

First Amendment to the Draft SEIR
Almaden Office Project

File No. SP20-005



Prepared by the



In Consultation with



August 2021

TABLE OF CONTENTS

Section 1.0	Introduction	1
Section 2.0	Draft EIR Public Review Summary	2
Section 3.0	Draft EIR Recipients	3
Section 4.0	Responses to Draft EIR Comments	5
Section 5.0	Draft EIR Text Revisions	87

Attachments

Attachment A: Draft SEIR Comment Letters

Attachment B: Renderings

Attachment C: H.T. Harvey Responses to Comments Memorandum

Attachment D: April 2020 Memorandum from Santa Clara Valley Habitat Agency

Attachment E: April 2021 Revised Memorandum from Santa Clara Valley Habitat Agency

Attachment F: July 2021 Setback Diagram

Attachment G: Updated Adjacent Property Tree Survey and Riparian Tree Impacts Assessment

SECTION 1.0 INTRODUCTION

This First Amendment, together with the Draft Supplemental Environmental Impact Report (SEIR), constitute the Final SEIR for the Almaden Office project.

1.1 PURPOSE OF THE FINAL SEIR

In conformance with the California Environmental Quality Act (CEQA) and CEQA Guidelines, the Final SEIR provides objective information regarding the environmental consequences of the proposed project. The Final SEIR also examines mitigation measures and alternatives to the project intended to reduce or eliminate significant environmental impacts. The Final SEIR is intended to be used by the City of San José in making decisions regarding the project.

Pursuant to CEQA Guidelines Section 15090(a), prior to approving a project, the Lead Agency shall certify that:

- (1) The Final EIR has been completed in compliance with CEQA;
- (2) The Final EIR was presented to the decision-making body of the Lead Agency, and that the decision-making body reviewed and considered the information contained in the Final EIR prior to approving the project; and
- (3) The Final EIR reflects the Lead Agency's independent judgment and analysis.

1.2 CONTENTS OF THE FINAL EIR

CEQA Guidelines Section 15132 specify that the Final SEIR shall consist of:

- a) The Draft SEIR or a revision of the Draft;
- b) Comments and recommendations received on the Draft SEIR either verbatim or in summary;
- c) A list of persons, organizations, and public agencies commenting on the Draft SEIR;
- d) The Lead Agency's responses to significant environmental points raised in the review and consultation process; and
- e) Any other information added by the Lead Agency.

1.3 PUBLIC REVIEW

In accordance with CEQA and the CEQA Guidelines (Public Resources Code Section 21092.5[a] and CEQA Guidelines Section 15088[b]), the City shall provide a written response to a public agency on comments made by that public agency at least 10 days prior to certifying the EIR. The Final SEIR and all documents referenced in the Final SEIR are available for review on the City's website: <https://www.sanjoseca.gov/active-eirs/>.

SECTION 2.0 DRAFT EIR PUBLIC REVIEW SUMMARY

The Draft SEIR for the Almaden Office project, dated July 2020 was circulated to affected public agencies and interested parties for a 52-day review period from July 31, 2020 through September 21, 2020. The City undertook the following actions to inform the public of the availability of the Draft SEIR:

- The Notice of Availability of Draft SEIR was published on the City's [website](#) and in the San José Mercury News;
- The Notice of Availability of the Draft SEIR was mailed to neighboring cities, tribal contacts, organizations, and individual members of the public who had indicated interest in the project or requested notice of projects in the City;
- The Notice of Availability was sent to members of the public who signed up for City notices via *Newsflash*;
- The Draft SEIR was delivered to the State Clearinghouse on July 31, 2020, which forwarded the Draft SEIR to various governmental agencies and organizations, (see *Section 3.0* for a list of agencies and organizations that received the Draft SEIR); and
- Copies of the Draft SEIR were made available on the City's [website](#).

SECTION 3.0 DRAFT EIR RECIPIENTS

CEQA Guidelines Section 15086 requires that a local lead agency consult with and request comments on the Draft EIR prepared for a project of this type from responsible agencies (government agencies that must approve or permit some aspect of the project), trustee agencies for resources affected by the project, adjacent cities and counties, and transportation planning agencies.

The following agencies received a copy of the Draft SEIR via the State Clearinghouse:

- Cal Fire
- California Department of Fish and Wildlife, Bay Delta Region 3
- California Department of Parks and Recreation
- California Public Utilities Commission
- California Regional Water Quality Control Board, San Francisco Bay Region 2
- California State Lands Commission
- Caltrans, Division of Aeronautics
- Department of Toxic Substances Control
- Office of Emergency Services, California
- Office of Historic Preservation
- Resources Agency
- Resources, Recycling and Recovery
- State Water Resources Control Board, Division of Water Quality
- California Native American Heritage Commission
- California Department of Transportation, District 4

Copies of the Notice of Availability for the Draft SEIR were sent by mail and/or email to the following organizations, businesses, and individuals who expressed interest in the project:

- Andrew Tubbs
- Association of Bay Area Governments
- Bay Area Air Quality Management District
- California Native Plant Society – Santa Clara Valley Chapter
- Children’s Discovery Museum of San José
- Greenbelt Alliance
- Guadalupe-Coyote Resource Conservation District
- Guadalupe River Park Conservancy
- Jodi Starbird
- Kat Wilson
- Lozeau Drury, LLP
- Pat Flanigan

- Paul Fogarty
- Robert Levy
- Santa Clara Valley Audubon Society
- Santa Clara Valley Open Space Authority
- San Francisco Bay Area Planning and Urban Research Foundation Association
- San Francisco Bay National Wildlife Refuge
- Shawn Oly
- The Sierra Club – Loma Prieta Chapter

SECTION 4.0 RESPONSES TO DRAFT EIR COMMENTS

In accordance with CEQA Guidelines Section 15088, this document includes written responses to comments received by the City of San José on the Draft SEIR.

Comments are organized under headings containing the source of the letter and its date. The specific comments from each of the letters and/or emails are presented with each response to that specific comment directly following. Copies of the letters and emails received by the City of San José are included in their entirety in Attachment A of this document. Comments received on the Draft EIR are listed below.

<u>Comment Letter and Commenter</u>	<u>Page of Response</u>
Federal and State Agencies	11
A. California Department of Transportation (August 31, 2020)	11
B. California Department of Transportation (September 11, 2020)	12
Regional and Local Agencies.....	15
C. San Francisco Bay Regional Water Quality Control Board (September 7, 2020)	15
D. Santa Clara Valley Transportation Authority (September 14, 2020)	16
E. Valley Water (September 14, 2020).....	18
F. County of Santa Clara Roads and Airports Department (September 15, 2020).....	23
Organizations, Businesses, and Individuals	26
G. Guadalupe River Park Conservancy (September 14, 2020)	26
H. Jean Dresden (September 14, 2020).....	32
I. Guadalupe-Coyote Resource Conservation District (September 21, 2020)	41
J. California Native Plant Society (September 21, 2020)	44
K. Santa Clara Valley Audubon Society (September 21, 2020)	51
L. Sierra Club Loma Prieta (September 21, 2020)	73

4.1 MASTER RESPONSE

Comments were received on biological resources in multiple comment letters. To address the multiplicity of concerns, including comments that were identical or similar, a master response was prepared. Where applicable, the response to individual comments refers the reader to this master response.

Master Response 1: Biological Resources Associated with Guadalupe River

The City of San José analyzed the project’s impacts to the Guadalupe River riparian corridor under the Riparian Corridor Protection and Bird-Safe Design policy (City Council Policy 6-34), General Plan policies pertaining to conformance with the Santa Clara Valley Habitat Plan (VHP), and impacts associated with the CEQA Guidelines Appendix G Checklist. CEQA requires state and local agencies to disclose and evaluate potential environmental impacts of proposed developments and to implement mitigation to reduce or avoid those identified significant environmental impacts. Under CEQA, biological impacts are determined based on General Policies and the CEQA Checklist Biological Resources section. City Council Policy 6-34, VHP, and the CEQA analysis are separate, independent regulations that require separate assessments for compliance documentation.

Project Description

The Draft SEIR analyzed a 16-story tower of 1,727,777 square feet project with zero to 26 feet setback to respective boundaries (i.e., top of bank, riparian edge, or property line). Since the completion of the Draft SEIR, the applicant has revised the proposed plans (refer to Attachment F of this First Amendment) in which the first and second floors of the proposed building would have increased setbacks from the top of bank by 54 feet and 35 feet, respectively. Additionally, the proposed basement would be set back from the top of bank by 19 feet and would be outside of the existing adjacent riparian driplines. The tables below provide a breakdown of project components and boundaries or the project analyzed in the Draft SEIR to the currently revised project.

Project Components		
	Draft SEIR	Proposed Project July 2021
Office	1,727,777	1,416,171
Amenity/Retail	39,137	37,603
Total parking spaces	1,343	1,279

Minimum Setback from Boundaries									
	January 2019			SEIR (May 2020)			July 2021		
	Top of Bank	Riparian Edge	Property Line	Top of Bank	Riparian Edge	Property Line	Top of Bank	Riparian Edge	Property Line
Level 1/Amenity	54'-7"	26'-9"	37'-0"	54'-7"	23'-2"	37'-0"	54'-7"	23'-2"	37'-0"
Level 2 Tower Above	16'-9"	14'-3"	0'-0"	31'-1"	0'-0"	14'-4"	35'-2"	3'-11"	17'-4"
Basement (Underground)	16'-9"	14'-3"	0'-0"	17'-8"	12'-1"	1'-6"	19'-4"	1'-6"	1'-6"

The project would result in the removal of the existing surface parking lot with 666 square feet of planting areas on site. The proposed project, while more intensive, would replace the existing 666 square feet of planting areas with the 13,033 square feet of new planting areas at-grade. The planting areas will be planted with primarily native plant species or plant species adapted to the Santa Clara

Valley watershed district.

California Environmental Quality Act (CEQA)

As previously mentioned, City Council Policy 6-34 and the CEQA analysis are separate, independent regulations that require separate assessments for compliance documentation.

In accordance with CEQA Guidelines Section 15121(a), the City of San José has prepared this Draft SEIR to assess potential environmental impacts of the Almaden Office Project, as well as identify mitigation measures and alternatives to the proposed project that could reduce or avoid adverse environmental impacts. Pursuant to the CEQA guidelines, the project completed a Biological Resources Report (Appendix D of the Draft SEIR) to analyze impacts on the site and the adjacent riparian corridor. Applicable regulations and policies (e.g., City Council Policy 6-34) are disclosed in the Draft SEIR in which the lead agency is responsible for ensuring compliance with those regulations and policies. Furthermore, the project completed a consultation with the Santa Clara Valley Habitat Agency (SCVHA) pertaining to the project's conformance with Condition 11 of the VHP as part of the Draft SEIR. Section 3.2.2.1 of the Draft SEIR identified that, individually, the project would not result in a significant impact as the downtown area does not provide suitable habitat for special-status plants. As stated in the cumulative analysis in Section 3.2.2.2 of the Draft SEIR, even with implementation of the identified mitigation, encroachment of new buildings within 35 feet of the riparian corridor would still result in a cumulatively considerable contribution to impacts on the riparian corridor because the project represents a new type of development that would have a greater impact on the adjacent corridor (due to the reduction in wildlife use from the tall buildings, avian collisions with the new towers, and shading) compared to existing conditions. Text revisions have been made and disclosed in Section 5.0 Draft SEIR Text Revisions in this First Amendment to provide text clarification on Mitigation Measure BIO(C)-1.1. The text clarifications include expanding potential mitigation land and process on compliance with the mitigation measure.

As discussed on page 58 of the Draft SEIR and Appendix D of the Draft SEIR, Mitigation Measure BIO(C)-1.1 specifies that riparian habitat shall be enhanced or restored to native habitat along the immediately adjacent riparian corridor, and/or off-site on the Santa Clara Valley floor and/or within the City of San José. Areas along Guadalupe River meet the parameters discussed above, however, the measure clarifies that acceptable riparian habitat does not need to be in the immediate project vicinity. would be restored or enhanced. The mitigation measure determined performance criteria for restoration or enhancement. Exact programs or locations for implementing Mitigation Measure BIO (C)-1.1 will be determined prior to the applicant receiving a Grading or Building Permit (whichever occurs earliest) and progress status shall be required prior to Certificate of Occupancy. MM BIO(C)-1.2 requires the applicant to submit a monitoring plan which adopted performance standards that the mitigation measure will achieve and identify the actions required to achieve those standards. Since the circulation of the Draft SEIR, the biologist clarified that restoration could occur outside the City of San José as long as it is on the Santa Clara Valley floor and in areas that drain to the San Francisco Bay.¹ Mitigation should occur on the Santa Clara Valley floor in riparian habitats that support more diverse bird communities such as lower Guadalupe River, Los Gatos Creek, and Coyote Creek. Refer to Section 5.0 Draft SEIR Text Revisions in this First Amendment for text clarification. Refer to Section 7.0 of the Draft SEIR for a discussion of alternatives, including larger riparian setbacks.

¹ Rottenborn, Steve. Principal – H.T. Harvey & Associates. Personal communication. April 5, 2021.

Furthermore, even with the mitigation measures of off-site restoration or enhancement and because the mitigation cannot be guaranteed to be fully implemented, the SEIR found the impact to be significant and unavoidable.

The changes in the mitigation measures are to clarify implementation process of the mitigation measure and do not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

City Council Policy 6-34

The Riparian Corridor Policy Study, revised in 1999, analyzed numerous streams and Riparian Corridors found within San José and provided detailed policy recommendations on how various types of development should be designed to protect and preserve the City's Riparian Corridors. The Policy Study provides guidance for a range of Riparian Corridor setbacks, based on types of land uses, activities, development and physical attributes of a Riparian Project's site. As the General Plan was adopted in 2011, this guidance was incorporated and referenced as the latest guidance for analyzing projects within the City of San José. While the Riparian Corridor Policy Study was incorporated as guidance within the General Plan, the Study itself was never formally adopted by City Council.

The Riparian Corridor Policy Study informed the requirements in the Riparian Corridor Protection and Bird-Safe Design policy (City Council Policy 6-34), adopted in 2016. The City Council Policy 6-34 was adopted and intended to be supplemental to the Valley Habitat Plan and is the independent City's policy for all future projects in City of San José. This policy regulates how riparian projects should be designed to protect and preserve the City's riparian corridors. The City Council Policy 6-34 also provides a list of exceptions that could be granted for applicants requesting a reduction in riparian setback. If the applicant requests an exception to the setback encroachment, the City of San José will review the application and either approve or deny the request based on compliance with some or all of the conditions listed in City Council Policy 6-34. City Council Policy 6-34 and the CEQA analysis are separate, independent regulations that require separate assessments for compliance documentation. The Draft SEIR and associated technical reports such as the Biological Resources Report (refer to Appendix D of the Draft SEIR) focus on impacts to ecological elements and not whether the exception to City Council Policy 6-34 will be detrimental to downstream properties. As mentioned in the Draft SEIR, the proposed project would be subject to City Council Policy 6-34 and shall comply with all applicable findings and policies prior to the approval of the project.

To qualify for the reduced setback under Council Policy 6-34, the applicant may illustrate the existence of one or more of the exceptions under Section A.2 of City Council Policy 6-34. Findings for City Council Policy 6-34 are made as part of the project recommendation. Based on the analysis, the project fully and partially meets the following exceptions: the project is within the downtown growth area (exception 1), has unique geometric characteristics or disproportionately long riparian frontages in relation to the width of the minimum riparian corridor setback (exception 4), includes measures for protecting and enhancing the riparian value (exception 7), has legal use within the

minimum setback area (exception 10), and has demonstrable hardship due to the shape of the site (exception 11). The following exceptions under Council Policy 6-34 are not applicable to this project such as the project is not less than or equal to one acre (exception 2), the Guadalupe River is not a small lower order tributary (exception 3), the existing site is not a one- or two-family residential lot (exception 5), the proposed project would be more intensive use than the existing parking lot (exception 6), the proposed project is not a recreational facility such as a trail (exception 8), the proposed project does not consist of utility installation in the riparian corridor (exception 9), and meeting the minimum setback would not require deviations from other established policies, legal requirements, or standards (exception 12).

Council Policy 6-34 makes allowances for an exception to the 100-foot minimum riparian setback to be granted if one or more of the exceptions referenced above are demonstrated by the project. The project area is an irregularly long and narrowly shaped site with an approximately 0.16-mile (845 feet) stretch of riparian corridor along the entire western edge. Because the site is narrow, almost 50% of the site is within the 100-foot riparian setback area. Adherence to the 100-foot setback would result in a disproportionately narrow stretch of developable space measuring approximately 44 feet by 845 feet. The riparian corridor adjacent to the project is extremely limited in its habitat value and influence because of the highly urbanized surrounding environment and human-related disturbances, as explained in Section 3.2.2.1 of the SEIR. Therefore, required mitigation of 3.6 acres of native restored riparian habitat will enhance the riparian value at a location to be determined prior to the issuance of grading permits. While the project would encroach on approximately 1.8 acres within the 100-foot riparian setback area, much of this setback is already developed with an existing parking lot whereas the 3.6 acres of required riparian mitigation would aim to provide high-quality habitat restoration and enhancement. Additionally, the project is located within the Downtown growth area defined in the general plan and the parcel already has an existing legal use within the minimum 100-foot setback. For these reasons, the project would meet at least five of the exceptions to the minimum 100-foot riparian setback under Council Policy 6-34.

Santa Clara Valley Habitat Plan (VHP)

Santa Clara Valley Habitat Plan (VHP) covers the City of San José and was adopted through the partnership between Santa Clara county, the Cities of San José, Morgan Hill, and Gilroy, Santa Clara Valley Water District (Valley Water), Santa Clara Valley Transportation Authority (VTA), U.S. Fish and Wildlife Services, California Department of Fish and Wildlife Services. The VHP intends to promote the recovery of endangered species and enhance ecological diversity and function, while accommodating planned growth within the Santa Clara County.

As part of the CEQA analysis and General Plan policy conformance review, VHP policies and requirements were analyzed. Based on the findings in the Draft SEIR (Section 3.2.2.1, checklist question f), it was determined the project would be considered a Covered Project under VHP. As the proposed project analyzed in the Draft SEIR do not meet the 35' minimum setback of the Condition 11 of the VHP, the project was deemed to have a significant unavoidable impact.

However, since circulation of the Draft SEIR, a revised memorandum from SCVHA pertaining to Condition 11 of the VHP Stream Setback requirements and findings were submitted (refer to Attachments D and E of this document for the April 2020 and April 2021 revised memorandums). The revised memorandum states that as the project existing pavement extends to the property line

and the proposed new development would not increase impervious surface area within the required minimum 35-foot stream setback, a Stream Setback Exception Request would not be required by the VHP. The revised memorandum explains that new projects are not subject to Condition 11 of the VHP if the scope of work is occurring on existing disturbed land. The new information is also reflected in Section 5.0 Draft SEIR Text Revisions in this First Amendment.

FEDERAL AND STATE AGENCIES

A. California Department of Transportation (August 31, 2020)

Comment A.1: Hope this email finds you well! I am reaching out regarding the SEIR for the Almaden Office project. We are aware in the SEIR, it mentions that “the project site is located within the Downtown Growth Area Boundary, for which an Environmental Impact Report (EIR), Downtown San José Strategy Plan 2040 (DTS 2040), has been completed and approved. With adoption of DTS 2040, this project is covered under DTS 2040 and no CEQA transportation analysis is required.” But because this project is very close to SR-280 on/off ramps, with the added trips due to the project, there could be potential traffic impact on the highway system. I looked at the EIR for the DTS 2040. Although the report recognizes the potentially traffic impact on the highway system due to the projects included in the Plan, I didn’t see proposed improvements (maybe I have missed something). May I ask for more information regarding the potential traffic impact on the adjacent highway and any mitigation measure might have been proposed?

Response A.1: The Downtown Strategy 2040 (DTS 2040) identified impacts to Congestion Management Program (CMP) designated study intersections and freeway segments. Of the 76 freeway segments that were analyzed under the Downtown Strategy 2040 EIR, 66 directional mixed-flow freeway segments were projected to operate at an unacceptable level of service based on the CMP’s level of service standards. The EIR found that freeway segment congestions cannot be reduced to levels considered acceptable under the CMP and no feasible mitigation measures were proposed. Additional information on freeway segment impacts can be found on page 307 of the Downtown Strategy 2040 EIR. The Valley Transportation Authority’s Transportation Impact Analysis Guidelines require consideration of alternative modes of travel when recommending changes to improve CMP impacts. With development around major transit nodes, especially downtown, the Downtown Strategy 2040 promotes adoption of a more comprehensive set of transportation goals, policies and standards that reflect the entire transportation system and its ability to provide mobility for intersection impacts. As a result, the project would construct multimodal improvements within the vicinity of the project site. The City prepared a Woz Way Plan Line Improvement which includes a new signal at Woz Way and Locust street, curb extensions that would reduce pedestrian crossing distances, installation of a bike lane adjacent to the existing crosswalk across the west leg of the intersection, installation of bike lane protected landscaping/median island along both sides of Woz Way, and the installation of a new north-south crosswalk across the east leg of the intersection. In addition, the project would construct Class IV protected bike lanes along Almaden Boulevard and Woz Way project frontages as part of the City’s Better Bikeway Improvements.

Additionally, the project proposes a 57.5 percent reduction in parking compared to municipal code parking requirements and will be implementing a Transportation Demand Management (TDM) plan that includes trip reduction strategies to meet the parking reduction and to decrease vehicular trips within the transportation network.

Therefore, the traffic impact on the adjacent highways will be minimal and no new mitigation measures are required. This comment does not provide any specific detail, information, or data relating to the commenter's concerns; therefore, no further response can be provided.

B. California Department of Transportation (September 11, 2020)

Comment B.1: Thank you for including the California Department of Transportation (Caltrans) in the environmental review process for the Almaden Office Project. We are committed to ensuring that impacts to the State's multimodal transportation system and to our natural environment are identified and mitigated to support a safe, sustainable, integrated and efficient transportation system. The following comments are based on our review of the July 2020 SEIR.

Project Understanding

The proposed project would demolish the existing parking lot and construct up to approximately 1.7 million square feet (s.f.) of office in two 16-story towers, along with 40,000 s.f. of ground floor retail. The total floor area ratio (FAR) of both buildings combined would be 11.1.

This project is located at the northern west corner of Almaden Boulevard/Woz Way in downtown San José, in close vicinity to State Route (SR)-87 and I-280. It is located within the Downtown Growth Area Boundary, for which an EIR, Downtown San José Strategy Plan 2040, has been completed and approved.

Response B.1: The commenter has summarized the proposed project. It should be noted that the Draft SEIR analyzed for 39,137 square feet of retail. Since then, the proposed project has been revised to reduce this space further (Refer to Master Response 1). This comment does not raise any issues with the adequacy of the Draft SEIR; therefore, no further response is required.

Comment B.2: *Travel Demand Analysis*

With the enactment of Senate Bill (SB) 743, Caltrans is focusing on transportation infrastructure that supports smart growth and efficient development to ensure alignment with State policies using efficient development patterns, innovative travel demand reduction strategies, multimodal improvements, and VMT as the primary transportation impact metric. Caltrans commends the lead agency in providing thorough justification to demonstrate how the proposed project meets the screening criteria established in City Council Policy 5-1. Caltrans also commends the lead agency in preparing the Transportation Demand Management (TDM) plan, along with the monitoring and reporting system identified in the plan. The implementation of the proposed project and the TDM plan is in support of meeting state policy goals on transportation, VMT reduction, GHG emissions reduction, and betterment of the environment and human health.

Response B.2: The commenter acknowledges the Lead Agency in demonstrating compliance with City Council Policy 5-1. This comment does not raise any issues with the adequacy of the Draft SEIR; therefore, no further response is required.

Comment B.3: Highway Operations

Caltrans recommends the lead agency to include the freeway segment and queuing analysis in the traffic report to identify any project-level traffic impacts on the State Highway system. The freeway segment analysis should include SR-87 from Woz Way to Park Avenue on both directions to assess any potential operational deficiency. This is consistent with the study limits in the Local Transportation Analysis report. The queuing analysis should include the following ramp terminal intersections:

- South Bound (SB) SR-87 on-ramp from Auzerais Avenue
- North Bound (NB) SR-87 off-ramp to Woz Way
- NB SR-87 on-ramp from Woz Way/Park Avenue
- SB SR-87 off-ramp to Park Avenue/Delmas Avenue

If traffic generated from the project impacts the freeway and ramp operations, the impacts shall be mitigated, or a fair share fee should be considered to allocate for the following two projects identified in the MTC's Regional Transportation Plan 2040:

- SR-87 Express Lane: I-880 to SR-85 (17-07-0082)
- I-280 Express lanes: US-101 to Magdalena (17-07-0084)

Response B.3: As discussed on page 33 of the Local Transportation Analysis (LTA) (Appendix H of the Draft SEIR), a vehicle queueing analysis was completed for high-demand movements at selected study intersections. The study locations were selected based on the number of projected project trips utilizing left-turning lanes at surrounding intersections.

The vehicle queuing analysis in the LTA indicated that the estimated 95th percentile vehicle queues would exceed the vehicle storage capacity at the following intersections and movements (see Table 5 of the TIA):

- Delmas Avenue and Auzerais Avenue
- Woz Way and Auzerais Avenue
- Almaden Boulevard and Woz Way/Balbach Street
- Almaden Boulevard and San Carlos Street

Please see Response A.1 for additional information regarding the multimodal improvements and project-specific mitigation measures to reduce trips within the transportation network and adjacent freeways. The comment does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment B.4: *Hydraulics*

The 100-year flood discharge is contained into the Guadalupe River. Surface runoff from the project site to be discharged into the Guadeloupe River must be evaluated. Any increased design discharge to the river shall be mitigated to pre-construction levels.

Response B.4: Per General Plan Policy EC-5.1, the City requires evaluation of flood hazards prior to approval of development projects within a Federal Emergency Management Agency (FEMA) designated floodplain. New development and substantial improvements to existing structures are reviewed to ensure projects are designed to provide protection from flooding with a one percent annual chance of occurrence, commonly referred to as the “100-year” flood, or other designated benchmark FEMA may adopt in the future. Policy EC-5.1 also states that new development should also provide protection for less frequent flood events when required by the State. As stated on page 76 of Appendix A (Initial Study) of the SEIR, the project site is located within Flood Zone X which is designated as areas of 0.2 percent annual chance flood, areas of one percent annual chance flood with average depths of less than one foot or with drainage areas of less than one square mile, and areas protected by levees from one percent annual chance floods. There are no City floodplain requirements for Flood Zone X.

Additionally, the proposed project would comply with the City of San José’s Post-Construction Urban Runoff Policy 6-29 and the MRP to reduce stormwater runoff from the proposed project. The project proposes media filters and flow-through planters to treat stormwater runoff. This comment does not raise any issues with the adequacy Draft SEIR; therefore, no further response is required.

Comment B.5: *Lead Agency*

As the Lead Agency, the City of San José is responsible for all project mitigation, including any needed improvements to the State Transportation Network (STN). The project’s fair share contribution, financing, scheduling, implementation responsibilities and lead agency monitoring should be fully discussed for all proposed mitigation measures.

Response B.5: All required information regarding project mitigation is provided in detail in Draft EIR and in the Mitigation Monitoring or Reporting Program (MMRP) prepared for this project, consistent with CEQA requirements. The MMRP contains reporting and compliance requirements, including financing, scheduling, and monitoring. This comment does not provide any specific detail, information, or data relating to the commenter’s concerns; therefore, no further response can be provided.

REGIONAL AND LOCAL AGENCIES

C. San Francisco Bay Regional Water Quality Control Board (September 7, 2020)

Comment C.1: San Francisco Bay Regional Water Quality Control Board (Water Board) staff appreciates the opportunity to review the Supplemental Environmental Impact Report, South Almaden Office Project, File No. SP20-005, City of San José, Santa Clara County (SEIR). The SEIR evaluates the potential environmental impacts associated with constructing the South Almaden Office Project (Project).

Project Summary. The Project will replace an existing parking lot with two office towers. The Project site is located in downtown San José, east of the Guadalupe River, west of South Almaden Boulevard, and north of Woz Way.

Summary. As discussed below, the mitigation proposed for impacts to riparian habitat may not be feasible. We encourage the Project proponents to either document that proposed Mitigation Measure BIO(C)-1.1 is feasible or to revise the Project to avoid intrusion into the riparian corridor.

Response C.1: The commenter has correctly summarized the proposed project. Responses to specific comments on the SEIR are provided below. This comment does not raise any issues with the adequacy Draft SEIR; therefore, no further response is required.

Comment C.2: Comment 1. Please verify that there are feasible opportunities for implementing 3.6 acres of riparian restoration and/or enhancement on the Santa Clara Valley floor in the City of San José.

The Project site is adjacent to the Guadalupe River. The San Francisco Bay Basin Water Quality Control Plan (Basin Plan) defines the beneficial uses of waters of the State. The following beneficial uses are listed in the Basin Plan for the Guadalupe River: groundwater recharge, cold freshwater habitat, fish migration, preservation of rare and endangered species, fish spawning, warm freshwater habitat, wildlife habitat, water contact recreation, and noncontact water recreation. The beneficial uses of cold freshwater habitat, fish migration, preservation of rare and endangered species, fish spawning, and wildlife habitat are all enhanced by the presence of a well-vegetated riparian corridor along the River. However, the proposed Project is seeking an exemption from the City of San José's Riparian Policy and the Santa Clara Valley Habitat Conservation Plan's guidance for stream and riparian setbacks, both of which recommend a 100-foot setback for riparian corridors. The Project's proposed setbacks range from zero to 26 feet, which would place structures within 1.8 acres of the preferred riparian setback.

As mitigation for the proposed reduction in the riparian setback, Mitigation Measure BIO (C)-1.1 calls for restoring or enhancing 3.6 acres of riparian habitat. The restoration is to be implemented on the Santa Clara Valley floor, in the City of San José, and as close to the Project site as possible. While we agree that 3.6 acres of riparian restoration and/or enhancement along the Guadalupe River would be beneficial to the beneficial uses designated for the Guadalupe River, we are concerned that it may be difficult to locate 3.6 acres of land along the Guadalupe River that are available for restoration and/or enhancement.

Response C.2: Refer to Master Response 1.

Comment C.3: Much of the land along the Guadalupe River on the Santa Clara Valley floor is under the control of Valley Water, which usually does not allow other parties to implement mitigation projects on the land that Valley Water Controls. In addition, land along the Guadalupe River on the Santa Clara Valley floor is densely developed, which limits opportunities for restoring and/or enhancing significant amounts of riparian habitat. Before the SEIR is finalized, we recommend that feasible opportunities for 3.6 acres of riparian restoration and/or enhancement along the Guadalupe River be identified. If sufficient land cannot be located for full implementation of Mitigation Measure BIO (C)-1.1, then the mitigation measure should be revised to provide a feasible mitigation project. Alternatively, the Project could be revised to reduce intrusion into the riparian setback.

Response C.3: As discussed on page 58 of the Draft SEIR and Appendix D of the Draft SEIR, riparian habitat shall be enhanced or restored to native habitat along the immediately adjacent riparian corridor, and/or off-site on the Santa Clara Valley floor and in areas that drain to the San Francisco Bay (refer to Master Response 1 and Section 5.0 Draft SEIR Text Revisions in this First Amendment for text clarifications). This restoration will be included as part of a monitoring plan that the applicant will be required to adhere to for a period of ten years. This comment does not provide any specific detail, information, or data relating to the commenter's concerns; therefore, no further response can be provided. The comment does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

D. Santa Clara Valley Transportation Authority (September 14, 2020)

Comment D.1: VTA appreciates the opportunity to comment on the Draft Supplemental Environmental Impact Report (SEIR) for the Almaden Office project VTA has reviewed the document and has the following comments:

Transit Delay Analysis

VTA acknowledges the transit delay analysis for bus routes included in the SEIR, but the SEIR does not disclose any potential impacts to light rail in the area. VTA requests the First Amendment to the SEIR include a transit delay analysis conducted for light rail. VTA requests coordination to develop holistic appropriate offsetting measures to reduce or eliminate the identified delays for bus, and potential delays for light rail. Transit priority measures, such as improvements to signal timing, signal priority, transit stops or passenger amenity improvements, would constitute appropriate offsetting measures.

Response D.1: As discussed on page 30 of the LTA (Appendix H of the Draft SEIR), the transit delay analysis was completed for all transit routes that travel through the study intersections. Within the project vicinity, bus transit routes primarily travel along San Carlos Street in the immediate project vicinity. The City does not currently

have adopted policies or significance criteria related to transit vehicle delay and transit vehicle delay is included in the LTA for informational purposes only. The comment does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment D.2: Bicycle and Pedestrian Circulation and Bicycle Parking

VTA supports the design of the separated bike lanes between the sidewalk and drop-off zones along the eastern and southern project frontages on Almaden Boulevard and Woz Way. VTA also applauds the bicycle and pedestrian access between the project site and the adjacent Guadalupe River Trail. Every effort should be made to make the access areas between the trail and the project site a comfortable and welcoming environment through seating and shade.

VTA applauds the project for providing 319 bicycle parking spaces. This exceeds the recommended number identified in the VTA Bicycle Technical Guidelines. VTA requests that access to the short term bicycle parking room be made through the lobby rather than directly outside. Lobby access increases security for those who use the bicycle room and reduces the risk of having bicycles stolen. Additionally, VTA requests that the access door be wired with ADA-compliant kick plates that allow those walking their bicycle in or out of the room to easily open and maneuver through the doors. Lastly, VTA recommends the bicycle room have space available to securely park non-traditional bicycles or bicycles with trailers that may not fit on lift racks.

Response D.2: The commenter acknowledges the project for providing bicycle parking that exceeds the recommended amount identified in the VTA Bicycle Technical Guidelines and for providing bicycle and pedestrian access between the Guadalupe River Trail and project site. The comment does not provide new information that would change the project's impact, or provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5. No further response is required.

Comment D.3: Land Use

VTA appreciates the project's intent to intensify the land uses in the area. Surface parking lots, which this project would replace, are not conducive to lively downtowns. This project's proximity to Diridon Station, two light rail stations, and the Guadalupe River Trail help increase the number of people within Downtown San José while reducing potential vehicle miles traveled for those working at this project.

Response D.3: The commenter acknowledges the project's proximity to transit and the Guadalupe River Trail and does not provide new information that would change the project's impact or provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices. No further

response is required.

Comment D.4: Construction Impacts

VTA does not see any traffic impacts as part of construction in the SEIR. VTA had requested the SEIR analyze how construction impacts will affect transit operations/delay, haul routes, and queuing at specific intersections as part of the Notice of Preparation phase. VTA would like to reiterate that the construction period of 51 months is noted to be significant throughout the SEIR and impacts to the transportation system, if any, should be documented and mitigation measures disclosed.

Response D.4: Construction management in terms of transit operations, vehicular lane, bicycle lane and sidewalk closures will be reviewed if the project is approved.² At the grading and building stage of the project, the applicant will be required to submit Traffic Control Plans consistent with the City's Downtown Construction Guidelines prior to issuance of an encroachment permit for the project. Any impacts to VTA bus transit service will be coordinated with VTA prior to the approval of the Traffic Control Plans. The City will also review and approve of construction staging areas and truck haul routes proposed by the project. Lastly, similar to other projects in Downtown area, the City also has a Downtown Construction Manager who will coordinate construction of this project along with other construction occurring concurrently within Downtown. This comment does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

E. Valley Water (September 14, 2020)

Comment E.1: The Santa Clara Valley Water District (Valley Water) has reviewed the Supplemental EIR (SEIR) & Initial Study (IS) -Almaden Office Project-City File No. SP20-005, received by the Valley Water on July 31, 2020.

The Guadalupe River runs along the westerly property line and Valley Water has an easement over portions of the river and fee title property over the areas located directly adjacent to the project site. As per Valley Water's Water Resources Protection Ordinance any work proposed on Valley Water's easement, fee title property or that may impact the Valley Water facilities, including the Guadalupe River, will require issuance of a Valley Water encroachment permit prior to the start of construction. Additionally, as issuance of an encroachment permit is a discretionary act, Valley Water will be considered a responsible agency under California Environmental Quality Act (CEQA) if a permit is required.

Response E.1: The proposed project would not include any work on Valley Water's easement, nor would the project impact the Valley Water facilities. All construction work would be within the boundaries of the project site. Nevertheless, if an encroachment permit is required by Valley Water, the applicant and City will be

² This information was provided by the Development Services Public Works Traffic team in a Memorandum dated December 12, 2020

required to coordinate closely with Valley Water to meet their objectives. The proposed project would be required to comply with/obtain all necessary regulatory permits.

Comment E.2: Based on our review of the SEIR we have the following comments:

1. The SEIR notes on page 10 that there are three options for the storm drain relocation. In our discussions with the developer and City, it is our understanding that Option C (storm drain to remain in its current location) is not a feasible option. It is unclear why Option C is included in the SEIR if it is not considered feasible. If Option C is now considered feasible, Valley Water is interested in discussing moving forward with that option as it has no impacts on the Guadalupe River and Valley Water fee title property. The other two options require the construction of a new outfall and removal of the existing outfall, which is not clear in the description provided.

Response E.2: The proposed project would remove the existing storm drain north of the project and construct storm drain realignment along the northern and western portion of the site which would connect to the existing outfall. Since the circulation of the Draft SEIR, updated project plans indicate that the project is only moving forward with storm drain relocation Option A, the currently proposed option (refer to Section 5.0 Draft SEIR Text Revisions in this First Amendment for the proposed text amendments).

Comment E.3: 2. The SEIR and IS do not have any discussion of impacts of the relocation of the outfall and removal of the existing outfall as proposed in Options A and B. Options A and B require issuance of Valley Water permits, as well as other regulatory permits. Additionally, as discussed with the developer and City previously, the temporary storm drain alignment in Option A would only be utilized if all the regulatory and Valley Water permits were not obtained in time to meet the developer's project schedule. It is preferable for the outfall to be constructed without the need for the temporary installation.

Response E.3: As described in response E.2, above, the updated project plans indicate that the project is only moving forward with storm drain relocation Option A, the currently proposed option (refer to Section 5.0 of this First Amendment for text amendments). Under Option A, a storm drain main head and a sanitary sewer main head are proposed along South Almaden Boulevard. The project would remove the existing 30-inch storm drain that bisects the northern portion of the site and construct a storm drain realignment along the northern and western portion of the site which would connect to the existing outfall.

Comment E.4: 3. The discussion regarding tree replacement on page 53 of the SEIR should note that tree replacement species should be in conformance with the Guidelines and Standards for Land Use Near Streams, Design Guide 3, in order to protect the existing riparian habitat.

Response E.4: As discussed on page 52 of the Draft SEIR, a total of 28 trees (off-site and street trees) would be removed as part of the project. Based on the project plan set, no trees are proposed for removal along the riparian corridor. Instead, the project proposes to plant trees near the riparian corridor that are compatible with the existing

riparian habitat. Consistent with all projects within the City of San José, the proposed project would comply with all applicable Downtown Strategy 2040 FEIR measures and policies regarding tree replacement as discussed in Section 3.2.2.1 of the Draft SEIR (refer to pages 53-54). The comment does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment E.5: 4. The SEIR indicates that encroachment of the project into the 100-foot riparian corridor setback would be a Cumulative Significant Unavoidable Impact. The proposed mitigation measure, MM BIO(C)-1.1 Compensation, for the 1.8 acre encroachment is to restore or enhance 3.6 acres (minimum 2:1 ratio) of riparian habitat immediately adjacent to the site and/or off site within the San José city limits. However, the footnotes for this mitigation on page 58 of the SEIR note that Valley Water and City approval is required to restore the area immediately adjacent to the site. Valley Water has not had discussion regarding this proposed mitigation measure and how this could impact future Valley Water work in the area or potential impacts of riparian restoration on the river hydraulics. Valley Water does not allow mitigation for non-Valley Water projects on Valley Water property due the significant mitigation needs of the Valley Water. The footnotes further note that the off-site mitigation may not be feasible if a suitable location cannot be found. Based on the discussion in the SEIR, this mitigation measure has not been determined to be feasible and no other mitigation measures are provided to address this impact.

Response E.5: Refer to Master Response 1 for more information on compliance with riparian policies pursuant to CEQA analysis and findings. If the applicant chooses to restore/enhance the riparian corridor immediately adjacent to the site, the applicant shall coordinate with the City of San José and/or Valley Water. Additionally, the 3.6 acres of enhanced or restored habitat may be divided among several locations on the Santa Clara Valley floor and is not limited to one area. There is no other feasible mitigation to reduce the impact to a less than significant level, but the SEIR does include multiple project alternatives for consideration which have larger setbacks from the riparian corridor than the proposed project. Because the mitigation cannot be guaranteed to be fully implemented the SEIR found the impact to be significant and unavoidable.

The comment does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment E.6: 5. Mitigation measure MM BIO(C)-1.2 Riparian Habitat Mitigation and Monitoring Plan, needs to specify that all plantings used for the riparian restoration/enhancement need to be grown from propagules collected in the watershed where the work will occur to protect the genetic integrity of the locally native riparian species and any existing mitigation plantings.

Response E.6: As stated in the mitigation, restoration/enhancement/mitigation design that is provided along the immediately adjacent riparian corridor shall, at the minimum, consist of the removal of non-native trees, shrubs, and vines and the planting of native riparian vegetation. The Riparian Habitat Mitigation and Monitoring Plan and a letter signed by the qualified biologist shall be submitted to the Director of Planning, Building and Code Enforcement or Director's designee prior to the issuance of any grading or building permits. Additional language has been included in the mitigation (refer to Section 5.0 Draft SEIR Text Revisions in this First Amendment). This comment does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment E.7: 6. As it is not clear that the proposed mitigation for impacts to the riparian corridor can be mitigated, since a feasible site(s) for mitigation has not be determined, Valley Water recommends that the developer look at alternatives that reduce the encroachment into the riparian corridor setback and minimize the land needed for mitigation of this impact. Finding 3.6 acres of suitable creek land to restore/enhance may be difficult unless the City is willing to allow the work to occur on their property.

Response E.7: Refer to Master Response 1, and Response E.5.

Comment E.8: 7. As indicated on page 50 of the IS, dewatering is required during construction because shallow groundwater occurs in the project location, ranging from less than 15 to 20 feet depth to groundwater below ground surface. Valley Water recommends that the construction dewatering system be designed such that the volume and duration of dewatering are minimized to the greatest extent possible. Valley Water also recommends that a more detailed analysis of construction dewatering be conducted, including estimating dewatering volumes/durations and evaluating related impacts.

It is important that the project comply with the recommendations from the geotechnical exploration report (SEIR Appendix F), which will be reviewed and approved by the Department of Public Works, and the City's Standard Permit Conditions for dewatering. Valley Water supports the geotechnical exploration report recommendation that the project be constructed with a structural mat foundation and waterproofing to avoid the need for permanent dewatering.

Response E.8: As stated on pages 48-50 of Appendix A (Initial Study) of the Draft SEIR, a site-specific geotechnical investigation was prepared which contain specific recommendations regarding existing demolition, existing fill removal, site drainage, foundation, basement walls, dewatering, temporary excavation support, and pavement designs. Refer to Appendix F (Geotechnical Investigation) of the Draft SEIR for more information. Based on the report, the proposed project would be constructed in conformance with the recommendations of the site-specific geotechnical analysis and the most current California Building Code and therefore, would not result in significant unavoidable impacts. This comment does not provide new information

that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5. No further response is required.

Comment E.9: 8. On page 73 of the IS, we suggest revising the following sentence “Their stewardship also includes creek restoration, pollution prevention efforts, and groundwater recharge.” to “Their stewardship also includes creek restoration, pollution prevention efforts, and groundwater management.”

Response E.9: The comment provides administrative text corrections to the Draft SEIR. Refer to Section 5.0 Draft SEIR Text Revisions in this First Amendment for the proposed text amendments. These text changes do not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment E.10: 9. In addition to discussion of Valley Water's Well Ordinance on page 73 of the IS, we have the following additional information regarding abandoned wells. Due to the long agricultural history of the Santa Clara Subbasin, and subsequent land development, there are likely many abandoned wells in the subbasin. While some of these abandoned wells may have been sealed prior to well permitting requirements, many have open casings and may be discovered during project construction. It is not uncommon for these wells to have significant artesian flow, which may impact dewatering and construction activities. If encountered during the proposed project, abandoned wells must be properly destroyed, with related work permitted by Valley Water.

Response E.10: The proposed project would be required to comply with all applicable permit conditions, including proper procedures for the closure of any wells on-site. The comment does not provide new information that would change the project's impact or provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices. No further response is required.

Comment E.11: 10. The discussion on pages 76 and 82 regarding dam inundation, should be revised to note the site is also subject to inundation from the Guadalupe Reservoir Dam as well as Lenihan and Anderson dams.

Reference Valley Water File Number 26457 on further correspondence regarding this project.

Response E.11: The comment provides administrative text corrections to the Draft SEIR. Refer to Section 5.0 Draft SEIR Text Revisions in this First Amendment for the proposed text amendments. This comment does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than

those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

F. County of Santa Clara Roads and Airports Department (September 15, 2020)

Comment F.1: The County of Santa Clara Roads and Airports Department (The County) appreciates the opportunity to review the Draft SEIR Public Review: Almaden Office Project (SP20-005), and is submitting the following comments:

1. This proposed project is in the San José Downtown Area Plan and is subjected to less stringent impact mitigations. As we have mentioned earlier for projects in this designated area, the County strongly urges the City to do a cumulative analysis to recognize the regional impacts they have and not only consider a single project at a time. Their area of impacts would be much greater than just the protected downtown area where any impacts outside of that would not be recognized for mitigation.

Response F.1: The commenter’s assertion that projects within the Downtown Strategy Plan area would be subject to less stringent mitigations is not supported by any evidence. Pursuant to CEQA guidelines and City of San José’s Municipal Code Title 21, environmental reviews are required to be completed to disclose potential impacts to the environment, regardless of location. For any project that would result in a significant impact, feasible mitigation measures would be identified. The San José City Council certified the Downtown Strategy 2040 Final EIR on December 18, 2018 (Resolution No. 78942), which included project-level analysis of transportation impacts of anticipated Downtown development using the Vehicle-Miles Traveled (VMT) metric established by the City’s Transportation Analysis Policy (City Council Policy 5-1). Subsequent project-level CEQA analysis is completed for projects within the Downtown boundary. The proposed project is consistent with planned growth approved under the Downtown Strategy 2040 which addressed the cumulative effect of all proposed growth within the downtown. Furthermore, although not required for determining impacts under CEQA, the Transportation Analysis for the Downtown Strategy 2040 EIR did include an evaluation of how buildout of development anticipated in the Downtown Strategy 2040 would affect nearby Congestions Management Plan intersections and freeway segments.

The comment does not provide new information that would change the project’s impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment F.2:

2. Trip Generation – The proposed project assumed a considerable vehicle trip reduction percentage (-57.5%) based on by not providing the required on-site parking and assumed that many trips would not come to the site. The County believes that not providing enough on-site parking does

not equate to the same number of project related vehicle trips would not be on the roads, for instance vehicles can be parked off-site and walk to the project site.

3. The County strongly recommend all proposed projects in Downtown Area Plan to develop a TDM Plan and a required monitoring and yearly report, if TDM Plan is not met than there should be some impact fee funds set up towards impact mitigations base on extent of those impacts.

Response F.2: The City of San José has an adopted transportation threshold of Vehicle Miles Traveled (VMT) per Council Policy 5-1. Under the adopted CEQA threshold of VMT, traffic congestion and trip generation are not considered threshold metrics but are instead usually included for information purposes in Local Transportation Analysis documents prepared for each project. As discussed in Appendix H (Local Transportation Analysis and Transportation Demand Management) and on page 117 of Appendix A (Initial Study) of the Draft SEIR, since the project would exceed the City's bicycle parking requirement and comply with Municipal Code 20.90.220.A.1 subsections A and B, the project may be granted up to a 20 percent reduction in off-street parking spaces. By implementation of a Transportation Demand Management (TDM) program that contains, but is not limited to, three of the measures listed in Municipal Code 20.90.220.A.1 subsections C and D, the project could be granted an additional 30 percent parking reduction. Additionally, Municipal Code 20.70.330.A allows for an additional 15 percent reduction for mixed-use development projects within the downtown with implementation of a TDM program. The project proposes a TDM plan (refer to Appendix H of the Draft SEIR) and, as a result, the reductions would allow for a 57.5 percent reduction from the required 3,161 off-street parking spaces.

As shown in Table 2 of Appendix H, the reductions taken for daily traffic trips was not based on the parking reduction, but was based on a mixed-use development reductions prescribed in the VTA Transportation Impact Analysis Guidelines and location based reductions for high-transit urban areas per the City of San José VMT Evaluation Tool. The only trip reductions based on the availability of on-site parking were noted at the project driveways. As a result, the trip generation estimates do not discount persons traveling into downtown by car and parking off-site. The comment does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment F.3:

4. The SEIR should identify potential mitigations if there are impacts to County facilities, especially on Almaden Expressway.

Response F.3: The City of San José has an adopted transportation threshold of Vehicle Miles Traveled (VMT) per Council Policy 5-1. Under the adopted CEQA threshold of VMT, impacts associated with level of service, trip generation, and traffic congestion are not considered significant impacts. Almaden Expressway is located more than one mile south of the project site and the proposed project would

not impact Almaden Expressway or any County facilities based on adopted CEQA thresholds. This comment does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

ORGANIZATIONS, BUSINESSES, AND INDIVIDUALS

G. Guadalupe River Park Conservancy (September 14, 2020)

Comment G.1: The Guadalupe River Park Conservancy (GRPC) submits the following comments on the Draft Supplemental EIR (DSEIR) for the Almaden Office Project at Woz Way and S. Almaden Blvd in downtown San José, adjacent to the Guadalupe River Park. There are important values shared by Boston Properties and GRPC on this project site highlighted in the project Draft SEIR and submitted documents, and we look forward to addressing the various details to help us better align with the overall goal to highlight the Guadalupe River Park as a natural resource and to better connect the workers, community, and ecology at one of downtown San Jose's key gateway projects.

The letter details the following:

1. Unclear and insufficient information in listed site plans regarding project impacts to trails and aesthetic components of the project;
2. Concern for development within the 35 feet of the riparian corridor;
3. Concern over significant project impacts to birds and support for bird safe designs;
4. Noise impacts to wildlife and adjacent parkland and noise barrier impacts on trail use over the course of construction;
5. Local transportation impacts specific to bike lanes and Guadalupe River Trail interface;
6. Riparian Mitigation Plan recommendations, which should be adjacent or in close proximity to the impacted area;
7. Other priorities related to public life, environmental awareness, and social equity for park accessibility.

Response G.1: The comment provides a summary of more detailed comments below. Refer to Responses G.2 to G.11 below.

Comment G.2: Unclear and Insufficient Information in Listed Site

Our first comment is related to clarity of the figure in the DSEIR, which lacked sufficient information on the aesthetic components of the project, and its impact on the Guadalupe River Trail. As the project is located in an area sensitive to impacts on biological resources, we ask that the Final SEIR include graphics that can provide an accurate level of detail for the determination of aesthetic impacts and impacts to the trail and riparian corridors, supported with photo simulations and/or architectural renderings. Providing additional detail here would encourage more quality comments from the general public and decision makers to understand the project's impact and help guide the process.

Response G.2: Refer to Attachment B of this First Amendment for the renderings. The renderings do not provide new information that would change the project's impact or provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices. The Draft SEIR found that the project would have a less than significant impact on Aesthetics, consistent with the Downtown Strategy 2040 EIR. Therefore, this comment does not provide new

information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment G.3: The GRPC supports the development of the project site and appreciates that the architecture does not appear to put it's back to the River. We also agree with the project objectives that promote access to the Guadalupe River. Our priority is to ensure that the connectivity of the existing trail is not impeded by the project; and from the listed site plan, it is difficult to determine if this is the case. In addition, we support a project objective that would encourage limiting impacts to the riparian corridor habitat, and inclusion of bird safe design features. These objectives are not listed in Section 2.3 yet we highly recommend that they be added to better allow an accurate comparison of project alternatives.

Response G.3: Pursuant to CEQA Guidelines Section 15124(b), the EIR must include a list of objectives sought by the proposed project. The statement of objectives is intended to define the underlying purpose of the project. The objectives listed on pages 11-12 and 84-85 of the SEIR were provided by the applicant and represent the applicant's underlying purpose for the project. While bird-safe design features and limiting impacts to the riparian corridor habitat are not part of the project objectives, additional information and mitigation measures related to bird-safe design are discussed in the Biological Resources section of the Draft SEIR.

As shown on the site plan (Figure 2.2-1 of the Draft SEIR) the Guadalupe River Trail remains in its current configuration and has an enhanced access from Woz Way. The trail will continue to be accessible via the entrance on Woz Way, but will also be made available via the open public paseo on the project's ground level. The comment does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment G.4: Biological Resource Impacts to the Riparian Corridor – Ecology and Habitat
GRPC continues to express concern on development within 35 feet of the riparian corridor and encourages the developer to consider Reduced Development Alternative 1 (Option 1). This would reduce the square footage of the project by approximately 68,000 square feet (4 percent of the total area).

We believe that the "moderate quality" of riparian habitat in this segment of the 14-mile river corridor makes it even more necessary to adhere to a 35-foot setback, rather than the proposed 0 to 26 feet. When given the opportunity, we have witnessed the river's ability to restore its biological resources with mitigation and care. With the project's Riparian Mitigation Plan and adhering to the 35-foot setback, we believe that this project could support the overall riparian health and be of even greater value to the project and the community. The Option 1 Alternative would also reduce

associated construction-related noise and air quality impacts which would benefit the riparian habitat as well as the surrounding neighborhood.

Response G.4: This comment is in support for the Reduced Development Option 1 Alternative. Refer to Master Response 1 for more information on compliance with riparian policies pursuant to CEQA analysis and findings. The comment does not provide new information that would change the project’s impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5. No further response is required.

Comment G.5: Biological Resource Impacts to the Riparian Corridor – Bird Safety

GRPC continues to express concern for the significant unavoidable impact this project will have on birds. As mentioned in our comments submitted on the Notice of Preparation for the Almaden Office Project (July 1, 2019 - reattached), we fully support the use of bird safe design as required by the City of San José and the American Bird Conservancy. We do believe that if the building could “step back” more from the riparian corridor, impacts to birds could also be reduced, and recommend that bird safe design be a project objective.

Response G.5: The potential for bird collisions was identified as a significant impact in the SEIR and mitigation measures, including bird-safe design measures, were developed as outlined on pages 51-52 of the Draft SEIR. Implementation of Mitigation Measures BIO-1.1 and BIO-1.2 would reduce the number of bird collisions to less than significant (refer to page 52 of the Draft SEIR). The commenter’s recommendation of a step-back for the building as mitigation was not identified as a necessary mitigation to reduce the bird collision impact to less than significant. As mentioned previously, the project applicant provides the list of project objectives. Because there is project-specific mitigation and City policy that require bird-safe design on-site, the addition of bird-safe design to the project objectives is not necessary to ensure compliance. The comment does not provide new information that would change the project’s impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment G.6: Noise Impacts to the Riparian Corridor and Adjacent Parkland

As project construction is anticipated to extend well beyond 12 months, we need more clear recommendations on how noise impacts will be addressed, particularly as it relates to its impact on riparian wildlife, and for various events hosted in Discovery Meadow. Coordination and a noise mitigation process is needed to ensure that Discovery Meadow remains a flexible and desirable location for events and festivals for our city. Limiting construction noise, particularly in the evening, will not only benefit the nearby residents, but also allow for the local wildlife periods of respite as

they migrate to and through the Guadalupe River.

Aesthetic treatments of noise barriers should also be considered. To ensure that the walking and biking experience of the trail and connecting sidewalks is inviting during the construction period, we recommend barrier treatments such as artwork, education posters, timed spotlights, and a Guadalupe River Park map to encourage trail use throughout the construction period.

Response G.6: As discussed on page 68 of the Draft SEIR, project construction would last for a period of more than 12 months. The project applicant would be required to comply with Mitigation Measure NOI-1.1 which includes implementation of a noise logistic plan prior construction that would identify construction hours, notification, barriers, and other features to be implemented during different phase of the construction timeframe. The project applicant shall submit and implement a construction noise logistics plan prior to the issuance of any grading or demolition permits. Additionally, as a part of the noise logistic plan, the project would be required to comply with the identified best management practices on page 68 of the Draft SEIR which includes construction of temporary solid noise barriers (where feasible) to screen mobile and stationary construction equipment.

The project would comply with Chapter 20.100.450 of the City of San José Municipal Code which establishes allowable hours of construction within 500 feet of a residential unit between 7:00 AM and 7:00 PM Monday through Friday unless permission is granted with a development permit or other planning approval. The comment does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment G.7: Local Transportation Impacts

GRPC is encouraged by the improvements to bike lanes along Woz Way and the intersection of Woz Way and S. Almaden Blvd. GRPC is also very supportive of the direct alignment of the Guadalupe River Trail south across Woz Way towards Palm Ave. We believe that these improvements will make the trail more accessible to local workers and residents and increase bicycle commutes.

Our concerns include potential blind spots for vehicles in egress, bike turn radii and conflicts to pedestrians and street trees, and if pavement changes or awnings over the trail are proposed (Figure 2.2-1). Without more detail on the interface of the Woz Way bike lane, Guadalupe River Trail entry, vehicular ramp, and the adjacent sidewalk, it makes it difficult to determine potential safety, lines of sight, and conflict points.

Response G.7: As discussed on page 114 of Appendix A, vehicles exiting the Locust Street/Woz Way driveway would be able to see approaching traffic at least 290 feet to the east and 200 feet to the west. This project driveway would meet American Association of State Highway Transportation Officials (AASHTO) minimum stopping sight distance standards. Vehicles exiting the Almaden Boulevard/ Convention Center driveway would be able to see approaching traffic on Almaden

Boulevard at least 550 feet to the north and would meet the AASHTO minimum stopping sight distance standard. At the right-in/right-out only driveway along Almaden Boulevard, trucks exiting would be able to see approaching traffic at least 300 feet to the north and would also meet the AASHTO minimum stopping sight distance standard. Additionally, as stated on page 14 of Appendix H, any landscaping that is installed near these vehicle access points is required to not obstruct a driver's view exiting the site per City safety requirements for ingress/egress. The comment does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment G.8: Mitigation Plan Recommendations

We believe that all planned mitigation for project impacts should be adjacent or in close proximity to the project area. The mitigation priorities in this segment of the Guadalupe River watershed include enhancements to water quality and native trees and vegetation, ongoing maintenance through invasive and plantings management, and regular pollutant reduction and litter removal measures. We propose the 3.6-acre (2:1 area of impacted riparian corridor,) mitigation area consider the following locations:

- Ongoing trails and riparian maintenance (litter reduction, debris removal, invasive species removal) in between Woz Ave and Palm Ave./S. Virginia Street;
- Ongoing trails and riparian maintenance (litter reduction, debris removal, invasive species removal) in between Santa Clara and Julian Streets;
- Riparian enhancement and management of the west bank of the Guadalupe River between San Carlos and Woz Way (across from the project site)
- Trail connectivity improvements along the Guadalupe River Park, east side between Park Ave and San Carlos Street.

In addition to a 2:1 area mitigation of impacted riparian corridor, we recommend that planting, design, and ongoing maintenance of the project area integrates the Guadalupe River, either through complementary plantings, opportunities for people to view/engage with the river, maintenance to remove non-native and invasive species, reduce litter from entering the waterways, and environmental awareness opportunities to connect workers and visitors to the importance and interconnectedness of the Guadalupe River.

We do not believe that providing mitigation on other waterways or within other watersheds mitigates for impacts to the Guadalupe River and its watershed. GRPC would be willing to work with the applicant, the City, regulatory agencies, and Valley Water to provide a better mitigation strategy.

Response G.8: Refer to Master Response 1 for more information on compliance with riparian policies pursuant to the CEQA analysis and findings. As previously stated in Master Response 1, since the circulation of the Draft SEIR, the biologist clarified that restoration could occur outside the City of San José as long as it is on the Santa Clara Valley floor and in areas that drain to the San Francisco Bay.

Furthermore, as stated in Master Response 1, the mitigation measures do not explicitly state that areas along Guadalupe River would be restored or enhanced. Riparian habitat shall be enhanced or restored to native habitat along the immediately adjacent riparian corridor, and/or off-site on the Santa Clara Valley floor and in areas that drain to the San Francisco Bay (page 58 of the Draft SEIR and Appendix D of the Draft SEIR and Section 5.0 of this document for text revisions). The actual location for the compensatory mitigation will be dependent on property owners and verification of location or enrollment in programs to identify restoration locations shall be presented prior to issuance of grading and building permits. Exact methodology, programs, or locations for implementing Mitigation Measure BIO(C)-1.1 shall be determined prior to issuance of grading permit or building permits, and progress reports shall be filed with the City prior to the issuance of Certificate of Occupancy Permit with information regarding on-going monitoring. Furthermore, MM BIO(C)-1.2 requires the applicant to submit a monitoring plan which adopted performance standards that the mitigation measure will achieve and identify the actions required to achieve those standards. As previously stated, even with implementation of Mitigation Measures BIO(C)-1.1 and BIO(C)-1.2, the project's impacts on the riparian corridor would still be cumulatively considerable. The comment does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment G.9: Other Priorities

In addition to addressing the environmental impacts of this project, we submit other comments based on the SEIR and submitted Plan Sets around other GRPC priorities - particularly around **public life, environmental awareness, and social equity for park accessibility**.

Public Life & Environmental Awareness

We believe a key measure of the success of how a development benefits the local community is its ability to promote public life at the intersection of development and the River Park. We recommend that the development team factor certain elements into the project that foster public life and inspire environmental awareness, particularly to the thousands of new workers and visitors to the development.

- There are opportunities to extend the experience of the Guadalupe River through the project to Almaden Blvd. This would ensure physical and visual connection from the downtown core to our natural resource. This may be achieved through architectural interventions, planting selection, art, or other treatments to the ground floor experience;
- As the River Park is a public park, and thus, is publicly accessible; we request to ensure that the ground floor of the project area is accessible as well, especially during park hours;
- Where possible, increase the amount of bike parking, bike repair features, and strategically located public seating (particularly when a view of the river is available). The latter ensures that users of all ability-groups and ages have a comfortable experience exploring the Guadalupe River Park;

- Incorporate native plantings and informational signage within the ground floor project boundary to highlight elements of the River Park and local ecology;
- Contribute capital and maintenance capacity improvements to Discovery Meadow that supports increased use from new workers and visitors to the development and enhance the quality of life to the nearby community.

Response G.9: The comment does not raise any specific environmental issues under CEQA; therefore, no further response is required.

Comment G.10: Social Equity for Park Accessibility

The project will create many benefits to nearby neighborhoods and businesses, and these benefits should also be enjoyed by those currently living and working on our community. We also believe that doing so would provide more benefits to the project, particularly for the food and retail establishments, and the park, through increased connection of diverse neighborhoods.

- Signage directing community members to and through the project and to the Guadalupe River Park or Discovery Meadow should be in multiple languages (minimum Spanish, Vietnamese, and English);
- As part of the project’s private security portfolio, we recommend contracting with homeless service case managers, and partnering with the City’s park rangers to address the complex conflicts that may occur in this area;
- Consider opening up space to host local nonprofits, neighborhood meetings and events, and storage for local events and river/trail clean ups, to facilitate ongoing community capacity building and park stewardship;
- Consider retail and commercial options that serve both building tenants and the local community, and programs that connect the tenants, neighbors, and River Park.

Response G.10: The comment does not raise any specific environmental issues under CEQA; therefore, no further response is required.

Comment G.11: The Almaden Office Project will be a key development project acting as a gateway to downtown San José and the Guadalupe River Park, potentially connecting thousands of new visitors to our natural asset. We believe there is an opportunity to showcase this potentially landmark project as a leading sustainable development standard, highlighting the integration of buildings and ecology. Aiming high for these standards are of particularly importance as our City embarks on this new wave of commercial and high-rise development.

Response G.11: The comment does not raise any specific environmental issues under CEQA; therefore, no further response is required.

H. Jean Dresden (September 14, 2020)

Comment H.1: 1. Shade Impacts

The shade impacts of the towers on the adjacent parkland was dismissed as not significant because it was less than 10% of the Guadalupe River Park. The EIR revealed there would be shade all morning and noon throughout the year. The impact on Discovery Meadows and the

Children’s Discovery Museum and its “Bill’s Garden” outdoor education amenity were not quantified.

What acreage was used to compute this percentage? Please include a table and itemize.

Response H.1: As discussed on page 210 of the Downtown Strategy 2040 FEIR, the City identifies significant shade and shadow impacts as occurring when a building or other structure located in the Downtown area substantially reduces natural sunlight on six major public open spaces (St. James Park, Plaza of Palms, Plaza de Cesar Chavez, Paseo de San Antonio, Guadalupe River Park and McEnery Park). The land area of the Guadalupe River Park & Trail as defined by the Downtown Strategy 2040 is shown on Figure 3.14-1 (page 258) of the Downtown Strategy 2040 FEIR. Specifically, an impact would occur if a project increased shading by 10 percent or more across the total park acreage. Guadalupe River Park is an approximately three-mile linear park that runs along the river from I-880 in the north to I-280 in the south, which is approximately 250 acres in size. The park includes neighborhood-serving spaces such as Arena Green, Discovery Meadow, and McEnery Park, as well as 33 plazas and educational exhibits.³

As shown in Figure 4.11-1 of Appendix A of the Draft SEIR, the maximum shading from the project would occur in the winter months (December 21). As shown in the comparison between current conditions and project conditions (Figure 4.11-1 of Appendix A of the Draft SEIR), the proposed project would have a minor increase in shading on Discovery Meadow just east of the Children’s Discovery Museum in the morning hours in spring and fall (March 21 and September 21). No other portion of Discovery Meadow would be shaded at this time. There would be a slight increase in morning shade along the trail east of the Children’s Discovery Museum and educational garden in the summer morning hours, but it would not extend to those facilities. Throughout the winter, shadows on Discovery Meadow and the educational garden would not be any more substantial than under current conditions. Mid-day and afternoon shadows would not be directed toward Discovery Meadow. Based on the shade and shadow analysis (refer to pages 87 and 88 of Appendix A of the Draft SEIR), the proposed project would not increase shade on Guadalupe River Park by 10 percent or more. The comment does not provide new information that would change the project’s impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment H.2: Many properties near the river are not parkland—private property owners have graciously allowed public access to their properties. A major owner of this acreage is the Santa Clara Valley water district (SCVWD or Valley Water). For example, all of Arena Green East is owned by Valley Water. (Example APN 259-37-057).

Some of the City’s pre-existing street network remains within the open space; it was never vacated

³ City of San José. Integrated Final Environmental Impact Report Downtown Strategy 2040. December 2018.

the Guadalupe River Park & Trail, including Arena Green East, Columbus Park, and Guadalupe Gardens, is used for the assessment. As shown in the comparison between current conditions and project conditions (Figure 4.11-1 of Appendix A of the Draft SEIR), the proposed project would have a minor increase in shading on Discovery Meadow just east of the Children’s Discovery Museum in the morning hours in spring and fall (March 21 and September 21). Additionally, there would be a slight increase in morning shade along the trail east of the Children’s Discovery Museum and educational garden in the summer morning hours, but it would not extend to those facilities. Since Arena Green, Columbus Park, and Guadalupe Gardens are not analyzed as separate parks, consistent with the City’s approach for other developments in the downtown area, the shading impact would remain less than significant. The comment does not provide new information that would change the project’s impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment H.3: 2. The shade impacts on turf were not explained. Discovery Meadows is planted with a turf species that allows for high traffic use. It does not thrive in shade.

This allows for activation by public and private partners. In 2019, PRNS reports over 180,000 visitors to downtown came for events at Discovery Meadows. Activation of the parks is considered a key strategy to meet the four goals of Cultural Opportunities of the Envision 2040 General plan. (VN-4.1, 4.2, 4.3, 4.4, 4.5). These land use goals are not discussed in the SEIR.

The Downtown Strategy called out the use of individual parks as critical to the Downtown for programming and activation. Discovery Meadow was considered key to the downtown strategy. The Downtown Strategy discussion revolved around maintaining high quality venues for activation and vibrancy in the Downtown Core.

Please clarify the impact of year-round morning shade from the project on the turf. Please provide specifics of which, if any, other turf species can hold up to high traffic with only afternoon sun. How will the shading affect the amount of mud in the turf area? How will it change the temperature profile through the year of the venue space? Please clarify how the changes in the environment might make the site less attractive for venue operators.

Please describe alternative mitigation landscaping so that the venue can maintain year-round outdoor programming for cultural events—public and private.

Response H.3: Refer to Responses H.1 and H.2. A significant shade and shadow impact would occur if the project would result in an increase in shading of 10 percent or more onto any of the six major open space areas in the downtown San José area (St James Park, Plaza of Palms, Plaza de César Chávez, Paseo de San Antonio, Guadalupe River Park, McEnery Park). Pursuant to the City’s threshold and as shown in Figure 4.11-1 of Appendix A of the Draft SEIR, there is no significant impact from increased shading on parkland. Additionally, turf is not considered sensitive habitat

and the shade and shadow increase would be limited to the morning hours primarily in winter months (December 21). As such, no analysis is required to determine physical effects of reduced natural sunlight. The comment does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment H.4: 3. The SEIR does not acknowledge this project's shade impact on Bill's Garden of the Children's Discovery Museum. nor does it discuss any mitigation to the destruction of the viability of their program. Bill's Garden was built with private philanthropic money in order to broaden the Discovery Museum's activities into the natural world through outdoor STEM activities. The General Plan includes many policies on diversity, social equity, and education. Environmental policies such as water, recycling, and air quality, and include strategies to use community partners to provide education on these issues. The Children's Discovery Museum—on city-owned parkland—is one such community partner.

Please clarify the impacts of the year-round shade impacts on the living instructional space at Bill's World? What will be the temperature impacts each morning at 9 am when children are expected to arrive for their field trips? How will the environment be modified? Will the garden still grow the instructional materials?

Community members report that Boston Properties has acknowledged this impact and has reached out to the Children's Discovery Museum with mitigation proposals. Why is this not included in this SEIR? If Boston Properties subsequently sells the entitlement or chooses not to provide any compensation, how will the Children's Discovery Museum be compensated for the effective loss of this natural world instructional space due to the shade impacts? For what reason is mitigation not included in the SEIR? Will there be a separate Community Benefits agreement in the final development standards?

Response H.4: Refer to Responses H.1 to H.3. The City has no record of documentation or written confirmation of any agreement between the applicant and the Children's Discovery Museum. As stated in Appendix A of the Draft SEIR (pages 87 and 88), the shade and shadow analysis found that there would not be any significant shade or shadow impacts on the Guadalupe River Park and the Discovery Meadow as neither would be shaded by 10 percent or more, therefore, no shading mitigation measures are proposed or required under CEQA. The comment does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment H.5: 4a. Riparian impacts in Park

The Guadalupe River Park Master Plan 2002 identify objectives for the park. They included:

- The enhancement of the Guadalupe River as both a valuable riparian habitat and a natural resource to be enjoyed by the greater San José community and visitors alike
- A balance between human access to the river and maximum protection of the riparian habitat

The year-round shade will impact the riparian habitat. Riparian habitat is acknowledged to be sensitive. The SEIR states that there will be a significant cumulative impact.

How will the shade impact to the park be mitigated? How will the park system be compensated?

Response H.5: As discussed on page 57 and Appendix D of the Draft SEIR, construction and operation of the new buildings within 35 feet of the edge of the riparian corridor would result in a cumulatively considerable contribution to the Guadalupe River as a whole due to encroachment. As stated in the Draft SEIR Section 3.2.2.1, there is no individual impacts of the project to the adjacent riparian corridor. Although the proposed towers would shade the adjacent habitat throughout some of the morning hours year-round, the proposed project would not result in a project-level impact since the existing riparian habitat immediately adjacent to the site is of moderate quality (as opposed to high quality) as a result of human activities degrading the immediate habitat. The comment does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment H.6: 4b. Riparian Setbacks.

While Envision 2040 sets a 100 foot setback and San Jose's Riparian policy study allows 30 foot setbacks in Downtown where they existed previously. The Santa Clara Valley Habitat Conservation Plan sets a minimum 35 foot setback. Where is there a provision that allows 0 foot setback? The parking garage will be at the top of bank. Above ground, there will be emergency vehicle access that dead-ends at West San Carlos.

The SEIR claims the 0 ft. setback is appropriate for financial feasibility reasons. What data does the applicant have to provide in order to qualify for 0 foot setbacks? How is this determination made? Can any applicant simply affirm, "I need 0 feet setback to make money." What policy or standard protects the riparian habitat and the community from private actions that thwart the environmental policies of the City? To what extent do overall market conditions figure in the analysis of whether feasibility problems are related to site specific conditions or market conditions? Since this project was given an exemption that will cause significant environment impacts in shade and riparian, please explain how this decision is made.

Response H.6: The Draft SEIR takes into consideration financial feasibility factors provided by the applicant, but does not base findings and analysis of the zero-foot setback solely on this factor. Refer to Master Response 1 for more detailed information on compliance with riparian policies pursuant to CEQA analysis and findings.

As stated on page 55 of the Draft SEIR, a stream setback exception (filed by the project applicant) was requested because a greater setback would be economically infeasible due to the required average floorplate size of 40,000 square feet needed to attract viable tenants. This, however, is not a conclusion of the analysis and did not preclude the finding of a significant impact with regard to consistency with the VHP. Project Objective 3 states the applicant's intent for the project is to "Provide Class A office, amenity/retail, and public space that supports employment and activity, thereby increasing the job base within the downtown and contribution to the economic feasibility of San José" (pages 12 and 85 of the Draft SEIR). This project objective does not, however, inform the analysis of the project and the alternatives to the project which provide greater setback were found to be consistent with this objective.

The City Council Policy 6-34 provides detailed policy recommendations on how different types of development should be designed to protect and preserve the City's riparian corridors. In addition, the City Council Policy 6-34 is intended to 1) protect, preserve, and restore riparian habitat; 2) limit the creation of new impervious surfaces within riparian corridor setbacks to minimize flooding from urban runoff, and erosion control; and 3) encourage bird-safe design in baylands and riparian habitats of the lower Coyote Creek north of State Route 237. H.T. Harvey & Associates prepared a Biological Resources Report (refer to Appendix D of the Draft SEIR) based on the proposed zero to 26-foot setback from the riparian corridor. City Council Policy 6-34 states that riparian setbacks should be measured 100 feet from the outside edges of riparian habitat or the top of bank, whichever is greater. As analyzed in Appendix D, the setback distances for individual sites may vary if consultation with the City and a qualified biologist indicates that a smaller or larger setback is more appropriate for consistency with riparian preservation objectives. As noted on page nine of Appendix D of the Draft SEIR, while the biologist believes that encroachment to within 35 feet would be acceptable with compensatory mitigation, an exception for encroachment within 100 feet of the riparian corridor would need to be granted by the City of San José. Since the completion of the Draft SEIR, the applicant has revised the proposed plans (refer to Attachment F of this First Amendment) in which the first and second floors of the proposed building would be set back from the top of bank by 54 feet and 35 feet, respectively. Additionally, the proposed basement would be set back from the top of bank by 19 feet. As discussed in Master Response 1, a revised memorandum from SCVHA was provided for this project and is attached as Attachment E to this First Amendment. The proposed project is located adjacent to a Category 1 stream (Guadalupe River) and would have a zero-foot setback from the edge of the riparian corridor vegetation as mapped by H.T. Harvey & Associates (refer to Appendix D of the Draft SEIR). Based on SCVHA's revised memorandum (Attachment E of this First Amendment), in order for a project to be considered by the VHP, it must impact

a land cover type. Any redevelopment project located entirely within an existing developed footprint, regardless of its distance from a stream or riparian corridor, would not be subject to the VHP. The existing project site is developed with a surface parking lot and the new development footprint would not extend beyond the existing developed area; therefore, the proposed project would not be subject to Condition 11 of the VHP.

Furthermore, two alternatives of different setbacks (35-foot and 100-foot setback from the edge of the property line) were analyzed and disclosed in Section 7.0 of the SEIR. In addition, since the proposed project would occur on a site that is already paved with a parking lot up to the edge of the riparian corridor, it will not impact any land cover types (e.g., riparian, stream, or wetland land cover types) on the property, and therefore the project would not be subject to the conditions of the VHP. The comment does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment H.7: 4c. Riparian setbacks. No feasible alternative.

What alternatives were evaluated? The SEIR does not describe any alternatives. In another part of Downtown, the City ceded a portion of the street to the developer. The City is pursuing a policy of down-sizing and right-sizing its streets. Was the use of a portion of Almaden Road one of the alternatives considered? If not, for what reason?

Response H.7: The alternatives studied in the SEIR are summarized on pages xvi and xvii and the full analysis is provided in Section 7.0 of the Draft SEIR. Refer to Response H.6 and Section 5.0 in this First Amendment.

The CEQA Guidelines state that an EIR must identify alternatives that would feasibly attain the most basic objectives of the project, but avoid or substantially lessen significant environmental effects, or further reduce impacts that are considered less than significant with the incorporation of mitigation (CEQA Guidelines Section 15126.6). The CEQA Guidelines do not require analysis of off-site alternatives in every case. The City's determination of the feasibility of an off-site alternative is provided in Section 7.4.1.1 of the SEIR. The City has no planned roadway re-configurations for Almaden Boulevard and has no plans to vacate portions of Almaden Boulevard for private development. Therefore, an alternative that included a portion of the existing Almaden Boulevard right-of-way as part of the development would be infeasible.

The comment does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment H.8: 5. Hydrology. De-watering. Riparian.

The SEIR does not address the risk of dewatering of the Guadalupe River. The project proposes placing a parking garage at the top of bank. The Guadalupe River in this area was historically a series of meandering interconnected streams. As the water table dropped, the meandering streams dropped below the street level. However, water is present. The Hydrology report discusses at great length construction strategies to make the parking garage dry. It does not discuss the risk of dewatering the Guadalupe River.

The Geotechnical Reports states the ground water varied from about 14 to 17 feet during the time of analysis and following seasonal trends. How does this compare to the depth of the channel of the Guadalupe River at this site. And how did the water table level compare to the water level within the channel? This analysis was not conducted.

Citizen scientists have observed there are small areas where water seeps through the side of the bank; it appears to be a spring and not a drain pipe.

Was any attempt made to determine whether water in the upper water table (14 to 17 foot depth) was flowing into the Guadalupe River? If not, for what reason?

Under what conditions does the Guadalupe River come at risk of dewatering due to the pumping of water from the parking garage? How large will the pump flow be and how does that compare to water flows of the river at this spot?

Response H.8: As discussed on pages 49-50 of the Initial Study (Appendix A of the SEIR), the proposed project would be constructed in conformance with the recommendations of the site-specific geotechnical analysis and the most current California Building Code as standard permit condition. Refer to Appendix F (Geotechnical Investigation of the Draft SEIR) for more information including the specific locations along the Guadalupe River of the cone penetration tests used in the geotechnical analysis (identified in Figure 2A and 2b, pages 44-45 of the Geotechnical Investigation). The comment does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment H.9: 6. Guadalupe River Trail.

The Guadalupe River Trail master plan calls for connection from Woz Way to an undercrossing at West San Carlos. The plans appear to show that the utility lane will end before West San Carlos. Is this intended to be trail access? Or will it be closed to the public? Will the project be building the undercrossing? If it is not being built, for what reasons are they not conforming to the master plan?

Response H.9: As described in Chapter 2 Project Description of the Draft SEIR, the proposed project will not alter the existing trail alignment along the eastern side of the river between Woz Way and West San Carlos Street. While the trail would be available for fire truck access along the length of the project, the trail operations

would continue as they are currently providing street level access to Woz Way and West San Carlos Street. The trail currently extends from Woz Way to West San Carlos Street on both sides of the river. There is also an existing undercrossing at West San Carlos which connects to the trail on the west side of the Guadalupe River. Trail users can access the undercrossing from the east side of the river by crossing the Children's Bridge located near the northern edge of the project site.

As discussed on page 111 of Appendix A of the SEIR, the project will be required to construct or provide fair-share contribution to a new traffic signal at the Woz Way/Locust Street intersection. This improvement will increase protected crossing phases for all approaches, add curb extensions to shorten the crossing distance for Woz Way, and a new north-south crosswalk. No other improvements to the trail are required or proposed. The comment does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment H.10: 7. Valley Water land. The Assessor Parcel map suggests that this project is being built on Valley Water land, that is APN 264-28-162. Where in the narrative of the SEIR is this discussed? The project appears to straddle APN 264-28-178. This is a little confusing on the assessor map. There is a double-headed arrow from the 178 parcel to a little narrow triangular piece that goes towards parcel 22. This is Valley Water land. How has this been addressed in the SEIR? For what reason did the water district have this land? How does it affect the project? It does not appear to be addressed in the SEIR.

Response H.10: As stated in the project description of the Draft SEIR, the project site is comprised of 18 parcels (APNs 264-28-019, -022, -023, -024, -025, -028, -149, -152, -153, -160, -167, -168, -169, -172, -173, -174, -175, and -176). APNs 264-28-162 and -178 are not part of the project. This comment does not raise any issues with the adequacy of the Draft SEIR; therefore, no further response is required. The comment does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

I. Guadalupe-Coyote Resource Conservation District (September 21, 2020)

Comment I.1: The Guadalupe-Coyote Resource Conservation District (GCRCD) appreciates the opportunity to provide comments on the Draft Supplemental EIR for the Almaden Office Project. GCRCD is an independent special district of the State of California dedicated to the conservation of natural resources, and its mission is to provide education and technical assistance to constituents and watershed stakeholders to sustainably manage soil, water and wildlife with the best available science.

We are concerned that the project's footprint and design will cause unnecessary and avoidable

impacts to water quality, flood risk, wildlife habitat, and other beneficial uses of the riparian corridor. Additionally, we are concerned that climate change has not been adequately addressed, given anticipated sea level rise and its predicted impacts on flooding in the south Bay Area⁴, and the increased frequency of atmospheric-river storms as an indicator that future flood risks may be beyond what we have experienced historically⁵. However, we would like to focus our comments on the project's apparent inconsistency with the City Council's Policy 6-34, *Riparian Corridor Protection and Bird-Safe Design*.

Response I.1: As discussed on page 150 of the Downtown Strategy 2040 FEIR, past, present, and future development projects worldwide contribute to global climate change. No single project is sufficient in size to, by itself, change the global average temperature. This project completed an Air Quality and Greenhouse Gas (GHG) Emission Analysis (Appendix B of the Draft SEIR) to evaluate the project impacts on greenhouse gas emission during construction and operation, consistent with the State's 2030 GHG threshold. Section 4.8 of Appendix A of the SEIR disclosed the potential impacts of the project on GHG emission. As discussed on pages 47 and 48 of the Draft SEIR, the project would be required to implement the identified Standard Permit Conditions to avoid abandonment of raptor and other protected migratory bird nests. Additionally, the existing riparian habitat immediately adjacent to the site is of moderate quality (as opposed to high quality) and is not expected to attract a large number of birds; therefore, implementation of the project would not result in a substantial degradation to riparian bird communities. The project site is located in Flood Zone X which has no floodplain requirements. While the project site is located in the Anderson Dam and Lexington Dam failure inundation zones, detailed evacuation procedures have already been prepared for each dam (refer to the San José's Dam Failure Evacuation Plan) and the dams are routinely being monitored and inspected on an annual basis (refer to page 82 of Appendix A of the Draft SEIR).

In December 2015, the Supreme Court issued an opinion in the California Building Industry Association v. Bay Area Air Quality Management District, 62 Cal. 4th 369 (BIA v. BAAQMD) case which held that impacts of the environment on a project's future users or residents are not considered CEQA impacts. The comment does not provide new information that would change the project's impact or provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5. No further response is required.

Comment I.2: The City Council's policy calls for consideration for reduced setback only in limited circumstances. It further indicates that "applicants requesting reduction in setbacks may be required to submit a report by a qualified biologist, stream hydrologist and/or other appropriate

⁴ Statewide Flood Management Planning Program; California's Flood Future: Recommendations for Managing the State's Flood Risk (Final); November 2013, p. 3-17

⁵ Dettinger, M.D., 2011. Climate Change, Atmospheric Rivers, and Floods In California – A Multimodel Analysis of Storm Frequency and Magnitude Changes, JAWRA, Vol. 47, No. 3

qualified professional certifying the existence of some or all of the following conditions:

- a. There is no reasonable alternative for the proposed Riparian Project that avoids or reduces the encroachment into the Setback Area.
- b. The reduced setback will not significantly reduce or adversely impact the Riparian Corridor.
- c. The proposed uses are not fundamentally incompatible with riparian habitats (see Chapter 3, Section IB Incompatible Land Uses of the Policy Study).
- d. There is no evidence of stream bank erosion or previous attempts to stabilize the stream banks that could be negatively affected by the proposed development within the Setback Area.
- e. The granting of the exception will not be detrimental or injurious to adjacent and/or downstream properties.”

Although the project clearly meets the policy’s definition of “riparian project” and calls for a very significant reduction in riparian setback, the Revised Biological Resources Report filed by H.T. Harvey & Associates does not appear to meet the intent of the City Council’s policy nor does it certify the existence of any of the specific conditions set forth in the policy in order to justify the exception to the setback requirement. Furthermore, although the report identifies anticipated significant environmental and cumulative impacts from the project, it recommends the developer provide compensatory mitigation for riparian buffer encroachment rather than recommend changes to the project to address identified impacts.

Based on this information, GCRC D requests:

- the consultant for the Revised Biological Resources Report be directed to specifically address each of the five conditions set forth in the policy so the record is clear when the project is presented for approval.
- the City select an alternative project that reduces and/or redesigns the project so that a setback can be included that more closely reflects the City’s minimum setback of 100’ in order to reduce environmental impacts to the riparian corridor.

Response I.2: Refer to Master Response 1 for more information on compliance with riparian policies pursuant to CEQA analysis and findings. As discussed in H.T. Harvey’s Memorandum (Attachment C of this First Amendment) and in Master Response 1, the City Council Policy 6-34 and CEQA are two separate regulations that require separate assessments. The lead agency, City of San José, would review these separately because they are submitted and go through two separate processes. As discussed in Response H.6, the City Council Policy 6-34 that provides detailed policy recommendations on how different types of development should be designed to protect and preserve the City’s riparian corridors. If the applicant requests an exception to the setback encroachment, the City of San José will review the application and either approve or deny the request based on compliance with each of the conditions listed in the City Council Policy 6-34. The Draft SEIR and associated technical reports such as the Biological Resources Report (refer to Appendix D of the Draft SEIR) focus on impacts to ecological elements and not whether the exception will be detrimental to downstream properties (land use issues).

In accordance with CEQA Guidelines Section 15121(a), the City of San José has

prepared this SEIR to assess potential environmental impacts of the Almaden Office Project, as well as identify mitigation measures and alternatives to the proposed project that could reduce or avoid adverse environmental impacts. Applicable regulations and policies (e.g., City Council Policy 6-34) are disclosed in the SEIR and the lead agency is responsible for ensuring compliance with those regulations and policies. To qualify for the reduced setback, the applicant may illustrate the existence of some or all of the exceptions under Section A.2 of City Council Policy 6-34. Findings for City Council Policy 6-34 are made as part of the project recommendation. Refer to Master Response 1 for findings information under City Council Policy 6-34.

Furthermore, since circulation of the Draft SEIR, a revised memorandum from SCVHA pertaining to Condition 11 of the VHP Stream Setback requirements and findings were submitted (refer to Attachments D and E of this document for the April 2020 and April 2021 revised memorandums). The revised memorandum states that as the project existing pavement extends to the property line and the proposed new development would not increase impervious surface area within the required minimum 35-foot stream setback, a Stream Setback Exception Request would not be required by the VHP. The revised memorandum explains that new projects are not subject to Condition 11 of the VHP if the scope of work is occurring on existing disturbed land. The new information is also reflected in Section 5.0 Draft SEIR Text Revisions in this First Amendment. No further response is required.

J. California Native Plant Society (September 21, 2020)

Comment J.1: The California Native Plant Society, Santa Clara Valley Chapter (CNPS SCV) appreciates the opportunity to provide input on the Supplemental Environmental Impact Report (SEIR) for the Almaden Office Project. CNPS is a non-profit environmental organization, established in 1965, whose mission is to protect California's native plant heritage and preserve it for future generations through the application of science, research, education, and conservation. The CNPS Santa Clara Valley Chapter has over 1,000 members distributed throughout our chapter area, which encompasses all of Santa Clara County and southern San Mateo County.

The proposed project would take place within a developed urban area within the Downtown Strategy 2040 development zone. The project site is currently in use as a paved parking lot. The proposed project site is located adjacent to the Guadalupe River and riparian corridor zone.

Response J.1: The commenter is correct in regard to the current land use and location. This comment does not provide any specific detail, information, or data relating to the commenter's concerns; therefore, no further response can be provided.

Comment J.2: We have serious concerns about the proposed project's significant, unavoidable biological resources impacts that conflict with the Santa Clara Valley Habitat Plan (VHP). The City has requested an exception to the VHP to allow the project to have a zero-foot setback to the Guadalupe River corridor, where a 100-foot setback would be normally required by the VHP.

There is no defensible rationale for the City to request such a significant exception to the VHP,

which was approved and adopted after a long and difficult process, and which the City participated in as a Local Partner. Members of our chapter of CNPS and our partner environmental organizations also spent many hours reviewing documents and attending meetings during the long development of the VHP.

We do not support exceptions for projects where there is no appreciable public benefit to overriding significant, unavoidable impacts, and where feasible alternatives are available to reduce the impacts to less than significant. Exceptions to the VHP should be carefully considered so that the gradual erosion of the VHP, which is designed to protect biological resources, does not occur, and further cumulative impacts to our natural heritage are avoided.

Response J.2: Refer to Master Response 1 and Response H.6 for more information on the Biological Resources Report and VHP Condition 11 requirement. As discussed in Master Response 1 and Response H.6, since the circulation of the Draft SEIR, a revised memorandum from SCVHA was submitted to clarify the Condition 11 exception requirements and findings (Attachments D and E of this First Amendment for the April 2020 and the April 2021 revised memorandums). The new memorandum (Attachment E, dated April 2021) stated that in order for a project to be considered by the VHP, it must impact a land cover type. Any redevelopment project located entirely within an existing developed footprint, regardless of its distance from a stream or riparian corridor, would not be subject to the VHP. The existing project site is developed with a surface parking lot and the new development footprint would not extend beyond the existing developed area; therefore, the proposed project would not require Riparian Setback Exception request under the VHP. Additionally, the applicant has formally revised the project to further move the buildings and the parking garage back from the edge of vegetation (refer to Attachment F of this First Amendment) and the details of the setbacks to different boundaries are available in Master Response 1. Section 5.0 Draft SEIR Text Revisions in this First Amendment includes a new alternative which reflects the new plans. The comment does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment J.3: Our specific concerns are as follows:

Impact BIO-2 and Mitigation Measure Discussion

The project is in substantial conflict with the Valley Habitat Plan.

As stated in the document, the project doesn't conform with the requirements of the VHP, and conflicts with the VHP stream setback requirements by proposing a 0-foot, instead of a 100-foot setback. The SEIR admits that there are "no feasible mitigation measures available to reduce this impact except for redesign to increase the setback from the riparian corridor."

Response J.3: Refer to Master Response 1, Response H.6, Response I.2, and Response J.2.

Comment J.4: The proposed project does not follow the City of San Jose’s General Plan “Riparian Corridor Protection and Bird-Safe Design Policy 6-34.”

Although it is stated on page 52 that the project would be required to comply with this policy, the SEIR provides no evidence that this is the case, since the project is proposing a zero-foot setback.

Response J.4: Refer to Master Response 1, Response H.6, Response I.2, and Response J.2.

Comment J.5: The proposed project is in conflict with multiple policies from the Envision 2040 General Plan.

- Policy ER-2.1. Ensure new public and private development adjacent to riparian corridors...consistent with SCVHCP and SJ riparian policy.
- Policy ER-2.2. 100-foot setback standard with limited exceptions where “No significant environmental impacts would occur.”
- Policy ER-2.3. Protect riparian corridor from encroachment of lighting
- Policy MS-21.8. Avoid conflicts with tree roots.

For the policies listed above from the 2040 General Plan, how does the project comply with any of these? The project is not consistent with the VHP and San José Riparian Corridor policy, is asking for a setback exception that would cause significant unavoidable impacts, and the project would not protect the riparian corridor from lighting encroachment. In addition, the project would not avoid conflicts with tree roots (how would avoidance be possible with the garage right up against the river?)

Response J.5: Refer to Master Response 1 for more information on compliance with riparian policies pursuant to the CEQA analysis and findings. Council Policy 6-34 provides guidance consistent with the goals, policies, and actions of the City’s General Plan. As discussed in Responses G.8 and H.7, the proposed project would not result in a project-level impact since the existing riparian habitat immediately adjacent to the site is of moderate quality (as opposed to high quality) because of human-related disturbances and the existing surrounding urban development along nearby portions of the river . In addition, the project is not expected to attract a large number of birds (refer to Appendix D of the Draft SEIR). Construction and operation of the new buildings within 35 feet of the edge of the riparian corridor would result in a cumulatively considerable contribution to the Guadalupe River as a whole due to encroachment. Additionally, the project would be required to install lighting to comply with Leadership in Energy and Environmental Design (LEED) Pilot Credit 55: Bird Collision Deterrence which includes developing a lighting design strategy to effectively reduce or eliminate light trespass from exterior fixtures, either by shielding fixtures and programming them to automatically shut off from midnight until 6:00 AM or demonstrating that the project complies with the exterior lighting requirements of the latest published LEED for New Construction SS Credit, Light Pollution Reduction. The project applicant shall also develop a lighting design

strategy to effectively eliminate or reduce light trespass from the building by either requiring that all interior lighting must be turned off by night-time personnel after hours when the space is unoccupied or controlled automatic shutoffs such that all lighting shall automatically shut off after the space is unoccupied for 30 minutes (with exceptions). These measures would reduce light intrusion into the adjacent riparian corridor. Furthermore, consultation with the biologist was completed and it was confirmed that due to the conditions of the existing site, it is unlikely that tree roots of nearby vegetation along the frontage of the Guadalupe River would be encountered or affected to the degree that would result in detrimental health to the vegetation during the excavation of the project.⁶

Additional tree surveys were completed on June 30, 2021 and identified that three trees may have canopies overlapping the edge of the proposed underground garage (Attachment G). The project further revised the underground garage to be outside of the overlapped canopy areas (Attachment F). This comment does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment J.6: Impact BIO(C)-1 (Cumulative Impacts), MM BIO-C-1.1, 1.2

MM BIO(C)-1.1: A feasible 4-acre off-site riparian restoration site within the county should be identified and acquired before the City considers project approval.

It is difficult, if not impossible, to find a suitable property in the valley that is available to implement the type of restoration that is suggested. Much of the riparian areas in the county, both along the Guadalupe River and other waterways are controlled by other agencies or private property owners, and often are already designated for mitigation projects. The City has themselves admitted that mitigation sites “might not be feasible.”⁷ No alternative plan is proposed. For this reason, this mitigation measure is infeasible until property is acquired.

If the City waits until after project approval and “prior to the issuance of grading permits” to locate a mitigation site, the chance that project construction and significant unavoidable impacts will occur is nearly guaranteed, since the successful implementation of this measure is highly unlikely. The City should require that this mitigation site is secured before project approval.

Response J.6: Refer to Master Response 1 and Response H.6 for analysis background and E.5 and G.8 for mitigation measure feasibility. If the applicant chooses to restore/enhance the riparian corridor immediately adjacent to the site under the requirements of the Riparian Mitigation and Monitoring Plan, the applicant shall coordinate with the City of San José and/or Valley Water. If the project is

⁶ Carle, Robin and Rottenborn, Steve. H.T. Harvey & Associates. Personal Communication via Zoom. June 16, 2021.

⁷ SEIR, Page 58. Footnote.

approved, then the stipulations of the mitigation measure require that the restoration sites be chosen, and a plan developed prior to a City-issued Grading or Building Permit Full completion of restoration will be done prior to the issuance of Certificate of Occupancy Permit. Nevertheless, as analyzed in the SEIR, even with implementation of the identified mitigation measure, the proposed project would still result in a significant unavoidable cumulative impact. The comment does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment J.7: MM BIO(C)-1.2: The SEIR does not include a feasible riparian corridor mitigation plan for this cumulative impact for review and comment by responsible agencies or the public.

What is provided is an outline of a plan for a project with a 35-foot setback, not the 0-foot setback that is actually proposed. The project requires the applicant to provide a riparian plan yet it does not:

- Adequately describe impacts and mitigation ratios;
- Describe the location of the mitigation site and site conditions (note: no mitigation sites may be available)
- Describe the attributes of a “qualified biologist.”
- Designate or describe any outside permitting agencies for this work.

According to the SEIR, the only person or entity required to provide any feedback and approval of “The Plan” (the Mitigation Plan) is the Director of Planning, Building and Code Enforcement. This plan should be available for review and comment by applicable permitting agencies and the public *before* the project is approved.

No amount of high-quality restoration of the Guadalupe River riparian corridor next to the site will be able to mitigate the permanent encroachment and shading that this project will involve. In their Biological Report (Appendix D to the SEIR), H.T. Harvey spells out multiple biological impacts for which no viable mitigation plan is actually presented for the project they are presenting with a 0-27 foot setback.

Response J.7: The mitigation listed under Impact BIO(C)-1 is for the proposed project which includes new buildings proposed within 35 feet of the edge of the riparian corridor. This would include the project setback of zero to approximately 26 feet from the edge of riparian corridor as defined by either the edge of the riparian vegetation or top of bank, whichever is more restrictive. Since the circulation of the Draft SEIR, the applicant has revised the project setbacks (refer to Attachment F of this First Amendment) in which the proposed project (first floor building) would be set back from the top of bank by 55 feet and 35 feet, respectively. Additionally, the proposed basement would be set back from the top of bank by 19 feet. The proposed first and second floors would be set back from the riparian edge by 23 feet and up to

33 feet, respectively. The proposed basement would also be set back to be outside of the tree driplines. This setback would require an exception to City Council Policy 6-34 since the policy requires the project to be set back from edge of vegetation or top of bank, whichever is greater. Nevertheless, an exception for encroachment within 100 feet of the riparian corridor would need to be granted by the City of San José. The findings for an exception will be made in the Staff Report and in the permit findings prior to any public hearing, which can be found via links on the Planning Commission agenda on the City's website at <https://www.sanjoseca.gov/your-government/departments-offices/planning-building-code-enforcement/planning-division/commissions-and-hearings/planning-commission/agendas-minutes-2021>. Refer to Master Response 1 and Response H.6 for background information on different policies pertaining to riparian corridor effects and CEQA requirements.

Due to the cumulative impact of the project, as stated in Mitigation Measure BIO(C)-1.1, riparian habitat shall be enhanced or restored to native habitat along the immediately adjacent riparian corridor, and/or off-site on the Santa Clara Valley floor, at a minimum ratio of 2:1, on an acreage basis, for a total of 3.6 acres of enhanced or restored habitat. Exact methodology, programs, or locations for implementing Mitigation Measure BIO (C)-1.1 shall be determined prior to the applicant receiving a Grading or Building Permit (whichever occurs earliest). The commenter is correct and as disclosed in Section 3.2.2.2 of the Draft SEIR, the project would continue to have a significant unavoidable cumulative considerable impact even with implementation of the identified mitigation measures.

Section 5.0 Draft SEIR Text Revisions in this First Amendment includes a new alternative which reflects the updated plans. The comment does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment J.8: Conflict with the Downtown Strategy 2040

We note that the impact to riparian corridor resources with this proposed project is a “**New Cumulative Significant Unavoidable Impact.**” This indicates that such an impact was not anticipated in the adopted Downtown Strategy 2040, which this SEIR purportedly tiers from. Approving projects that are in such grave conflict with an approved Program EIR, the Envision 2040 General Plan, and the adopted Santa Clara Valley Habitat Plan is an inadvisable precedent for the City to embark on. The Downtown Strategy 2040 was approved after a lengthy public process, and we oppose the consideration of individual projects tiering from this document that create **new** significant unavoidable impacts.

Response J.8: The Downtown Strategy 2040 FEIR is a programmatic document, and therefore does not provide project-level CEQA clearance for individual projects. As stated on page 32 of the Downtown Strategy 2040 FEIR, the Downtown Strategy 2040 FEIR is intended to provide project-level CEQA clearance for traffic-related

impacts (i.e., VMT, traffic noise, and operational emissions of criteria pollutants) and facilitates project-level review of some impacts by including specific measures in the project. When it is not feasible to identify specific measures that would reduce impacts of future projects to a less than significant level, the Downtown Strategy 2040 FEIR provides program-level review, requiring subsequent project-level analyses and/or verification of consistency with 2040 General Plan policies and existing regulations. As previously discussed in Master Response 1 and Response H.6, a revised memorandum from SCVHA pertaining to Condition 11 of the VHP Stream Setback requirements and findings were submitted (refer to Attachments D and E of this document for the April 2020 and April 2021 revised memorandums). The revised memorandum states that as the project existing pavement extends to the property line and the proposed new development would not increase impervious surface area within the required minimum 35-foot stream setback, a Stream Setback Exception Request would not be required by the VHP. The revised memorandum explains that new projects are not subject to Condition 11 of the VHP if the scope of work is occurring on existing disturbed land. Since the proposed project would be built within the existing footprint of an existing developed surface parking lot, the project would not be subject to the Riparian Setback Exception request from SCVHA.

Consistent with the CEQA Guidelines and protocols, a draft SEIR was prepared because of new significant impacts that were not previously identified in the programmatic Downtown 2040 FEIR, including the new identified significant and unavoidable impact to riparian habitat. The identification of a new significant unavoidable impact does not preclude tiering from the Downtown Strategy 2040 FEIR consistent with CEQA Section 15152. Furthermore, this is not precedent setting as new significant impacts have been identified on past projects in the Downtown area. The comment does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment J.9: Alternatives to the Proposed Project

We urge the City to reject the approval of the project as currently proposed, as it creates new significant unavoidable impacts to sensitive biological resources, and conflicts with a number of adopted plans and policies. The City should consider approving a feasible alternative to the project. We support Alternative 1, Option 2 as our preferred alternative, which respects the 100-foot setback and the requirements of the Valley Habitat Plan, which was approved to protect biological resources.

Response J.9: The commenter supports Alternative 1, Option 2 and does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of

the Draft EIR pursuant of CEQA Guideline Section 15088.5. No further response is required.

K. Santa Clara Valley Audubon Society (September 21, 2020)

Comment K.1: The Santa Clara Valley Audubon Society (SCVAS) thanks you for the opportunity to provide comment on the Draft Supplemental Environmental Impact Report (DSEIR) for the Almaden Office Project (H19-004). SCVAS was founded in 1926, and is one of the largest National Audubon Society chapters in California. SCVAS’ mission is to promote the enjoyment, understanding, and protection of birds and other wildlife by engaging people of all ages in birding, education, and conservation. SCVAS has engaged in the protection of riparian and aquatic ecosystems in Santa Clara Valley for decades. Our members have a strong interest in projects that could impact creeks, rivers, and other biological resources.

The purpose of an Environmental Impact Report (EIR) is to inform decision makers and the general public of the environmental effects of the proposed project that an agency may implement or approve. A Supplemental Environmental Impact Report (SEIR) is prepared when it is determined by the discretionary authority that changes proposed in an approved project will require revisions to a previous EIR because of possible new impacts or an increase in severity of previously identified impacts.

Response K.1: The comment acknowledges the purpose of an EIR and does not provide new information that would change the project’s impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5. No further response is required.

Comment K.2: The Draft Supplemental Environmental Impact Report (DSEIR) for the Almaden Office Project (Project) stems from the Downtown Strategy 2040 Final Environmental Impact Report (DS2040 FEIR) (San José File Number PP15-102 State Clearinghouse Number 2003042127, <https://www.sanjoseca.gov/Home/ShowDocument?id=44054>)

The DS2040 FEIR incorporates San Jose’s Riparian Corridor and Bird-Safe Building Policy 6-34 (<https://www.sanjoseca.gov/home/showdocument?id=12815>). This policy requires a riparian setback of 100-ft. Setback is measured from the outside drip line of the Riparian Corridor vegetation or top of-bank, whichever is greater. The Policy allows exceptions (reduced setbacks) under limited circumstances, including infill, downtown development, and unusually shaped parcels. The Downtown Strategy 2040 Final Environmental Impact Report assumes compliance with this policy.

Response K.2: As stated on page 80 of the Downtown Strategy 2040 FEIR, individual development projects proposed near creeks in downtown shall be evaluated for project-level environmental impacts, to determine impacts to riparian habitat, and to identify any necessary mitigation. The comment does not provide new information that would change the project’s impact, provide new information that would require additional analysis or result in new significant impacts or mitigation

measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment K.3: I. Incompatibility of the project with the San Jose’s Riparian Corridor and Bird-Safe Building Policy 6-34

I.a. The Project does not qualify for reduced setbacks

Policy 6-34 provides that a reduced setback may be considered under limited circumstances such as:

- a. There is no reasonable alternative for the proposed Riparian Project that avoids or reduces the encroachment into the Setback Area.
 - Please note that this consideration does not require a reasonable alternative to be feasible. We maintain that reasonable alternatives of reduced setback exist and must be required in this ecologically sensitive setting.
 - Not only did the DSEIR reject two reasonable reduced development alternatives, but it never analyzed a reasonable alternative that would abide by the setback requirements of the Creek Corridor Study (50-ft, see below) and thus avoid the project’s Significant Unavoidable Impacts to the Guadalupe River and its riparian corridor and comply with the Santa Clara Valley Habitat Plan (VHP). We ask for a 50-ft setback reduced development alternative to be analyzed.

Response K.3: Refer to Master Response 1 and Response H.6 for background information on different policies pertaining to riparian corridor effects and CEQA requirements. The alternatives studied in the SEIR are summarized on pages xvi and xvii and the full analysis is provided in Section 7.0 of the Draft SEIR.

CEQA requires a reasonable range of alternatives be studied that would reduce or avoid project impacts (CEQA Guidelines Section 15126.6). The alternatives addressed in the SEIR included setbacks consistent with applicable policies and consistent with the recommendation of the biological consultant. A 50-foot reduced setback alternative would result in similar impacts to those identified under *Reduced Development Alternative 1 (Option 1) – Reduced Square Footage With 35 Foot Setback* and *Reduced Development Alternative 1 (Option 2) – Reduced Square Footage With 100 Foot Setback*. Because a 50-foot setback would not be measurably different from a 35- or 100-foot setback (from the property line), it was not included. This comment does not provide new information that would change the project’s impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment K.4: b. The reduced setback will not significantly reduce or adversely impact the Riparian Corridor.

- The Project will have a Significant Unavoidable Cumulative Impact on Biological

Resources in the Guadalupe River (DSEIR Section 6, page 83).

The project does not meet the biological goals and objectives of the VHP and would conflict with the SCVHP stream setback requirements. This is why the Santa Clara Valley Habitat Agency recommended denial of this project (see attached).

- Cumulative Biological Resources: Construction and operation of the new buildings within 35 feet of the riparian edge would result in a cumulatively significant and unavoidable impact to the Guadalupe River as a whole.

Response K.4: The commenter has correctly summarized the findings related to the setbacks and riparian corridor as presented in the Draft SEIR. Refer to Master Response 1, and H.6 and Section 5.0 of this document for a discussion of the revised findings from the SCVHA. As discussed in the Master Response and H.6, since circulation of the Draft SEIR, the SCVHA has issued a revised memorandum (refer to Attachments D and E for the April 2020 and the April 2021 revised memorandum) on the requirements of Condition 11 for previously developed properties. Per this clarification, projects that build within existing developed footprints (such as surface parking lots) are consistent with the VHP and Condition 11, even if the existing and proposed development is within 35 feet of the top of bank and edge of riparian vegetation. Since the proposed project would be built within the existing footprint of an existing developed surface parking lot, the project would not be subject to the Riparian Setback Exception request with the SCVHA. The comment does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088. No further response is required.

Comment K.5: c. The proposed uses are not fundamentally incompatible with riparian habitats (see Chapter 3, Section IB Incompatible Land Uses of the Policy Study). Section IB states, "...Incompatible land uses include, "Any subsurface disturbance, including for grading activities and underground utility lines, should be located to minimize damage to root systems of healthy riparian trees...."

- Due to the reduced setback for both above and below ground construction, the project is likely to damage the roots of riparian trees at the top of the bank and thus, is fundamentally incompatible with riparian habitats

Response K.5: Refer to Master Response 1 and Response H.6 for background information on different policies pertaining to riparian corridor effects and CEQA requirements. As disclosed in Section 3.2.2.1 of the Draft SEIR, the project would be required to comply with the City's tree replacement ratio and tree protection measures to avoid or reduce impacts to trees. As stated in Response J.5, consultation with the biologist was completed and it was confirmed that due to the conditions of the existing site, it is unlikely that tree roots of nearby vegetation along the frontage of the Guadalupe River would be encountered or affected to the degree that would

result in detrimental health to the vegetation during the excavation of the project. The project has also since been revised to reduce the underground parking footprint to be outside of the driplines. The project would be required to comply with the tree protection measures before and during construction as listed on page 84 of the Downtown Strategy 2040 FEIR and in Section 3.2.2.1 of the Draft SEIR. Refer to Master Response 1 for additional information and analysis to the City Council Policy 6-34. This comment does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment K.6: d. There is no evidence of stream bank erosion or previous attempts to stabilize the stream banks that could be negatively affected by the proposed development within the Setback Area; and

Response K.6: Refer to Master Response 1 and Response H.6 for background information on different policies pertaining to riparian corridor effects. Consistent with the Downtown Strategy 2040 FEIR, the project would be required to implement the identified erosion control measures and prepare a Storm Water Pollution Prevention Plan (SWPPP) as discussed in Sections 4.7 and 4.10 of Appendix A of the SEIR. Streambank erosion occurs when soil, rock, and vegetation are removed from the streambank. Requirements for grading, excavation, and erosion control are included in Chapter 17.04 (Building Code, Part 6 Excavation and Grading). In addition, the project would be required to comply with the Downtown Strategy 2040 FEIR measures listed on page 79 of Appendix A of the Draft SEIR. Specifically, the project applicant shall prepare a Storm Water Pollution Prevention Plan (SWPPP) prior to commencement of construction. The project's SWPPP shall include measures for soil stabilization, sediment and erosion control, non-stormwater management, and waste management to be implemented during all demolition, site excavation, grading, and construction activities. This comment does not provide any specific detail, information, or data relating to the commenter's concerns; therefore, no further response can be provided.

Comment K.7: e. The granting of the exception will not be detrimental or injurious to adjacent and/or downstream properties

- 1000-ft from the project site, the Guadalupe River required public investment to channelize and fortify creek banks in order to reduce erosion and flooding of Downtown San José. Riverine ecosystems inherently meander, removing sediment from one side of a river and depositing the sediments on the other. The Guadalupe River by the project site is incised and the banks, somewhat stabilized by riparian vegetation, show evidence of erosion. It is reasonable to assume, and supported by volumes of studies of riverine systems worldwide, that projects with less than minimum setbacks will, sooner or later, require fortification of the banks to reduce erosion and risk of flooding. Fortification will be required to protect adjacent properties as well as City properties on the other side of the river (including trails, Discovery Meadows, and the Children discovery museum)

The City of San José allows encroachment into the Riparian Setback only when a qualified biologist finds that the encroachment will not harm the waterway and its riparian setback. Clearly, the project does not qualify.

Response K.7: Refer to Master Response 1 and Response H.6 for background information on different policies pertaining to riparian corridor effects and CEQA requirements. As previously stated in those responses, the City Council Policy 6-34 provides guidance for how riparian projects should be designed to project and preserve the City’s riparian corridors. The City Council Policy 6-34 also provides a list of exceptions that could be granted for applicants requesting a reduction in riparian setbacks. If a project is to request an exception to the setback, the City of San José will review the application and either approve or deny the request based on compliance with criteria set by the Policy. As discussed in Master Response 1, the CEQA analysis, City Council Policy 6-34, and VHP are separate regulations that require separate assessments for compliance review.

Comment K.8: I.b. When a reduced setback exception is granted, a minimum setback of 50-ft is required

For actual setback and buffer dimensions Policy 6-34 refers to Chapter 3 of the San José Riparian Policy Study. For projects that are granted exception to the 100-ft setback requirement, the 1999 Policy Study provides:

Mitigations and Conditions: Projects with setbacks less than 100 feet should be conditioned to any measures necessary to ensure compliance with the purpose of these guidelines:

- Minimum reduced setbacks should be no less than 50 feet or, in urban infill areas, no less than 30 feet or no less than the average of existing setbacks on adjacent properties, whichever is greater.
- Minimum reduced setbacks for those limited redevelopment sites described under the Setback Exceptions section above should represent some significant improvement over the existing setback conditions and should never be less than 30 feet.

The Project as proposed does not provide the very minimum 50-ft setbacks that are required by Policy 6-34 and thus, by the DS2040 FEIR. The Project does not even meet the absolute 30-ft minimum that would be allowed if the project represents “some significant improvement over the existing situation”. Since the project will cause significant and unavoidable cumulative degradation to the Guadalupe River and its corridor, the project can never provide significant improvement over the existing situation and must adhere to a 50-ft setback.

- Please analyze a Reduced Development Alternative that allows 50-ft setback, as required by Policy 6-34 and the Riparian Corridor Policy Study, and recirculate the EIR to allow decision makers and the public to respond to this common-sense alternative.

Response K.8: Refer to Master Response 1 and Response H.6 for background information on different policies pertaining to riparian corridor effects and CEQA requirements. Based on the City Council Policy 6-34, riparian setback exceptions to the 100-foot setback may be considered in some instances (refer to pages 31-32 of

City Council Policy 6-34 for the list of circumstances). The City of San José prepared a Draft SEIR for the Almaden Office Project in compliance with CEQA requirements which analyzed impacts to sensitive or special-status species, effects on sensitive communities, and conflicts with the habitat plan. As analyzed in the Draft SEIR, the proposed project would not result in a project-level impact since the existing riparian habitat immediately adjacent to the site is of moderate quality (as opposed to high quality). Encroachment of new buildings within 35 feet of the riparian corridor was found to result in a cumulatively considerable contribution on the riparian corridor. Refer to Response K.3 for a discussion on alternatives and an explanation of why an alternative with a 50-foot riparian setback would not have significantly different impacts than the two riparian setback alternatives already evaluated in the SEIR. This comment does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment K.9: I.c. County-wide implications: Growth inducing impacts

The Santa Clara Valley Habitat Conservation Plan classifies the Guadalupe River as a Category 1 Stream. Developments adjacent to Category 1 streams require a 100-foot setback. In addition, the Plan provides that, regardless of project location, Stream Setback Exceptions may not reduce a Category 1 stream setback to a distance less than 35 feet for existing or previously developed sites. Thus, the DSEIR finds impacts to the Santa Clara Valley Habitat Conservation Plan are significant and unavoidable and a statement of overriding considerations will be needed.

The implications are likely to be felt throughout the service area of the Habitat Agency, including not only urban areas in San José but also Morgan Hill, Gilroy and Santa Clara County. The Final SEIR should study and mitigate growth-inducing impacts in urban areas along all rivers and tributaries within the Valley Habitat Agency boundary by setting a precedent allowing construction in the riparian corridor. The analysis should also address cumulative biological impacts of such growth for the streams, riparian corridors and watersheds of the South Bay.

Response K.9: Refer to Master Response 1, Response H.6, and the revised memorandum from the SCVHP pertaining to Condition 11 Riparian Setback Exception requirement and request. Based on the findings in the Draft SEIR (Section 3.2.2.1, checklist question f), it was determined the project would be considered a Covered Project under VHP. As the proposed project analyzed in the Draft SEIR do not meet the 35' minimum setback of the Condition 11 of the VHP, the project was deemed to have a significant unavoidable impact. However, since circulation of the Draft SEIR, a revised memorandum from SCVHA pertaining to Condition 11 of the VHP Stream Setback requirements and findings were submitted (refer to Attachments D and E of this document for the April 2020 and April 2021 revised memorandums). The revised memorandum states that as the project existing pavement extends to the property line and the proposed new development would not increase impervious surface area within the required minimum 35-foot stream setback, a Stream Setback Exception Request would not be required by the VHP. The revised memorandum

explains that new projects are not subject to Condition 11 of the VHP if the scope of work is occurring on existing disturbed land.

The City of San José has urbanized development along all waterways within the City, including the Guadalupe River. In some cases, this development is within the 100-foot setback required by the City's Riparian Corridor and Bird Safe Design Policy. The project is located Downtown, which is a highly urbanized area with many developed and constrained parcels with minimal riparian setbacks. There is no nexus between the setback exception requested for the proposed project and growth-inducing impacts along all rivers and tributaries within the VHP Permit Area, as many properties along each waterway lack existing development within the setback and future development will occur in areas planned for growth within each jurisdiction's General Plan. Each parcel along Guadalupe River and other waterways must be looked at individually by the decision makers to determine if a proposed development is appropriate based on location, parcel size and shape, quality of adjacent habitat, etc. Furthermore, the SEIR disclosed that even with implementation of the identified mitigation measures, the project would still result in a cumulative considerable impact. Pursuant to CEQA, it would be speculative to assume one project would result in growth inducing impacts to all available parcels along the corridor; therefore, the proposed project would not be responsible to mitigate for any future projects along the corridor. This comment does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment K.10: II. The Project cannot rely on the Downtown Strategy 2040 Final Environmental Impact Report “Same as Approved Project” findings

The Downtown Strategy 2040 Final Environmental Impact Report assumes compliance with the General Plan Policies for Riparian Corridors (Policies ER-2.1, ER-2.2, ER-2.3, ER-2.4 and ER-2.5) as well as Policy 6-34, which - as we have shown above - requires a minimum riparian setback of 50 feet. The Downtown Strategy 2040 Final Environmental Impact Report also assumes compliance with the VHP requirements of a riparian setback that does not encroach into the minimum riparian setback of 35 feet. The proposed Project does not comply with any of these policies and requirements.

The Downtown Strategy 2040 FEIR (p.80) states, “For specific projects adjacent to the riparian corridor, a setback will be established in accordance with the Council-adopted Santa Clara Valley Habitat Conservation Plan/Natural Community Conservation Plan (Habitat Plan) (Chapter 18.40 of Title 18 of the San José Municipal Code), the Zoning Code (Title 20 of the San José Municipal Code), the development guidelines in the San José City Council Policy 6-34 “Riparian Corridor Protection and Bird-safe Design” Policy and GP Policy ER-2.2.”

The Downtown Strategy 2040 FEIR (page 80) continues, “Setbacks protect riparian corridors by buffering the effects of adjacent activities. Incorporating other site planning measures set forth in the

‘Riparian Corridor Protection and Bird-safe Design’ Policy development guidelines will further minimize human-induced disturbances, such as lighting, noise, and use of toxic substances. At the time individual development projects proposed near creeks in Downtown are evaluated for project level environmental impacts, detailed evaluation will be required to determine impacts to riparian habitat and identify any necessary mitigation.”

Findings of Less Than Significant Impacts in the Downtown Strategy 2040 FEIR were therefore based on setbacks that comply with the 100-ft setback or at a minimum, the Habitat Plan exceptions (minimum 35-foot setback), Policy 6-34 (minimum 50-foot setback) or GP Policy ER-2.2.(100-foot setback except where no significant environmental impacts would occur).

The analysis in this DSEIR tiers from the Downtown Strategy 2040 FEIR, so the level of impact in the project specific analysis is presented as it relates to the findings of the Downtown Strategy 2040 FEIR. However, because the Project does not abide by the assumptions that underlie the findings of significance of the Downtown Strategy 2040 FEIR, the DSEIR cannot justifiably suggest that impacts of the Proposed Project are “Same Impact as Approved Project” and doing so is inappropriate and inadequate by CEQA standards.

Response K.10: As discussed in Response J.8, the Downtown Strategy 2040 FEIR provides program-level review. When it is not feasible to identify specific measures that would reduce impacts of future projects to a less than significant level, the Downtown Strategy 2040 FEIR requires subsequent analyses and/or verification of consistency with 2040 General Plan policies and existing regulations. Per the Downtown Strategy 2040 FEIR (page 80), individual development projects proposed near creeks in downtown shall be evaluated for project-level environmental impacts, to determine impacts to riparian habitat, and to identify any necessary mitigation.

Because the analysis in this SEIR tiers from the Downtown Strategy 2040 FEIR, the level of impact in the project-specific analysis is presented and disclosed as it relates to the findings of the Downtown Strategy 2040 FEIR. For example, if the conclusion is “Same Impact as Approved Project/Less Than Significant Impact” the project level impact was found to be less than significant consistent with the finding in the Downtown Strategy 2040 FEIR for that resource area. As discussed previously, the proposed project would not result in a project-level impact to the riparian habitat because existing riparian habitat immediately adjacent to the site is of moderate quality (as opposed to high quality) and is not expected to attract a large number of birds or result in a substantial degradation of riparian bird communities in the segment of the Guadalupe River adjacent to the site. Therefore, consistent with the findings of the Downtown Strategy 2040 FEIR, the conclusion would be [Same Impact as Approved Project (Less than Significant Impact)]. Since the project would result in a cumulatively considerable impact to the riparian corridor (as a whole), the conclusion would be [New Cumulative Significant Unavoidable Impact (Less Than Significant Cumulative Impact)]. This comment does not provide new information that would change the project’s impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present

new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment K.11: III. Aesthetic Resources

In our Scoping letter, we asked for the DSEIR to provide:

- Visual depictions and analyze the visual impacts of this dominant structure on park users at Discovery Meadows Park, trail users along the Guadalupe River, and users of the Children’s Discovery Museum - during the day and at night.
- Analysis of the impacts of Artificial Night Lighting and of Daytime Glare on park users at Discovery Meadows Park, trail users along the Guadalupe River, and visitors to the Children’s Discovery Museum.
- Impacts of shading on park users at Discovery Meadows Park, trail users along the Guadalupe River, and visitors to the Children’s Discovery Museum
- Impacts of reflected sunlight and glare on drivers on highways 87 and 280, and on airport traffic.
- Depictions of impacts to the San José view-shed from the Lick Observatory, and discuss the impact of any visible light on the night sky.

The DSEIR ignores our comments. Photos and descriptions of “land uses” surrounding the Project ignore the Guadalupe River, the trails, the parks and the museum. Instead, the EA/DSEIR proposes that that state law exempts it from analysis based on SB 743 and because the project is not located on a Scenic Highway. But the purpose of an EIR is to provide decision makers and the public with information about a project, and we maintain:

- The Guadalupe River and associated trails and parks are critically important scenic resources in the City of San José, appreciated by the public and equivalent in their importance to a state or county road. Indeed, the Guadalupe River Trail is a Featured National Recreation Trail, designated in 2009 (<https://www.americantrails.org/resources/san-jose-trail-network-california>). The impact of the Project on these resources cannot be ignored. Please analyze impacts to the public views from city resources such as the Guadalupe River trail, the southern part of Discovery Meadows and the Children’s Discovery Museum - will people using these facilities retain visibility of hillside areas such as the foothills of the Diablo Range and Silver Creek Hills? Will they be able to see the eastern hills at night? Please include visuals and discuss the aesthetics in the day and the night.

Response K.11: The CEQA document analyzed and disclosed information consistent with thresholds established for the CEQA checklist. As discussed on page 13 of Appendix A of the SEIR, a project’s aesthetic impacts are not considered significant impacts on the environment if:

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

The project would meet the criteria of SB 743 because 1) the project would construct an employment center project and 2) the project is located within a transit priority area. Therefore, the project would have a less than significant aesthetics impact consistent with Public Resources Code Section 21099.

Shade and shadow impacts on the Guadalupe River Park are discussed in Section 3.2.2.1 of the SEIR and Section 4.11.2 of Appendix A of the SEIR. Increased shading from the proposed project was found to be less than significant. While the project would have a less than significant aesthetic impact consistent with SB 743, all checklist questions were addressed for informational purposes in Section 4.1.2 of Appendix A of the SEIR, including increased light and glare.

There is no threshold that would require analysis of the viewshed of a dense urban environment from the surrounding hillsides. Furthermore, based on the design of the building and the City's policy requirements, light and glare from the proposed project would be mitigated the same as all new development downtown and within the City through compliance with the City's Outdoor Lighting Policy. The project will also be required to develop a lighting design strategy pursuant to Mitigation Measure MM BIO-1.1. While the building would not interfere with operation of Lick Observatory, the operation of an off-site facility is not an environmental issue within the purview of CEQA. This comment does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment K.12:

- Because of the proximity to the Guadalupe River and building within the minimum required setback of the riparian corridor, the project will certainly damage the “vista” of the creek corridor itself. Thus, the findings of “Same Impact as Approved Project (Less Than Significant Impact” cannot be made for the question “d) Would the project create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?” (see under comment II. above).
 - Lighting and glare impacts are not the same for projects outside the creek corridor setback as projects with no setback, or minimal setback. This is true for any projects, including 16-story towers as proposed for the Project. Unless modified, this project will create a new source of substantial light or glare which would adversely affect day or nighttime views in the area. This impact should be considered significant and unavoidable unless the project is modified to avoid construction within the riparian corridor setback.

Response K.12: The Downtown Strategy 2040 FEIR concluded that with implementation of existing policies, future development under the Downtown Strategy 2040 plan would not result in a substantial adverse effect on a scenic vista. Views of the hillside areas and the downtown skyline are key scenic features in the City and views of the riparian corridor are not considered scenic vistas. As discussed

on page 22 of Appendix A of the SEIR, the proposed project would implement bird-safe building design considerations to comply with LEED Pilot Credit 55: Bird Collision Deterrence. Per LEED Pilot Credit 55, the project applicant shall also develop a lighting design strategy to effectively eliminate or reduce light trespass from the building by either requiring that all interior lighting must be turned off by night-time personnel after hours when the space is unoccupied or controlled automatic shutoffs such that all lighting shall automatically shut off after the space is unoccupied for 30 minutes (with exceptions). These measures would reduce light intrusion into the adjacent riparian corridor. Nevertheless, the project would go through a design review process and would be reviewed for consistency with the Downtown Design Guidelines. Refer to Response K.11 for a discussion on light and glare. This comment does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment K.13:

- The EA interprets the criterion “Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway” incorrectly. The only requirement related to State Scenic Highways are historic buildings. Thus, the DSEIR should analyze impacts to other scenic resources, including, but not limited to trees, trails, and the Guadalupe River. This analysis is needed, and without it the finding that impacts are “Same Impact as Approved Project” cannot be made. This is important since the proximity of the development and its underground features could potentially harm the trees along the river bank and in the riparian area.

Response K.13: The commenter’s interpretation of the checklist question is incorrect. A project that may result in damage to scenic resources, including, but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway designated as an official state scenic highway would be considered to have a significant impact on scenic resources. Due to the project site’s proximity to the nearest designated state scenic highway is State Route 9 (approximately nine miles southwest), implementation of the project would not damage scenic resources within a state scenic highway. This comment does not provide new information that would change the project’s impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment K.14:

- The 2040 General Plan identifies “gateways” as freeways and rural scenic corridors where preservation and enhancement of views of the natural and man-made environment are crucial. The segment of Bird Avenue over I-280 adjacent to the Downtown area is designated as a

gateway for scenic purposes. Please provide an analysis (including depictions) of the impacts of the Project on this gateway. Include visibility of the foothills of the Diablo Range and Silver Creek Hills. Please include visuals and discuss the aesthetics in the day and the night.

- General Plan Policy CD-10.3 Requires that development visible from freeways (including highways 101, 880, 680, 280, 17, 85, 237, and 87) is designed to preserve and enhance attractive natural and man-made vistas. This Project will be visible from freeways, yet it dwarfs natural vistas. Please show how the vistas from highways 87 and 280 will be impacted.
- Please discuss compliance with the City of San José Downtown Design Standards and Guidelines.

The San José community and decision makers deserve full disclosure and clear and extensive answers to our scoping comments and the additional comments submitted above.

Response K.14: As noted above and discussed on page 13 of Appendix A of the SEIR, the project would meet the criteria of SB 743 and, pursuant to that law, would have a less than significant aesthetics impact consistent with Public Resources Code Section 21099.

As stated on page 40 of the Downtown Strategy 2040 FEIR, future mid- to high-rise buildings constructed immediately adjacent to gateways and freeways could diminish views for motorists, bicyclists, and pedestrians. The segment of Bird Avenue over I-280 is located approximately 0.5 mile west of the project site. In addition, the project area has minimal to no scenic views of the Diablo foothills to the east, Santa Cruz Mountains to the west, and Santa Teresa Hills to the south (refer to page 20 of Appendix A of the SEIR). This comment does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment K.15: IV. Flooding and Valley Water Easement

The Air Quality and Greenhouse Gas Assessment pg 40, pdf page 40 states that global climate change is currently affecting changes in weather patterns and precipitation rates, and that it will increasingly do so in the future, and states, "Potential effects of global climate change that could adversely affect human health include ... more frequent and intense natural disasters such as flooding....". Concerns for flooding are also expressed in the Biological Resources report and the Geotechnical Investigation.

Indeed, Valley Water considers, "Future projections for the Southwestern U.S. and California generally indicate increasing temperatures, increasing drying tendency, increasing storm severity, and a shift in the seasonal and annual precipitation patterns. Annual average precipitation may increase, possibly as result of increased extreme storms; however, increased drought severity is also likely" (see attached).

Scoping comments by Valley Water provide, “The project area includes a portion of land that has no Assessor Parcel Number (APN) and is located between APNs: 264-28-160, 162, 019 and 153. Please note Valley Water has a flood control easement over this entire parcel, including the portion to be developed. Development of this area appears to be in conflict with the purpose of the easement.”

The Geotechnical Investigation provides Flood Insurance Maps issued by the Federal Emergency Management Agency (FEMA) indicating that the Project site is within a flood hazard area. This area of San José has been subject to flooding in the past due to heavy rainfall. Indeed, the Project’s Geotechnical exploration states, “The river banks are subject to flooding, especially within the downtown San José area. Based on a review of the FEMA flood insurance study, the one-percent annual chance of flood elevations of the Guadalupe River between the northern and southern bounds of the site show maximum flood elevations of 92 and 94 feet (NAVD88), respectively.”

It is our belief that parcels near streams, especially when designated to provide flood control, should not allow a reduction in current or future flood control capacity. When such reduction is considered, transparency and full disclosure are needed.

- It is difficult to discern where the Valley Water easement is located. We ask that the Final SEIR include a map clearly showing the Valley Water’s easement and an analysis and explanation of how any conflict may be resolved at this time and into the future.

Response K.15: An Existing Conditions Plan has been added to the Draft SEIR (refer to Section 5.0 Draft SEIR Text Revisions in this First Amendment) to show the location of easements adjacent to the property. As discussed in Response E.1, if an encroachment permit is required by Valley Water, proper protocol will be followed. The proposed project would be required to comply with/obtain all necessary regulatory permits. This comment does not provide new information that would change the project’s impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment K.16: V. Relocation, Reconstruction or Added Storm Drains (Initial Study, Project Description, p. 10, Utility Improvements)

- Runoff from the site will drain into the Guadalupe River. The project is proposing three alternative options for relocating the existing storm drains on site, and potentially new outfalls into the river. The Initial Study states that permitting for new storm drains will be procured from “appropriate federal agencies”.
- Please provide a full description of any construction work within the river’s top-of-the-bank and the tree drip zone for each of the three options. This includes both new infrastructure and re-construction of existing infrastructure (storm drains, outfalls etc.).
- Please specify which Federal Agencies will be approached to secure permits
- Any new outfall into the Guadalupe River must be reviewed by Valley Water and permitted by the Regional Water Quality Control Board. It may also require a Streambed Alteration permit from the California Department of Fish and Wildlife. Additional permits may be

needed from NOAA Fisheries, the US Fish and Wildlife Service, and Army Corps of Engineers.

- In the final SEIR, please clarify the outfall plans, the permitting agencies and permitting process for any new or reconstructed outfall into the Guadalupe River.
- A footnote provides, “The applicant and project contractor have confirmed that all three options fit within the proposed construction schedule. Verrips, Joanne. Director – Precon & Estimating, Webcor. Personal communications. July 22, 2020.”
 - Please provide documentation, in writing, to show that all three options fit within the proposed construction schedule, in light of the required permits from Valley Water, the Regional Water Quality Control Board, the Army Corps of Engineers and the California Department of Fish and Game and any other state or federal other agencies.

Response K.16: The Draft SEIR analyzed the proposed project with storm drain relocation Option A, which is the current proposed storm drain alignment. The storm drain would be realigned to run along South Almaden Boulevard and north along the project property line which would connect to the existing outfall at the northwest corner of the site. The project would not require construction of a new outfall. The majority of construction work for implementation of the storm drain alignment would occur along South Almaden Boulevard, which is outside of the riparian top of bank area. Minimal construction work to connect the storm drain to the existing outfall would occur in the dripline for riparian trees near the northwest corner of the site. This area is currently developed with impervious surface area. The storm drain alignment would not require any stream-bed construction work and, therefore, the only permitting agency that the project is expected to consult with is Valley Water. Construction of the storm drain alignment was accounted for in the overall project description timeline and would not exceed the timeline of 51 months, as identified in the Draft SEIR. Text changes are made and disclosed in Section 5.0 of this document to clarify the utility improvement as part of this project. The personal communication can be provided upon request. Please contact the Environmental Project Manager, Kara Hawkins, at Kara.Hawkins@sanjoseca.gov.

Comment K.17: VI. Compliance with the Downtown Design Guidelines and Standards

On April 23, 2019 San José City Council approved the new San José Downtown Design Guidelines and Standards. This document was amended by the City Council on May 21, 2019 to add the Bird Safety Design Guidelines on page 49 and a few new definitions to the glossary. The Project Notice of Preparation was signed on May 24, 2019, after the adoption and amendment of the Downtown Design Guidelines and Standards.

- Please discuss compliance with the City of San José Downtown Design Standards and Guidelines in the Initial Study and analyze and mitigate deviations from the required Standards and Guidelines.
 - Please analyze compliance with the San José Downtown Design Standards and Guidelines from a regulatory point of view
 - Please address the requirements for Bird Safety.

Response K.17: As discussed on page 22 of Appendix A of the SEIR, the proposed project would be subject to a design review process (architecture and site planning). The design review process is used to evaluate projects for conformance with adopted design guidelines and other relevant policies and ordinances. Per Section 20.70.500 of the Zoning Ordinance the project is subject to design guidelines adopted by the City Council. The 2004 Downtown Design Guidelines apply to the project, because the project application was filed in August of 2018, prior to the effective date of April 23, 2019 of the current San José Downtown Design Guidelines and Standards. Separately, project impact to nearby habitat and species, including avian, were analyzed in the Draft SEIR. As stated on page 51 of the SEIR, there is potential for birds to collide with the proposed building's northern, western, and southern façades. Prior to the issuance of any building permits, the project applicant shall implement the bird-safe building design considerations at the building's north, west, and south-facing façades that encroach entirely or partially within the 100-foot riparian setback to comply with LEED Pilot Credit 55: Bird Collision Deterrence (refer to Mitigation Measures BIO-1.1 and BIO-1.2). This comment does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment K.18: VII. Biological Impacts

VII.a. Significance of Biological Impacts

The Initial Study in Section 4.4.2 (pages 27 and 28) recognizes that the Project will have a substantial adverse effect on the riparian habitat of the Guadalupe River. However, the Initial Study dismisses most of the significance thresholds for biological impacts as "Same Impact as Approved Project". Again, we insist that this finding cannot be made because the reduced minimum setbacks have not been evaluated in the Downtown Strategy 2040 Environmental Impact Report (See comment II above). The Creek adjacent to the Project, and all the wildlife that uses it or migrates along it (including fish) will suffer from the reduced buffer from the adverse environmental impacts of the Project (including Noise and Vibrations, Light, Glare and Shading, Hazards, and more). For all these environmental resources, a determination of "no significant impact" (with or without mitigation) that is based on the "Same Impact as Approved Project" should be re-evaluated to include potentially additional or more severe impacts – both local and cumulative - due to the proximity to the Guadalupe river. Specifically, we believe that both local and cumulative impacts are substantial and unmitigable, and the project will

- Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, impede the use of native wildlife nursery sites.

The Final EIR for the Downtown Strategy 2040 found that many animals in the river and the riparian corridor will sustain added shading since they are habituated to a shaded environment. However, the Final EIR for the Downtown Strategy 2040 also states, "Although riparian vegetation is generally shade tolerant as well, prolonged periods of shading can preclude some species from growing" and

“The specific shade/shadow effects of new development would generally depend on the building height, distance from the riparian edge, and orientation to the creek relative to solar position”.

Response K.18: As stated in Appendix D (Biological Report) and page 49 of the Draft SEIR, the proposed project would shade the adjacent habitat throughout all or most of the morning year-round. Shading of the habitat by the towers could potentially affect the health and growth of the plants and degrade the riparian habitat long-term. Since the existing riparian habitat immediately adjacent to the site is of moderate quality (as opposed to high quality) and is not expected to attract a large number of birds, these impacts would not affect regional populations of bird species that use the site nor would it result in a substantial degradation of riparian bird communities in the segment of the Guadalupe River adjacent to the site.

As stated on page 50 of the Draft SEIR, the existing riparian habitat immediately adjacent to the site is of moderate quality (as opposed to high quality) and compensatory mitigation shall be provided by the project applicant to offset project impacts on the ecological functions and values of the riparian corridor (refer to Mitigation Measure BIO(C)-1.1).

Comment K.19: The two 16-story towers that are proposed within less than 50-feet (City requirements) and even less than 35-feet (Habitat Agency requirements) and the project-associated increase in lighting and degradation of protective vegetative cover in the riparian corridor will increase light penetration into the creek.

Studies show that in fish, most physiological and behavioural-biology processes are governed by daily or seasonal dynamics. Artificial light blurs the boundary between day and night, and therefore interferes with the physiological functions and behaviour of fish. It is already known that artificial light affects the growth and development of fish, and can even disrupt the migration of diadromous (migratory) fish such as steelhead trout (<https://www.igb-berlin.de/en/news/disruptive-light-when-night-becomes-day-fish>, <https://esajournals.onlinelibrary.wiley.com/doi/pdf/10.1890/ES11-00241.1>)

Cumulatively, the increase in light levels in the creek has the potential to interfere with fish migration and substantially affect the persistence of Steelhead trout in the Guadalupe River. We believe that cumulative impacts to wildlife movement and migration, including to fish, are significant and unavoidable.

Response K.19: The City disagrees with the assertion that the project would result in cumulative impacts to wildlife movement and migration due to the addition of new artificial light sources. The commenter’s assertion that artificial light from the project interferes with the physiological functions and behavior of fish is not supported by any evidence.

The first link (<https://www.igb-berlin.de/en/news/disruptive-light-when-night-becomes-day-fish>) provided in the comment is a PhD thesis and based on laboratory experiments which analyzed how light pollution affect the perch (*Perca fluviatilis*) and the roach (*Rutilus rutilus*). As noted in the abstract of the second link

(<https://esajournals.onlinelibrary.wiley.com/doi/pdf/10.1890/ES11-00241.1>),

“Although terrestrial ecologists have observed that artificial light at night may disrupt migrations, feeding, and other important ecological functions, we know comparatively little about the role artificial light might play in disrupting freshwater and riparian ecosystems.” The article notes that future experiments and modeling are needed to determine the effects of artificial light on ecosystems.

As stated on page 89 of the Downtown Strategy 2040 FEIR, future development in downtown could affect the survival rates of steelhead and Chinook salmon by altering the water temperature and quality of Guadalupe River.⁸ This could occur from sediment, construction debris, chemicals, and/or other materials being discharged into the waterways. Although considered suitable habitat, the reach of Guadalupe River through downtown provides less than optimal conditions for steelhead and Chinook salmon due to water temperatures, velocity and depth of flow, sandy gravel substrate, pollution, and barriers to migration (e.g., culverts, stream crossings, gabions, and dams) as discussed on page 46 of the Draft SEIR. The project would implement the erosion control measures listed on page 49 of Appendix A of the Draft SEIR. In addition to these measures, the project would be required to prepare a SWPPP under the National Pollution Discharge Elimination System (NPDES) General Construction Permit and the City’s Municipal Code to reduce pollutants from discharging into the river. As discussed on page 22 of Appendix A of the SEIR, the proposed project would implement bird-safe building design considerations to comply with LEED Pilot Credit 55: Bird Collision Deterrence. Per LEED Pilot Credit 55, the project applicant shall also develop a lighting design strategy to effectively eliminate or reduce light trespass from the building by either requiring that all interior lighting must be turned off by night-time personnel after hours when the space is unoccupied or controlled automatic shutoffs such that all lighting shall automatically shut off after the space is unoccupied for 30 minutes (with exceptions). These measures would reduce light intrusion into the adjacent riparian corridor and would not result in significant unavoidable impacts to wildlife movement.

Comment K.20: Because wildlife is regulated by the California Department of Fish and Wildlife, and cumulative harm to the riparian function will affect birds and fish in the entire watershed, the Project must seek permits from NOAA Fisheries and from the California Department of Fish and Wildlife for potential cumulative harm to Steelhead Trout and to bird populations.

- Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?

Response K.20: As stated on pages 52-54 of the Draft SEIR, the project would be required to comply with the identified Standard Permit Conditions related to tree replacement, in-lieu mitigation, and tree protection standards. As provided in Response K.19, the project would implement the erosion control measures listed on page 49 of Appendix A of the Draft SEIR and prepare a SWPPP to reduce

⁸ City of San José. Integrated Final Environmental Impact Report Downtown Strategy 2040. December 2018.

construction-related erosion impacts. National Oceanic and Atmospheric Administration (NOAA) and California Department of Fish and Wildlife (CDFW) typically only get involved in projects where work is being performed that directly impacts riparian habitat. The project, as proposed, would not include work inside the stream bed and banks or directly within the riparian corridor. Therefore, permits from wildlife agencies would not be required for this project. .

Comment K.21: The Project conflicts with ALL creek, riparian and watershed policies and protections in the San José General Plan, Downtown Strategy 2040, and Policy 6-34 and the Riparian Corridor Policy Study.

- Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan.

Allowing development within the minimum setback required by the VHP is a clear conflict with the provisions of this plan, and a breach of trust that was established when the VHP was adopted. Furthermore, approval of this Project is likely to set a terrible precedent that will stimulate development not only in downtown San José, but in other locations in this city as well as other cities. The conflict with the provisions of an adopted Habitat Conservation Plan and Natural Community Conservation Plan is clear, which is the reason why the Habitat Agency recommended denial for this project as proposed (see attached).

Response K.21: Refer to Master Response 1 and Response H.6 for a discussion of the City of San José’s Riparian Policy, CEQA analysis, and a revised memorandum from SCVHA pertaining to Condition 11 of the VHP Stream Setback requirements (refer to Attachments D and E of this document for the April 2020 and the April 2021 revised memorandums). Since the circulation of the Draft SEIR, SCVHA submitted a revised memorandum for the Condition 11 exception request. The proposed project is located adjacent to a Category 1 stream (Guadalupe River) and would have a zero-foot setback from the edge of the riparian corridor. Based on SCVHA’s revised memorandum, in order for a project to be considered by the VHP, it must impact a land cover type. Any redevelopment project located entirely within an existing developed footprint, regardless of its distance from a stream or riparian corridor, would not be subject to the VHP. The existing project site is developed with a surface parking lot and the new development footprint would not extend beyond the existing developed area; therefore, the proposed project would not be subject to Condition 11 of the VHP. In addition, since the proposed project would not impact any land cover types (e.g., riparian, stream, or wetland land cover types) on the property, the project would not be subject to the VHP. The comment does not provide new information that would change the project’s impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5. No further response is required.

Comment K.22: VII.b. Mitigation of Significant Impacts

Appendix D: Biological Resources Report, Page 7-9 proposes that encroachment from the construction of new buildings within the 100-foot setback would represent a cumulatively considerable contribution to significant cumulative impacts on riparian communities in the Santa Clara Valley, suggesting that implementation of Mitigation Measure MM BIO(C)-1.1 would reduce the severity of this impact, “but even with this mitigation, encroachment of new buildings within 35 feet of the riparian corridor (less than the minimum setback allowed by the VHP) would result in a significant and unavoidable impact due to the contribution of such encroachment to significant cumulative impacts.”

Since riverine and riparian ecosystems are linear, cumulative impacts to a watershed can never be fully mitigated. When mitigation is proposed, such mitigation must compensate for the entire loss of beneficial uses for the stream.

The San Francisco Bay Basin Water Quality Control Plan (Basin Plan) lists the following beneficial uses for the Guadalupe River: groundwater recharge, cold freshwater habitat, fish migration, preservation of rare and endangered species, fish spawning, warm freshwater habitat, wildlife habitat, water contact recreation, and noncontact water recreation.

As we argued above, the beneficial uses of cold freshwater habitat including fish migration, preservation of rare and endangered species, fish spawning, and wildlife habitat are all enhanced by the presence of a vegetated riparian ecosystem, without degradation. But the project’s overriding of the City of San Jose’s Riparian Policies and the Santa Clara Valley Habitat Conservation Plan’s guidance for stream and riparian setbacks will harm the riparian corridor and the beneficial uses of the river.

Mitigation Measure MM BIO(C)-1.1 proposes to purchase mitigation for building of 1.8 acres of the riparian setback, “MM BIO(C)-1.1: Compensation. Prior to the issuance of any grading or building permits, the project applicant shall provide compensatory mitigation to offset project impacts on the ecological functions and values of the riparian corridor. Such compensatory mitigation shall be provided as follows: Riparian habitat shall be enhanced or restored to native habitat along the immediately adjacent riparian corridor, and/or off-site on the Santa Clara Valley floor and within the City of San José , at a minimum ratio of 2:1 (compensation:impact), on an acreage basis, for a total of 3.6 acres of enhanced or restored habitat to compensate for 1.8 acres of project encroachment within the 100-foot setback.”

- This mitigation measure should specify that mitigation in an off-site riparian corridor can only occur where all the beneficial uses of the Guadalupe River occur (especially fish, including a viable steelhead trout population), and that the mitigation site can be protected from influence of adjacent future development.

Response K.22: As discussed in Master Response 1, C.3, E.5, E.7, G.8, and J.8, for discussion on feasibility and locations for implementing of Mitigation Measure BIO(C)-1.1. If the applicant chooses to restore/enhance the riparian corridor immediately adjacent to the site, the applicant shall coordinate with the City of San José and/or Valley Water. Additionally, the 3.6 acres of enhanced or restored habitat may be divided among several locations on the Santa Clara Valley floor as was

recommended by a qualified biologist. It is not limited to one area. This comment does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment K.23: VIII. Health impacts of outdoor lighting

Many of the City's policies and directives for lighting are outdated, and fail to consider new scientific studies and lighting innovations that would reduce light pollution and the impacts of Artificial Light At Night (ALAN) on neuro-sensitive people, and reduce the risk of cancer and other health risks. The SEIR should provide mitigation for these impacts, even if the City does not require it. Please see attached reference lists of ALAN research studies compiled by Soft Light. Please mitigate impacts of outdoor light pollution.

In our scoping letter, we offered mitigation for use of outdoor LED lighting by using fixtures that produce Correlated Color Temperature (CCT) of no more than 3000 K (although we have learned that 2700 K is a more appropriate upper limit to protect human health and especially neuro-sensitive people from impacts of excessive lighting).

Response K.23: The proposed project would be required to comply with City Council Policy 4-2 which requires dimmable, programmable lighting for new streetlights, which would control the amount and color of light shining on streets and sidewalks. As stated on page 14 of Appendix A of the SEIR, the downtown area is exempt from City Council Policy 4-3. Based on the plan set provided by the applicant, all outdoor lighting would be fully shielded, and all lighting would be LED. All outdoor lighting would be used to illuminate walkways and turned down or off after normal business hours. Additionally, the proposed project would implement bird-safe building design considerations to comply with LEED Pilot Credit 55: Bird Collision Deterrence (refer to Section 3.2 Biological Resources of the Draft SEIR). This comment does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment K.24: X. Alternatives

Under CEQA, a lead agency may not approve a project if there are feasible alternatives that would avoid or lessen its significant environmental effects (Public Resources Code §§ 21002, 21002.1(b).) To this end, an EIR is required to consider a range of potentially feasible alternatives to a project, or to the location of a project, that would feasibly attain most of the project's basic objectives while avoiding or substantially lessening any of the project's significant environmental impacts.

The DSEIR evaluates several alternatives, and proposes that:

- Reduced Development Alternative 1 (Option 1) – Reduced Square Footage with 35 Foot setback. The DSEIR suggests that this alternative would be consistent with project objectives 1, 2, 3, 4, 5, 7, 8, 9, and 10.

- Reduced Development Alternative 1 (Option 2) – Reduced Square Footage with 100 foot setback. The DSEIR suggests that this alternative would be consistent with project objectives 3, 4, 5, 7, 8, 9, and 10.
- Reduced Development Alternative 2 – Square Footage Reduction and Increase in Height. The DSEIR suggests that this alternative would be consistent with project objectives 1, 2, 3, 4, 5, 7, 8, 9, and 10.

We maintain that each of these three alternatives meet all 10 project objectives.

- Reduced Development Alternative 1 (option 1 and 2) is consistent with project objective 6 (“Maximize use of an underutilized infill site), because the Downtown Strategy 2040 assumes compliance with the City’s General Plan 100-ft setback, the City’s required 50- foot setback and the VHP 35-foot setback. “Maximization” should occur within the City’s policies and multi-agency commitments, so that maximization of underutilized infill sites should occur while maintaining the integrity of the riparian corridor and the Guadalupe River Watershed.
- Reduced Development Alternative 1 (Option 2) also meets project objectives 1 and 2, as it would meet the strategies and goals of the Envision San José 2040 General Plan and Downtown Strategy 2040 of locating usable high density development on infill sites along transit corridors and advance the principal of “Smart Growth” by replacing a surface parking lot with a new high density office campus with amenity/retail, public space and associated parking. It also allows for a riparian setback that promotes the City’s environmental policies for recreation and protection of natural resources.

Thus, Reduced Development Alternative 1 (Option 2) meets all the project objectives, is least impactful to the riparian corridor and other environmental resources, and will reduce many other significant levels to a less-than-significant with mitigation. Thus, Reduced Development Alternative 1 (Option 2) should be advanced as the Environmentally Superior Alternative.

The EIR does not explain why feasible Reduced Development Alternatives have been rejected. The Project, as proposed, cannot be approved since there are feasible alternatives that would avoid or lessen its significant environmental effects.

Response K.24: Under the *Reduced Development Alternative 1 (Option 1)* and *Reduced Development Alternative 1 (Option 2)*, the two towers would be reduced by approximately 477,972 square feet and 1,309,697 square feet, respectively, when compared to the proposed project⁹. Use of the site would not be maximized under any of these alternatives and, as a result, the proposed project under these two alternatives would not be consistent with project objective 6 which is to maximize an underutilized infill site to reduce vehicle miles traveled.

Under the *Reduced Development Alternative 1 (Option 2)*, the square footage would be substantially reduced to 828,070¹⁰ and would not provide high-density development compared to the other alternatives and proposed project.

⁹ The total square footage of the project with the basement square footage would be 2,137,767 square feet.

¹⁰ Includes basement square footage.

The *Reduced Development Alternative 1 (Option 1)* would meet most project objectives while providing high-density development and reducing the project's cumulatively considerable contribution impact to the Guadalupe River riparian corridor. Refer to Section 7.4.2 of the Draft SEIR for the environmentally superior alternative discussion.

The Reduced Development alternatives outlined in the SEIR have not been rejected for the purposes of CEQA. Alternatives were analyzed in the SEIR consistent with CEQA Guidelines Section 15126.6. Six alternatives were explored, including a Location Alternative and Modified Construction Schedule that was determined to be infeasible and considered rejected (refer to page 87 of the Draft SEIR) due to availability of sites or consistency with existing code and policies. Sections 7.4.1.2 – 7.4.1.5 discuss the alternatives to the proposed project, including the reduced development alternatives. This comment does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment K.25: IX. Geotechnical exploration

The Geotechnical Exploration did not include excavation sloping or shoring, soil volume change factors, flood potential, or a geohazard exploration, or work to determine the existence of possible hazardous materials. The Geotechnical Exploration does not provide evaluation of the impacts of the project on the stability of the creek banks, and potential need for predictable structural reinforcements of the creek banks due to the proximity of the Project to the creek.

The evaluation criteria of the Initial Study do not ask the question of whether stabilization the creek banks will be needed to protect this development into its functional life-span. It is reasonable to expect that riverine function (creating meanders by cutting and deposition of material along the River Banks) will erode the banks due to natural stormwater flows in the Guadalupe River.

History shows that when buildings do not abide by minimum riparian setbacks, sooner or later, reinforcement and bank stabilization is needed to mitigate erosion, and concrete and riprap line the riverbanks. Such stabilization is harmful to the river's natural ecosystems and species. It is also very costly.

The question must be asked, and answered: Over the life-time of the project, is it likely to require protection from natural erosion processes that would require the reinforcement of the creek bank? We believe the answer will be yes, and that because of the proximity to the creek - this will be a predictable, significant and unavoidable consequence of the intrusion into the protective creek setbacks. The EIR must answer this question. It should be recirculated to provide studies, evaluations, findings and mitigation measures included in a new draft.

Response K.25: The purpose of a geotechnical report is to analyze soil and geologic conditions of a site and to provide design and construction recommendations. The Phase I Environmental Site Assessment (Appendix G of the

Draft SEIR) provides information of potential hazardous materials on-site and in the vicinity of the site.

The project would be required to comply with the Downtown Strategy 2040 FEIR measures listed on page 79 of Appendix A of the SEIR. Specifically, the project applicant shall prepare a Storm Water Pollution Prevention Plan (SWPPP) prior to commencement of construction. The project's SWPPP shall include measures for soil stabilization, sediment and erosion control, non-stormwater management, and waste management to be implemented during all demolition, site excavation, grading, and construction activities. The SWPPP shall also include a Post-Construction Stormwater Management Plan that includes site design, source control, and treatment measures to be incorporated into the project and implemented following construction.

The project would be required to obtain a grading permit prior to any excavation. The site is not within the City of San José Geologic Hazard Zone or State of California Seismic Hazard Zone of Required Investigation for Landslides and, therefore, does not require a Certificate of Geologic Hazard Clearance prior to environmental clearance. The site is located within the State of California Seismic Hazard Zone of Required Investigation for Liquefaction; therefore, a geotechnical investigation report must be prepared to address the potential hazard of liquefaction and must be approved by the City Geologist prior to issuance of a grading permit. Foundation, earthwork and drainage recommendations must be included in the report. The investigation must be consistent with State of California guidelines for the preparation of seismic hazard evaluation reports (CGS Special Publication 117A, 2008, and the Southern California Earthquake Center report, SCEC, 1999). A recommended minimum depth of 50 feet would be explored and evaluated in the investigation and a design-level geotechnical corrective plan must be included in the rough grading plan set to be approved for a grading permit if ground improvements to mitigate settlement, liquefaction, landslides, or other geologic hazards are recommended in the report. An erosion control plan would also be required as part of the grading permit for all private development projects adjacent to a creek/river and would be reviewed for conformance to the Guidelines and Standards for Land Use Near Streams as adopted by Council Resolution 73644. A structural engineering review of shoring plans for the construction of the below-grade parking levels would also be required as part of the grading permit. This comment does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

L. Sierra Club Loma Prieta (September 21, 2020)

Comment L.1: Thank you very much for allowing the Sierra Club additional time to review the Draft Supplemental EIR for the Almaden Office Project (H19-004 and SP20-005). Please find attached our comments relating to specific aspects of this EIR and associated Initial Study.

The EIR should be updated to provide adequate information, to sufficiently analyze impacts, and to include important mitigations that reduce impacts. However, more importantly, we strongly request that the Supplemental EIR be updated to describe the most environmentally preferable and feasible alternative project, Reduced Development Alternative 1 (Option 2). This alternative achieves the project objective to “maximize use of an underutilized infill site,” assuming compliance with the City’s General Plan 100-foot setback, the City’s required 50-foot setback analyzed in the Downtown Strategy 2040 EIR, and the Santa Clara Valley Habitat Plan 35-foot setback.

By going forward with this reduced development alternative, many analyses, mitigations, and permitting requirements will be lessened. This will also reduce the risk of legal and permitting issues that might make the project infeasible.

Response L.1: As stated on page 91 of the Draft EIR, the *Reduced Development Alternative 1 (Option 1)* would be the most environmentally superior alternative. The *Reduced Development Alternative 1 (Option 1)* would meet nine of the project objectives while the *Reduced Development Alternative 1 (Option 2)* would meet only seven of the project alternatives. When compared to the *Reduced Development Alternative 1 (Option 2)*, the *Reduced Development Alternative 1 (Option 1)* would reduce the project’s cumulatively considerable contribution impact to the Guadalupe River riparian corridor while allowing for more office space. Refer to Response K.24 which discussed how the alternatives were analyzed in the Draft SEIR, consistent with CEQA Guidelines Section 15126.6. This comment does not provide new information that would change the project’s impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment L.2: We would also like to express our considerable concern that the permit required for this project has changed from a Site Development Permit to a Special Use Permit. According to City handouts, a Site Development Permit is “required to construct, enlarge, or install a building or structure” while a Special Use Permit is required for:

- Demolition of buildings without a replacement building
- Late-night (past midnight) operations in the Downtown area
- Nonresidential condominiums
- Outdoor special events on private property
- Parking that is off-site or alternating arrangements
- Residential accessory structures larger than 650 sq. ft.
- Slimline monopoles

Based on these clear instructions published by the City of San José, we expect the Almaden Office Project to obtain a Site Development Permit. Please update the Final EIR to reflect the correct permit requirements.

Response L.2: Per Zoning Code Section 20.90.200.A.3, a Special Use Permit (SUP) is required because the project proposes alternative parking arrangements. A Site

Development Permit (SDP) is still required for the new development proposal. Zoning Code Section 20.100.140.B stipulates that the unified process shall use the public hearing procedures required for the highest level of permit approval. As the required SUP is a higher permit level than the SDP, the project file, associated hearing requirements, and Site Development Permit findings are included in the SUP (SP20-005). This comment does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment L.3: General

1. Please publish the Mitigation and Monitoring Plan along with the Final Supplemental Environmental Impact Report (SEIR) to allow for proper evaluation of the impacts and mitigated impacts resulting from the project.

Response L.3: Refer to <https://www.sanjoseca.gov/your-government/department-directory/planning-building-code-enforcement/planning-division/environmental-planning/environmental-review/active-eirs/almaden-office-project> for the First Amendment. The draft Mitigation Monitoring and Reporting Plan (MMRP) will be published online with the First Amendment at least ten days prior to the first hearing. The impacts and mitigations are also listed on pages iii-xvi of the Draft SEIR. This comment does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment L.4: Project Description

1. Please include a higher resolution a site plan that can be discerned by the public on a small personal screen and make sure the plan shows the extent of below ground construction as well as ground level construction and includes a legend so that symbols on the plan can be understood. This is important since there is no public access to view plans in the Planning Office at this time.
2. Please include information about soil removal, where it will be stored and how it will be disposed of and analyze the impacts of this activity.
3. Please provide information on where staging will be located and machinery stored and analyze the impacts of this activity.

Response L.4: Refer to Appendix B of this First Amendment for the full plan set or contact the Environmental Project Manager. As stated on page 79 of Appendix A of the SEIR, the project applicant shall file a Notice of Termination (NOT) with the RWQCB and the DTSC after construction is complete. The NOT shall document that all elements of the SWPPP have been executed, construction materials and waste have been properly disposed of, and a Post-Construction Stormwater Management Plan is in place, as described in the SWPPP for the site.

Staging area for daytime construction activities are unknown at this stage of the planning process as has been the case with previous downtown projects. If the project is approved, the logistics of construction including staging, worker parking, temporary road closures, truck routes, etc. will be reviewed and approved with the issuance of the Public Work's encroachment permit for the public street improvements required by the project. The Public Work's encroachment permit must be obtained by the project prior to issuance of the Building Permit. This is the typical approval process with all construction projects, both inside and outside of downtown. For nighttime construction, refer to Figure 6 of Appendix E or Figure 3.3-2 of the Draft SEIR for the location of concrete trucks and pumps. This comment does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment L.5: Cumulative Impacts

1. Analysis of cumulative impacts should include additional projects to those listed in Table 3.0-1: Summary Project List Within Half-Mile Radius. We request that the following projects be included since they are reasonably foreseeable future projects or are under construction, and they are within ½ mile or very close to ½ mile of the Almaden Office Project.

- Downtown West (PDC19-039, PD19-029, GP19-009)
- 27 West (SP18-016)
- Fountain Alley (H19-041 & T19-035)
- Carlisle (H18-025)
- Post and San Pedro Tower (H14-023)
- Almaden Corner Hotel (H18-038)
- Almaden Blvd Tower (H20-021)
- 4th Street Metro Station (H17-004)
- Invicta Towers (CP18-038)
- Garden Gate (SP18-001)
- Greyhound Residential Project (SP16-021 & T16-017)
- Woz Way Project (GP19-008 & H20-004)

Response L.5: The following projects: Downtown West, Fountain Alley, Almaden Boulevard Tower, and Woz Way were not on file prior to the release of the Notice of Preparation (NOP) in May 2019; therefore, they were not included in the proposed text amendments (refer to Section 5.0 Draft SEIR Text Revisions in this First Amendment). Furthermore, the application for Invicta Towers was withdrawn and so was also not included in the proposed text amendment. These text amendments do not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of

the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment L.6: Air Quality

1. The section on Community Risk Impacts from Project Operation – Traffic and Generators must include Balbach Street between Almaden Blvd and Market Street in the emissions analysis. Balbach will be used to access Market and the onramp to Highway 280 south and is already bumper to bumper during the evening commute. This will increase dramatically with three large new projects (traffic generators) at the intersection of Balbach and Almaden currently in the development process (Almaden Office Project, Woz Way Project, and Balbach Affordable Housing Project).

Response L.6: The analysis under *Project Traffic on Highways and Local Roadways* was based on the driveway access points and the number of project trips provided by Hexagon Transportation Consultants, Inc. The community risk analysis is impacts resulting from the project; it is not a cumulative discussion. Therefore, traffic on Balbach Street or traffic related to other pending developments in the area are not relevant. The cumulative assessment for toxic air contaminants (TACs) is provided on page 35 of the SEIR. This comment does not provide new information that would change the project’s impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment L.7: Biological Resources

1. We strongly believe that a 100-ft setback recommended by 2016 San José Riparian Corridor Policy should be maintained. Please analyze the significance of non-compliance with the City and Habitat Agency minimum riparian corridor policies and consider the precedent this sets to develop in the riparian corridors elsewhere in San José. Please refer to the detailed comments made by Santa Clara Valley Audubon Society and the Guadalupe Coyote Resource Conservation District regarding the regulatory issues created by these reduced setbacks.

Response L.7: Refer to the Draft SEIR for an analysis of project impacts to the riparian corridor and Master Response 1 and Response H.6 for a discussion of the City of San José’s Riparian Corridor Policy, VHP, and CEQA analysis. As discussed in Response K.9, the proposed project would not set a precedent by allowing future development to be developed along the riparian corridor. Each development site is unique and is analyzed on a project-by-project basis. The project would be required to comply with San José’s Riparian Corridor Policy. An exception to the City’s Riparian Corridor Policy could be granted if all of the required criteria are satisfied. This comment does not provide new information that would change the project’s impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment L.8:

2. The south central California coast steelhead is an Endangered Species Act listed species for the Guadalupe River and is not covered by the Habitat Plan. Therefore, the impacts of the project on the steelhead must be analyzed. The Downtown Strategy 2040 Final EIR states that, due to the sensitivity of riparian habitat, future projects could result in a substantial adverse effect on special status fish species by generating pollution, altering flow conditions, and increasing water temperatures in the Guadalupe River.
3. The Downtown Strategy 2000 EIR determined that development in Downtown could result in a significant impact to steelhead and Chinook salmon due to possible increases in water temperatures. The Downtown Strategy 2040 only mentions construction of mid-rise buildings adjacent to Los Gatos Creek, which could increase shading in a manner that impairs growth of shaded riverine aquatic habitat. Construction of high-rise buildings adjacent to the Guadalupe River and reduced setbacks less than 35 feet are not discussed.
4. Reduced shaded riverine aquatic habitat, increased thermal radiation, or the discharge of water from construction could cause stream temperatures to rise for prolonged periods, resulting in increased fish mortality. Therefore, please assess the effects of the proposed structures (shading and thermal radiation) on riparian vegetation and creek temperatures. If the project will result in a 20 percent or more increase in shade or any increase in average daily temperature within the river corridor, alter the design to reducing shading, or implement other measures to reduce instream water temperatures. Depending on the assessment, increase the setback or include a mitigation measure to require planting of additional shaded riverine aquatic habitat to protect the stream and the fish.
5. Since the project as proposed has high potential to increase impacts on anadromous fish in the Guadalupe River, please include mitigation measures to improve the less than optimal conditions for these fish such as installation of sandy gravel substrate or removal of barriers to fish migration.
6. Include a mitigation measure stipulating that, between March 1 and October 31, the discharge of water from the construction site into the Guadalupe River shall be prohibited if the temperature of the water exceeds 72° F unless modeling studies and monitoring demonstrates that the volume of the discharge will not increase the maximum daily stream temperatures above 75.2° F. Prohibit discharges until the discharged water is cooled below the average daily stream temperature at the discharge point or maximum daily stream temperatures drop below 75° F.

Response L.8: While the Central California Coast steelhead (federally threatened) and Central Valley Fall-run Chinook salmon (a California species of special concern) are known to spawn in Guadalupe River and Los Gatos Creek, the reach of Guadalupe River through downtown provides less than optimal conditions for steelhead and Chinook salmon due to water temperatures, velocity and depth of flow, sandy gravel substrate, pollution, and barriers to migration (refer to page 73 of the Downtown Strategy 2040 FEIR). Per the Downtown Strategy 2040 FEIR, potential impacts to water quality resulting from construction activities will be avoided through use of Best Management Practices (BMPs) for erosion control. As discussed in Response K.19, the project would implement the erosion control measures listed on page 49 of Appendix A of the Draft SEIR. In addition to the measures, the project would be required to prepare a SWPPP under the National Pollution Discharge Elimination System (NPDES) General Construction Permit and the City's Municipal

Code to reduce pollutants from discharging into the river. This comment does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment L.9: Geology

1. The project site is located in a seismically active site along a river and thus it may be susceptible to liquefaction or uncertain seismic action. Please analyze and discuss possible impacts. Ideally, conduct geomorphic modeling to determine the near bank shear stress values, and to determine the potential of the Project (especially underground elements) to contribute to greater erosion along the Guadalupe River and evaluate the need for bank stabilization treatments of the Guadalupe River channel in this reach to avoid bank collapse. Otherwise, include a mitigation measure to require these actions.

Response L.9: The project site is located within a liquefaction hazard zone. As analyzed on pages 49-50 of Appendix A of the SEIR, the project would be constructed in accordance with the site-specific geotechnical investigation (refer to Appendix F of the Draft SEIR). In addition, requirements for grading, excavation, and erosion control are included in Chapter 17.04 (Building Code, Part 6 Excavation and Grading) of the City's Municipal Code. For any project located within a City Geologic Hazard Zone or within the State of California Seismic Hazard Zone of Required Investigation for Earthquake Induced Landslides, a Certificate of Geologic Hazard Clearance shall be obtained from the Director of Public Works prior to any discretionary approval for development, including site development, special use, lot line adjustment, zoning approval, grading or building permits.¹¹ For any project located within a State of California Seismic Hazard Zone of Required Investigation for Liquefaction, a Geologic Clearance approval shall be obtained from the City of Geologist prior issuance of a grading or building permit. This comment does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment L.10: Hazards and Hazardous Materials

1. Please add more discussion in this section of the SEIR about the potential for contaminated groundwater and related water quality impacts due to dewatering.
2. 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?
3. Due to the potential hazardous soils on the site and potential impacts to the Guadalupe River during construction dewatering, release of toxic groundwater to the river is a reasonably

¹¹ City of San José. "Geological Hazard Review." Accessed October 15, 2020. <https://www.sanjoseca.gov/your-government/departments/public-works/development-services/geological-hazard-review>.

foreseeable upset that may release hazardous materials into the environment. Please include a mitigation measure requiring approval of a soil management plan and groundwater management strategy for dewatering prior to construction, as discussed in the Initial Study.

4. As required by the Downtown Strategy 2040 EIR, include a mitigation measure to require a site-specific Health and Safety Plan prepared by an environmental professional that includes provisions for the on-site management and/or treatment of contaminated groundwater during extraction or dewatering activities. Please also show a proposed location for this treatment facility on the site plan provided with the SEIR.

Response L.10: Construction of the project has the potential to create a significant hazard to the public through release of hazardous materials in the environment. As stated on page 66 of Appendix A of the SEIR, contaminants were detected above soil and groundwater Tier 1 Environmental Screening Levels (ESLs). As a result, the project would be required to comply with Mitigation Measure HAZ-1.1 to reduce potential hazardous materials impacts to construction workers, adjacent uses, and the environment (refer to page 69 of Appendix A of the SEIR). The Santa Clara County Department of Environmental Health (SCCDEH) shall review the Phase I Environmental Site Assessment and may require a Phase II Environmental Site Assessment, a Soil and Groundwater Management Plan, and/or other studies to ensure the proposed development is safe for construction workers and future site occupants. As for dewatering, the project applicant would be required to comply with the Standard Permit Conditions for dewatering as discussed in Section 4.10 Hydrology and Water Quality of Appendix A of the SEIR. This comment does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment L.11: Hydrology and Water Quality

1. The Initial Study states “[t]he Downtown Strategy 2040 FEIR concluded that with the regulatory programs currently in place, stormwater runoff from new development would have a less than significant impact on stormwater quality.” However, the Almaden Office Project doesn't comply with the regulatory programs used as a basis for the Downtown Strategy EIR because it doesn't comply with the City of San José or Habitat Plan required minimum setbacks from the riparian corridor. Please include a complete analysis of stormwater, hydrology and water quality impacts and don't rely on the Downtown Strategy EIR in this section.

Response L.11: Refer to Response B.4. The proposed project would comply with the City of San José's Post-Construction Urban Runoff Policy 6-29 and the MRP to reduce stormwater runoff from the proposed project. The project proposes media filters and flow-through planters to treat stormwater runoff. The project would be required to comply with the City of San José Riparian Corridor Policy 6-34. An exception to this policy would be granted if the project meets all of the required criteria pursuant to the policy. Furthermore, and as discussed in Master Response 1, the Project is consistent with the objectives of the Santa Clara Valley Habitat Plan

and Condition 11 in that it would not develop on any previously undisturbed land (Attachment D and E of this First Amendment). Therefore, the project would apply with all applicable regulatory programs used as the basis for the Downtown Strategy 2040 EIR. Refer to Master Response 1 for Policy 6-34 findings. This comment does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment L.12:

2. Under Regulatory Setting, please include a discussion of the City of San José Green Stormwater Infrastructure Plan.
3. New or replaced outfalls to the Guadalupe River will require permits from the Army Corps of Engineers (Clean Water Act Section 404 Permit), the California Regional Water Quality Control Board (NPDES Stormwater Permit and Clean Water Act Section 401 Water Quality Certification), the California Department of Fish and Wildlife (Lake and Streambed Alteration Agreement) and other public agencies. Please discuss these permit requirements under Regulatory Setting.
4. Since a new outfall will be installed to drain the site, please estimate the outfall volume under different circumstances and analyze the potential for substantial erosion.
5. Please analyze potential impacts from belowground structures on the water table in the surrounding area. Once the belowground structure is constructed, could pressure from groundwater displacement result in surface flooding on nearby streets or properties?

Response L.12: This project has been reviewed for compliance with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of Best Management Practices including site design measures, source controls and numerically-sized Low Impact Development stormwater treatment measures to minimize stormwater pollutant discharges. The project currently proposes the storm drain alignment Option A as addressed in the Draft SEIR (refer to Appendix A of the Draft SEIR, pages 10-11). Under Option A, the current option, a storm drain main head and a sanitary sewer main head are proposed along South Almaden Boulevard. The project would remove the existing 30-inch storm drain that bisects the northern portion of the site and construct a storm drain realignment along the northern and western portion of the site which would connect to the existing outfall. This would be the final alignment and would not require the relocation or replacement of the existing outfall. The project site is not within a designated Federal Emergency Management Agency (FEMA) 100-year floodplain. The project site is completely within Flood Zone X which is an area of moderate or minimal flood hazard. Zone X is used on new and revised maps in place of Zones B and C. There are no City floodplain requirements for Zone X. Possible flooding impacts due to excavation would be fully mitigatable through a construction site dewatering plan that must be submitted to and accepted by the City's Environmental Services Department.

Additionally, prior to excavation, the project would be required to obtain a grading permit. As part of the grading permit, a soils investigation report must be submitted to and accepted by the Public Works Project Engineer. Also, the site is within the State of California Seismic Hazard Zone of Required Investigation for Liquefaction. As such, a geotechnical investigation report must be prepared to address the potential hazard of liquefaction and must be approved by the City Geologist prior to issuance of a grading permit. Foundation, earthwork and drainage recommendations must be included in the report. The investigation must be consistent with State of California guidelines for the preparation of seismic hazard evaluation reports (CGS Special Publication 117A, 2008, and the Southern California Earthquake Center report, SCEC, 1999). A recommended minimum depth of 50 feet would be explored and evaluated in the investigation and a design level geotechnical corrective plan must be included in the rough grading plan set to be approved for a grading permit if ground improvements to mitigate settlement, liquefaction, landslides, or other geologic hazards are recommended in the report. The corrective plan may also include measures to mitigate hydrostatic pressure and the rise of groundwater levels adjacent to the structure. A typical measure may be the installation of a subdrain along the basement retaining structure that would redirect rising groundwater to the municipal storm drain system. This comment does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment L.13:

6. Since significant dewatering will take place during construction, under “Required Downtown Strategy 2040 FEIR Measures” in the Initial Study please explicitly include dewatering in addition to the more general term “non-stormwater management.” The dewatering mitigations described in this section also need to be included in the Mitigation Monitoring Plan published with the Final EIR, not just in the Stormwater Pollution Prevention Plan.

Response L.13: All required information regarding project mitigation is provided in the MMRP prepared for this project, consistent with CEQA requirements. In addition to the SWPPP, the project would be required to comply with a geotechnical exploration consistent with the Downtown Strategy 2040 FEIR. As discussed on page 139 of the Downtown Strategy 2040 FEIR, if dewatering is needed, the design-level geotechnical investigations to be prepared for individual future development projects shall evaluate the underlying sediments and determine the potential for settlements to occur. If it is determined that unacceptable settlements may occur, then alternative groundwater control systems shall be required. The Downtown Strategy 2040 FEIR concluded that with implementation of this measure, future projects that include dewatering would reduce and avoid impacts related to ground settlement. This comment does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new

information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment L.14:

7. In order to evaluate the impacts of dewatering, please document in the SEIR or Initial Study the estimated amount of dewatering to be required for the project including the days and hours dewatering will take place, the number of months this will take place, the volume of water to be produced (discharge per minute) during dewatering, and total groundwater pumping in acre feet. Please include both groundwater dewatering and dewatering of rainwater accumulated at the bottom of the excavation site.
8. In order for impacts to be understood, please also describe in more detail where and how dewatering effluent will be contained prior to discharge, and where it will be discharged into the storm or sanitary sewer system if pollutant levels are acceptable.
9. The Downtown Strategy 2040 EIR discusses dewatering and the potential that “Dewatering activities that lower the groundwater level would increase the effective stress on the underlying sediments, potentially resulting in ground settlements and damage to structures, roadways, and/or utilities.” Please discuss the results of the geotechnical investigation with regard to groundwater level, stress on sediments, and potential for ground settlements in the SEIR or Initial Study. This discussion should also consider possible cumulative impacts considering construction and dewatering may be simultaneous with the adjacent Woz Way Project.
10. Include a mitigation measure to use a dewatering system which has a minimal impact on the groundwater level surrounding the proposed excavation, such as an internal dewatering system (from geotechnical report).
11. Include a mitigation measure to require the shoring system to extend adequately below the bottom of the excavation such that groundwater can be controlled from within the excavation and impacts to adjacent developments and the Guadalupe River can be minimized (from geotechnical report).
12. Include a mitigation measure to require that a system of construction monitoring instruments be installed. This may consist of inclinometers and groundwater monitoring wells that are installed within a distance of 5 to 15 feet from the excavation towards the existing buildings. Vibration monitoring should be considered during operation of heavy equipment, demolition, etc. In addition, a settlement survey should initially be performed on a weekly basis during excavation and on a monthly basis, approximately one month after the excavation has been completed, at a minimum (from geotechnical report).
13. Include a mitigation measure to require periodic reports during dewatering documenting current groundwater levels, pumping rates, pumped water quantity, and adherence to water quality standards.
14. Include a mitigation measure to limit dewatering during the rainy season (between November and March) to minimize stream or storm drain capacity issues.
15. Under the NPDES permit, in order to maintain or restore the site’s natural hydrologic functions, the project should maximize opportunities for infiltration and evapotranspiration, and using stormwater as a resource (rainwater harvesting for non-potable uses). A mitigation measure should be added to require use of stormwater as a resource (rainwater capture and/or installation of pervious paving) to reduce runoff and restore natural hydrologic functions.
16. This project will result in an exponential increase in traffic on Woz Way. Studies show runoff from highways contains detectable levels of zinc, lead, copper, and nitrate/nitrite. Please

include a mitigation measure to require installation of bioretention areas, not just on the project site but also offsite on Woz Way, to mitigate the potential impact to water quality in the Guadalupe River.

Response L.14: The estimated amount of dewatering that would be required is unknown at this time and would fluctuate over time. As mentioned previously, the project would comply with the geotechnical investigation prepared for the site (refer to Appendix F of the Draft SEIR) and the Standard Permit Conditions for dewatering as discussed in Section 4.10 Hydrology and Water Quality of Appendix A of the SEIR. As discussed in the Draft SEIR Appendix A (pages 49-50), the proposed project would be constructed in conformance with the recommendations of the site-specific geotechnical analysis regarding dewatering and the most current California Building Code as a condition of the permit. Note that the permit would include mitigation, standard permit conditions, and all applicable permit conditions which would be implemented as part of the project. Many of the requested mitigation measures in the comments are standard permit conditions in which all projects with groundbreaking activities in the City are required to comply with. See Response L.12 for additional information. This comment does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment L.15: Noise

1. Although wildlife is not considered to be a sensitive receptor, a mitigation measure should be included to provide noise mitigation such as temporary sound walls along the Guadalupe riparian corridor to minimize noise impacts during construction to “normally acceptable” levels for open space or parks.

Response L.15: Construction impacts to nesting birds are addressed on page 47 of the Draft SEIR. No other construction noise impacts were identified to wildlife. The lead agency cannot require mitigation without a nexus, meaning a significant impact must be identified. This comment does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment L.16: Utilities and Service Systems

1. Please discuss the impacts of expanded stormwater drainage facilities and specifically the environmental impacts the new stormwater outfall(s) to the Guadalupe River that will be constructed.
2. Please consider adding a mitigation measure to require onsite greywater treatment to mitigate impacts on water supply and wastewater treatment facilities.

Response L.16: Any new or replaced outfall will be constructed in conformance to the requirements and conditions of all applicable regulatory agencies and would be conservatively designed to protect from erosion due to discharge from a 10-year storm event. A modified option has also been proposed that would relocate and reconnect the storm drain to the existing outfall through the existing storm drain easement. This would be the final alignment and would not require the relocation or replacement of the existing outfall. The applicant would be required to obtain the appropriate clearances from Public Works, Building, and the Environmental Services Department for any on-site water treatment. A Water Supply Assessment was performed for the proposed project by the San José Water Company and supply levels with the project incorporated were found to be adequate for the service area.

Comment L.17: Mandatory Findings of Significance

1. Please discuss stormwater drainage impacts under Utilities in this section of the Initial Study.

Response L.17: The only relevant discussion would be if there is a relocation or construction of new/expanded stormwater drainage. As mentioned in Responses E.3 and L.12, the project applicant has confirmed that the project is moving forward with storm drain relocation Option A, the currently proposed option (refer to Section 5.0 of this First Amendment for text amendments). Under Option A, a storm drain main head and a sanitary sewer main head are proposed along South Almaden Boulevard. The project would remove the existing 30-inch storm drain that bisects the northern portion of the site and construct a storm drain realignment along the northern and western portion of the site which would connect to the existing outfall.

Comment L.18: Alternatives

1. We strongly request that the Final SEIR be updated to describe the most environmentally preferable and feasible alternative project, Reduced Development Alternative 1 (Option 2). This alternative achieves the project objective to “maximize use of an underutilized infill site,” assuming compliance with the City’s General Plan 100-foot setback, the City’s required 50-foot setback analyzed in the Downtown Strategy 2040 EIR, and the Santa Clara Valley Habitat Plan 35-foot setback.
2. The SEIR and the Biological Assessment do not explain why feasible Reduced Development Alternatives have been rejected. The proposed project cannot be approved since there are feasible alternatives that would avoid or lessen its significant environmental effects.

Response L.18: The alternatives analyzed in the Draft SEIR were developed with the goal of being at least potentially feasible, given project objectives and site constraints, while avoiding or reducing the project’s identified environmental effects. Six alternatives were explored in the Draft SEIR, including a Location Alternative and Modified Construction Schedule that was determined to be infeasible and considered rejected. The remaining alternatives were further discussed on pages 88-91 of the Draft SEIR.

Under the *Reduced Development Alternative 1 (Option 2)*, the square footage would be substantially reduced from 2,137,767 square feet to 828,070 square feet and would not provide high-density development compared to the other alternatives and

proposed project. The *Reduced Development Alternative 1 (Option 1)* would meet most project objectives while providing high-density development and reducing the project's cumulatively considerable contribution impact to the Guadalupe River riparian corridor. Refer to Section 7.4.2 of the Draft SEIR for the environmentally superior alternative discussion.

The Reduced Development alternatives outlined in the SEIR have not been rejected. They are provided consistent with CEQA Guidelines Section 15126.6. The only alternatives that were considered and rejected were the location alternative and the modified construction schedule alternative as discussed on page 87 (Section 7.4.1.1) of the SEIR. Sections 7.4.1.2 – 7.4.1.5 discuss the alternatives to the proposed project, including the reduced development alternatives.

30-inch storm drain that bisects the northern portion of the site and construct a ~~temporary~~ storm drain realignment along the northern and western portion of the site which would connect to the existing outfall. ~~Once the applicant receives approval from the appropriate federal agencies, the portion of the storm drain that runs parallel to the river (west of the site) would be removed and a new outfall north of the site would be constructed.~~

~~Under Option B, the storm drain line would be located south of the site, along Woz Way and a new permanent outfall would be constructed north of the bridge at Woz Way.~~

~~Under Option C, the storm drain line would remain in its current location (bisecting the northern portion of the site).~~

Appendix A, Section 4.10.1.1,
Page 73

The paragraph under the Water Resources Protection Ordinance and District Well Ordinance heading will be **REVISED** as follows:

The Santa Clara Valley Water District (Valley Water) operates as the flood control agency for Santa Clara County. Their stewardship also includes creek restoration, pollution prevention efforts, and groundwater ~~recharge management~~. Permits for well construction and destruction work, most exploratory boring for groundwater exploration, and projects within Valley Water property or easements are required under Valley Water’s Water Resources Protection Ordinance and District Well Ordinance.

Appendix A, Section 4.10.1.2,
Page 76

The sentence under the Dam Failure section will be **REVISED** as follows:

The project site is located within the Anderson Dam and Lexington dam failure inundation hazard zones.^{13,14}
Additionally, the project site would be subject to inundation by the Guadalupe dam.¹⁵

¹³ Santa Clara Valley Water District. “Anderson Dam Flood Inundation Maps.” Accessed February 18, 2020. <https://www.valleywater.org/sites/default/files/Anderson%20Dam%20Inundation%20Maps%202016.pdf>.

¹⁴ Santa Clara Valley Water District. “Lexington Dam Flood Inundation Maps.” Accessed February 18, 2020. <https://www.valleywater.org/sites/default/files/Lexington%20Dam%20Inundation%20Map%202016.pdf>.

¹⁵ Santa Clara Valley Water District. “Inundation Map for the Hypothetical Inflow Design Flood Failure of Guadalupe Dam.” Accessed September 21, 2020. https://www.valleywater.org/sites/default/files/Guadalupe_inundation_IDF_1000.pdf.

Appendix A, Section 4.10.2,
Page 82

The second paragraph under checklist question 4 will be **REVISED** as follows:

The project site is located in the Anderson Dam, ~~and~~ Lexington Dam, ~~and~~ Guadalupe Dam failure inundation zone. In accordance with the State Dam Safety Act, detailed evacuation procedures have been prepared for each dam and are contained in San José's Dam Failure Evacuation Plan. The California Division of Safety of Dams (DSOD) inspects dams on an annual basis and Valley Water routinely monitors the 10 dams, including the Anderson, ~~and~~ Lexington, ~~and~~ Guadalupe Dam. Therefore, the likelihood of flooding from dam failure is low and the project would not release pollutants due to dam inundation. **[Same Impact as Approved Project (Less Than Significant Impact)]**

Appendix A, Section 4.19.2,
Page 127

The last paragraph under Checklist Question A will be **REVISED** as follows:

The project would utilize existing utility connections to connect to the City's water, wastewater, electric, natural gas, and telecommunications facilities. ~~The project includes three storm drain relocation options.~~ Under the current option, the project would remove the storm drain that bisects the northern portion of the site and ~~relocate it to the adjacent parcels owned by Valley Water or north of the site~~ construct a storm drain realignment along the northern and western portion of the site which would connect to the existing outfall (refer to *Section 3.1.2*). The proposed storm drain relocation would not result in a significant environmental effect. The proposed project would have a less than significant impact on these facilities.

Appendix A, Section 4.21,
Page 134

The following paragraph shall be **ADDED** after Solid Waste as follows:

Storm Drainage

The project would be required to comply with the City's Post-Construction Urban Runoff Policy 6-29 and the RWQCB MRP, to minimize and treat stormwater runoff to reduce the rate of stormwater runoff while removing pollutants. As mentioned in the Downtown Strategy 2040 FEIR, implementation of General Plan policies and existing regulations would substantially reduce drainage impacts. Additionally, the on-site storm drain systems shall be designed and constructed to meet the capacity of the City's

10-year storm event design standard (consistent with the Downtown Strategy 2040 FEIR).

Appendix A, Section 5.0,
Page 137

The following reference shall be **ADDED** as follows:

Santa Clara Valley Water District. “Inundation Map for the Hypothetical Inflow Design Flood Failure of Guadalupe Dam.” Accessed September 21, 2020.
https://www.valleywater.org/sites/default/files/Guadalupe_inundation_IDF_1000.pdf.

Draft SEIR, Summary,
Page v

The impact statement will be **REVISED** as follows:

Impact AIR-2: Construction and operational activities associated with the proposed project would expose the off-site maximum exposed individual to cancer risk and annual PM_{2.5} in excess of BAAQMD thresholds.

Draft SEIR, Summary
Page vii

Impact BIO-2 will be **REMOVED** from the summary table:

<p>Impact BIO-1: The proposed building design would result in bird collisions with the building’s northern, western, and southern façades.</p> <p>[New Less Than Significant Impact with Mitigation Incorporated (Less Than Significant Impact with Mitigation)]</p>	<p>MM BIO-1.1: Due to the potential for the proposed towers on the project site to result in a high number of bird collisions, prior to the issuance of any building permits, the project applicant shall implement the following bird-safe building design considerations at the building’s north, west, and south-facing façades that encroach entirely or partially within the 100-foot riparian setback to comply with LEED Pilot Credit 55: Bird Collision Deterrence:</p> <ul style="list-style-type: none"> • At a height of 0 to 36 feet above-grade and 0 to 12 feet above any green roof, no more than 15 percent of the glazed area shall have a Threat Factor¹⁶ higher than 75. • All glazed corners or fly-through conditions, created when windows meet
--	---

¹⁶ A material’s Threat Factor is assigned by the American Bird Conservancy, and refers to the level of danger posed to birds based on birds’ ability to perceive the material as an obstruction, as tested using a “tunnel” protocol (a standardized test that uses wild birds to determine the relative effectiveness of various products at deterring bird collisions). The higher the Threat Factor, the greater the risk that collisions will occur. An opaque material will have a Threat Factor of 0, and a completely transparent material will have a Threat Factor of 100.

	<p>perpendicularly on a corner or when windows are installed parallel in close proximity such that a clear line of sight is created through the building, shall have a Threat Factor less than or equal to 25.</p> <ul style="list-style-type: none">• All structures other than the main building(s) on-site, including but not limited to handrails, guardrails, windscreens, noise barriers, gazebos, pool safety fencing, bush shelters, band shells, etc., shall be constructed entirely of materials with a Threat Factor of 15 or lower.• The combined façades shall achieve a maximum Bird Collision Threat Rating of 15 or lower.• The project applicant shall develop a lighting design strategy to effectively eliminate or reduce light trespass from the building by either requiring that all interior lighting must be turned off by night-time personnel after hours when the space is unoccupied or controlled automatic shutoffs such that all lighting shall automatically shut off after the space is unoccupied for 30 minutes (with exceptions).• The project applicant shall develop a lighting design strategy to effectively reduce or eliminate light trespass from exterior fixtures, either by shielding fixtures and programming them to automatically shut off from midnight until 6:00 AM or demonstrating that the project complies with the exterior lighting requirements of the latest published LEED for New Construction SS Credit, Light Pollution Reduction.• The project applicant shall develop a three-year post-construction monitoring plan to routinely monitor the effectiveness of the building and site design in preventing bird collisions.
--	---

<p>Impact BIO-2: The project does not meet the biological goals and objectives of the Santa Clara Valley Habitat Plan (SCVHP) and would conflict with the SCVHP stream setback requirements.</p> <p>[New Significant Unavoidable Impact (Less Than Significant Impact)]</p>	<p>MM BIO-1.2: Prior to issuance of any building permits, the applicant shall submit a verification letter or plan to the Director of Planning, Building and Code Enforcement or Director’s designee to ensure that all identified bird-safe design considerations have been met. The plan shall be accompanied by a letter signed by a qualified biologist, verifying that the building design, as proposed, complies with LEED Pilot Credit 55: Bird Collision Deterrence.</p> <p>There are no feasible mitigation measures available to reduce this impact except for redesign to increase the setback from the riparian corridor.</p>
---	---

Draft SEIR, Summary
Page vii

A new paragraph will be **ADDED** under MM BIO(C)-1.1: Compensation as follows:

MM BIO(C)-1.1: Compensation. Prior to the issuance of any grading or building permits, the project applicant shall provide compensatory mitigation to offset project impacts on the ecological functions and values of the riparian corridor. Such compensatory mitigation shall be provided as follows:

- Riparian habitat shall be enhanced or restored to native habitat along the immediately adjacent riparian corridor¹⁷, and/or off-site on the Santa Clara Valley floor and in areas that drain to the San Francisco Bay within the City of San José¹⁸, at a minimum ratio of 2:1 (compensation:impact), on an acreage basis, for a total of 3.6 acres of enhanced or restored habitat to compensate for 1.8 acres of project encroachment within the 100- foot setback.
 - The applicant shall submit verifications of restoration programs and/or locations, consistent with the

¹⁷ The applicant shall obtain permission from the City of San José and/or the Santa Clara Valley Water District (Valley Water) to restore/enhance the riparian corridor immediately adjacent to the project site. Valley Water may not grant permission for this work, as they often look for such opportunities as mitigation for their own projects.

¹⁸ ~~The proposed off site mitigation may not be feasible if a suitable location cannot be found within the City of San José. Properties owned by the City where the restoration/enhancement may be possible include Kelley Park and Lake Cunningham Park.~~

requirement of this measure, prior to the issuance of the grading permit and building permit. A restoration progress report shall be submitted to the City prior to issuance of any occupancy permit.

Draft SEIR, Summary
Page ix

The fifth bullet under MM BIO(C)-1.2: Riparian Habitat Mitigation and Monitoring Plan will be **REVISED** as follows:

- Restoration/enhancement/mitigation design that is provided along the immediately adjacent riparian corridor shall, at the minimum, consist of the removal of non - native trees, shrubs, and vines and the planting of native riparian vegetation. Where feasible, plantings used for the riparian restoration/enhancement shall be grown from propagules collected in the watershed where the work will occur to protect the genetic integrity of the locally native riparian species. Acreage will be credited based on the extent of nonnative vegetation removed.

Draft SEIR, Summary
Page ix

The seventh bullet point under MM BIO(C)-1.2: Riparian Habitat Mitigation and Monitoring Plan will be **REVISED** as follows:

Off-site restoration/enhancement must restore or augment high-quality riparian habitat for ~~birds~~native riparian wildlife communities. Such restoration shall need to occur in an area with sufficient setbacks and appropriate soils and hydrology to support high-quality riparian vegetation.

Draft SEIR, Summary
Page xvii

The last sentence of the first paragraph under the Reduced Development Alternative 1 (Option 1) – Reduced Square Footage With 35 Foot Setback section will be **REVISED** as follows:

The proposed building would be set back from the ~~Guadalupe River riparian corridor~~ edge of the property line by 35 feet.

Draft SEIR, Summary
Page xvii

The last sentence of the first paragraph under the Reduced Development Alternative 1 (Option 2) – Reduced Square Footage With 100 Foot Setback section will be **REVISED** as follows:

Unlike the *Reduced Development Alternative Option 1*, the proposed building would be set back from the ~~Guadalupe River riparian corridor~~ edge of the property line by 100 feet.

Draft SEIR, Section 2.2,
Page 10

The Utility Improvements discussion will be **REVISED** as follows:

~~The project includes three storm drain relocation options (Options A, B, and C) as discussed below.¹⁹~~

Under Option A, the current option, a storm drain main head and a sanitary sewer main head is proposed along South Almaden Boulevard. The project would remove the existing 30-inch storm drain that bisects the northern portion of the site and construct a ~~temporary~~ storm drain realignment along the northern and western portion of the site which would connect to the existing outfall. ~~Once the applicant receives approval from the appropriate federal agencies, the portion of the storm drain that runs parallel to the river (west of the site) would be removed and a new outfall north of the site would be constructed.~~

~~Under Option B, the storm drain line would be located south of the site, along Woz Way and a new permanent outfall would be constructed north of the bridge at Woz Way.~~

~~Under Option C, the storm drain line would remain in its current location (bisecting the northern portion of the site).~~

Draft SEIR, Section 3.0,
Page 3

The last sentence under Subsection 2.1 will be **REVISED** as follows:

Refer to Figures 2.1-1 to 2.1-34 for the regional, vicinity, and aerial maps and the existing conditions plan with easements figure maps.

Draft SEIR, Section 3.0,
Page 4

A new graphic will be **ADDED** as follows:

¹⁹ ~~The applicant and project contractor have confirmed that all three options fit within the proposed construction schedule. Verrips, Joanne, Director — Precon & Estimating, Webeor. Personal communications. July 22, 2020.~~

Table 3.0-1: Summary Project List Within Half-Mile Radius

Project Name	Location	Description
200 Park Avenue Office	200 Park Avenue	Construction of an approximately 1,055,000 square foot office building with 840,000 square feet of office space, and 229,200 square feet of above-grade parking.
The Graduate	80 East San Carlos Street	Construction of a 19-story building with up to 260 residential units and approximately 14,800 square feet of ground floor retail/commercial space.
Gateway Tower	455 South First Street	Construction of a 25-story building with up to 308 residential units and approximately 8,000 square feet of ground floor retail.
363 Delmas Avenue	341 Delmas Avenue	Construction of a five-story building with up to 120 residential units.
Tribute Hotel	211 South First Street	Construction of a 24-story, 279 room hotel integrated into a historic building.
425 Auzerais Avenue	425 Auzerais Avenue	Construct a six-story residential building and up to 130 attached residential units.
<u>27 West</u>	<u>27 South First Street</u>	<u>Construction of a 22-story, 242-foot tall mixed-use building consisting of 374 residential units and approximately 35,712 square feet of retail space.</u>
<u>The Carlyle</u>	<u>51 Notre Dame Avenue</u>	<u>Construction of a 21-story mixed-use building with 290 residential units, approximately 123,479 square feet of office, and approximately 7,951 square feet of ground level retail space.</u>
<u>Post & San Pedro Tower</u>	<u>171 Post Street</u>	<u>Construction of a 21-story residential tower with 228 residential units and 10,863 square feet of ground floor retail.</u>
<u>Almaden Corner Hotel</u>	<u>8 North Almaden Boulevard</u>	<u>Construction of a 19-story hotel with 272 guest rooms.</u>
<u>Garden Gate</u>	<u>600 South First Street</u>	<u>Construction of a 27-story tower with 285 residential units or co-living with 793 rooms, and 4,840 square feet of commercial space.</u>
<u>Greyhound Residential</u>	<u>70 South Almaden Avenue</u>	<u>Construction of a two-tower (23- and 24-stories) building with 708 residential condominium units and 13,974 square feet of ground floor retail.</u>
Pending		
CityView Plaza	Northeast corner of Almaden Boulevard and Park Avenue	Construction of three 19-story buildings with up to approximately 3.8 million square feet of office and commercial space.

Table 3.0-1: Summary Project List Within Half-Mile Radius		
Project Name	Location	Description
South Market Mixed-Use	477 South Market Street	Construction of a six-story mixed-use building with 130 residential units and approximately 5,000 square feet street of commercial space.
South Fourth Street Mixed-Use	439 South Fourth Street	Construction of an 18-story mixed use building consisting of 218 residential units, approximately 1,345 square feet of commercial use and approximately 12,381 square feet of public eating establishment.
Balbach Affordable Housing	Southeast corner of Balbach Street/South Almaden Boulevard intersection	Construction of an eight-story building with 87 residential units.
543 Lorraine Avenue Mixed-Use	543 Lorraine Avenue Mixed-Use	Construction of a mixed-use building including up to 70 residential units and approximately 2,200 square feet of commercial space.
Block 8	282 South Market Street	Construction of a 20-story office building with approximately 568,286 square feet of office and 16,372 square feet of ground floor commercial space.
<u>Fourth Street Metro Station</u>	<u>439 and 451 South Fourth Street</u>	<u>Construction of a 19-story, mixed-use building with 218 residential units and an approximately 7,247 square-foot public eating establishment.</u>

Draft SEIR, Section 3.1.3.1,
Page 30

The last paragraph will be **REVISED** as follows:

The project proposes a total of three emergency generators which would be located on the ground floor as shown in Figure 3.1-2 below. One generator would have a power wattage of ~~1,500~~2,000 kW²¹ and the other two generators would have a power wattage of 750 kW. The size of the diesel generators are unknown, but the engines would be approximately 2,011 horsepower (HP) for the ~~1,500~~2,000-kW emergency generator and approximately 1,005 HP for the 750 kW emergency generators. The generators would be operated during periods of emergency and for maintenance and testing purposes with a maximum of 50 hours per year. During the

²¹ Since the project would be required to meet Tier 4 engine standards (per Mitigation Measure AIR-1.1), the larger engine would actually have lower NO_x emissions and similar or slightly higher DPM emissions (leading to similar or increased cancer risk). The conclusions of the report would not change. Reyff, James. Principal, Illingworth & Rodkin, Inc. Personal Communication. April 15, 2021.

maintenance and testing periods, the generator would run for less than one hour at a time.

Draft SEIR, Section 3.1.3.1,
Page 32

The impact statement will be **REVISED** as follows:

Impact AIR-2: Construction and operational activities associated with the proposed project would expose the off-site maximum exposed individual to cancer risk and annual PM_{2.5} in excess of BAAQMD thresholds.

Draft SEIR, Section 3.1.3.1,
Page 33

The first paragraph will be **REVISED** as follows:

With implementation of Mitigation Measure AIR-2.1, cancer from project generators would be reduced to 0.3 cases per one million. In combination with Mitigation Measure AIR-1.1 and ~~the required Downtown Strategy 2040 measures identified~~ Standard Permit Conditions, the cancer risk from project construction and operation would be reduced to 9.97 cases per one million. The HI from construction and operation activities would not exceed BAAQMD's significance threshold of greater than 1.0. Even with implementation of Mitigation Measure AIR-1.1 and ~~the required Downtown Strategy 2040 measures identified~~ Standard Permit Conditions, the project would still have a significant unavoidable PM_{2.5} concentration impact to the off-site MEI. **[Same Impact as Approved Project (Significant Unavoidable Impact)]**

Draft SEIR, Section 3.1.3.1,
Page 35

The paragraph under Table 3.1-8 will be **REVISED** as follows:

As shown in the table above, with implementation of Mitigation Measure AIR-1.1 and ~~the required Downtown Strategy 2040 measures identified~~ Standard Permit Conditions, the PM_{2.5} concentration would exceed BAAQMD's cumulative threshold. Figure 3.1-4 below shows the locations of sensitive receptors and the extent of mitigated annual PM_{2.5} concentrations within the 1,000-foot radius. The annual PM_{2.5} concentration would only exceed the single-source BAAQMD threshold during the first year of construction (2021). In subsequent years, construction would not exceed BAAQMD's significance threshold of 0.3 µg/m³ for PM_{2.5}. As shown in the figure, the area located immediately south of the site would have PM_{2.5} concentrations exceeding 0.3 µg/m³. With implementation of Mitigation Measure AIR-1.1 and ~~the required Downtown~~

~~Strategy 2040 measures identified Standard Permit Conditions~~, the significant PM_{2.5} impacts would continue to significantly affect six single-family residences. As mentioned above, this exceedance would only occur during the first year of construction when demolition, site preparation, grading, and foundation work would occur.

Draft SEIR, Section 3.1.3.1,
Page 38

The first paragraph under will be **REVISED** as follows:

With implementation of Mitigation Measures AIR-1.1 and the ~~required Downtown Strategy 2040 measures identified Standard Permit Conditions~~, the computed maximum increased lifetime residential cancer risk from construction and operation would be 9.97 cases per one million, the maximum annual PM_{2.5} concentration would be 0.43 µg/m³, and the HI value would be 0.03. With mitigation and the identified measures incorporated, the cancer risk and HI would not exceed the BAAQMD cumulative significance thresholds. The cumulative PM_{2.5} concentration would, however, continue to exceed BAAQMD significant threshold of 0.8 µg/m³. [**Same Impact as Approved Project (Significant Unavoidable Cumulative Impact)**]

Draft SEIR, Section 3.2,
Page 55

The first sentence will be **REVISED** as follows:

The ~~SCVHP's~~ SCVHA's findings²⁴ of the stream setback exception request are summarized below.

Draft SEIR, Section 3.2.2.1
Page 55

The last paragraph, Impact BIO-2, and paragraph following Mitigation Measures will be **REVISED** as follows:

The stream setback exception does not preclude achieving the biological goals and objectives of the SCVHP or conflict with other applicable requirements of the SCVHP and local policies. The SCVHP Conservation Strategy Biological Goals provides natural community level requirements to minimize potential impacts to sensitive biological resources (refer to page 5-7 of the SCVHP)²². Any development adjacent to Category 1 streams would require a 100-foot setback. In addition, the SCVHP provides that, regardless of project location, stream setback exceptions may not reduce a Category 1 stream setback to a distance less than 35-feet for existing or previously developed sites. As currently proposed, the project does not meet the biological goals and objectives

²² Santa Clara Valley Habitat Agency. *Santa Clara Valley Habitat Plan*. Accessed May 18, 2020. <https://scv-habitatagency.org/178/Santa-Clara-Valley-Habitat-Plan>.

of the SCVHP and would conflict with the SCVHP stream setback requirements. ~~As a result, the proposed project would conflict with the provisions of the SCVHP and would result in a significant unavoidable impact.~~

Impact BIO-2: ~~The project does not meet the biological goals and objectives of the Santa Clara Valley Habitat Plan (SCVHP) and would conflict with the SCVHP stream setback requirements.~~

Mitigation Measures

~~As mentioned in Mitigation Measures BIO(C) 1.1, compensatory mitigation shall be provided to offset project impacts on the ecological functions and values of the riparian corridor. Even with the compensatory mitigation, there are no feasible mitigation measures available to reduce this impact except for redesign to increase the setback from the riparian corridor. Redesign is considered as an alternative to this SEIR and further discussion is provided in Section 7.4, Alternatives.~~

Draft SEIR, Section 3.2.2.1
Page 55

The first sentence will be **REVISED** as follows:

In April 2020, the SCVHA prepared a memorandum on The in response to the City of San José's Condition 11 Exception Request for a zero-foot minimum setback. SCVHPSCVHA's findings²³ of the stream setback exception request are summarized below.

Draft SEIR, Section 3.2.2.1
Page 55

A new discussion will be **ADDED** after the April 2020 SCVHA memorandum findings as follows:

In April 2021, a revised memorandum²⁴ prepared by SCVHA pertaining to the Condition 11 Exception Request was submitted to the City of San José. SCVHA's findings are summarized below.

The entire project site is currently developed with a surface parking lot. The proposed building footprint would occupy the existing areas that are already developed and would have a stream setback of zero-feet from the edge of the riparian corridor. Per Section 6.2 of the SCVHP (page 6-3), projects that do not affect land cover are exempt. Therefore, for the

²³ Santa Clara Valley Habitat Agency. *Condition 11 Exception Request*. April 7, 2020.

²⁴ Santa Clara Valley Habitat Agency. *Condition 11 Exception Request*. April 5, 2021.

project to be considered covered by the SCVHP, it must impact a land cover. Since the project would not affect a land cover type and would be constructed within its existing developed footprint/not increase impervious surfaces within the required minimum 35-foot stream setback, the project would not be subject to a Stream Setback Exception Request by the SCVHP nor would the project be subject to Condition 11. Note that the only feature that is covered by the SCVHP is an off-site bridge which would extend from the project site to the opposite bank of Guadalupe River. If constructed, this feature would be subject to land cover fees and would be covered by the SCVHP. The proposed project would not conflict with the provisions of the SCVHP and, as a result, would result in a less than significant impact.

Draft SEIR, Section 3.2.2.1
Page 57

The first sentence will be **REVISED**

The project would not conflict with the biological goals and objectives of the SCVHP. [~~New Significant Unavoidable Impact~~Same Impact as Approved Project (Less Than Significant Impact)]

Draft SEIR, Section 3.2.2.2
Page 58

A new paragraph will be **ADDED** under MM BIO(C)-1.1: Compensation as follows:

MM BIO(C)-1.1: Compensation. Prior to the issuance of any grading or building permits, the project applicant shall provide compensatory mitigation to offset project impacts on the ecological functions and values of the riparian corridor. Such compensatory mitigation shall be provided as follows:

- Riparian habitat shall be enhanced or restored to native habitat along the immediately adjacent riparian corridor²⁵, and/or off-site on the Santa Clara Valley floor and in areas that drain to the San Francisco Bay within the City of San José²⁶, at a minimum ratio of 2:1 (compensation:impact), on an acreage basis, for a total of 3.6 acres of enhanced or restored habitat to compensate for 1.8 acres of project encroachment within the 100- foot setback.
- The applicant shall submit verifications of restoration programs and/or locations, consistent with the

²⁵ The applicant shall obtain permission from the City of San José and/or the Santa Clara Valley Water District (Valley Water) to restore/enhance the riparian corridor immediately adjacent to the project site. Valley Water may not grant permission for this work, as they often look for such opportunities as mitigation for their own projects.

²⁶ ~~The proposed off site mitigation may not be feasible if a suitable location cannot be found within the City of San José. Properties owned by the City where the restoration/enhancement may be possible include Kelley Park and Lake Cunningham Park.~~

requirement of this measure, prior to the issuance of the grading permit and building permit. A restoration progress report shall be submitted to the City prior to issuance of any occupancy permit.

Draft SEIR, Section 3.2.2.2,
Page 58

The fifth bullet under MM BIO(C)-1.2: Riparian Habitat Mitigation and Monitoring Plan will be **REVISED** as follows:

- Restoration/enhancement/mitigation design that is provided along the immediately adjacent riparian corridor shall, at the minimum, consist of the removal of non - native trees, shrubs, and vines and the planting of native riparian vegetation. Where feasible, plantings used for the riparian restoration/enhancement shall be grown from propagules collected in the watershed where the work will occur to protect the genetic integrity of the locally native riparian species. Acreage will be credited based on the extent of nonnative vegetation removed.

Draft SEIR, Section 3.2.2.2,
Page 59

The seventh bullet point under MM BIO(C)-1.2: Riparian Habitat Mitigation and Monitoring Plan will be **REVISED** as follows:

- Off-site restoration/enhancement must restore or augment high-quality riparian habitat for ~~birds~~native riparian wildlife communities. Such restoration shall need to occur in an area with sufficient setbacks and appropriate soils and hydrology to support high-quality riparian vegetation.

Draft SEIR, Section 6.0,
Page 83

The fourth bullet from the list of significant and unavoidable impacts will be **REMOVED**:

- ~~• **Biological Resources:** The project does not meet the biological goals and objectives of the SCVHP and would conflict with the SCVHP stream setback requirements.~~

Draft SEIR, Section 7.3,
Page 86

The sixth bullet from the list of significant impacts will be **REMOVED**:

- ~~• **Biological Resources:** The project does not meet the biological goals and objectives of the SCVHP and would conflict with the SCVHP stream setback requirements. **[New Significant Unavoidable Impact (Less Than Significant Impact)]**~~

Draft SEIR, Section 7.4.1.3,
Page 88

The last sentence of the second paragraph under the Reduced Development Alternative 1 (Option 1) – Reduced Square Footage With 35 Foot Setback section will be **REVISED** as follows:

The proposed building would be set back from the ~~Guadalupe River riparian corridor~~ edge of the property line by 35 feet.

Draft SEIR, Section 7.4.1.3,
Page 89

The last sentence of the third paragraph under the Reduced Development Alternative 1 (Option 1) – Reduced Square Footage With 35 Foot Setback will be **REVISED** as follows:

Under this alternative, an exception for encroachment within 100 feet of the riparian corridor would need to be granted by ~~the Habitat Agency and~~ the City of San José.

Draft SEIR, Section 7.4.1.4,
Page 90

The last sentence of the first paragraph under the Reduced

Development Alternative 1 (Option 2) – Reduced Square Footage With 100 Foot Setback section will be **REVISED** as follows:

Unlike the *Reduced Development Alternative Option 1*, the proposed building would be set back from the ~~Guadalupe River riparian corridor~~ edge of the property line by 100 feet.