2030 GHGRS, which are consistent with the State's SB 32 target, are to reduce the Citywide GHG emissions per service population by 26 percent below the 2017 levels and reduce the absolute emissions by 7 percent below the 2017 levels by the year 2030. The 2030 GHGRS aims to achieve the GHG reduction targets by reducing GHG emissions from the following topic areas: San José Clean Energy, Zero Net Carbon Residential Construction, Renewable Energy Development, Existing Building Retrofits – Natural Gas, Zero Waste Goal, Caltrain Modernization Project, and Water Conservation. A project's consistency with the 2030 GHGRS is determined through the Development Compliance Checklist.[55]

Climate Change Action Plan. In addition to the most recent GHG planning document, the 2030 GHGRS, the City has a Climate Change Action Plan (CCAP), Climate Smart San José, adopted in 2018. The CCAP proposes a 2050 target of GHG emission reduction while simultaneously creating jobs, preserving the environment, and improving quality of life. The CCAP includes 22 GHG reduction measures and supporting efforts organized under six GHG emissions categories: Municipal Operations; Energy; Transportation and Land Use; Solid Waste; Community Education and Outreach; and Adaptation.[56]

General Plan. The City of San José's General Plan include actions and policies relevant to GHG reductions and climate change, including but not limited to:

- **Action MS-2.11:** Require new development to incorporate green building practices, including those required by the Green Building Ordinance. Specifically, target reduced energy use through construction techniques (e.g., design of building envelopes and systems to maximize energy performance), through architectural design (e.g., design to

[54] City of San José, 2020. 2030 Greenhouse Gas Reduction Strategy. August.

[55] City of San José, 2020. 2030 Greenhouse Gas Reduction Strategy, Attachment A: Development Compliance Checklist. August.

[56] City of San José, 2018. Climate Smart San José. Adopted in 2018.

maximize cross ventilation and interior daylight) and through site design techniques (e.g., orienting buildings on sites to maximize the effectiveness of passive solar design).

- **Action MS-14.1:** Promote job and housing growth in areas served by public transit and that have community amenities within a 20-minute walking distance.
- **CD-3.2**: Prioritize pedestrian and bicycle connections to transit, community facilities (including schools), commercial areas, and other areas serving daily needs. Ensure that the design of new facilities can accommodate significant anticipated future increases in bicycle and pedestrian activity.
- **CD-5.1:** Design areas to promote pedestrian and bicycle movements, to facilitate interaction between community members, and to strengthen the sense of community.

B. Impact Evaluation

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

Less Than Significant Impact

The project would generate temporary GHG emissions through construction activities, such as operation of on-site construction equipment and off-site construction vehicle trips, and would generate long-term GHG emissions through project operations related to the direct and indirect combustion of fossil fuels to generate heat and electricity, decomposition of solid waste, and wastewater treatment.

As discussed in above, the City adopted the 2030 GHGRS that outlines the actions the City will undertake to align with the Statewide 2030 GHG emissions target under SB 32. The goals of the City's GHGRS Compliance Checklist (Checklist) are to:

- Ensure GHG reduction strategies from the 2030 GHGRS are implemented for new development projects.
- Provide a streamlined review process for proposed new development projects that are subject to environmental review under CEQA.

For environmental review under CEQA, projects that demonstrate compliance with the 2030 GHGRS using the Checklist are considered to have a less-than-significant impact on the environment.

The Checklist contains three sections for projects to demonstrate conformance with the 2030 GHGRS: General Plan Policy Compliance, 2030 Greenhouse Gas Reduction Strategy Compliance, and Applicant Proposed Greenhouse Gas Reduction Measures. Because the project does not propose alternative GHG mitigation measures, the section on Applicant Proposed Greenhouse Gas Reduction Measures is not applicable to the project. **Table 10** provides a summary of the Checklist criteria and project applicability, the project's Checklist is included in Appendix A.

Table 10: Summary of Project Conformance with the 2030 Greenhouse Gas Reduction Strategy Checklist

Section	Checklist Question	Description of Project Measure	Project Conformance
General Plan Consistency	Is the project consistent with the Land Use/Transportation Diagram	The project site has a General Plan land use designation of Regional Commercial. The proposed retail project is consistent with the designation.	Yes
Implement Green Building Measures	Encourage on-site generation of renewable energy (General Plan Policies MS-2.2, MS-2.3, MS-2.7, and MS-16.2)	The proposed retail building has a rectangular footprint with short ends facing east and west, which is the ideal solar orientation limiting solar heat gain at the site elevations. South façade has limited openings and introduces sun-shading devices to limit solar heat gain. All landscaping proposed is drought resistant and native species; a grove of trees is introduced at west end of the site further limiting solar heat gain to lower storefront. All openings in building will introduce low-e glazing. Building shall incorporate cool roof and light field color on building walls to minimize solar heat gain.	Yes
	Require new development to incorporate green building practices (General Plan Policies MS-2.11)	The project design and construction will comply with the 2019 California Green Building Standards Code. The building is designed to minimize energy use and maximize effectiveness of passive solar use.	Yes
Pedestrian, Bicycle &Transit Site Design Measures	Promote Circulation Goals and Policies in the General Plan (CD-2.1)	The project includes the elimination of a driveway, expansion of the sidewalk to 12 feet, and the installation of street trees in the park strip, landscaping and lighting along the frontages of Cherry Avenue and Almaden Expressway which will increase safety and comfort for pedestrians, bicyclists and vehicles. The parking area serving the retail building is shared with the shopping center.	Yes
	Integrate Green Building Goals and Policies of the General Plan into site	The project includes the planting of trees for shade within the parking area, along the widened sidewalks, and adjacent to	Yes

Section	Checklist Question	Description of Project Measure	Project Conformance
	design to create healthful environments. (General Plan Policy CD-2.5)	the retail building. After construction, there will be more pervious area within the project site that will be associated with landscaping and on-site stormwater filtration and management. The building is oriented to maximize passive solar use.	
	Within the Downtown and Urban Village Overlay areas, avoid the construction of surface parking lots except as an interim use. (General Plan Policy CD-2.11)	The project site is not located within the Downtown and Urban Village Overlay areas.	Not applicable
	Encourage pedestrian and bicycle-friendly designs (General Plan Policies CD-3.2, CD-3.4, LU-3.5, and TR-2.8)	The project includes the widening of sidewalks and expansion of landscaping along the project site frontages and through the project site. The project would also provide ten bicycle parking spaces and two motorcycle parking spaces.	Yes
	Require large employers to develop Transportation Demand Management and to promote car share programs (General Plan Policies TR-7.1 and TR-8.5)	The project would have a maximum of 10 employees at any given time. The proposed project is not a large employer. It would also not be feasible promoting a car share program with the limited number of employees for a retail use.	Not applicable
Water Conservation and Urban Forestry Measures	Require water-efficient landscaping and encourage stormwater reuse (General Plan Policies MS-3.1, MS-3.2 and ER-8.7)	The landscape plan for the project complies with the criteria of the California Model Water Efficiency Ordinance. The use of captured rainwater is included in the project. The project includes reuse and biotreatment of stormwater that flows to bioretention areas, flow-through planters, and landscaped areas.	Yes
	Required the use of recycled water (General Plan Policies MS-19.4)	While the project includes the use of captured rainwater for watering landscaping and stormwater management, there is no recycled water infrastructure available to serve the project site.	Not applicable
	Ensure that the project include planting and maintenance of trees and that the tree selection comprises of species with low-water requirements and adaptable to	The project Applicant will irrigate and maintain all landscaping on the project site including street trees and any other landscaping in the park strip. The trees plants identified in the landscape plan comply with the criteria of the California Model Water Efficiency Ordinance. Additionally, the City arborist	Yes

Section	Checklist Question	Description of Project Measure	Project Conformance
	Mediterranean climate. (General Plan Policy MS-21.3 and MS-26.1)	will specify the street trees to be planted in the planting strip.	
2030 Greenhouse Gas Reduction Strategy Compliance	Zero net carbon residential construction	The project does not include residential land use.	Not applicable
	Renewable Energy Development	The proposed retail building is 7,800 sf in size and no future tenants or users have been identified; therefore, the installation of solar panels is not feasible or cost effective at this time. There is no community renewable energy program available to the project site.	Not applicable
	Replace an existing natural gas appliance with a high-efficiency model or an electric alternative.	The project would not retrofit an existing building.	Not applicable
	Zero waste goal	Green and compost waste pick up services are not available to the site and would not be collected. The project will meet the demolition waste diversion requirement by recycling and reusing the existing asphalt pavement and building foundations, and will work to exceed the requirements during demolition and construction.	Proposed
	Caltrain modernization	The project site is not within 1/2 mile of a Caltrain Station.	Not applicable
	Water conservation	The project will include high efficiency fixtures in the bathrooms and kitchen areas. The project includes water-sensitive landscape design and the reuse of stormwater for irrigation of landscaping. Roofs and impervious surfaces all drain to landscaped areas.	Proposed

Sources: Brereton, 2020. Greenhouse Gas Reduction Strategy Compliance Checklist. December. Baseline Environmental Consulting, 2020.

As demonstrated in **Table 10**, the proposed project is consistent with the existing General Plan land use designation and would generally comply with applicable mandatory measures of the 2030 GHGRS. By complying with the City's 2030 GHG emissions target, the project would also comply with the statewide 2030 GHG emissions target under SB 32. Therefore, GHG emissions from the proposed project would have a less-than-significant impact on the environment.

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

Less Than Significant Impact

As described under subsection (a, above, the project would comply with the City's 2030 GHGRS and the statewide 2030 GHG emissions target under SB 32. As a result, the project would not conflict with the applicable plans, policies, and regulations adopted for the purposes of reducing the emissions of GHGs, and therefore the project's impact would be less than significant.

4.9 HAZARDS AND HAZARDOUS MATERIALS

Would the project:	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?	❒	❒	■	❒
b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?	❒	■	❒	❒
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?	❒	■	❒	❒
d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?	❒	■	❒	❒
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard or excessive noise for people residing or working in the project area?	❒	❒	❒	■
f) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?	❒	❒	■	❒
g) Expose people or structures, either directly or indirectly, to a significant risk of loss, injury or death involving wildland fires?	❒	❒	■	❒

A. Environmental Setting

Existing Conditions

A Phase I Environmental Site Assessment (Phase I) was prepared for the project site by Baseline in August 2020[57] (included in this report as Appendix C) to evaluate whether past land uses at the project site or surrounding area may have resulted in the release of hazardous materials that could impact the environmental conditions of the project site. The Phase I included a review of historical maps and aerial photos, a review of environmental databases, a site inspection, and consultation with the owner of the project site. The Phase I identified the following environmental conditions and concerns associated with the project site:

- The project site and surrounding areas were historically used for agricultural (orchards) from at least 1939 through 1968. Although the project site has been graded after the agricultural use, which can reduce the potential for impacts from pesticides in shallow soil, it is still possible that impacts from agricultural chemicals (e.g., organochlorine pesticides and arsenic) may be present in shallow soil at the project site.
- The past and on-going use of the project site as a gas station is considered a Recognized Environmental Condition (REC). Violations have been noted for the project site related to underground storage tank (UST) systems monitoring and testing between 2013 and 2019. It is possible that a hazardous materials release has occurred at the project site that has not been detected during investigations previously performed at the project site.
- The closure of a leaking UST (LUST) case at the project site in 1998 related to the removal of former USTs and fuel piping and detection of petroleum hydrocarbon contamination in soil at the project site in 1996 is considered a Historic REC. Because the project site has a closed LUST case, it is included on the list of hazardous materials release sites compiled pursuant to Government Code Section 65962.5, commonly referred to as the “Cortese List”.
- Based on the age of the structure on the project site, hazardous building materials including asbestos-containing materials, lead based paint, and polychlorinated biphenyls-containing materials and electrical equipment may be present in the structure.
- There are properties of potential environmental concern located in the inferred upgradient direction from the project site, including a gas station at 5005 Almaden Expressway and a dry cleaner at 5029 Almaden Expressway. There is the potential for hazardous materials releases at these properties to impact the environmental condition of the project site, including presenting a potential vapor encroachment condition for the project site.

[57] Baseline, 2020. Phase I Environmental Site Assessment, Rotten Robbie Gas Station, 4962 Almaden Expressway, San José, California, August 21.

- The on-site address of 4960 Almaden Expressway was listed in City Directories to be occupied by Bargain Carpet Cleaning in 1994 and 2000, American Lab in 2004, and RP Labs in 2009. Carpet cleaning operations may have involved the use of chlorinated solvents, such as tetrachloroethylene (also known as "PCE" or "perc", a chemical commonly used for dry cleaning) and laboratory operations may also have involved the use of hazardous materials such as solvents. It is possible that this address was associated with the larger shopping center that contains the project site, and that these businesses were not actually located on the project site, as multiple businesses were listed at this address in the same year (which may reflect an error in the historical City Directories). If these businesses were located on project site and had releases of hazardous materials, the subsurface of the project site could have been impacted.

In October 2020, environmental sampling and analysis of shallow soil was performed at the project site by Cornerstone, concurrent with the Geotechnical Investigation (the sampling memorandum is included in Appendix B of this report). Four soil samples were collected from two borings and analyzed for organochlorine pesticides (OCPs) and pesticide-related metals including arsenic, lead, and mercury. Laboratory analyses of the soil samples detected OCPs and metals at concentrations less than the San Francisco Bay Regional Water Quality Control Board's Tier 1 Environmental Screening Levels (ESLs), hazardous waste thresholds, and/or typical natural background levels. Based on the limited data, soil in the approximate area of the two borings does not appear to have been significantly impacted by past agricultural uses.[58]

Regulatory Framework

Federal

Occupational Safety and Health Administration. Worker health and safety is regulated at the federal level by the US Department of Labor, Occupational Safety and Health Administration (OSHA). OSHA regulations include training requirements for construction workers and a requirement that hazardous materials are accompanied by manufacturer's Safety Data Sheets (SDSs). The Federal Occupational Safety and Health Act of 1970 authorizes states to establish their own safety and health programs with OSHA approval.

Transportation of Hazardous Materials. The transportation of hazardous materials is subject to US Department of Transportation (USDOT), Resource Conservation and Recovery Act (RCRA), and State regulations. In 1990 and 1994, the federal Hazardous Material Transportation Act was amended to improve the protection of life, property, and the environment from the inherent risks of transporting hazardous material in all major modes of commerce. The USDOT developed hazardous materials regulations, which govern the classification, packaging, communication, transportation, and handling of hazardous materials, as well as employee training and incident reporting.

[58] Cornerstone Earth Group, 2020b. Limited Environmental Sampling, 4962 Almaden Retail Building, 4962 Almaden Expressway, San José, California, October 27.

Polychlorinated Biphenyls (PCBs). PCBs or PCBs-contaminated items require proper off-site transport and disposal at a facility that can accept such wastes, in accordance with the Federal Toxic Substances Control Act of 1976 and other federal and State regulations. PCBs were historically used as coolants and lubricants in transformers, capacitors, heating/cooling equipment, and other electrical equipment, and were also used as plasticizers in paints, plastics, rubber products, and caulking. PCBs have been demonstrated to cause cancer and a variety of other adverse health effects in animals, including effects on the immune system, reproductive system, nervous system, and endocrine system. Although manufacturing of PCBs has been banned in the United States since 1979, they may still be found in older electrical equipment and other building materials such as light ballasts and caulking. PCBs in manufactured materials such as caulking may also move directly into adjoining materials, particularly porous materials such as wood, concrete, and other types of masonry.[59]

The EPA has indicated that there was potential widespread use of PCB-containing building materials in buildings built or renovated between about 1950 and 1979. Prior to removal, EPA recommends PCB testing of caulk and other building materials that are going to be removed to determine what protections are needed during removal and to determine proper disposal requirements.[60]

State

California Department of Industrial Relations and California OSHA. Worker health and safety protections in California are regulated by the California Department of Industrial Relations (DIR). The DIR includes the Division of Occupational Safety and Health (DOSH), which acts to protect workers from safety hazards through its California OSHA (Cal/OSHA) program. Cal/OSHA regulations include requirements for protective clothing, training, and limits on exposure to hazardous materials. California standards for workers dealing with hazardous materials are contained in California Code of Regulations (CCR) Title 8 and include practices for all industries (General Industrial Safety Orders), and specific practices for construction, and other industries.

Transportation of Hazardous Materials. The California Highway Patrol, the California Department of Transportation (Caltrans), and the California Environmental Protection Agency (Cal/EPA) Department of Toxic Substances Control (DTSC) are responsible for enforcing federal and State regulations pertaining to the transportation of hazardous materials. If a discharge or spill of hazardous materials occurs during transportation, the transporter is

[59] EPA, 2015a. PCBs in Building Materials – Questions & Answers. July 28. Available: https://www.epa.gov/sites/production/files/2016-03/documents/pcbs_in_building_materials_questions_and_answers.pdf, accessed September 25, 2020.

[60] EPA, 2015b. Practical Actions for Reducing Exposure to PCBs in Schools and Other Buildings, Guidance for school administrators and other building owners and managers https://www.epa.gov/sites/production/files/2016-03/documents/practical_actions_for_reducing_exposure_to_pcbs_in_schools_and_other_buildings.pdf, accessed April 9, 2019.

required to take appropriate immediate action to protect human health and the environment (e.g., notify local authorities and contain the spill), and is responsible for the discharge cleanup.

Government Code Section 65962.5 ("Cortese List"). The provisions of Government Code Section 65962.5 require the DTSC, the State Water Resources Control Board, the California Department of Health Services, and the California Department of Resources Recycling and Recovery (formerly the California Integrated Waste Management Board) to submit information pertaining to sites associated with solid waste disposal, hazardous waste disposal, LUST sites, and/or hazardous materials releases to the Secretary of Cal/EPA. The lists of hazardous materials release sites compiled in accordance with Government Code Section 65962.5 is also known as the "Cortese List".

Lead. Prior to 1978, lead compounds were commonly used in exterior and interior paints. Due to its health effects, the application of lead-based paint (LBP) on residential structures was banned in 1978; however, (LBP) can be found in commercial or industrial structures, regardless of construction date (because its use is still allowed in commercial and industrial applications). If lead paint is present on structures to be demolished, the stabilization and/or removal of lead paint would be required in accordance with applicable laws and regulations, including but not limited to: Cal/OSHA's Construction Lead Standard, Title 8 CCR Section 1532.1, and Department of Health Services (DHS) regulation 17 CCR Sections 35001 through 36100, as may be amended.

Local

BAAQMD. Asbestos is a known human carcinogen that was commonly used in building materials until the early 1980s. BAAQMD Regulation 11-2-303.8 requires that prior to commencement of any demolition or renovation, the owner or operator must thoroughly survey the affected structure or portion thereof for the presence of asbestos-containing material (ACM). The survey must be performed by a person who is certified by the Division of Occupational Safety and Health, and who has taken and passed an EPA-approved Building Inspector course and who conforms to the procedures outlined in the course. The survey must include sampling and the reporting of results of laboratory analysis of the asbestos content of all suspected ACMs. This survey must be made available, upon request by the Air Pollution Control Officer, prior to the commencement of any regulated ACMs removal or any demolition. If ACMs are identified, the disturbance/removal and management of ACMs must be performed in accordance with BAAQMD Regulations under Rule 11-2 to ensure that asbestos would not be released into the environment.[61]

Santa Clara County Department of Environmental Health. The Santa Clara County Department of Environmental Health (SCCDEH) is designated as the Certified Unified Program Agency

[61] BAAQMD, 1998. Regulation 11 Hazardous Pollutants Rule 2 Asbestos Demolition, Renovation and Manufacturing, October 7.

(CUPA) for the City, and coordinates the regulation of hazardous materials and hazardous wastes in the City. The role of a CUPA is to consolidate, coordinate, and make consistent the administrative requirements, permits, inspections, and enforcement activities associated with the regulation of hazardous materials and hazardous wastes.

PCBs. All applicants for a demolition permit or any other permit that involves the demolition of a building in San José must submit a PCBs Screening Assessment Form. For applicable structures and demolitions, representative sampling and analysis of priority building materials must be performed per the Bay Area Stormwater Management Agencies Association (BAASMA) Protocol for Evaluating Priority PCBs-Containing Materials before Building Demolition.

General Plan. The following policies of the City of San José's General Plan[62] related to hazardous materials would be applicable to the proposed project:

- **EC-6.1**: Require all users and producers of hazardous materials and wastes to clearly identify and inventory the hazardous materials that they store, use or transport in conformance with local, state and federal laws, regulations and guidelines.
- **EC-6.2**: Require proper storage and use of hazardous materials and wastes to prevent leakage, potential explosions, fires, or the escape of harmful gases, and to prevent individually innocuous materials from combining to form hazardous substances, especially at the time of disposal by businesses and residences. Require proper disposal of hazardous materials and wastes at licensed facilities.

The following policies and actions of the City of San José's General Plan related to environmental contamination would be applicable to the proposed project:

- **EC-7.1**: For development and redevelopment projects, require evaluation of the proposed site's historical and present uses to determine if any potential environmental conditions exist that could adversely impact the community or environment.
- **EC-7.2**: Identify existing soil, soil vapor, groundwater and indoor air contamination and mitigation for identified human health and environmental hazards to future users and provide as part of the environmental review process for all development and redevelopment projects. Mitigation measures for soil, soil vapor and groundwater contamination shall be designed to avoid adverse human health or environmental risk, in conformance with regional, state and federal laws, regulations, guidelines and standards.
- **EC-7.3**: Where a property is located in near proximity of known groundwater contamination with volatile organic compounds or within 1,000 feet of an active or

[62] City of San José, 2020. Op. cit.

inactive landfill, evaluate and mitigate the potential for indoor air intrusion of hazardous compounds to the satisfaction of the City's Environmental Compliance Officer and appropriate regional, state and federal agencies prior to approval of a development or redevelopment project.

- **EC-7.4**: On redevelopment sites, determine the presence of hazardous building materials during the environmental review process or prior to project approval. Mitigation and remediation of hazardous building materials, such as lead-paint and asbestos-containing materials, shall be implemented in accordance with state and federal laws and regulations.
- **EC-7.5**: On development and redevelopment sites, require all sources of imported fill to have adequate documentation that it is clean and free of contamination and/ or acceptable for the proposed land use considering appropriate environmental screening levels for contaminants. Disposal of groundwater from excavations on construction sites shall comply with local, regional, and state requirements.
- **EC-7.6**: The City will encourage use of green building practices to reduce exposure to volatile or other hazardous materials in new construction materials.
- **EC-7.8**: Where an environmental review process identifies the presence of hazardous materials on a proposed development site, the City will ensure that feasible mitigation measures that will satisfactorily reduce impacts to human health and safety and to the environment are required of or incorporated into the projects. This applies to hazardous materials found in the soil, groundwater, soil vapor, or in existing structures.
- **EC-7.9**: Ensure coordination with the County of Santa Clara Department of Environmental Health, Regional Water Quality Control Board, Department of Toxic Substances Control or other applicable regulatory agencies, as appropriate, on projects with contaminated soil and/or groundwater or where historical or active regulatory oversight exists.
- **EC-7.10**: Require review and approval of grading, erosion control and dust control plans prior to issuance of a grading permit by the Director of Public Works on sites with known soil contamination. Construction operations shall be conducted to limit the creation and dispersion of dust and sediment runoff.
- **EC-7.11**: Require sampling for residual agricultural chemicals, based on the history of land use, on sites to be used for any new development or redevelopment to account for worker and community safety during construction. Mitigation to meet appropriate end use such as residential or commercial/industrial shall be provided.

B. Impact Evaluation

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

Less Than Significant Impact

The routine transport, use, or disposal of hazardous materials could pose a potential hazard to construction workers and employees working at the project site as they would be handling the hazardous materials and could therefore be exposed through inhalation of vapors, direct contact with skin, or accidental ingestion. The routine transport, use, or disposal of hazardous materials would not pose a significant hazard to the public or environment unless the hazardous materials were accidentally spilled or released into the environment, as discussed under subsection b) below.

During project construction, hazardous materials such as fuel, lubricants, paint, sealants, and adhesives would be transported and used at the project site. The closure and demolition of the existing gas station on the project site would also require the removal of the existing USTs and associated piping and fuel dispensers, which would require the removal and transportation of residual fuel. The current storage of fuel at the project site is permitted through the SCCDEH's UST Program. The proposed closure and removal of gas station infrastructure from the project site would require permitting and oversight from the SCCDEH,[63] which would ensure that the routine transportation and disposal of hazardous materials (e.g., residual fuel) during the removal of gas station infrastructure would be performed in accordance with applicable regulations to ensure the protection of human health and the environment.

The routine transport, use, and disposal of hazardous materials at the project site during operation and construction activities would be required to comply with CCR Title 8, which would mitigate potential health hazards for workers related to the routine transport, use, or disposal of hazardous materials to a less-than-significant level.

Construction and operation of the proposed project would result in the generation of various waste materials that would require recycling and/or disposal, including some waste materials that may be classified as hazardous waste. Hazardous wastes are required to be transported by a licensed hazardous waste hauler and disposed of at facilities that are permitted to accept such materials as required by DOT, RCRA, and State regulations.

Compliance with the existing hazardous materials regulations described above, including requirements of the SCCDEH's UST Program; OSHA and Cal/OSHA regulations, CCR Title 8; and DOT, RCRA, state, and local regulations, would ensure potential impacts related to the routine transport, storage, use, or disposal of hazardous materials would be less than significant.

[63] Santa Clara County Hazardous Materials Compliance Division, 2020. Closures Web Page, Available at: https://www.sccgov.org/sites/hazmat/programs/closures/Pages/home.aspx, Accessed November 3.

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

Less Than Significant with Mitigation Incorporated

The proposed retail use of the project site would not involve handling of significant quantities of hazardous materials during operation. Only small quantities of commercially available hazardous materials (e.g., cleaning products, paint) would be stored and used at the project site during operation.

The public and/or the environment could be affected by the release of hazardous materials from the project site into the environment if: 1) leakage, spills, or improper disposal of hazardous materials would occur during construction of the project; 2) hazardous building materials (e.g., lead paint, asbestos, or polychlorinated biphenyls [PCBs]) were disturbed and released into the environment during demolition of the existing structures; 3) potentially contaminated soil or groundwater is present beneath the project site which could create exposure risks for construction workers and the public if contaminated soil is disturbed, or for future site occupants if the proposed structure is placed over contaminated soil or groundwater.

Leakage, Spills, or Improper Disposal of Hazardous Materials

An accidental release of hazardous materials (e.g., oils, fuels, or paints) during project construction could result in exposure of construction workers, the public, and/or the environment to hazardous materials. As discussed under subsection a) above, compliance with the existing hazardous materials regulations would ensure that hazardous materials that would be handled during project construction are appropriately managed, transported, and disposed of; and if an accidental spill or leak of hazardous materials occurs, appropriate response actions would be taken to clean up the accidental release. Therefore, potential impacts related to leakage, spills, or improper disposal of hazardous materials would be less than significant.

Demolition and Renovation of Existing Structures, Concrete Slabs, Pavement, and Drainage Systems

The Standard Permit Conditions related to asbestos and lead based paint are described below

Standard Permit Conditions

Asbestos and Lead Based Paint measures to reduce hazards associated with asbestos and lead based paint include, but are not limited to, the following:

- In conformance with State and local laws, a visual inspection/pre-demolition survey, and possible sampling, shall be conducted prior to the demolition of on-site building(s) to determine the presence of ACMs and/or LBP.

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

While electrical equipment and lighting ballasts that may contain PCBs can be readily identified; PCB-containing building materials such as caulking, specialized paints, mastics and other adhesives would require testing to evaluate whether these materials contain PCBs. Based on the age of the structure on the project site, the City would require testing to identify potential PCBs in building materials in accordance with BAASMA protocols prior to demolition of the structure. The project would be required to properly handle and dispose of electrical equipment, lighting ballasts, and other building materials that may be identified to contain PCBs, in accordance with the Toxic Substances Control Act and other federal and State regulations.

Soil and Groundwater Contamination

As discussed above, the Phase I identified the potential for soil contamination from past agricultural uses to be present at the project site.[64] The analyses of shallow soil samples collected at the project site detected OCPs and metals at concentrations less than the Tier 1 ESLs, hazardous waste thresholds, and/or typical natural background levels.[65] Based on these findings, soil at the project site does not appear to have been significantly impacted by past agricultural uses; however, the City's Environmental Services Department (ESD) has indicated that additional sampling and analysis of soil for agricultural contaminants should be performed to confirm that the project site is not impacted by past agricultural uses. The ESD indicated that sampling and analysis of soil from four discrete sample locations should be performed in accordance with DTSC guidelines for agricultural properties that are up to 3 acres. If elevated concentrations of residual agricultural contaminants (e.g., OCPs and metals) are present in areas of the project site which have not been tested, the disturbance of soil during construction activities could result in the release of contaminants into the environment and exposure of construction workers, the public, and the environment to hazardous materials.

The Phase I indicated that groundwater at the project site has not been found to be impacted by a release of petroleum hydrocarbons or associated volatile organic compounds (VOCs), and only limited and isolated impacts have been found in soil samples collected beneath former fuel piping in 1997. Although impacts were not detected in soil samples collected in the area of the former USTs during their removal from the southeast portion of the project site, groundwater samples have not been collected in the area of the former USTs, therefore it is possible that groundwater could be impacted by possible past releases in the area of the former USTs. The Phase I also indicated that it is possible that impacts from petroleum hydrocarbons or associated VOCs could be present in soil and groundwater in other areas of the project site that have not been sampled.[66]

The proposed closure and removal of gas station infrastructure from the project site would require permitting and oversight from the SCCDEH. SCCDEH requires that soil sampling be performed beneath all USTs and piping after they are removed, and that removal and sampling activities be witnessed by a representative from SCCDEH.[67] The required permitting and oversight from the SCCDEH would ensure that if hazardous materials releases have occurred from the existing gas station infrastructure, the contamination would be investigated and remediated to ensure protection of human health and the environment.

The Phase I indicated that there have been land uses at the project site and upgradient from the project site that were known or likely to have involved the storage, use, and disposal of

[64] Baseline, 2020. Op. cit

[65] Cornerstone Earth Group, 2020b. Op. cit.

[66] Baseline, 2020. Op. cit.

[67] Santa Clara County Hazardous Materials Compliance Division, 2020. Op. cit. 2020https://www.sccgov.org/sites/hazmat/programs/closures/Pages/home.aspx, Accessed November 3.

hazardous materials including gas stations, a carpet cleaner, and a dry cleaner. The continued use of the project site as a gas station and upgradient properties as a gas station and a dry cleaner presents the potential for hazardous materials releases to impact the environmental condition of the project site. The Phase I indicated that soil gas sampling has not been performed at the project site to evaluate potential vapor intrusion risks.[68] If soil gas contamination is present beneath the project site, future occupants of the project site could be exposed to hazardous materials in indoor air due to vapor intrusion.

The Phase I included the following recommendation to address the potential for soil gas contamination at the project site:

- Removal of petroleum hydrocarbon impacted soil, if present, could be performed during removal of the UST systems. Following the removal of the UST systems and backfilling of the UST excavation, and after allowing a sufficient time for subsurface conditions at the project site to equilibrate (approximately 1 month), soil gas samples should be collected within the footprint of the proposed commercial building to evaluate whether soil gas may be impacted with volatile organic compounds (VOCs) at levels that could present a vapor intrusion risk for future occupants of the project site. If VOCs are detected in the soil gas samples at concentrations exceeding the ESLs for commercial land use, a soil vapor mitigation system should be designed and certified by a qualified Environmental Professional and installed beneath the proposed structure.

Impact HAZ-1: The proposed project could result in disturbance of contaminated soil which could release hazardous material into the environment; and could result in exposure of future site occupants to a vapor intrusion related health risk.

Mitigation Measure HAZ-1: Prior to any Underground Storage Tank (UST) removal activities including excavation, the project applicant shall contact the San Jose Fire Department and the Santa Clara County Department of Environmental Health (SCCDEH) and coordinate any necessary field inspections and required permits and paperwork from both agencies. The project applicant shall complete and submit a UST System Closure Permit Application to the SCCDEH and a UST System Closure Application (UN-003) to the City of San Jose's Fire Department. Additional permits (i.e., demolition permits, electrical permits, plumbing permits, etc.) may be required by the City of San José's Department of Planning, Building, and Code Enforcement or other state or federal agencies. The project applicant shall perform post removal sampling of the UST and surrounding soil/and or groundwater as directed by the SCCDEH under their Local Oversight Program (LOP). If the UST(s) have been determined by the SCCDEH to have leaked, a regulatory case will be opened and further investigation and cleanup (if necessary) shall be performed under LOP oversight. Copies of evidence of consultation with SCCDEH and the San Jose Fire Department shall be submitted to the

[68] Baseline, 2020. Op. cit.

Municipal Compliance Office of the City of San José Environmental Services Department.

Mitigation Measure HAZ-2: Prior to the issuance of a site grading permit, the project applicant shall hire a qualified environmental professional to complete a Phase II Environmental Site Assessment (ESA) to address the concerns and recommendations posed in the Phase I ESA prepared for the project site by Baseline Environmental Consulting dated 21 August 2020. The Phase II ESA shall include soil sampling for agricultural contaminants in at least four discrete sample locations at the project site, and soil gas sampling in accordance with recommendations of the Phase I ESA. Results of the Phase II ESA shall be provided to the SCCDEH, the City of San Jose Planning, Building, and Code Enforcement Supervising Environmental Planner, and the Environmental Services Department Municipal Compliance Officer. If the Phase II ESA results indicate soil, soil gas and/or groundwater contamination above applicable regulatory environmental screening levels, the project applicant shall obtain regulatory oversight from the San Francisco Bay Regional Water Quality Control Board or SCCDEH. Any further investigation and remedial actions shall be performed under regulatory oversight to mitigate the contamination and make the project site suitable for the proposed development.

Required compliance with the existing hazardous materials regulations described above, including hazardous building materials regulations and SCCDEH regulations for removal of the existing fuel system infrastructure, compliance with the Standard Permit Conditions and General Plan policies, and implementation of Mitigation Measures HAZ-1 and HAZ-2 would ensure that potential impacts of the project related to accidental releases of hazardous materials would be a less than significant.

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

Less Than Significant with Mitigation Incorporated

Broadway High, a public continuation high school, is located at 4825 Speak Lane, approximately 1,000 feet northwest of the project site, and John Muir Middle School, a public middle school, is located at 1260 Branham Lane, approximately 1,000 feet northwest of the project site.[69] No other schools were identified within a quarter mile of the project site.[70]

The project would not involve the handling of acutely hazardous materials. As discussed above, the project would not handle significant quantities of hazardous materials during operation.

[69] California Department of Education, 2020. California School Directory, Available at: https://www.cde.ca.gov/schooldirectory/, Accessed on November 4

[70] Ibid.

Required compliance with the existing hazardous materials regulations described above, including hazardous building materials regulations and SCCDEH regulations for removal of the existing fuel system infrastructure, compliance with the Standard Permit Conditions and General Plan policies, and implementation of Mitigation Measures HAZ-1 and HAZ-2 would ensure that potential impacts of the project related to emissions of hazardous materials within a quarter mile of schools would be less than significant.

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

Less Than Significant with Mitigation Incorporated

Due to the project site being a LUST site, the project site is included on the lists of hazardous materials release sites compiled in accordance with Government Code Section 65962.5, also known as the "Cortese List".[71] The required permitting and oversight from the SCCDEH during the proposed removal of fueling infrastructure and implementation of Mitigation Measure HAZ-1 as discussed in subsection b) above, would ensure that potential impacts related to past hazardous materials releases at the project site and inclusion on a list of hazardous materials release sites compiled pursuant to Government Code Section 65962.5. would be less than significant.

e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard or excessive noise for people residing or working in the project area?

No Impact

The project site is located approximately 7 miles south-southeast of the San José International Airport. The project site is not located within the Airport Safety Zones or Airport Influence Area of the San José International Airport,[72] and is not located in the vicinity of a private air strip. Therefore, the project would not result in aviation related hazards due to proximity to an airport.

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

Less Than Significant Impact

[71] CalEPA. 2020. Cortese List Data Resources. Available at: https://calepa.ca.gov/sitecleanup/corteselist/, Accessed on November 3.

[72] Santa Clara County Airport Land Use Commission, 2016. Comprehensive Land Use Plan, Santa Clara County, Norman Y. Mineta San José International Airport. May 25.

The project would not permanently alter any existing streets. During construction the project would require temporary closure of portions of adjacent streets and sidewalks for sidewalk improvements and utility connections. Compliance with traffic control requirements imposed by the City for the permitting of temporary closure of street and sidewalk areas would ensure that appropriate emergency access is maintained at all times during construction activities. The proposed project would be required to comply with all Building and Fire codes related to emergency access and evacuation. Additionally, after construction of the retail building, the site would continue to be accessed via the parking lot of the shopping center. Therefore, the project would have a less than significant impact related to emergency access and evacuation.

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

Less Than Significant Impact

California Department of Forestry and Fire Protection (CAL FIRE) maps identify fire hazard severity zones in State and local responsibility areas for fire protection. The project site is not located within or near a very high fire hazard severity zone for either state or local responsibility areas.[73] The project site is in a highly developed urban area and vegetation on and surrounding the project site is minimal. Therefore, the project would have less-than-significant impacts related to exposing people or structures to a significant risk of loss, injury or death involving wildland fires.

4.10 HYDROLOGY AND WATER QUALITY

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
Would the project:				
a) Violate any water quality standards or waste discharge requirements or otherwise substantially degrade surface or groundwater quality?	❒	❒	■	❒
b) Substantially decrease groundwater supplies or interfere substantially with groundwater recharge such that the project may impede sustainable groundwater management of the basin?	❒	❒	■	❒

[73] CAL FIRE. 2020. California Fire Hazard Severity Zone Viewer, Available at: https://gis.data.ca.gov/datasets/789d5286736248f69c4515c04f58f414, Accessed on November 3.

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river or through the addition of impervious surfaces, in a manner which would:				
(i) result in substantial erosion or siltation on- or off-site;	❒	❒	■	❒
(ii) substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site;	❒	❒	■	❒
(iii) create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff; or	❒	❒	■	❒
(iv) impede or redirect flood flows?	❒	❒	❒	■
d) In flood hazard, tsunami, or seiches zones, risk release of pollutants due to project inundation?	❒	❒	❒	■
e) Conflict with or obstruct implementation of a water quality control plan or sustainable groundwater management plan?	❒	❒	❒	■

A. Environmental Setting

Existing Conditions

The project site is located in the Guadalupe River Watershed and the Guadalupe River is located approximately 900 feet northeast of the project site. Stormwater runoff from the project site is conveyed to the Guadalupe River via underground storm drains. The project site is not located within a flood hazard zone mapped by the Federal Emergency Management Agency (FEMA). According to FEMA mapping, the project site is located in Zone D, which is an unstudied area where flood hazards are undetermined, but flooding is possible.[74] There are no City floodplain requirements for Zone D.

The project site is located within the Santa Clara Plain Groundwater Basin, and is located within the Santa Clara Plain Recharge Area designated in the Santa Clara Valley Water District's

[74] Federal Emergency Management Agency (FEMA), 2020. National Flood Hazard Layer (NFHL) Viewer, Map Number 06085C0244H, Effective 18 May 2009, Available at: https://hazards-fema.maps.arcgis.com/apps/webappviewer/index.html?id=8b0adb51996444d4879338b5529aa9cd, Accessed on November 4.

Groundwater Management Plan.[75] The depth to groundwater at the project site has been measured at depths of approximately 21 to 25 feet,[76] and historic high groundwater in the vicinity of the project site is mapped at depths of approximately 18 feet below the ground surface.[77] Fluctuations in groundwater levels occur due to many factors including seasonal fluctuation, underground drainage patterns, regional fluctuations, and other factors.

Regulatory Framework

Federal

Clean Water Act. The Federal Clean Water Act of 1972 is the primary federal law that protects the quality of the nation's surface waters, including lakes, rivers, and coastal wetlands. It is administered by the USEPA. The Clean Water Act operates on the principle that all discharges into the nation's waters are unlawful unless specifically authorized by a permit. The USEPA has delegated its authority to implement and enforce most of the applicable water quality provisions of this law to the individual states. In California, the provisions are enforced by nine regional water boards under the auspices of the State Water Board

National Pollutant Discharge Elimination System (NPDES) Permit Program. Under Section 402 of the Clean Water Act, the discharge of pollutants through a point source into waters of the United States is prohibited unless the discharge complies with an NPDES permit. The NPDES program regulates the discharge of pollutants from municipal and industrial wastewater treatment plants and sewer collection systems, as well as stormwater discharges from industrial facilities, municipalities, and construction sites. In California, implementation and enforcement of the NPDES program is conducted through the State Water Board and the nine regional water boards. The regional water boards set standard conditions for each permittee in their region, which includes effluent limitations and monitoring programs.

State

Porter-Cologne Water Quality Control Act. The Porter-Cologne Water Quality Control Act (California Water Code, Division 7, Water Quality) was promulgated in 1969. It established the State Water Board and divided the State into nine hydrologic regions, each overseen by a regional water board. The State Water Board is the primary State agency responsible for protecting the quality of the State's surface and groundwater supplies, but much of its daily implementation authority is delegated to the nine regional water boards. The Porter-Cologne Act also provides for the development and tri-annual review of Water Quality Control Plans that designate beneficial uses of California's major rivers and groundwater basins and establish narrative and numerical water quality objectives for those waters. The State Water Board and nine regional water quality control boards regulate water quality of surface water and groundwater quality throughout California. The City of San José lies within the jurisdiction of the San Francisco Bay Regional Water Board which enforces compliance with water quality

[75] Santa Clara Valley Water District, 2016. Groundwater Management Plan, November.
[76] Environmental Investigation Services Inc., 2016.Op. cit.
[77] Cornerstone Earth Group, 2020a. Op. Cit.

objectives for beneficial uses of surface waters. The Basin Plan[78] establishes beneficial water uses for waterways, water bodies, and groundwater basins within the region and is a master policy document for managing water quality in the region.

Municipal Regional Permit. Stormwater discharges in the City of San José are regulated under a regional National Pollutant Discharge Elimination System (NPDES) permit (NPDES Permit No. CAS612008, State Water Board Order No. R2-2015-0049) for the discharge of stormwater from municipal separate storm sewer systems (Municipal Regional Permit).[79] The Municipal Regional Permit (MRP) is issued and overseen by the San Francisco Bay Regional Water Quality Control Board. Under the MRP, the preparation of a Stormwater Control Plan (SCP) would be required for the proposed project. The SCP would present the design elements and implementation measures that would be used to meet MRP requirements.

Provision C.3 of the MRP requires implementation of low impact development (LID) source control, site design, and stormwater treatment for regulated projects. Projects that create or replace over 10,000 square feet of impervious surface area are regulated projects. LID employs principles such as preserving and re-creating natural landscape features and minimizing impervious surfaces to create functional and appealing site drainage that treats stormwater as a resource, rather than a waste product. Practices used to adhere to these LID principles include measures such as rain barrels and cisterns, green roofs, permeable pavement, preserving undeveloped open space, and biotreatment through rain gardens, bioretention units, bioswales, and planter/tree boxes.

Sustainable Groundwater Management Act. The 2014 Sustainable Groundwater Management Act (SGMA) requires local public agencies and Groundwater Sustainability Agencies in high- and medium-priority basins to develop and implement Groundwater Sustainability Plans (GSPs) or Alternatives to GSPs.[80] GSPs are detailed road maps for how groundwater basins will reach long term sustainability. Existing Groundwater Management Plans will be in effect until GSPs are adopted in medium and high priority basins. The Santa Clara Valley Water District's Groundwater Management Plan indicates that the project site is located within the Santa Clara Plain Recharge Area.[81]

[78] San Francisco Regional Water Quality Control Board (Regional Water Board), 2017. San Francisco Bay Basin (Region 2) Water Quality Control Plan (Basin Plan). Incorporating all amendments as of May 4.

[79] California Regional Water Quality Control Board, San Francisco Bay Region, 2015. San Francisco Bay Region, Municipal Regional Stormwater NPDES Permit, Order No. R2-2015-0049, NPDES Permit No. CAS612008, November 19.

[80] California Department of Water Resources, 2020. Groundwater Sustainability Plans. Accessed November 4. https://water.ca.gov/Programs/Groundwater-Management/SGMA-Groundwater-Management/Groundwater-Sustainability-Plans.

[81] Santa Clara Valley Water District, 2016. Op. cit.

Local
General Plan. The following policies of the City of San José's General Plan related to stormwater quality water quality would also be applicable to the proposed project:

- **EC-5.16**: Implement the Post-Construction Urban Runoff Management requirements of the City's Municipal NPDES Permit to reduce urban runoff from project sites.
- **ER-8.1**: Manage stormwater runoff in compliance with the City's Post-Construction Urban Runoff (6-29) and Hydromodification Management (8-14) Policies.
- **ER-8.3**: Ensure that private development in San José includes adequate measures to treat stormwater runoff.
- **ER-8.4**: Assess the potential for surface water and groundwater contamination and require appropriate preventative measures when new development is proposed in areas where storm runoff will be directed into creeks upstream from groundwater recharge facilities.
- **ER-8.5**: Ensure that all development projects in San José maximize opportunities to filter, infiltrate, store and reuse or evaporate stormwater runoff onsite.

B. Impact Evaluation

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

Less Than Significant Impact

During construction of the project, sediment and potential contaminants that may be in the soil (from any chemicals spilled or leaked onto the ground) could be entrained in stormwater runoff and potentially reduce the quality of the receiving water.

The project would be subject to the City's Standard Permit Conditions for construction-related water quality best management practices, which include the following:

Standard permit Condition

Construction-related Water Quality BMPs include, but are not limited to, the following:

- Burlap bags filled with drain rock shall be installed around storm drains to route sediment and other debris away from the drains.
- Earthmoving or other dust-producing activities shall be suspended during periods of high winds.
- All exposed or disturbed soil surfaces shall be watered at least twice daily to control dust as necessary.

- Stockpiles of soil or other materials that can be blown by the wind shall be watered or covered.
- All trucks hauling soil, sand, and other loose materials shall be covered and all trucks shall maintain at least two feet of freeboard.
- All paved access roads, parking areas, staging areas and residential streets adjacent to the construction sites shall be swept daily (with water sweepers).
- Vegetation in disturbed areas shall be replanted as quickly as possible.
- All unpaved entrances to the site shall be filled with rock to remove mud from tires prior to entering City streets. A tire wash system shall be installed if requested by the City.
- The project Applicant shall comply with the City of San José Grading Ordinance, including implementing erosion and dust control during site preparation and with the City of San José Zoning Ordinance requirements for keeping adjacent streets free of dirt and mud during construction.

Compliance with the City's Standard Permit Conditions above would ensure that potential impacts to water quality during construction of the project would be less than significant.

During the operational phase of the proposed project, pollutants associated with vehicle parking (e.g., fuel, oil/lubricants, brake dust, and fallout from exhaust) would be deposited on pavement surfaces which would contribute petroleum hydrocarbons, heavy metals, and sediment to the pollutant load in runoff being transported to receiving waters. Debris and particulates that gather on impervious surfaces such as paved areas and roofs of buildings can also add metals and sediment to the pollutant load in runoff. Long-term degradation of runoff water quality from the project site could adversely affect water quality in the receiving waters.

A Stormwater Control Plan[82] for the proposed project indicates that stormwater runoff from the project site would be managed and treated using several bioretention basins (see **Figure 10**). Compliance with existing stormwater control requirements described above, including those included in the City's General Plan Policies and Standard Permit Conditions and the MRP, would reduce potential operational impacts on surface were quality to a less-than-significant level.

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

No Impact

[82] Brereton,2020. 4962 Almaden Expressway – Retail Building, Stormwater Control Plan, June 19.

Based on the depth to groundwater at the project site of at least 18 feet,[83] groundwater dewatering is not expected to be required during construction activities. Groundwater dewatering or use would not occur during project operation. The Stormwater Control Plan[84] indicates that the proposed project would decrease the impervious surface area on the project site by approximately 4,450 square feet compared to the existing conditions. Additionally, stormwater runoff from impervious areas of the project site would be directed to bioretention basins, which would enhance the infiltration of stormwater runoff to the subsurface. Therefore, the project would have no impacts related to depletion of groundwater supplies or interfering with groundwater recharge.

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

Less Than Significant Impact

The project would not alter the course of a river or stream. As discussed above, the proposed project would decrease the impervious surface area on the project site compared to the existing conditions, therefore the proposed project would not increase the amount of runoff or contribute to erosion/siltation in receiving waters, flooding, or exceed the capacity of existing stormwater drainage systems.

As discussed above, stormwater runoff from the project site would be managed and treated using several bioretention basins. Compliance with existing stormwater control requirements described above, including the City's General Plan Policies and Standard Permit Conditions and the MRP, would ensure that potential impacts related to contributing polluted runoff would be less than significant.

The project site is not located within a flood hazard zone mapped by FEMA. According to FEMA mapping, the project site is located in Zone D, which is an unstudied area where flood hazards are undetermined, but flooding is possible.[85] There are no surface water drainage courses

[83] Cornerstone Earth Group, 2020a. Op. Cit.

[84] Brereton,2020. Op. cit.

[85] Federal Emergency Management Agency (FEMA), 2020. National Flood Hazard Layer (NFHL) Viewer, Map Number 06085C0244H, Effective 18 May 2009, Available at: https://hazards-fema.maps.arcgis.com/apps/webappviewer/index.html?id=8b0adb51996444d4879338b5529aa9cd, Accessed on November 4.

within the project site. Therefore, potential impacts related to impeding or redirecting flood flows would be less than significant.

d) In flood hazard, tsunami, or seiches zones, would the project risk release of pollutants due to project inundation?

No Impact

The project site is not located within a flood hazard zone mapped by FEMA.[86] According to FEMA mapping, the project site is located in Zone D, which is an unstudied area where flood hazards are undetermined, but flooding is possible. The project site is located approximately 16 miles south of San Francisco Bay, and therefore would not be subject to tsunami inundation.

A seiche is the oscillation of a body of water. Seiches occur most frequently in enclosed or semi-enclosed basins such as lakes, bays, or harbors and may be triggered by strong winds, changes in atmospheric pressure, earthquakes, tsunami, or tides. Triggering forces that set off a seiche are most effective if they operate at specific frequencies relative to the size of an enclosed basin. The nearest water bodies to the project site are recharge ponds located approximately 1,700 feet southeast of the project site and at a similar elevation as the project site. Based on the distance and topography between the recharge ponds and the project site, the recharge ponds would not pose a risk of inundation for the project site. Therefore, there would be no impacts associated with seiche inundation.

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

Less Than Significant Impact

The quality of surface water and groundwater in the vicinity of the project site is affected by past and current land uses at the project site and within the watershed and the composition of geologic materials in the vicinity.

As discussed above, stormwater and groundwater quality during construction and operation of the project would be controlled through required compliance with the existing stormwater control requirements including the City's General Plan Policies and Standard Permit Conditions and the MRP. Therefore, the project would not conflict with or obstruct implementation of a water quality control plan.

[86] Federal Emergency Management Agency (FEMA), 2020. National Flood Hazard Layer (NFHL) Viewer, Map Number 06085C0244H, Effective 18 May 2009, Available at: https://hazards-fema.maps.arcgis.com/apps/webappviewer/index.html?id=8b0adb51996444d4879338b5529aa9cd, Accessed on November 4.

As discussed above, groundwater dewatering or use would not occur during project construction or operation and the proposed project would decrease the impervious surface area compared to the existing conditions. Additionally, stormwater runoff from impervious areas of the project site would be directed to bioretention basins, which would enhance the infiltration of stormwater runoff to the subsurface. Therefore, the project would not conflict with or obstruct implementation of a groundwater management plan.

4.11 LAND USE AND PLANNING

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
Would the project:				
a) Physically divide an established community?	❒	❒	❒	■
b) Cause a significant environmental impact due to a conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect?	❒	❒	❒	■

A. Environmental Setting

Existing Conditions

The project site is located in a commercial area along Almaden Expressway. The site is developed with a gas station and small convenience store. The project site is bordered by Almaden Expressway to the west, Cherry Avenue to the south and a suburban shopping mall and parking area to the north and east.

The project site has an Envision San José 2040 General Plan (General Plan) land use designation of Regional Commercial and is located in the Commercial General (CG) zoning district. The Regional Commercial land use designation allows a mixture of compatible commercial uses. The CG zoning district allows for development of retail uses.

Regulatory Framework

Local

General Plan. The General Plan includes the following land use policies applicable to the proposed project.

- **CD-1.1**: Require the highest standards of architectural and site design, and apply strong design controls for all development projects, both public and private, for the enhancement and development of community character and for the proper transition between areas with different types of land uses.

- **CD-1.12**: Use building design to reflect both the unique character of a specific site and the context of surrounding development and to support pedestrian movement throughout the building site by providing convenient means of entry from public streets and transit facilities where applicable, and by designing ground level building frontages to create an attractive pedestrian environment along building frontages. Unless it is appropriate to the site and context, franchise-style architecture is strongly discouraged.
- **CD-1.22**. Include adequate, drought-tolerant landscaped areas in development and require provisions for ongoing landscape maintenance.
- **CD-1.23**. Further the Community Forest Goals and Policies in this Plan by requiring new development to plant and maintain trees at appropriate locations on private property and along public street frontages. Use trees to help soften the appearance of the built environment, help provide transitions between land uses, and shade pedestrian and bicycle areas.
- **CD-4.9**. For development subject to design review, ensure the design of new or remodeled structures is consistent or complementary with the surrounding neighborhood fabric (including but not limited to prevalent building scale, building materials, and orientation of structures to the street).

B. Impact Evaluation

a) Would the project physically divide an established community?

No Impact

The proposed project includes the demolition of the existing building, the gas pumps and canopy structure, removal of underground fuel storage tanks, and construction of a new 7,800-square foot retail building, landscaping and reconfiguration of the parking area. The site has been operating as a gas station for approximately 50 years. The addition of a new retail building would allow for uses similar to the previous uses and compatible with the uses in the vicinity of the project site. The site is within an existing suburban shopping center and the project would not substantially change the characteristics of the area. Therefore, development of the project would not physically divide an established community.

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

No Impact

The proposed project is subject to mitigation measures to minimize environmental impacts, including biological resources and hazardous materials impacts, and would be held to the City's Standard Permit Conditions consistent with General Plan policies adopted to avoid or mitigate environmental effects, as described in the individual resource sections of this IS.

4.12 MINERAL RESOURCES

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
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?	❒	❒	❒	■
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?	❒	❒	❒	■

A. Environmental Setting

Existing Conditions

The project site is not designated by the State Mining and Geology Board under the Surface Mining and Reclamation Act of 1975 as containing mineral deposits of regional significance. Communications Hill in central San José (bounded generally by the Union Pacific Railroad, Curtner Avenue, State Route 87, and Hillsdale Avenue) is the only area in the City with this designation.

Regulatory Framework

State

Surface Mining and Reclamation Act. In 1976, the State Surface Mining and Reclamation Act (SMARA) was enacted as Chapter 9, Division 2 of the Public Resources Code. SMARA requires the State Mining and Geology Board to adopt State policy for the reclamation of mined lands and the conservation of mineral resources. That policy is for the guidance of local governments who are required by the Act both to obtain reclamation plans for surface mining operations and to adopt mineral resource management policies in their general plans, which recognize and conserve mineral resources.

B. Impact Evaluation

a) Would the project 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?

No Impact

The project site is not located on or near Communications Hill and, therefore, would have no significant impact on the loss of availability of a known mineral resource.

b) Would the project result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan, or other land use plan?

No Impact

Because the project is not designated as an area containing mineral deposits of regional or local significance, the project would not result in the loss of availability of a locally important mineral resource recovery site delineated in the City's General Plan or any other City of San José land use plan.

4.13 NOISE

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
Would the project result in:				
a) Generation of a substantial temporary or permanent increase in ambient noise levels in the vicinity of the project in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?	❒	❒	■	❒
b) Generation of excessive groundborne vibration or groundborne noise levels?	❒	❒	■	❒
c) For a project located within the vicinity of a private airstrip or an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?	❒	❒	❒	■

A. Environmental Setting

Existing Conditions

Noise Concepts and Terminology

Noise is commonly defined as unwanted sound that annoys or disturbs people and can have an adverse psychological or physiological effect on human health. Sound is measured in decibels (dB), which is a logarithmic scale. Decibels describe the purely physical intensity of sound based on changes in air pressure, but they cannot accurately describe sound as perceived by the human ear since the human ear is only capable of hearing sound within a limited frequency

range. For this reason, a frequency-dependent weighting system is used and monitoring results are reported in A-weighted decibels (dBA).

Groundborne Vibration Concepts and Terminology

Vibration is an oscillatory motion through a solid medium in which the motion's amplitude can be described in terms of displacement, velocity, or acceleration. Several different methods are used to quantify vibration. Typically, groundborne vibration generated by man-made activities attenuates rapidly with distance from the source of the vibration. Sensitive receptors to vibration include structures (especially older masonry structures), people (especially residents, the elderly, and sick), and vibration-sensitive equipment. Vibration amplitudes are usually expressed as either peak particle velocity (PPV) or the root mean square (RMS) velocity. The PPV is defined as the maximum instantaneous peak of the vibration signal. PPV is appropriate for evaluating potential damage to buildings, but it is not suitable for evaluating human response to vibration because it takes the human body time to respond to vibration signals. The response of the human body to vibration is dependent on the average amplitude of a vibration. The RMS of a signal is the average of the squared amplitude of the signal and is more appropriate for evaluating human response to vibration. PPV is normally described in units of inches per second (in/sec), and RMS is also often described in vibration decibels (VdB).

Noise-Sensitive Receptors in Project Site Vicinity

Noise-sensitive receptors are defined as land uses where noise-sensitive people may be present or where noise-sensitive activities may occur. Examples of noise-sensitive land uses include: 1) residential, hotels and motels, hospitals and residential care; 2) recreation and neighborhood parks; 3) schools, libraries, museums, meeting halls, churches; and 4) public and quasi-public auditoriums, concert halls, and amphitheaters.[87] The nearest noise-sensitive receptors are residences located 255 feet northwest of the project site.

Ambient Noise Environment

The primary sources of noise in the vicinity of the project site are: 1) traffic along Almaden Expressway, which runs north to south adjacent to the project site; and 2) traffic along Cherry Avenue, which runs east to west adjacent to the project site. Based on the future noise contour map for the year 2035 in the Envision San José 2040 General Plan Comprehensive Update Environmental Noise Assessment,[88] traffic noise levels would range from 65 to 70 dBA Ldn at the project site and its vicinity in 2035. Since the project site is well developed and a large increase in growth that could lead to substantial increases in traffic is not anticipated in the area, for the purpose of this analysis, the existing noise levels at the project site and its vicinity are assumed to be the same as those shown on the 2035 noise contour map.

[87] As indicated in Policy EC-1.2 of the Envision San José 2040 General Plan, these land uses are sensitive to increased noise levels, and therefore are regarded as noise-sensitive receptors in this analysis.

[88] Illingworth & Rodkin, Inc., 2010. Envision San José 2040 General Plan Comprehensive Update Environmental Noise Assessment, San José, California. December 7.

Regulatory Framework

Local

General Plan. The General Plan includes the criteria in **Table 11** for land use compatibility and acceptable noise levels in the City.

The following relevant policies are contained within Chapter 3 Environmental Leadership of the General Plan:

- **EC-1.1**: Locate new development in areas where noise levels are appropriate for the proposed uses. Consider federal, state and City noise standards and guidelines as a part of new development review.

Table 11: Land Use Compatibility Guidelines for Community Noise in San José

Land Use Category	Exterior Noise Exposure (DNL In Decibels (DBA))					
	55	60	65	70	75	80
1. Residential, Hotels and Motels, Hospitals and Residential Care1						
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.)					

Source: City of San José. 2011. Envision San José 2040 General Plan. Adopted November 1, amended on March 16, 2020. Table EC-1.

- **EC-1.2**: Minimize the noise impacts of new development on land uses sensitive to increased noise levels (Categories 1, 2, 3 and 6 in **Table 11**) by limiting noise generation and by requiring use of noise attenuation measures such as acoustical enclosures and sound barriers, where feasible. The City considers significant noise impacts to occur if a project would:
    - Cause the DNL at noise sensitive receptors to increase by five dBA DNL or more where the noise levels would remain "Normally Acceptable"; or
    - Cause the DNL at noise sensitive receptors to increase by three dBA DNL or more where noise levels would equal or exceed the "Normally Acceptable" level.
- **EC-1.3**: Mitigate 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.
- **EC-1.6**: Regulate the effects of operational noise from existing and new industrial and commercial development on adjacent uses through noise standards in the City's Municipal Code.
- **EC-1.7**: Require construction operations within San José to use best available noise suppression devices and techniques and limit construction hours near residential uses per the City's Municipal Code. The City considers significant construction noise impacts to occur if a project located within 500 feet of residential uses or 200 feet of commercial or office uses would:
    - Involve substantial noise generating activities (such as building demolition, grading, excavation, pile driving, use of impact equipment, or building framing) continuing for more than 12 months.
- **EC-2.3**: Require new development to minimize continuous vibration impacts to adjacent uses during demolition and construction. For sensitive historic structures, including ruins and ancient monuments or building that are documented to be structurally weakened, a continuous vibration limit of 0.08 in/sec PPV (peak particle velocity) will be used to minimize the potential for cosmetic damage to a building. A continuous vibration limit of 0.20 in/sec PPV will be used to minimize the potential for cosmetic damage at buildings of normal conventional construction. Equipment or activities typical of generating continuous vibration include but are not limited to: excavation equipment; static compaction equipment; vibratory pile drivers; pile-extraction equipment; and vibratory compaction equipment. Avoid use of impact pile drivers within 125 feet of any buildings, and within 300 feet of historical buildings, or buildings in poor condition. On a project-specific basis, this distance of 300 feet may be reduced where warranted by a technical study by a qualified professional that verifies that there will be virtually no risk of cosmetic damage to sensitive buildings from the new development during demolition and

construction. Transient vibration impacts may exceed a vibration limit of 0.08 in/sec PPV only when and where warranted by a technical study by a qualified professional that verifies that there will be virtually no risk of cosmetic damage to sensitive buildings from the new development during demolition and construction.

San José Municipal Code. Section 20.40.600 sets forth specific maximum exterior noise levels generated from commercial uses as shown in **Table 12**, except upon issuance and in compliance with a Special Use Permit as provided in Chapter 20.100.

Section 20.100.450 establishes allowable hours of construction within 500 feet of a residential unit between 7:00 a.m. and 7:00 p.m. from Monday through Friday, unless otherwise expressly allowed in a Development Permit or other planning approval.

Table 12: City of San José Zoning Ordinance Noise Standards

Land Use Types	Maximum Noise Levels at Property Line (dBA)
Commercial or Public/Quasi-Public (PQP) use adjacent to a property used or zoned for residential purposes	55
Commercial or PQP use adjacent to a property used or zoned for commercial or other non-residential purposes	60

Source: City of San José Municipal Code, Section 20.40.600.

B. Impact Evaluation

a) Would the project result in generation of a substantial temporary or permanent increase in ambient noise levels in the vicinity of the project in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?

Less Than Significant Impact

Construction-Generated Noise

Construction is expected to occur over a period of approximately eight months. Construction noise levels would vary from day to day, depending on a number of factors, including the quantity and condition of the equipment being used, the types and duration of activity being performed, the distance between the noise source and the receptor, and the presence or absence of barriers, if any, between the noise source and receptor.

Table 13 shows typical noise levels associated with various types of construction equipment that may be used during each phase of construction. A general assessment of construction noise includes the two noisiest pieces of equipment expected to be used in each construction

phase.[89] The combined noise levels of the two noisiest pieces of equipment have been calculated to represent the noise impact from construction. **Table 13** also shows construction noise levels at residences located 255 feet northwest of the project site, which are the nearest noise-sensitive receptors.

Table 13: Construction Noise Levels at the Nearest Noise-Sensitive Receptors

Construction Phase	Equipment[a]	Reference Noise Level at 50 Feet (dBA Leq)[b]	Addition of Two Noisiest Pieces of Equipment at 50 Feet (dBA Leq)	Noise Level at the Nearest Noise-Sensitive Receptors at 255 feet (dBA Leq)[c]
Demolition	Concrete/Industrial Saws	83	85	71
	Excavators	81		
	Rubber Tired Dozers	81		
	Tractors/Loaders/Backhoes	80		
	Crane	77		
Site Preparation	Graders	81	84	70
	Tractors/Loaders/Backhoes	80		
Grading	Concrete/Industrial Saws	83	85	71
	Excavators	81		
	Rubber Tired Dozers	81		
	Tractors/Loaders/Backhoes	80		
Building Construction	Cranes	77	84	70
	Tractors/Loaders/Backhoes	80		
	Trenchers	79		
	Cement and Mortar Mixers	81		
Paving	Pavers	82	84	70
	Rollers	78		
	Tractors/Loaders/Backhoes	80		
Architectural Coating	Air Compressors	76	76	62

Notes:

[a] Forklifts are not considered heavy construction equipment and therefore are not presented in the table.

[b] Reference noise levels at 50 feet expressed in Leq were calculated based on the reference noise levels expressed in Lmax from FHWA Highway Construction Noise Handbook (U.S. Department of Transportation, 2006), taking into account the acoustical usage factors also from the Handbook.

[89] Federal Transit Administration (FTA), 2018. Transit Noise and Vibration Impact Assessment Manual, FTA Report No. 0123. September.

[c] Based on reference noise levels at 50 feet, the following propagation adjustment was applied to calculate noise levels at 255 feet:

dBA2 = dBA1 + 10 Log10(D1/D2)^2

Where:

dBA1 is the reference noise level at a specified distance (in this case 50 feet).

dBA2 is the calculated noise level.

D1 is the reference distance (in this case 50 feet).

D2 is the distance from the equipment to the receiver.

Source: The types of construction equipment are based on the California Emissions Estimator Model (CalEEMod) equipment list (see also Appendix A).

As indicated in **Table 13**, construction noise could have the potential to exceed ambient noise levels (ranging from 65 to 70 dBA Ldn) at the nearest noise-sensitive receptors. However, the following Standard Permit Conditions[90] would be applicable to the proposed project:

Standard Permit Conditions

Construction-Related Noise. Noise minimization measures include, but are not limited to, the following:

i. Limit construction hours to between 7:00 a.m. and 7:00 p.m., 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.

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

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

iv. Prohibit unnecessary idling of internal combustion engines.

v. 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.

vi. Utilize “quiet” air compressors and other stationary noise sources where technology exists.

[90] City of San José. 2020. DRAFT Standard Permit Conditions – Environmental. September 22.

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

viii. 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.

ix. If complaints are received or excessive noise levels cannot be reduced using the measures above, erect a temporary noise control blanket barrier along surrounding building facades that face the construction sites.

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

xi. Limit construction to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit. Construction outside of these hours may be approved through a development permit based on a site-specific "construction noise mitigation plan" and a finding by the Director of Planning, Building and Code Enforcement that the construction noise mitigation plan is adequate to prevent noise disturbance of affected residential uses.

Implementation of the Standard Permit Conditions that are related to construction noise would reduce the noise impact. Standard Permit Conditions L.i and L.xi limit construction activities to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday (a development permit or other planning approval is necessary for construction outside of these hours) are consistent with the City of San José Municipal Code. These limitations would prevent the disturbance of sleep for a majority of residents located near the project site. Standard Permit Conditions L.ii, L.iii, L.iv, L.v, L.vi, and L.vii require the proposed project to implement basic noise reduction measures during construction. Standard Permit Condition L.viii requires the notification to adjacent noise-sensitive receptors of the construction schedule, which would help the receptors to be prepared for construction noise that may occur. Standard Permit Conditions L.ix and L.x provide measures to respond to and track construction noise complaints during construction to allow sources of potentially disruptive construction noise to be quickly controlled or eliminated; and include additional measures to further reduce construction noise levels.

The anticipated construction period of the proposed project would be eight months. Because the time frame does not exceed one year, it is not considered a significant construction noise impact according to General Plan Policy EC-1.7. Therefore, the potential for construction of the proposed project to generate a substantial temporary increase in ambient noise levels in excess

of standards established in noise ordinance, or applicable standards of other agencies would be less than significant.

Operation-Generated Noise

As identified in Section 4.17 Transportation, the generation of trips during operation of the proposed retail project would be significantly less (215 trips versus 516 trips, or 301 fewer trips) than during the operation existing gas station.[91] Therefore, the proposed project would not increase traffic noise on area roads.

The proposed project would include the installation of heating, ventilation, and air conditioning (HVAC) systems for the proposed building. Information regarding the noise-generating characteristics and locations of the equipment was not available at the time this analysis was conducted. However, noise from HVAC equipment would be required to comply with the operational standards set forth in the San José Municipal Code Section 20.40.600 in Table 12. In addition, the following Standard Permit Condition would be applicable to the proposed project:

Standard Permit Condition

> **Mechanical Equipment.** Mechanical equipment shall be selected and designed by the project applicant to reduce impacts on surrounding uses to meet the City's 55 dB(A) noise level requirement at the property line of nearby noise-sensitive land uses. A qualified acoustical consultant shall be retained to review mechanical noise as these systems are selected to determine specific noise reduction measures necessary to reduce noise to comply with the City's noise level requirements. Noise reduction measures could include, but are not limited to, selection of equipment that emits low noise levels and installation of noise barriers, such as enclosures and parapet walls, to block the line-of-sight between the noise source and the nearest receptors. Other alternate measures may be optimal, such as locating equipment in less noise-sensitive areas, such as the rooftop away from the edges, where feasible.

In accordance with the above Standard Permit Condition and the San José Municipal Code Section 20.40.600, noise from HVAC equipment would be required to reduce to 55 dBA at the nearest noise-sensitive receptors, which is about 10 dBA lower than the ambient noise levels (65 to 70 dBA Ldn). When the difference between two noise levels is 10 dBA or more, the amount to be added to the higher noise level is zero. Therefore, the HVAC system would not increase existing ambient noise at the nearest noise-sensitive receptors. As a result, it is not considered a significant noise impact according to General Plan Policy EC-1.2. For these

[91] Hexagon Transportation Consultants. 2020. Memorandum, Retail Development at 4962 Almaden Expressway in San José, California. December 21.

reasons, the potential for operation of the proposed project to generate a substantial permanent increase in ambient noise levels in excess of standards established in noise ordinance, or applicable standards of other agencies would be less than significant.

b) Would the project result in generation of excessive groundborne vibration or groundborne noise levels?

Less Than Significant Impact

Construction activities can result in varying degrees of ground vibration, depending on the equipment, activity, and soil conditions. The reference vibration levels at 25 feet away from the construction equipment that could be used at the project site are summarized in **Table 14**.

Although **Table 14** provides one vibration level for each piece of equipment, it should be noted that there is considerable variation in reported ground vibration levels from construction activities, primarily due to variation in soil characteristics. The City's General Plan Policy EC-2.3 establishes a vibration limit of 0.2 in/sec PPV for buildings of normal conventional construction for cosmetic damage. **Table 14** also shows the buffer distance that would be required to reduce vibration levels to below the 0.2-in/sec PPV threshold for cosmetic damage.

Table 14: Reference Source Levels for Construction Equipment and the Associated Buffer Distances Required to Prevent Exceedance of 0.2 in/sec PPV

Equipment	At 25 Feet	Required Buffer Distance from Source
	PPV (in/sec)	Building Damage Threshold 0.2 in/sec PPV (Feet)
Vibratory Roller	0.21	26
Large Bulldozer	0.089	15
Loaded Trucks	0.076	13
Jackhammer	0.035	8
Small Bulldozer	0.003	2

Notes: Based on vibration levels at 25 feet, the following propagation adjustment was applied to estimate buffer distance required to reduce vibration levels at a receptor to 0. 2 in/sec PPV:

PPV2 = PPV1 x (D1/D2)^1.5

Where: PPV1 is the reference vibration level at a specified distance.
PPV2 is the calculated vibration level.
D1 is the reference distance (in this case 25 feet).
D2 is the distance from the equipment to the receiver.

Source: PPV vibration levels at 25 feet from the FTA (2018) Transit Noise and Vibration Impact Assessment.

As shown in **Table 14**, a vibratory roller could generate the highest vibration levels and cause cosmetic damage to buildings located within 26 feet of the project site. The nearest structure is

a commercial building located 100 feet east of the project site.[92] Because there are no buildings located within 26 feet of the project site, construction activities would not exceed 0.2 PPV at the nearest structure and would not generate vibration with the potential to cause cosmetic damage to buildings.

c) *For a project located within the vicinity of a private airstrip or an airport land use plan or, where such a plan has not been adopted, within 2 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?*

No Impact

The project site is located approximately 7 miles southeast of the San José International Airport. The project site is not located within the Airport Influence Area of the San José International Airport, which is a composite of the areas surrounding the Airport that are affected by noise, height, and safety considerations. In addition, the project site is not located in the vicinity of a private airstrip. Therefore, the project would not expose people to excessive noise levels from any public use airport or any private airstrip.

4.14 POPULATION AND HOUSING

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
Would the project:				
a) Induce substantial unplanned population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?	❒	❒	❒	■
b) Displace substantial numbers of existing people or housing, necessitating the construction of replacement housing elsewhere?	❒	❒	❒	■

[92] At this distance, a vibratory roller could generate a vibration level of 0.03 in/sec PPV, which is below the 0.2-in/sec PPV threshold. The following propagation adjustment was applied to estimate the vibration level at 100 feet:

PPV2 = PPV1 x (D1/D2)^1.5

Where: PPV1 is the reference vibration level at a specified distance.
PPV2 is the calculated vibration level.
D1 is the reference distance (in this case 25 feet).
D2 is the distance from the equipment to the receiver (in this case 100 feet).

A. Environmental Setting

The population of San José was estimated to be approximately 1,049,187 in January 2020 with an average of 3.19 persons per household.[93] At the end of 2019, the City contained approximately 336,507 housing units. By 2040, the City's population is projected to reach 1,379,108 with approximately 459,700 households.[94]

There are no housing units on the project site and it is located in an urbanized area served by existing infrastructure and roads.

B. Impact Evaluation

a) Would the project induce substantial unplanned population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?

No Impact

The project would potentially result in an increase of six employees for a total of ten after construction is complete. The project would not require any extensions of infrastructure or roads. Thus, the project would not induce substantial population growth.

b) Would the project displace substantial numbers of existing people or housing, necessitating the construction of replacement housing elsewhere?

No Impact

Construction of the proposed project would not displace any housing or people because it involves the replacement of a gas station.

[93] State of California, Department of Finance. "E-5 Population and Housing Estimates for Cities, Counties, and the State, 2011-2020." Accessed: September 30, 2020. http://www.dof.ca.gov/Forecasting/Demographics/Estimates/E-5/

[94] Center for Continuing Study of the California Economy. "Final Report Projections of Jobs, Populations, and Households for the City of San José." September 2015. Accessed: September 30, 2020.

4.15 PUBLIC SERVICES

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
Would the project:				
a) Result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times, or other performance objectives for any of the public services:				
Fire protection?	❒	❒	■	❒
Police protection?	❒	❒	❒	■
Schools?	❒	❒	❒	■
Parks?	❒	❒	❒	■
Other public facilities?	❒	❒	❒	■

A. Environmental Setting

Existing Conditions

Fire and police protection services for the project site are provided by the San José Fire Department (SJFD) and the San José Police Department (SJPD), respectively. The project site is located within the existing service area of both the SJFD and SJPD. The closest station to the project site is Fire Station 13, located approximately 1 mile southeast of the project site. The SJPD is headquartered at 201 West Mission Street, approximately 7 miles north of the project site.

The nearest schools to the project site are the John Muir Middle School and Broadway High School campus located approximately 1,000 feet northwest of the project site. Nearby parks include Thousand Oaks Park located approximately 4,000 feet north of the project site and Erikson Park, located approximately 1 mile east of the project site.

Regulatory Framework

Local

General Plan. The following policies in the City's General Plan have been adopted for the purpose of reducing or avoiding impacts related to public facilities and services and are applicable to the project.

- **ES-3.9**: Implement urban design techniques that promote public and property safety in new development through safe, durable construction and publicly-visible and accessible spaces.
- **ES-3.10**: Incorporate universal design measures in new construction, and retrofit existing development to include design measures and equipment that support public safety for people with diverse abilities and needs. Work in partnership with appropriate agencies to incorporate technology in public and private development to increase public and personal safety.
- **ES-3.11**: Ensure that adequate water supplies are available for fire-suppression throughout the City. Require development to construct and include all fire suppression infrastructure and equipment needed for their projects.

B. Impact Evaluation

a) Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times, or other performance objectives for any of the public services: Fire protection, police protection, schools, parks, other public facilities?

Less Than Significant Impact

The project site is located in an urbanized area within the growth boundaries of the City of San José. The existing gas station on the project site is already served by the SJFD and SJPD, parks, and other public facilities. The proposed project would not significantly impact the response time or performance objectives for public services. The proposed project is consistent with the project site's General Plan land use designation and would not substantially increase demand for fire, police, school, park, and other public facilities beyond what was assumed in the General Plan EIR. The proposed project would not increase the population of the City of San José, as no residences are on or would be constructed on the project site. Therefore, implementation of the project would have a less-than-significant impact on the City's provision of public services.

4.16 RECREATION

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?	❒	❒	❒	■
b) Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?	❒	❒	❒	■

A. Environmental Setting

Existing Conditions

The City of San José currently operates more than 200 regional and neighborhood parks, over 60 miles of urban trails, and over 200 miles of on-street bikeways.[95] The nearest parks to the project site are Thousand Oaks Park located approximately 4,000 feet north of the project site and Erikson Park, located approximately 1 mile east of the project site.

Regulatory Framework

Local

General Plan. The following policies in the City's General Plan have been adopted for the purpose of reducing or avoiding impacts related to recreation facilities and services and are applicable to the project.

- **IN-1.5**: Require new development to provide adequate facilities or pay its fair share of the cost for facilities needed to provide services to accommodate growth without adversely impacting current service levels.
- **IN-1.6**: Ensure that public facilities and infrastructure are designed and constructed to meet ultimate capacity needs to avoid the need for future upsizing. For facilities subject to incremental upsizing, initial design shall include adequate land area and any other elements not easily expanded in the future. Infrastructure and facility planning should discourage over-sizing of infrastructure which could contribute to growth beyond what was anticipated in the Envision General Plan.

[95] City of San José Website. 2020. https://www.sanjoseca.gov/your-government/departments/parks-recreation-neighborhood-services/outdoor-activities. Accessed October 8, 2020.

B. Impact Evaluation

a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?

No Impact

As described in Section 4.14, Population and Housing, the project would not induce population growth in the vicinity of the project site which would require recreation facilities. Therefore, the project would not substantially increase the use of existing neighborhood and regional recreational facilities.

b) Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?

No Impact

The project does not propose or require the construction or expansion of recreational facilities. The proposed project would not increase the use of existing parks or other recreational facilities such that substantial physical deterioration would occur or be accelerated due to overuse.

4.17 TRANSPORTATION

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
Would the project:				
a) Conflict with a program, plan, ordinance, or policy addressing the circulation system, including transit, roadway, bicycle, and pedestrian facilities?	❒	❒	■	❒
b) Conflict or be inconsistent with CEQA Guidelines Section 15064.3, Subdivision (b)?	❒	❒	■	❒
c) Substantially increase hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?	❒	❒	■	❒
d) Result in inadequate emergency access?	❒	❒	■	❒

A. Environmental Setting

Existing Conditions

The project site is located at 4962 Almaden Expressway, at the southeastern corner of the intersection with Cherry Avenue. Almaden Expressway is a north/south expressway that extends from Harry Road in south San José to Almaden Road, just south of downtown San José. Near the project site, Almaden Expressway is eight lanes wide and has a posted speed limit of 45 miles per hour (mph). North of Branham Lane, the posted speed limit is 50 mph. The expressway has a raised, landscaped median with left-turn pockets provided at intersections. Sidewalks exist along both sides of Almaden Expressway near the project site. Bicycles are allowed along expressways, and bike lanes are provided along the project frontage and various other segments on Almaden Expressway. Access to the project is provided via its intersection with Cherry Avenue and the shopping center driveways along Almaden Expressway. The driveway on Almaden Expressway is limited to right turns only for inbound and outbound traffic due to the median.

Cherry Avenue is a predominantly north-south local connector street that extends from Curtner Avenue in the north and turns into an east-west local connector street after Russo Drive. Cherry Avenue transitions into Sanchez Drive south of the SR 85 overpass. Near the project site, Cherry Avenue is two lanes wide with a two-way left turn lane west of Speak Lane. Cherry Avenue is four lanes wide east of Almaden Expressway with a raised, landscaped median with left-turn pockets provided at intersections. It has a speed limit of 35 mph. Sidewalks and bicycle lanes exist along both sides of the street. There is direct access to the project site from Cherry Avenue via two existing driveways for the shopping center. The driveway closest to the project site is limited to right turns only for inbound and outbound traffic due to the median.

Regulatory Framework

State and Regional

Senate Bill 743. Senate Bill 743 (SB 743), which became effective September 2013, initiated reforms to the CEQA Guidelines to establish new criteria for determining the significance of transportation impacts that "promote the reduction of GHG emissions, the development of multimodal transportation networks, and a diversity of land uses." Specifically, SB 743 directs the Governor's Office of Planning and Research (OPR) to update the CEQA Guidelines to replace automobile delay, as described solely by level of service (LOS) or similar measures of vehicular capacity or traffic congestion, with vehicle miles traveled (VMT) as the recommended metric for determining the significance of transportation impacts. OPR has approved the CEQA Guidelines implementing SB 743. Beginning on January 1, 2020, the provisions of SB 743 apply statewide.

SB 743 did not authorize OPR to set specific VMT impact thresholds, but it did direct OPR to develop guidelines for jurisdictions to utilize. CEQA Guidelines Section 15064.3(b)(1) describes factors that might indicate whether a development project's VMT may be significant, or not. Notably, projects that locate within one half mile of transit should be considered to have a less than significant transportation impact based on OPR guidance.

Regional Transportation Plan. Plan Bay Area 2040 is a State-mandated, integrated long-range transportation and land use plan. As required by SB 375, all metropolitan regions in California must complete a Sustainable Communities Strategy (SCS) as part of a Regional Transportation Plan (RTP). In the Bay Area, the Metropolitan Transportation Commission (MTC) and the Association of Bay Area Governments (ABAG) are jointly responsible for developing and adopting an SCS that integrates transportation, land use, and housing to meet GHG reduction targets set by CARB. Plan Bay Area 2040 (adopted in July 2017) includes an RTP and provides a guide for accommodating projected household and employment growth in the nine-county Bay Area by 2040 as well as a transportation investment strategy for the region.

Santa Clara County Congestion Management Program. The Valley Transportation Authority (VTA) oversees the Congestion Management Program (CMP), which is aimed at reducing regional traffic congestion. The purpose of the CMP is to develop a comprehensive transportation improvement program among local jurisdictions that will improve multimodal transportation system performance, land use decision-making, and air quality. State legislation requires that each CMP define traffic LOS standards, transit service standards, a trip reduction and transportation demand management plan, a land use impact analysis program, and a capital improvement element. VTA has review responsibility for proposed development projects that are expected to affect CMP-designated intersections.

Local

General Plan. The General Plan includes the following policies for the purpose of avoiding or mitigating transportation impacts, which are applicable to the project.

- **TR-1.6**: Require that public street improvements provide safe access for motorists and pedestrians along development frontages per current City design standards.
- **TR-9.1**: Enhance, expand and maintain facilities for walking and bicycling, particularly to connect with and ensure access to transit and to provide a safe and complete alternative transportation network that facilitates non-automobile trips.
- **CD-3.3**: Within new development, create a pedestrian friendly environment by connecting the internal components with safe, convenient, accessible, and pleasant pedestrian facilities and by requiring pedestrian connections between building entrances, other site features, and adjacent public streets.

Transportation Analysis Policy (City Council Policy 5-1). As established in City Council Policy 5-1 “Transportation Analysis Policy” (2018), the City of San José uses vehicle miles traveled (VMT) as the metric to assess transportation impacts from new development. If a project’s VMT does not meet the established thresholds, mitigation measures would be required, where feasible. The policy also requires preparation of a Local Transportation Analysis to analyze non-CEQA transportation issues, including local transportation operations, intersection level of service, site access and circulation, and neighborhood transportation issues such as pedestrian and bicycle access, and recommend needed transportation improvements. Screening criteria

have been established to determine which projects require a detailed VMT analysis. If a project meets the relevant screening criteria, it is considered to a have a less than significant VMT impact.

Transportation Analysis Handbook. In April of 2018, the City published the Transportation Analysis (TA) Handbook outlying the analysis strategy to comply with the environmental review requirements of CEQA. The TA Handbook provides significance criteria, screening criteria, and thresholds of significance for environmental clearance for development projects and the appropriate methodologies, procedures, and process for determining the effects of development projects on the local transportation system. The first step in assessing a development project's impacts under the TA Handbook is to determine if the City's screening criteria apply. According to Section 3.4 of the TA Handbook, projects with a sufficiently small footprint do not require a detailed CEQA transportation analysis. Table 1 of the TA Handbook provides the definitions for what the City considers small development projects and the corresponding screening criteria. The City does not typically require an intersection level of service (LOS) analysis for "small" projects such as the proposed gas station removal and retail project because once the project-generated peak hour trips are assigned to the roadway network, the trips disperse and the number of new trips added to any intersection is effectively negligible.

B. Impact Evaluation

a) Would the project conflict with a program, plan, ordinance, or policy addressing the circulation system, including transit, roadway, bicycle, and pedestrian facilities?

Less Than Significant Impact

Hexagon Transportation Consultants completed a transportation study for the proposed project[96] that identifies how the project complies with applicable transportation policies and regulations. The study is included in Appendix D. Demolition of the gas station and development of the 7,800 square-foot retail project would not conflict with any program, plan, ordinance, or policy addressing the circulation system or the existing and proposed transit, bicycle and pedestrian facilities in the vicinity of the project site. The project includes the closure of the westernmost driveway on Cherry Avenue which would increase pedestrian and bicyclist safety. The project also proposes landscaping and other improvements to the sidewalks on Almaden Expressway and Cherry Avenue.

b) Would the project conflict or be inconsistent with CEQA Guidelines Section 15064.3, Subdivision (b)?

Less Than Significant Impact

[96] Hexagon Transportation Consultants. 2020. Memorandum, Retail Development at 4962 Almaden Expressway in San José, California. December 21.

VMT Analysis

Section 15064.3 of the CEQA Guidelines establishes specific considerations for evaluating a project's transportation impacts. The CEQA Guidelines identify vehicle miles travelled (VMT) as the most appropriate measure of transportation impacts, which is the total miles of travel by personal motorized vehicles a project is expected to generate in a day. VMT measures the full distance of personal motorized vehicle-trips with one end within a project. Other relevant considerations may include the effects of the project on transit and non-motorized travel. VMT exceeding an applicable threshold of significance for land use projects may indicate a significant impact. Generally, projects within one-half mile of either an existing major transit stop or a stop along an existing high-quality transit corridor should be presumed to cause a less-than-significant transportation impact. Projects that decrease VMT in the project area, compared to existing conditions, should be presumed to have a less-than-significant transportation impact.

The City of San José's Transportation Analysis Policy establishes procedures for determining project impacts on VMT based on project description, characteristics, and/or location. Typically, development projects that are farther from other, complementary land uses (such as a business park far from housing) and in areas without transit or active transportation infrastructure (bike lanes, sidewalks, etc.) generate more driving than development near complementary land uses with more robust transportation options. Therefore, developments located in a central business district with high density and diversity of complementary land uses and frequent transit services are expected to internalize trips and generate shorter and fewer vehicle trips than developments located in a suburban area with low density of residential developments and no transit service in the project vicinity.

The City of San José's Transportation Analysis Handbook includes screening criteria for projects that are expected to result in less-than-significant VMT impacts based on the project description, characteristics and/or location. Projects that meet the screening criteria do not require a CEQA transportation analysis but may be required to provide a Local Transportation Analysis (LTA). The type of development projects that may meet screening criteria include small infill projects, local-serving retail, or local-serving public facilities.

Retail projects of 100,000 square feet or less, such as the proposed project, are considered local-serving projects and result in less-than-significant VMT impacts according to the screening criteria. Retail projects that are part of a larger shopping center that is over 100,000 square feet in size, such as the proposed project, typically do not meet the screening criteria. For the proposed project, a CEQA transportation analysis was prepared to evaluate the project's VMT against the threshold of significance, and determined that the construction of the retail building would not generate new or more trips (see **Table 15**) than the previous gas station use, as described below.

Project Trip Estimates

Trip Generation

Trips generated by new development proposed within the City of San José typically are estimated using trip rates published in the Institute of Transportation Engineers' (ITE) Trip Generation Manual, 10th Edition. Trips that would be generated by the proposed mixed-use development were estimated using the ITE trip rates for "Shopping Center" (Land Use 820). The "Shopping Center" category refers to an integrated group of commercial establishments. This category includes the trip data for a wide scale of retail uses, from neighborhood centers to regional centers. Since specific uses of the proposed retail spaces are unknown, it is reasonable to use the trip rates for shopping centers for the retail space.

Trip Adjustments and Reductions

In accordance with the Transportation Analysis Handbook (Section 4.8, "Intersection Operations Analysis"), the project qualifies for a location-based trip adjustment from the baseline trip generation. The location-based adjustment reflects the project's vehicle mode share based on the "place type" in which the project is located per the San José Travel Demand Model. The project's place type was obtained from the San José VMT evaluation tool. Based on the VMT evaluation tool, the project site is located within a designated Suburban with Multi Family Homes area. Therefore, the baseline project trips were adjusted to reflect a Suburban with Multi Family Homes mode share. Retail developments within the Suburban with Multi Family Homes areas have a vehicle mode share of 88 percent. Thus, a 12 percent reduction was applied to the retail use in the trip generation estimates.

In addition, trip generation for retail uses are typically adjusted to account for pass-by trips. Pass-by trips are trips that would already be on the adjacent roadways (and are therefore already counted in the existing traffic) but would turn into the site while passing by. Pass-by trips are therefore excluded from the traffic projections (although pass-by traffic is accounted for at the site entrances). An average pass-by trip reduction of 34 percent was applied to the PM peak-hour trips of the retail component of the project based on the ITE Trip Generation Handbook, 3rd Edition.

Table15: Estimated Project Trip Generation

Land Use	ITE Code	Size	Daily		Weekday AM Peak Hour Trips				Weekday PM Peak Hour Trips			
			Rate	Trips	Rate: 0.940	In	Out	Total	Rate: 3.810	In	Out	Total
Proposed Land Use: Shopping Center	820	7,800 square feet	37.750	294		4	3	7		14	16	30
Location Based Mode Share Adjustment (12%)[a]				*-35*		*0*	*0*	*0*		*-2*	*-2*	*-4*
Pass-By Reduction (17% Daily/34% PM)[b]				*-44*		*0*	*0*	*0*		*-4*	*-5*	*-9*
Total Project Trips				**215**		**4**	**3**	**7**		**8**	**9**	**17**
Existing Land Use: Gas/ Service Station	944	6 Fuel Stations	172.010	1,032	**Rate: 10.280**	**In**	**Out**	**Total**	**Rate: 14.030**	**In**	**Out**	**Total**
						31	31	62		42	42	84
Pass-By Reduction (50% Daily/58% AM/42% PM)[c]				*-516*		*-18*	*-18*	*-36*		*-18*	*-18*	*-36*
Total Existing Trips				**516**		**13**	**13**	**26**		**24**	**24**	**48**
Net Project Trips				**-301**		**-9**	**-10**	**-19**		**-16**	**-15**	**-31**

Notes:

a A 12% reduction for the retail use was applied to the project based on the location-based vehicle mode share percentage outputs (Table 6 of TA Handbook) produced from the San José Travel Demand Model for the Suburban with Multi Family Homes area.
b An average 34% pass-by trip reduction was applied to the retail PM peak-hour trips based the ITE Trip Generation Handbook, 3rd Edition, for shopping center.
c An average 58% pass-by trip reduction was applied to the gas station AM peak-hour and 42% to the PM peak-hour, based on the ITE Trip Generation Handbook, 3rd Edition, for gas station.

Source: Hexagon Transportation Consultants, 2020.

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Existing Trip Credits
The project site is currently occupied by a gas station that would be demolished as part of the proposed project. Trips that are generated by the existing uses can be subtracted from the gross project trip generation estimates. Trips generated by the existing gas station were estimated based on the ITE trip rates for "Gasoline/Service Station" (Land use 944). The average rates per vehicle fueling station were used to estimate the existing trips.

In addition, trip generation for gas stations is typically adjusted to account for pass-by trips. An average pass-by trip reduction of 58 percent was applied to the AM peak hour trips and 42 percent was applied to the PM peak-hour trips of the existing gas station based on the ITE Trip Generation Handbook, 3rd Edition.

Net Project Trips
Based on the ITE trip generation rates and applicable reductions, it is estimated that the proposed project would generate 301 fewer daily trips, with 19 fewer trips (-9 in and -10 out) occurring during the AM peak hour and 31 fewer trips (-16 in and -15 out) occurring during the PM peak hour (see **Table 15**) compared to the existing gas station on the site. Therefore, the VMT impact is considered to be less than significant, and a detailed CEQA analysis is not required.

c) Would the project substantially increase hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?

Less Than Significant Impact

The retail project would not substantially increase hazards due to a design feature or incompatible uses, as none are proposed. While one driveway on Cherry Avenue would be removed, the retail building and parking can be accessed via the remaining driveways on Almaden Expressway or from Cherry Avenue. Accordingly, the project site would remain accessible from the existing driveways on Almaden Expressway and Cherry Avenue.

The project site plan was reviewed for truck access using truck turning-movement templates for an SU-40 truck type (single unit trucks), which represents small emergency vehicles, garbage trucks, and small to medium delivery trucks. Based on the site plan configuration, adequate access would be provided for trucks to access the retail building from within the parking area of the shopping center where they can maneuver as needed. Garbage trucks would be able to easily access the trash enclosure. There is no conflict with traffic in opposing lanes of the adjacent streets because there are medians on both Almaden Expressway and Cherry Avenue. The proposed project would not substantially increase transportation hazards and the impact would be less than significant.

d) Would the project result in inadequate emergency access?

Less Than Significant Impact

The retail project would not result in inadequate emergency access since there would be no change to the remaining driveways that access the site and shopping center, and the site would continue to conform to all police and fire requirements through review by the San José Fire Department and the City's Department of Public Works.

4.18 TRIBAL CULTURAL RESOURCES

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
Would the project:				
a) Cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code section 21074 as either a site, feature, place, cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American tribe, and that is:				
i) Listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code section 5020.1(k); or,	❒	❒	■	❒
ii) A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code Section 5024.1. In applying the criteria set forth in subdivision (c) of Public Resource Code Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe.	❒	❒	■	❒

A. Environmental Setting

Existing Conditions

As noted in Section 4.5, Cultural Resources, the project site has been disturbed by existing development, a gas station and convenience store, and is covered by buildings and pavement. The project site does not contain any known historical resources (resources eligible for listing on the California Register of Historic Resources). No subsurface or archaeological resources have been identified during previous construction efforts onsite.

Regulatory Framework

State

AB 52. California Assembly Bill (AB) 52 was enacted and expands upon CEQA by defining "tribal cultural resources." The AB under PRC § 21084.2 establishes that "a project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment." AB 52 established the category of tribal cultural resources for which only tribes are experts; these resources may not necessarily be visible or archaeological but could be religious or spiritual in nature. Significant impacts to tribal cultural resources are considered significant effects on the environment. AB 52 also establishes a formal consultation process for California tribes regarding those resources. The consultation process must be completed before a CEQA document can be certified. Under AB 52, Lead Agencies are required to "begin consultation with a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project." Native American tribes to be included in the process are those that have requested notice of projects proposed within the jurisdiction of the Lead Agency.

Formal consultation under the provisions of AB 52 is the goal of the City (the CEQA Lead Agency). Where a project may have a significant impact on a tribal cultural resource, the Lead Agency's environmental document must discuss the impact and whether feasible alternatives or mitigation measures could avoid or substantially lessen the impact. This consultation requirement applies only if the tribes have sent written requests for notification of projects to the Lead Agency. At the time of the preparation of this IS, no written requests for notification of projects from any tribe has been received by the City except for in Coyote Valley and Downtown. Due to the distance of the project site from Coyote Valley and Downtown, the fuel station removal and retail project is not expected to have a significant impact on tribal cultural resources.

Local

General Plan. The General Plan provides environmental policies and goals related to cultural resources. The following applicable policies relate to cultural resources.

- **ER-10.3**: Ensure that City, State, and federal historic preservation laws, regulations, and codes are enforced, including laws related to archaeological and paleontological resources, to ensure the adequate protection of historic and pre-historic resources.

B. Impact Evaluation

a) Would the project cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code section 21074 as either a site, feature, place, cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American tribe, and that is: (i) Listed or eligible for listing in the California Register of Historical Resources or in a local register of historical resources as defined in Public Resources Code section 5020.1(k); or ii) A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code Section 5024.1?

Less Than Significant Impact

As discussed in Section 4.5, the 1996 record search and the 1998 field survey of the Arcadia Property in the immediate vicinity of the project site did not uncover evidence of archaeological sites within 1 mile of the project area.

The retail project would require some ground disturbance to demolish the gas station and remove the fuel tanks. However, the project site is a heavily disturbed and previously developed property. In the unlikely event that unanticipated discoveries are made during construction, the City would conduct AB 52 consultation with appropriate Native American groups in order to determine whether the find constitutes a tribal cultural resource. If a tribal cultural resource is identified, it would be eligible for listing in the CRHR, or in a local register of historical resources as defined in PRC § 5020.1 (k). The project would also comply with the Standard Permit Conditions associated with protection of unidentified archeological and paleontological resources and human remains identified in Section 4.5 Cultural Resources. Therefore, the proposed project would have a less-than-significant impact on tribal cultural resource, with mitigation incorporated.

4.19 UTILITIES AND SERVICE SYSTEMS

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
Would the project:				
a) Require or result in the relocation or construction of new or expanded water, wastewater treatment, or stormwater drainage, electric power, natural gas, or telecommunications facilities, the construction or relocation of which could cause significant environmental effects?	❒	❒	■	❒

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
b) Have sufficient water supplies available to serve the project and reasonably foreseeable future development during normal, dry, and multiple dry years?	❒	❒	■	❒
c) Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?	❒	❒	■	❒
d) Generate solid waste in excess of State or local standards, or in excess of the capacity of local infrastructure, or otherwise impair the attainment of solid waste reduction goals?	❒	❒	■	❒
e) Comply with federal, State, and local management and reduction statutes and regulations related to solid waste?	❒	❒	❒	■

A. Environmental Setting

Existing Conditions

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 Regional Wastewater Facility; sanitary sewer lines maintained by the City of San José. There is an existing 8 inch VCP sanitary main along the Cherry Avenue frontage that serves the project site.
- Water Service: San José Water Company. A low pressure water main located within Cherry Avenue serves the project site.
- Storm Drainage: City of San José. There is an existing 12 inch storm drain on the site within the parking area to the east of the proposed retail building that connects to an existing 18 inch storm drain main within Cherry Avenue that serves the project site and shopping center.
- Solid Waste: Republic Services that provides waste and recycling pick up services.
- Natural Gas & Electricity: Pacific Gas and Electric Company

Regulatory Framework

State

Urban Water Management Plan. Pursuant to The State Water Code, water suppliers providing water for municipal purposes to more than 3,000 customers or supplying more than 3,000 acre-feet (approximately 980 million gallons) of water annually must prepare and adopt an urban water management plan (UWMP) and update it every five years. As part of a UWMP, water

agencies are required to evaluate and describe their water resource supplies and projected needs over a 20-year planning horizon, water conservation, water service reliability, water recycling, opportunities for water transfers, and contingency plans for drought events. The City of San José adopted its most recent UWMP in June 2016.

Wastewater. The San Francisco Bay Regional Water Quality Board (RWQCB) includes regulatory requirements that each wastewater collection system agency shall, at a minimum, develop goals for the City's Sewer System Management Plan to provide adequate capacity to convey peak flows.

Assembly Bill 939 and Senate Bill 1016. The California Integrated Waste Management Act of 1989, or Assembly Bill 939 (AB 939), established the Integrated Waste Management Board, required the implementation of integrated waste management plans, and mandated that local jurisdictions divert at least 50 percent of solid waste generated (from 1990 levels), beginning January 1, 2000, and divert at least 75 percent by 2010. Projects that would have an adverse effect on waste diversion goals are required to include waste diversion mitigation measures.

Assembly Bill 341. Assembly Bill (AB) 341 sets forth the requirements of the statewide mandatory commercial recycling program in the Public Resources Code. All businesses that generate four or more cubic yards of garbage per week and multi-family dwellings with five or more units in California are required to recycle. AB 341 sets a statewide goal for 75 percent disposal reduction by the year 2020.

Senate Bill 1383. Senate Bill (SB) 1383 establishes targets to achieve a 50 percent reduction in the level of the statewide disposal of organic waste from the 2014 level by 2020 and a 75 percent reduction by 2025. The bill grants CalRecycle the regulatory authority required to achieve the organic waste disposal reduction targets and establishes an additional target that not less than 20 percent of currently disposed edible food is recovered for human consumption by 2025.

Local

General Plan. The proposed project would be subject to the utilities and services policies of the City's General Plan, including the following.

- **MS-3.1**: Require water-efficient landscaping, which conforms to the State's Model Water Efficient Landscape Ordinance, for all new commercial, institutional, industrial, and developer-installed residential development unless for recreation needs or other area functions.
- **MS-3.2**: Promote use of green building technology or techniques that can help to reduce the depletion of the City's potable water supply as building codes permit.
- **MS-3.3**: Promote the use of drought tolerant plants and landscaping materials.

- **IN-3.3**: Meet the water supply, sanitary sewer and storm drainage level of service objectives through an orderly process of ensuring that, before development occurs, there is adequate capacity. Coordinate with water and sewer providers to prioritize service needs for approved affordable housing projects.
- **IN-3.5**: Require development which will have the potential to reduce downstream LOS to lower than “D”, or development which would be served by downstream lines already operating at a LOS lower than “D”, to provide mitigation measures to improve the LOS to “D” or better, either acting independently or jointly with other developments in the same area or in coordination with the City’s Sanitary Sewer Capital Improvement Program.
- **IN-3.7**: Design new projects to minimize potential damage due to stormwaters and flooding to the site and other properties.
- **IN-3.9**: Require developers to prepare drainage plans that define needed drainage improvements for proposed developments per City standards.

California Green Building Standards Code. On January, 1 2017, the State of California adopted CalGreen, which establishes mandatory green building standards for buildings in California. These standards include a mandatory set of guidelines, as well as more rigorous voluntary measures, for new construction projects to achieve specific green building performance levels:

• Reducing indoor water use by 20 percent;

• Reducing wastewater by 20 percent;

• Recycling and/or salvaging 50 percent of nonhazardous construction and demolition debris;

• Providing readily accessible areas for recycling by occupant.

CalGreen has been adopted by the City of San José.

San José Zero Waste Strategic Plan/Green Vision. The Green Vision provides a comprehensive approach to achieve sustainability through new technology and innovation. The Zero Waste Strategic Plan outlines policies to help the City of San José foster a healthier community and achieve its Green Vision goals, including zero waste by 2022. The Green Vision also includes ambitious goals for economic growth, environmental sustainability and an enhanced quality of life for San José residents and businesses.

Private Sector Green Building Policy. The City of San José's Green Building Policy for private sector new construction encourages building owners, architects, developers, and contractors to incorporate meaningful sustainable building goals early in building design process. This policy establishes baseline green building standards for private sector new construction and provides a framework for the implementation of these standards. It is also intended to enhance the public health, safety and welfare of San José residents, workers, and visitors by fostering practices in

the design, construction, and maintenance of buildings that will minimize the use and waste of energy, water and other resources in the City of San José.

Construction and Demolition Diversion Program. More than 30 percent of landfill waste is construction and demolition debris. The Construction and Demolition Diversion program ensures that at least 75 percent of this waste is recovered and diverted from landfills. Projects are required to comply with this program to receive either a Certificate of Final Occupancy or a refund if a deposit is paid.

B. Impact Evaluation

a) Would the project require or result in the relocation or construction of new or expanded water, wastewater treatment, or stormwater drainage, electric power, natural gas, or telecommunications facilities, the construction or relocation of which could cause significant environmental effects?

Less Than Significant Impact

The project site is currently being used as a fuel station and convenience store. The proposed project is to replace the gas station with a retail building that would use and connect to the existing utility facilities and would not require new or expanded utility facilities.

b) Would the project have sufficient water supplies available to serve the project and reasonably foreseeable future development during normal, dry, and multiple dry years?

Less Than Significant Impact

The retail building project would be a redevelopment of an existing commercial fuel station and 4,470 square foot convenience store site with a 7,800 square foot retail building. The project site would accommodate approximately ten employees, six more or less than are currently at the site. All landscaping on the site would be connected to the storm drain system and be drought tolerant. Accordingly, the redevelopment of the project site would not be expected to substantially increase water demand, nor would it require or result in the construction of new water treatment facilities or any expansion of existing facilities

c) Would the project 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?

Less Than Significant Impact

The proposed retail project would be a redevelopment of an existing commercial fuel station and convenience store site with a retail building on a .6-acre site. The project site would accommodate approximately ten employees, six more or less than are currently at the site. Accordingly, the redevelopment of the project site would not be expected to substantially

increase wastewater demand, nor would it require or result in the construction of new wastewater treatment facilities or any expansion of existing facilities.

d) Would the project generate solid waste in excess of State or local standards, or in excess of the capacity of local infrastructure, or otherwise impair the attainment of solid waste reduction goals?

Less Than Significant Impact

The proposed project would be a redevelopment of the current gas station commercial use with a retail building commercial use; accordingly, the solid waste generation would be similar. Therefore, the solid waste generation would not exceed the capacity of the local infrastructure.

e) Would the project comply with federal, State, and local management and reduction statutes and regulations related to solid waste?

No Impact

The proposed project would comply with all federal, State, and local statutes and regulations related to solid waste. During demolition, the Applicant would meet all recycling and waste diversion requirements and would reuse on-site asphalt and other materials to the degree possible.

4.20 WILDFIRE

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
If located in or near State responsibility areas or lands classified as very high fire hazard severity zones, would the project:				
a) Substantially impair an adopted emergency response plan or emergency evacuation plan?	❒	❒	❒	■
b) Due to slope, prevailing winds, and other factors, exacerbate wildfire risks, and thereby expose project occupants to pollutant concentrations from a wildfire or the uncontrolled spread of a wildfire?	❒	❒	❒	■
c) Require the installation or maintenance of associated infrastructure (such as roads, fuel breaks, emergency water sources, power lines, or other utilities) that may exacerbate fire risk or that may result in temporary or ongoing impacts to the environment?	❒	❒	❒	■

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
d) Expose people or structures to significant risks, including downslope or downstream flooding or landslides, as a result of runoff, post-fire slope instability, or drainage changes?	❒	❒	❒	■

A. Environmental Setting

The CALFire Fire Hazard Severity Zones Map was developed to guide construction standards for building permits, the use of natural hazard disclosure at time of sale, to guide defensible space clearance around buildings, set property development standards, and for considerations of fire hazard in City and County general plans. The project site is not located within a "Very High Fire Hazard Severity Zone" or within a State Responsibility Area hazard zone.[97]

B. Impact Evaluation

a) Would the project substantially impair an adopted emergency response plan or emergency evacuation plan?

No Impact

According to the CALFire Fire Hazard Severity Zones Map, the project area represents a very low threat from wildland fires because it is not located within or immediately adjacent to a Very High Fire Hazard Severity Zone. The project site is located approximately 4 miles east of the closest Very High Fire Hazard Severity Zone. Accordingly, demolition of the existing gas station and construction of the retail building would not substantially impair an adopted emergency response or evacuation plan. Due to the distance of the project site from the High Fire Hazard Severity Zone, the project would not exacerbate wildfire risks; and the project does not require installation or maintenance of associated infrastructure that could exacerbate fire risks; and it would not expose people or structures to significant risks from downstream flooding, landslides, slope instability, or drainage changes. Therefore, no significant impacts from wildfires are anticipated with the development of the retail project.

b) Due to slope, prevailing winds, and other factors, would the project exacerbate wildfire risks, and thereby expose project occupants to pollutant concentrations from a wildfire or the uncontrolled spread of a wildfire?

No Impact

[97] CALFire Website. 2020. Very High Fire Hazard Severity Zone Map. https://gis.data.ca.gov/datasets/789d5286736248f69c4515c04f58f414 Accessed October 8, 2020.

See response to item a) above.

c) Would the project require the installation or maintenance of associated infrastructure (such as roads, fuel breaks, emergency water sources, power lines, or other utilities) that may exacerbate fire risk or that may result in temporary or ongoing impacts to the environment?

No Impact

See response to item a) above.

d) Would the project expose people or structures to significant risks, including downslope or downstream flooding or landslides, as a result of runoff, post-fire slope instability, or drainage changes?

No Impact

See response to item a) above.

4.21 MANDATORY FINDINGS OF SIGNIFICANCE

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Does the project have the potential to substantially 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, substantially 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?	❒	■	❒	❒
b) Does the project 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 past projects, the effects of other current projects, and the effects of probable future projects.)?	❒	❒	■	❒
c) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?	❒	❒	■	❒

A. Impact Evaluation

a) Does the project have the potential to substantially 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, substantially 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?

Less Than Significant with Mitigation Incorporated

Based on the analysis presented in this IS, the retail project would not 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. The retail project could potentially have significant environmental effects with respect to migratory birds. Implementation of Mitigation Measure BIO-1, described in Section 4.4 Biological Resources, would protect active bird nests that could occur on the project site prior to demolition and construction. Therefore, protected bird species would not be threatened, and this impact would be less than significant with implementation of Mitigation Measure BIO-1. The project could also result in impacts to unknown cultural and paleontological resources during removal of the existing fueling tanks if such resources are present on the site. With the implementation of Standard Permit Conditions included in the project and described in Section 4.5 Cultural Resources, the proposed project would not result in significant environmental impacts to cultural resources.

b) Does the project 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 past projects, the effects of other current projects, and the effects of probable future projects.)?

Less Than Significant Impact

Based on the analysis presented in this IS, the retail project would not significantly contribute to a cumulative impact since no development is proposed in the immediate project area. The project would not impact agricultural, forestry, mineral, population, housing, or recreational resources. Therefore, the project would not contribute to cumulative impacts to these resources. There are no planned or proposed developments in the immediate project site vicinity that could contribute to cumulative aesthetic, traffic, and noise and vibration impacts. The project's geology and soils, hazardous materials, hydrology and water quality, and noise impacts are specific to the project site and would not contribute to cumulative impacts elsewhere.

The project's construction would emit criteria air pollutants and GHG emissions and contribute to the overall regional and global emissions of such pollutants. By its nature, air pollution and GHG emissions are commonly a cumulative impact. The project-level air quality thresholds identified by BAAQMD are the basis for determining whether a project's individual impact is cumulatively considerable, resulting in significant adverse air quality impacts to the region's existing air quality conditions. As described in Section 4.3, Air Quality, the project's excess $PM_{2.5}$ concentrations would not result in a substantial contribution or adverse change to the existing air quality and, therefore, would not result in a cumulatively considerable impact. The project would have a less than significant impact on air quality and therefore the proposed project would have a less than significant cumulative impact on air quality overall. Additionally, the project will not conflict with any local or regional plans to reduce GHG emissions and there is no expectation that there will be cumulative impacts associated with GHG emissions.

c) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?

Less Than Significant Impact

Based on the analysis presented in this IS, the retail project would not result in environmental effects that would cause substantial adverse effects on human beings, either directly or indirectly. Mitigation Measures HAZ-1 and HAZ-2 (discussed in Section 4.9 Hazards and Hazardous Materials), adherence to regulatory requirements and the Standard Permit Conditions outlined in the previous sections would ensure the retail project would not result in environmental effects that would cause adverse effects on human beings.

5.0 REFERENCES

The analysis in this Initial Study is based on the professional judgement and expertise of the environmental specialists preparing this document, based upon review of the site, surrounding conditions, site plans, and the following references:

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