TABLE OF CONTENTS

Figures

Photos

Tables

Appendices

SUMMARY

Project Overview

The project site is currently developed with a 67,984 square foot industrial building and surface parking lot which were constructed in 1985 and would be demolished to construct the project. The proposed project would develop the 4.3-acre site with 42, three-story townhouses in six buildings and one 292-unit, seven-story apartment building with a density of 77.7 units per acre. Approximately 5.82 percent of total units within the apartment building would be affordable (17 units out of 292). The proposed project would also include a publicly accessible paseo connecting to the existing Casa Verde Street, which connects to Baypointe Parkway.

Summary of Significant Impacts

The following table summarizes the significant effects and mitigation measures addressed within this Supplemental Environmental Impact Report (SEIR) (including the Initial Study in Appendix A). The project description and full discussion of impacts and mitigation measures can be found in *Section 2.0 Project Information and Description* and *Section 3.0 Environmental Setting, Impacts, & Mitigation*.

Significant Impacts	Mitigation and Avoidance Measures
Air Quality	
Impact AIR-1: The proposed project would have a cancer risk of 42.40 cases per million which would exceed the Bay Area Air Quality Management District threshold of 10 cases per million during construction of the project.	**MM AIR-1.1:** All construction equipment larger than 25 horsepower used at the site for more than two continuous days or 20 hours total shall meet U.S. EPA Tier 4 emission standards for Particulate Matter (PM) (PM_{10} and $PM_{2.5}$). If Tier 4 equipment is not available, the project may use equipment that meets U.S. EPA emission standards for Tier 3 engines and include particulate matter emissions control equivalent to CARB Level 3 verifiable diesel emission control devices that altogether achieve an 80 percent reduction in particulate matter exhaust in comparison to uncontrolled equipment; alternatively (or in combination). Alternatively, the applicant may request the development of a construction operations plan from a qualified air quality specialist demonstrating that the construction equipment used on-site would achieve a reduction in construction diesel particulate matter emissions by 80 percent or greater. Elements of the plan could include a combination of the following measures:

	• Implementation of the statement above to use Tier 4 engines or alternatively fueled equipment, • Installation of electric power lines during early construction phases to avoid use of diesel generators and compressors, • Use of electrically-powered equipment, • Forklifts and aerial lifts used for exterior and interior building construction shall be electric or propane/natural gas powered, • Change in construction build-out plans to lengthen phases, and • Implementation of different building techniques that result in less diesel equipment usage. The plan shall be submitted to the City of San José Director of Planning, Building and Code Enforcement or the Director's designee for review and approval prior to the issuance of any demolition, grading, or building permits (whichever occurs earliest).
Biological Resources	
Impact BIO-1: Construction activities associated with the proposed project could result in the loss of fertile eggs, nesting raptors or other migratory birds, or nest abandonment which would constitute a significant impact under the Migratory Bird Treaty Act (MBTA) and California Department of Fish and Wildlife (CDFW) Code Sections 3503, 3503.5, and 3800.	**MM BIO-1.1:** Tree removal and construction shall be scheduled to avoid the nesting season. The nesting season for most birds, including most raptors in the San Francisco Bay area, extends from February 1st through August 31st, inclusive. If tree removals and construction cannot be scheduled outside of nesting season, a qualified ornithologist shall complete pre-construction surveys to identify active raptor nests that may be disturbed during project implementation. This survey shall be completed no more than 14 days prior to the initiation of demolition/construction activities during the early part of the breeding season (February 1st through April 30th, inclusive) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May 1st through August 31st, inclusive), unless a shorter pre-construction survey is determined to be appropriate based on the presence of a

	species with a shorter nesting period, such as Yellow Warblers. During this survey, the qualified ornithologist shall inspect all trees and other possible nesting habitats in and immediately adjacent to the construction areas for nests. If an active nest is found in an area that will be disturbed by construction, the qualified ornithologist shall designate a construction-free buffer zone (typically 250 feet) to be established around the nest, in consultation with California Department of Fish and Wildlife (CDFW). The buffer would ensure that raptor or migratory bird nests will not be disturbed during project construction. Prior to any tree removal, or approval of any grading or demolition permits, the project applicant shall submit a report indicating the results of the survey and any designated buffer zones to the satisfaction of the Director of Planning, Building and Code Enforcement or Director's designee.
Cultural Resources	
Impact CUL-1: Project ground disturbing activities could result in a substantial adverse change in the significance of an archaeological resource.	**MM CUL-1.1: Cultural Sensitivity Training.** Prior to issuance of any grading permit, the project applicant shall be required to conduct a Cultural Awareness Training for construction personnel. The training shall be facilitated by a qualified archaeologist in collaboration with a Native American representative registered with the Native American Heritage Commissions for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3. Documentation verifying that Cultural Awareness Training has been conducted shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee.
	MM CUL-1.2: Sub-Surface Monitoring. A qualified archeologist, in collaboration with a Native American monitor, registered with the Native American Heritage Commission for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3, shall be present during applicable earthmoving activities including, but not limited

	to, trenching, initial or full grading, lifting of foundations, boring on-site, or major landscaping. If evidence of historic or prehistoric era resources are found during monitoring, then an archaeological resources treatment plan (as described in MM CUL-1.3) shall be prepared and implemented.
	MM CUL-1.3: Treatment Plan. If required pursuant to MM CUL-1.2, a qualified archeologist in collaboration with a Native American monitor, registered with the Native American Heritage Commission for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3, shall prepare and implement a treatment plan that reflects permit-level detail pertaining to depths and locations of excavation activities. The treatment plan shall be prepared and submitted to the Director of Planning, Building and Code Enforcement or Director's designee for review and approval prior to implementation of the plan. The plan shall be fully implemented prior to the issuance of building permits activities. The treatment plan shall contain, at a minimum: • Identification of the scope of work and range of subsurface effects (including location map and development plan), including requirements for preliminary field investigations. • Description of the environmental setting (past and present) and the historic/prehistoric background of the parcel (potential range of what might be found). • Monitoring schedules and individuals • Development of research questions and goals to be addressed by the investigation (what is significant vs. what is redundant information) • Detailed field strategy to record, recover, or avoid the finds and address research goals. • Analytical methods. • Report structure and outline of document contents. • Disposition of the artifacts. • Security approaches or protocols for finds.

	• Appendices: all site records, correspondence, and consultation with Native Americans, etc. The treatment plan shall utilize data recovery methods to reduce impacts on subsurface resources. Once implementation of the Treatment Plan is complete, no further mitigation is required on the project site.
	MM CUL-1.4: Evaluation. The project applicant shall notify the Director of Planning, Building and Code Enforcement or Director's designee of any finds during earthmoving activities or during implementation of the treatment plan. Any historic or prehistoric material recovered in the project area during implementation of the treatment plan shall be evaluated by a qualified archeologist for eligibility for listing in the California Register of Historic Resources as determined by the California Office of Historic Preservation. Data recovery methods may include, but are not limited to, backhoe trenching, shovel test units, hand augering, and hand-excavation. The techniques used for data recovery shall follow the protocols identified in the approved treatment plan. All documentation and recordation shall be submitted to the Northwest Information Center and Native American Heritage Commission (NAHC) Sacred Land Files, and/or equivalent prior to the issuance of an occupancy permit. A copy of the evaluation shall be submitted to the Director of Planning, Building and Code Enforcement or Director's designee.
Hazardous Materials	
Impact HAZ-1: Ground disturbing activities during construction would result in construction worker exposure to soils which contain arsenic, cobalt, lead, and nickel in excess of residential environmental screening levels.	**MM HAZ-1.1:** Prior to issuance of any excavation or grading permits, the applicant shall enter into an agreement with the Department of Toxic Substances Control (DTSC). The applicant shall meet with DTSC and perform additional sampling and testing to adequately define the known and suspected contamination from past agricultural use and any other past uses of concern. A Site Management Plan (SMP), Corrective Action

	Plan, Remedial Action Plan, or other equivalent plan shall be prepared and submitted to DTSC for their approval. The Plan shall include a Health & Safety Plan (HASP) and shall establish remedial measures and/or soil management practices to ensure construction worker safety and the health of future site occupants and visitors. The SMP shall include a plan for management of soil during construction, dust control measures, and waste management. If the contaminated materials are planned to be capped during construction by site improvements (landscape beds, buildings, pavements, turf sections, etc.), it shall be included in the SMP or similar document, for approval under the regulatory oversight of the Department of Toxic Substances Control (DTSC). If the contaminated soils are planned to be removed from the site, these shall be hauled off-site and disposed of at a licensed hazardous materials disposal site in accordance with applicable regulatory requirements. Capped areas (if and as included in the SMP) will likely require institutional controls by DTSC which may include a deed restriction for the affected areas and an operations and maintenance (O&M) Plan. The DTSC-approved plan(s) shall be submitted to the Director of Planning, Building and Code Enforcement or Director's designee, and the City's Environmental Compliance Officer in the City of San José's Environmental Services Department, prior to issuance of grading or excavation permits.
NOISE	
Impact NOI-1 The proposed project could result in ambient noise levels in excess of 80 dBA when construction is occurring on the boundaries of the project site, which is within the 500-foot distance for construction noise disturbance.	**MM NOI-1.1:** Pursuant to General Plan Policy EC-1.7, prior to provision of demolition or grading permits, a construction noise logistics plan shall be prepared that specifies hours of construction, noise and vibration minimization measures, posting or notification of construction schedules, and designation of a noise disturbance coordinator who would respond to neighborhood complaints will be required to be in place prior to the start of construction and

	implemented during construction to reduce noise impacts on neighboring residents and other uses. Project construction operations shall use best available noise suppression devices and techniques including, but not limited to the following: • Limit construction hours to between 7:00 AM and 7:00 PM, Monday through Friday, unless permission is granted with a development permit or other planning approval. No construction activities are permitted on the weekends at sites within 500 feet of a residence. Construction outside of these hours may be approved through a development permit based on a site-specific "construction noise mitigation plan" and a finding by the Director of PBCE that the construction noise mitigation plan is adequate to prevent noise disturbance of affected residential uses. • Construct solid plywood fences around construction sites adjacent to operational business, residences, or other noise-sensitive land uses. A temporary eight-foot noise barrier shall be constructed along the southeast property line and a portion of the northwest property line of the project site to shield adjacent residential buildings within 100 feet of the property lines from ground-level construction equipment and activities. The noise barrier shall be solid over the face and at the base of the barrier in order to provide a five dBA noise reduction. The first floor of the residential building to the southwest is a parking garage, and a noise barrier is not needed in this location. • Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment. • Prohibit unnecessary idling of internal combustion engines.

	• Locate stationary noise-generating equipment such as air compressors or portable power generators as far as possible from sensitive receptors. Construct temporary noise barriers to screen stationary noise-generating equipment when located near adjoining sensitive land uses. • Utilize "quiet" air compressors and other stationary noise sources where technology exists. • Control noise from construction workers' radios to a point where they are not audible at existing residences bordering the project site. • Notify all adjacent business, residences, and other noise-sensitive land uses of the construction schedule, in writing, and provide a written schedule of "noisy" construction activities to adjacent land uses and nearby residences. • Designate a "disturbance coordinator" who would be responsible for responding to any complaints about construction noise. The disturbance coordinator will determine the cause of the noise complaint (e.g., bad muffler, etc.) and will require that reasonable measures be implemented to current the problem. Conspicuously post a telephone number for the disturbance coordinator at the construction site and include it in the notice sent to neighbors regarding the construction schedule.

SUMMARY OF ALTERNATIVES

CEQA requires that an EIR identify alternatives to the project as proposed. The CEQA Guidelines specify that an EIR identify alternatives which "would feasibly attain the most basic objectives of the project but avoid or substantially lessen many of the significant environmental effects of the project," or would further reduce impacts that are considered less than significant with the incorporation of identified mitigation. A summary of project alternatives follows. A full analysis of project alternatives is provided in *Section 7.0 Alternatives*.

No Project – No Development Alternative

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

No Project – Develop with Base General Plan and Zoning Development

The No Project – Develop with Base General Plan and Zoning Development Alternative would not construct the proposed project as designed and would instead allow for the future construction of another commercial or residential development consistent with the General Plan designation of Industrial Park and TERO overlay for the project site which allows housing with a density of between 75 and 250 dwelling units per acre. Any future development proposals for the site would likely maximize allowable development and result in similar impacts to the proposed development project.

AREAS OF KNOWN CONTROVERSY

Section 15123 of the State CEQA Guidelines requires the summary section of a Draft EIR to identify areas of controversy known to the Lead Agency, including issues raised by agencies and the public. Area of public concern include:

The comment letters received in response to the Notice of Preparation are included in Appendix H of this document. No major areas of concern were identified.

SECTION 1.0 INTRODUCTION

1.1 PURPOSE OF THE ENVIRONMENTAL IMPACT REPORT

The City of San José (City), as the Lead Agency, has prepared this Draft Environmental Impact Report (EIR) for the 210 Baypointe Residential Project (project, proposed project) in compliance with the California Environmental Quality Act (CEQA) and the CEQA Guidelines.

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

1.2 EIR PROCESS

1.2.1 Notice of Preparation and Scoping

In accordance with Section 15082 of the CEQA Guidelines, the City of San José prepared a Notice of Preparation (NOP) for this EIR. The NOP was circulated to local, state, and federal agencies on December 12, 2022. The standard 30-day comment period concluded on January 16, 2023. The NOP provided a general description of the proposed project and identified possible environmental impacts that could result from implementation of the project. The City of San José also held a public scoping meeting on January 5, 2023 to discuss the project and solicit public input as to the scope and contents of this EIR. The meeting was held online at 6:00 pm. Appendix I of this EIR includes the NOP and comments received on the NOP.

1.2.2 Draft EIR Public Review and Comment Period

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

Kara Hawkins
City of San José
Department of Planning, Building & Code Enforcement
200 East Santa Clara Street
San José, CA 95113
Kara.Hawkins@sanjoseca.gov

1.3 FINAL EIR/RESPONSES TO COMMENTS

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

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

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

1.3.1 Notice of Determination

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

SECTION 2.0 PROJECT INFORMATION AND DESCRIPTION

2.1 PROJECT LOCATION

The project site is located at 210 Baypointe Parkway (APN 097-07-046) in north San José. The site is bordered by the University of Silicon Valley and a City of San José Interim City Park to the north; four- to five-story apartment buildings to the west, south, and northwest; and a vacant parcel to the northeast. The project site location is shown on Figure 2.1-1 Regional Map, 2.1-2 Vicinity Map, and 2.1-3 Aerial Map.

Existing Site Development

The site is currently developed with a commercial building and supporting parking lot. The project site was previously subject to the North San José Area Development Policy ("NSJA Development Policy"). In May 2022, the San José City Council approved the recission of the NSJA Development Policy as well as amendments to the General Plan and Zoning map to allow for the creation of the Transit Employment Residential Overlay District (TERO) Overlay.

The TERO General Plan Overlay applies to certain sites within the North San José Employment Center area that would be appropriate for residential development. This designation permits residential and mixed-use developments as an alternative use to make efficient use of land and provide residential units in support of nearby industrial employment centers. Developments consistent with the underlying designation are also permitted. Land within this overlay area may also be converted for the development of new schools and parks as needed to support residential development. Site specific land use issues and compatibility with adjacent uses should be addressed through the development permit process. This overlay has a maximum residential density of 75 to 250 dwelling units per acre.

The site is zoned Industrial Park and under the Industrial Park General Plan designation.

The Vesting Tentative Map includes seven lots, one for the apartment site and six lots for the townhome condominium project, one for each building. Lot lines for the town condo portion are at the center of the private street. Existing and proposed ingress/egress easements among other easements and emergency vehicle access are provided. Right of way dedication and easement vacation are proposed.

2.2 PROJECT DESCRIPTION

Project Overview

The proposed project would develop the 4.3-acre site with 42, three-story townhouses in six buildings and one 292-unit, seven-story apartment building with a density of 77.7 units per acre. Approximately 5.82 percent of total units within the apartment building would be affordable (17 units out of 292). The full layout and elevation diagram of the project can be seen in Figure 2.2-1 and 2.2-2 respectively.

The proposed project would include a publicly accessible paseo connecting to the existing Casa Verde Street, which connects to Baypointe Parkway. Ground floor apartments and townhomes would

line the paseo. The proposed project features amenities including but not limited to a lobby, a work-from-home space, plaza areas, and bike rooms in the apartment building.

The building heights for the development would range from three to seven stories, plus roof decks. along Baypointe Parkway. These buildings would step down in height along the new paseo, the Baypointe Parkway frontage, and the private road; and would be set back from the existing adjacent apartment's private dog park. The townhouse building along Baypointe Parkway would also feature private rooftop decks.

Implementation of the project would result in 105 on-site trees and 10 off-site street trees being removed, including six trees on the western property line, and the planting of 160 24-inch box replacement trees.

The project site is currently developed with a 67,984 square foot industrial building and surface parking lot which were constructed in 1985 and would be demolished.

Amenities

The apartment building would feature indoor and outdoor recreational amenities including a pool and spa on a landscaped podium courtyard, rooftop decks, a dog park on the east side of the apartment building, a clubroom, and fitness studio. The townhouses would also have publicly accessible common open space with amenities in the paseo including seating, lighting, landscaping, and bicycle parking.

Parking and Site Access

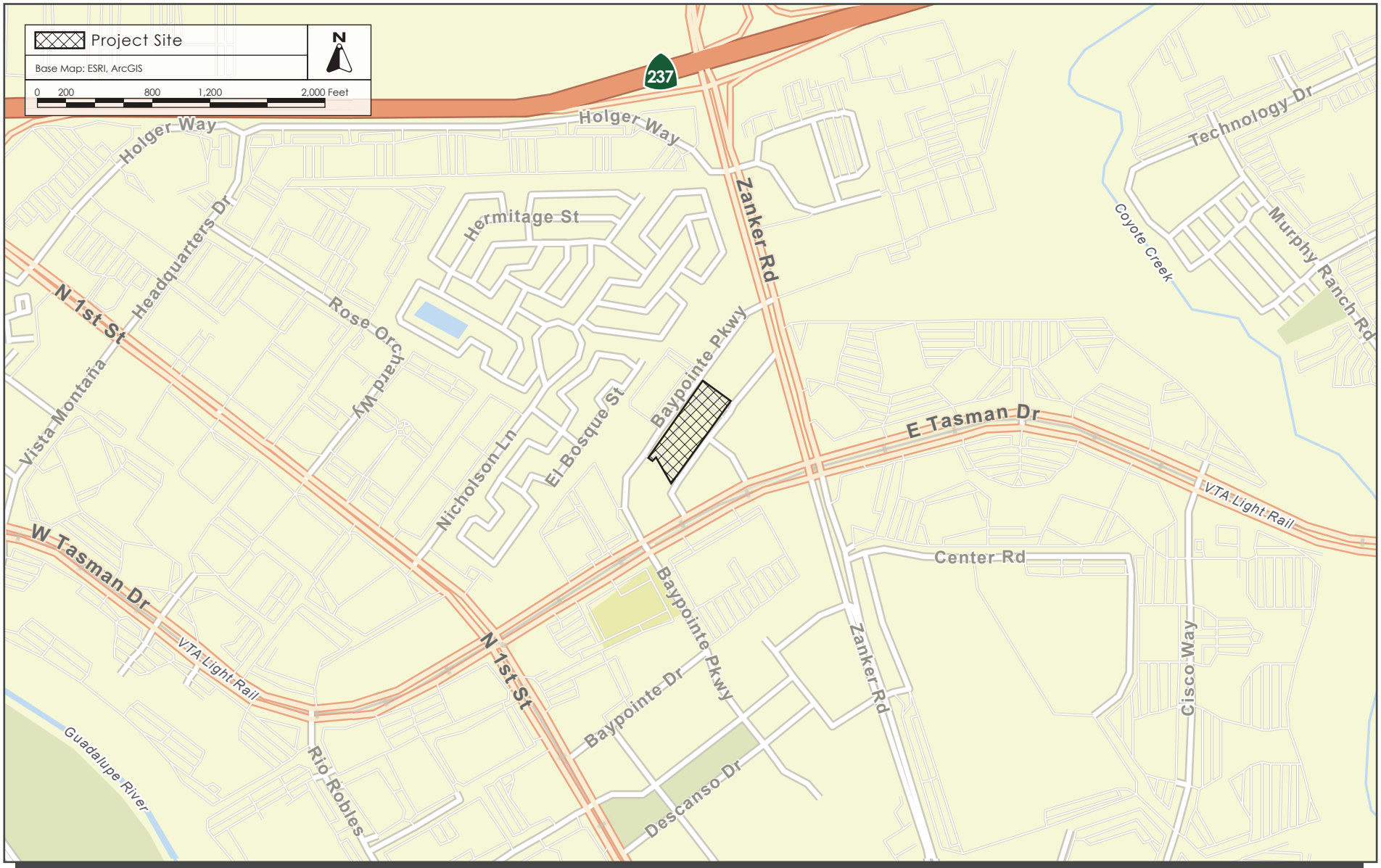
A total of 84 parking spaces would be provided within the townhouses in the form of a two-car garage for each unit, 10 of which would be tandem. The townhouse portion of the project would also include 11 motorcycle parking spaces. Eight on-site surface guest parking spaces would also be provided. The townhouses would also provide 42 long term bicycle parking spaces in each unit's garage, and two short term spaces in the public areas.

A total of 332 parking spaces would be provided in a garage for the apartment residents and nine surface spaces would be available to guests and prospective tenants. Within the garage, 11 of the spaces would be tandem and 66 would utilize mechanical sliders.[1] There would also be 146 bike parking spaces for residents in secure bike rooms as well as 18 short term bike parking spaces on the corners of the site guests.

Vehicle access to the townhouses would be provided via a 26-foot driveway, connecting Baypointe Parkway and the private road along the east side of the site. Additionally, the project would construct an internal private street connected to the driveway for townhouse access.

[1] Mechanical sliders are a machine operated shifting system that allows for greater parking capacity by sliding cars around on racks horizontally and vertically.

REGIONAL MAP | FIGURE 2.1-1



VICINITY MAP

FIGURE 2.1-2

AERIAL PHOTOGRAPH AND SURROUNDING LAND USES | FIGURE 2.1-3

Source: ktgy Architecture + Planning, December 2, 2022.

PROJECT SITE PLAN

FIGURE 2.2-1

EAST ELEVATION

NORTH ELEVATION

WEST ELEVATION

SOUTH ELEVATION

Source: ktgy Architecture + Planning, December 2, 2022.

ELEVATION DIAGRAM | FIGURE 2.2-2

The existing 30-foot wide driveway at the western end of the site would be reduced to 20 feet and used to access the apartment building parking garage and guest parking. Apartment move-ins and trash pick-up would utilize the private road with a designated loading driveway located at the southwest corner of the site.

The Baypointe Parkway frontage would be improved with a new 10-foot wide sidewalk with street trees. The apartment's leasing, lobby, and fitness studio, as well as individual resident entries for some of the townhouses would front Baypointe Parkway. The project would also include construction of two new ADA curb ramps and crosswalk striping at the intersection of Casa Verde Street and the private street.

Green Building Measures

The project would be constructed in compliance with the current California Green Building Standards Code (Title 24) and San José's adopted Reach Code. The apartment component would be designed to achieve LEED Silver standards and would include a solar panel array on the rooftop. As discussed above, the project would include 208 bicycle parking spaces including secure long-term spaces for residents within the apartment building and additional short-term spaces for guests on the exterior of the building. The project would include water-efficient landscaping which conforms to the State's Model Water Efficient Landscape Ordinance. The project would also plant 160 new 24-inch box trees on-site.

State Density Bonus

As proposed, five percent of the 334 residences on-site would be designated affordable. This would equate to 17 apartment units classified for very low-income households. Therefore, under the State Density Bonus law the proposed project is eligible for the following: a 20 percent density bonus, one incentive/concession[2], unlimited waivers or reductions of development standards, and use of the State Density Bonus Law's parking standards. The proposed project requests only waivers to development standards at this time, however during the permitting process the applicant could request use of other benefits. The proposed project is currently requesting waivers from the following development standards:

- Citywide Design Guidelines – Noncompacted Soil Volumes
- Citywide Design Guidelines – Tree to Building Separation Distances
- Citywide Design Guidelines – 50 Percent Minimum Infiltration Storm Water Treatment
- Citywide Design Guidelines – Tree Canopy Surface Parking Shading

Utilities, Public Services, Stormwater Management

Utilities and public services are readily available to the site and the proposed project would connect to existing municipal water and sewer services and recycled water. The project would include connection of three new storm drain laterals to the existing 27 to 30-inch reinforced concrete pipe (RCP) storm main along Baypointe Parkway and three new sanitary sewer laterals to the existing

[2] A development allowance proffered by the City

eight-inch vitrified clay pipe (VCP) sanitary main along Baypointe Parkway. Stormwater treatment and hydromodification would be provided in accordance with San José City standards.

Construction

The proposed project would require a maximum excavation of six feet below the existing grade, or 7.5 feet below the finished grade, for utilities and elevator pits. Excavation of the site would require approximately 4,100 cubic feet of soil removal and 1,100 cubic feet of fill. The total construction period would be approximately 32 months and estimated completion of construction is by 2026. Construction is proposed between the hours of 7:00 AM to 7:00 PM Monday through Friday, and Saturday 8:00 AM to 5:00 PM.

2.3 PROJECT OBJECTIVES

- Develop a mix of rental and for-sale multi-family housing units (including affordable units in the apartment building) to address the regional housing shortage.
- Provide affordable housing units in accordance with the City of San José Housing Element.
- Provide a variety of housing near the Baypointe Santa Clara Valley Transportation Authority (VTA) Light Rail Station and employment centers to reduce Vehicle Miles Traveled (VMT).
- Replace an underutilized office building with modern Class-A residential construction consistent with the Transit Employment Residential Overlay District (TERO), North San José (NSJ) Design Guidelines and Citywide Design Standards and Guidelines.
- Improve public pedestrian and bicycle access in the neighborhood with a publicly accessible central paseo. Utilize this paseo and building frontages to create a desirable streetscape and improve Baypointe Parkway.
- Provide on-site open space amenities for future residents.
- Enhance the architectural and visual character of the neighborhood by building townhouses and an apartment building with setbacks, massing breaks, and roof deck elements on select townhouses.

2.4 USES OF THE EIR

- Site Development Permit (SDP)
- Vesting Tentative Map (VTM)
- State Density Bonus and waivers
- SB 330 Application
- Tree Removal Permits

SECTION 3.0 ENVIRONMENTAL SETTING, IMPACTS, AND MITIGATION

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

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

The discussion for each environmental subject includes the following subsections:

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

Impact Discussion – This subsection includes the recommended checklist questions from Appendix G of the CEQA Guidelines to assess impacts.

- **Project Impacts** – This subsection discusses the project's impact on the environmental subject as related to the checklist questions. For significant impacts, feasible mitigation measures are identified. "Mitigation measures" are measures that will minimize, avoid, or eliminate a significant impact (CEQA Guidelines Section 15370). Each impact is numbered to correspond to the checklist question being answered. For example, Impact BIO-1 answers the first checklist question in the Biological Resources section. Mitigation measures are also numbered to correspond to the impact they address. For example, MM BIO-1.3 refers to the third mitigation measure for the first impact in the Biological Resources section.
- **Cumulative Impacts** – This subsection discusses the project's cumulative impact on the environmental subject. Cumulative impacts, as defined by CEQA, refer to two or more individual effects, which when combined, compound or increase other environmental impacts. Cumulative impacts may result from individually minor, but collectively significant effects taking place over a period of time. CEQA Guideline Section 15130 states that an EIR should discuss cumulative impacts "when the project's incremental effect is cumulatively considerable." The discussion does not need to be in as great detail as is necessary for project impacts, but is to be "guided by the standards of practicality and reasonableness." The purpose of the cumulative analysis is to allow decision makers to better understand the impacts that might result from approval of past, present, and reasonably foreseeable future

projects, in conjunction with the proposed project addressed in this EIR.

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

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

The City did not identify any approved (but not yet constructed or occupied) or pending projects in the project vicinity that need to be evaluated in the cumulative analysis.

For each resource area, cumulative impacts may occur over different geographic areas. For example, the project effects on air quality would combine with the effects of projects in the entire air basin, whereas noise impacts would primarily be localized to the surrounding area. The geographic area that could be affected by the proposed project varies depending upon the type of environmental issue being considered. Section 15130(b)(3) of the CEQA Guidelines states that lead agencies should define the geographic scope of the area affected by the cumulative effect. Table 3.0-1 provides a summary of the different geographic areas used to evaluate cumulative impacts.

Table 3.0-1: Geographic Considerations in Cumulative Analysis

Resource Area	Geographic Area
Aesthetics	Project site and adjacent parcels
Agriculture and Forestry Resources	Countywide
Air Quality	San Francisco Bay Area Air Basin
Biological Resources	Project site and adjacent parcels
Cultural Resources	Project site and adjacent parcels
Energy	Energy provider's territory
Geology and Soils	Project site and adjacent parcels
GHGs	Planet-wide
Hazards and Hazardous Materials	Project site and adjacent parcels
Hydrology and Water Quality	Coyote Creek watershed
Land Use and Planning/Population and Housing	Citywide

Table 3.0-1: Geographic Considerations in Cumulative Analysis	
Resource Area	**Geographic Area**
Minerals	Identified mineral recovery or resource area
Noise and Vibration	Project site and adjacent parcels
Public Services and Recreation	Citywide
Transportation/Traffic	Citywide
Tribal Cultural Resources	Project site and adjacent parcels
Utilities and Service Systems	Citywide
Wildfire	Within or adjacent to the wildfire hazard zone

3.1 AESTHETICS

3.1.1 Environmental Setting

3.1.1.1 *Regulatory Framework*

State

Senate Bill 743

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

- The project is a residential or mixed-use residential project, and
- The project is located on an infill site within a transit priority area.[3]

SB 743 also clarifies that local governments retain their ability to regulate a project's aesthetics impacts outside of the CEQA process.

Streets and Highway Code Sections 260 through 263

The California Scenic Highway Program (Streets and Highway Code, Sections 260 through 263) is managed by the California Department of Transportation (Caltrans). The program is intended to protect and enhance the natural scenic beauty of California highways and adjacent corridors through special conservation treatment. There are no state-designated scenic highways in San José. Interstate 280 from the San Mateo County line to State Route (SR) 17, which includes segments in San José, is an eligible, but not officially designated, State Scenic Highway.[4]

In Santa Clara County, the one state-designated scenic highway is SR 9 from the Santa Cruz County line to the Los Gatos City Limit. Eligible State Scenic Highways (not officially designated) include: SR 17 from the Santa Cruz County line to SR 9, SR 35 from Santa Cruz County line to SR 9, Interstate 280 from the San Mateo County line to SR 17, and the entire length of SR 152 within the County.

[3] An "infill site" is defined as "a lot located within an urban area that has been previously developed, or on a vacant site where at least 75 percent of the perimeter of the site adjoins, or is separated only by an improved public right-of-way from, parcels that are developed with qualified urban uses." A "transit priority area" is defined as "an area within 0.5 mile of a major transit stop that is existing or planned, if the planned stop is scheduled to be completed within the planning horizon included in a Transportation Improvement Program or applicable regional transportation plan." A "major transit stop" means "a site containing an existing rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods." Source: Office of Planning and Research. "CEQA Review of Housing Projects Technical Advisory." Accessed August 15, 2022. https://opr.ca.gov/docs/20190208-TechAdvisory-Review_of_Housing_Exemptions.pdf.

[4] California Department of Transportation. "Scenic Highways." Accessed August 15, 2022. https://dot.ca.gov/programs/design/lap-landscape-architecture-and-community-livability/lap-liv-i-scenic-highways.

Regional and Local

San José Municipal Code

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

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

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

City Design Guidelines and Design Review Process

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

City Council Policy 4-2: Lighting

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

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

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

Envision San José 2040 General Plan

The Envision San José 2040 General Plan identifies "gateways", freeways, and rural scenic corridors where preservation and enhancement of views of the natural and man-made environment are crucial. The following policies in the City's General Plan have been adopted for the purpose of reducing or avoiding impacts related to aesthetics and are applicable to the project.

General Plan Policies – Aesthetics	
Policy	**Description**
CD-1.1	Require the highest standards of architectural and site design, and apply strong design controls for all development projects, both public and private, for the enhancement and development of community character and for the proper transition between areas with different types of land uses.
CD-1.8	Create an attractive street presence with pedestrian-scaled building and landscaping elements that provide an engaging, safe, and diverse walking environment. Encourage compact, urban design, including use of smaller building footprints, to promote pedestrian activity throughout the City.
CD-1.9	Give the greatest priority to developing high-quality pedestrian facilities in areas that will most promote transit use and bicycle and pedestrian activity. In pedestrian oriented areas such as Downtown, Villages, Corridors, or along Main Streets, commercial and mixed-use building frontages should be placed at or near the street facing property line with entrances directly to the public sidewalk. In these areas, strongly discourage parking areas located between the front of buildings and the street to promote a safe and attractive street façade and pedestrian access to buildings.
CD-1.12	Use building design to reflect both the unique character of a specific site and the context of surrounding development and to support pedestrian movement through the building site by providing convenient means of entry from public streets and transit facilities where applicable, and by designing ground level building frontages to create an attractive pedestrian environment along building frontages. Unless it is appropriate to the site and context, franchise-style architecture is strongly discouraged.
CD-1.13	Use development review to encourage creative, high-quality innovative, and distinctive architecture that helps to create unique, vibrant places that are both desirable urban places to live, work, and play and that lead to competitive advantages over other regions.
CD-1.17	Minimize the footprint and visibility of parking area. Where parking areas are necessary, provide aesthetically pleasing and visually interesting parking garages with clearly identified pedestrian entrances and walkways. Encourage designs that encapsulate parking facilities behind active building space or screen parked vehicles from view from the public realm. Ensure that garage lighting does not impact adjacent uses, and to the extent feasible, avoid impacts of headlights on adjacent land uses.
CD-1.23	Further the Community Forest Goals and Policies in this Plan by requiring new development to plant and maintain trees at appropriate locations on private property and along public street frontages. Use trees to help soften the appearance of the built environment, help provide transitions between land uses, and shade pedestrian and bicycle areas.
CD-5.6	Design lighting locations and levels to enhance the public realm, promote safety and comfort, and create engaging public spaces. Seek to balance minimum energy use of outdoor lighting with goal of providing safe and pleasing well-lit spaces. Consider the City's outdoor lighting policies in development review processes.
VN-2.3	Ensure that community members have the opportunity to provide input on the design of public and private development within their community.

3.1.1.2 *Existing Conditions*

Project Site

The project site is flat and currently developed with a one-story industrial building, surface parking, and landscaping. The building is clad in white stucco and is separated from the street by a parking lot which encircles the building. Landscaping on-site consists of mature ornamental trees along the perimeter of the site, on median islands throughout the surface parking lot, and around the perimeter of the building. Several ornamental shrubs are also present around the perimeter of the building. Existing landscaping partially obscures views of the building from the street. Photos 1 and 2 show views of the existing development on-site.

Surrounding Area

The project site is located in an area developed with predominantly modern and recently constructed industrial and residential buildings. Several undeveloped parcels are also present and scattered throughout the project area. The project is immediately bordered Baypointe Parkway and a one-story industrial building to the north, a five-story residential building to the south, a four-story residential building to the west, and an undeveloped parcel to the east. Photos 3 and 4 show views of existing development in the surrounding area.

Scenic Views and Resources

The City of San José has many scenic resources including the hills and mountains that frame the valley floor, the baylands, and the urban skyline itself. Hillsides visible from the city include the foothills of the Diablo Range and Silver Creek Hills to the east, the Santa Cruz Mountains to the west, and Santa Teresa Hills to the south. The project site is relatively flat and is located in an urban area. There are no baylands visible from the project site. Views of the surrounding mountains and hills are currently obscured by existing development and mature trees. The project area is developed, and no natural scenic resources such as rock outcroppings are present on the site. There are no existing City-designated Historic Landmarks that are visible from the project site or its vicinity, due to existing urban development in the surrounding area.

Scenic Corridors

The project site is not located along a state-designated scenic highway. The nearest state-designated scenic highway is SR 9, approximately 12 miles southwest of the site.[5] The nearest eligible state scenic highways are Interstate 280 (I-280) (at the Interstate 85 interchange), approximately three miles northwest of the site and SR 17, approximately 13 miles southwest of the project site. The designated scenic and eligible state scenic highways are not visible from the project site. The City's General Plan identifies Gateways and Scenic Corridors where preservation and enhancement of views of the natural and man-made environment are crucial. There are no Urban Throughways in the project vicinity.[6]

[5] California Department of Transportation. California State Scenic Highway System Map. 2018. https://caltrans.maps.arcgis.com/apps/webappviewer/index.html?id=465dfd3d807c46cc8e8057116f1aacaa

[6] City of San José. Envision San José 2040 General Plan. November 1, 2011. Amended November 3, 2022. Chapter 4, P 27.

Photo 1: View of project site from northwestern end looking south.

Photo 2: View of project site from southeastern end looking north.

Photo 3: View of Interim City of San José Park from northern end of project site looking north.

Photo 4: View of Enso Apartments and University of Silicon Valley from Baypointe Parkway looking southwest.

3.1.2 Impact Discussion

For the purpose of determining the significance of the project's impact on aesthetics, except as provided in Public Resources Code Section 21099, would the project:

1) Have a substantial adverse effect on a scenic vista?
2) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?
3) In non-urbanized areas, substantially degrade the existing visual character or quality of public views of the site and its surroundings?[7] If the project is in an urbanized area, would the project conflict with applicable zoning and other regulations governing scenic quality?
4) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?

3.1.2.1 *Project Impacts*

The proposed project would replace an existing industrial building with residential units (including affordable units) on an infill site within a transit priority area.[8] Pursuant to SB 743 (Public Resources Code section 21099[d][1]) residential, mixed-use residential, or employment center projects on an infill site within a transit priority area shall not be considered to have a significant aesthetic impact on the environment; therefore, the aesthetics impacts of the project would be less than significant. Nonetheless, the following discussion is included for informational purposes.

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

As discussed above, the project site is located in a developed area of San José surrounded by existing development and mature trees. The project site and surrounding area are flat and there are no scenic vistas visible on or through the project site. For these reasons, the project would not have a substantial adverse effect on a scenic vista. **(Less than Significant Impact)**

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

The project site is not located on a State Designated Scenic Highway. The nearest State Designated Scenic Highway to the project site is SR 9, approximately 12 miles southwest of the site. The site is not visible from SR 9. Because the project site is not located within a state scenic highway,

[7] Public views are those that are experienced from publicly accessible vantage points.
[8] In accordance with SB 743, "Transit Priority Areas" are defined as "an area within one-half mile of a major transit stop that is existing or planned, if the planned stop is scheduled to be completed within the planning horizon included in a Transportation Improvement Program adopted pursuant to Section 450.322 of Title 23 of the Code of Federal Regulations." Major Transit Stop is defined in Section 21064.3 as "a site containing an existing rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service of 15 minutes or less during the morning and afternoon peak commute periods." The project site is located approximately 670 feet northeast of Baypointe light rail station which is considered a major transit stop pursuant to SB 743.

implementation of the project would not damage scenic resources within a State Designated Scenic Highway. **(Less than Significant Impact)**

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

The project site is located within an urbanized area of north San Jose. Although the City's Zoning Ordinance does not include regulations governing scenic quality, the proposed project would comply with Title 20 of the City's Municipal Code and would be subject to a design review process conducted as part of the development permit review process to ensure that it conforms with all adopted design guidelines and other relevant policies and ordinances. For these reasons, the proposed project would not conflict with applicable zoning and other regulations governing scenic quality. **(Less than Significant Impact)**

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

The project site is located in an urban area with existing commercial and residential development and vehicular traffic. The project site is currently developed with a one-story industrial building and surface parking. The existing use results in light and glare from building-mounted security lights, interior building lights, and vehicle headlights as vehicles enter and exit the project site. The proposed project would include internal building lights, security lights, vehicular headlights, and external building lights resulting in more visible nighttime lighting than currently exists on-site. The proposed project would be subject to Section 20.75.360 of the City's Municipal Code[9] and the City's design review process prior to the issuance of development permits to ensure that it is consistent with General Plan policies and the City's Design Guidelines. Compliance with the Downtown Design Guidelines, City policies, and regulations would protect the night sky and control the amount of light shining on streets, sidewalks, and residential properties. Therefore, the proposed project would not adversely affect day or nighttime views in the area from lighting. **(Less than Significant Impact)**

3.1.2.2 *Cumulative Impacts*

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

The geographic area for cumulative aesthetic impacts includes the project site and adjacent parcels. As discussed previously, the City's General Plan includes standards and guidelines to reduce impacts to scenic views and resources. All cumulative projects occurring within San José would be subject to the City's design guidelines (depending on the proposed use and location) and lighting standards. By requiring projects to adhere to these requirements, aesthetic impacts would be minimized or reduced. Development projects in the City would undergo individual review to ensure that site selection,

[9] Section 20.75.360 of the City's Municipal Code requires lighting to be directed away from any residential uses.

building materials, heights, and lighting is implemented in a manner that does not result in significant visual impacts. For these reasons, the proposed project, would not result in a cumulatively considerable aesthetic or visual impact when combined with other past, present, and responsibly foreseeable projects in north San José. **(Less than Significant Cumulative Impact)**

3.2 AGRICULTURE AND FORESTRY RESOURCES

3.2.1 Environmental Setting

3.2.1.1 *Regulatory Framework*

State

Farmland Mapping and Monitoring Program

The California Department of Conservation's Farmland Mapping and Monitoring Program (FMMP) assesses the location, quality, and quantity of agricultural land and conversion of these lands over time. Agricultural land is rated according to soil quality and irrigation status. The best quality land is identified as Prime Farmland. In CEQA analyses, the FMMP classifications and published county maps are used, in part, to identify whether agricultural resources that could be affected are present on-site or in the project area.[10]

California Land Conservation Act

The California Land Conservation Act (Williamson Act) enables local governments to enter into contracts with private landowners to restrict parcels of land to agricultural or related open space uses. In return, landowners receive lower property tax assessments. In CEQA analyses, identification of properties that are under a Williamson Act contract is used to also identify sites that may contain agricultural resources or are zoned for agricultural uses.[11]

Fire and Resource Assessment Program

The California Department of Forestry and Fire Protection (CAL FIRE) identifies forest land, timberland, and lands zoned for timberland production that can (or do) support forestry resources.[12] Programs such as CAL FIRE's Fire and Resource Assessment Program and are used to identify whether forest land, timberland, or timberland production areas that could be affected are located on or adjacent to a project site.[13]

3.2.1.2 *Existing Conditions*

The project site is defined as urban built-up land on the California Important Farmland Finder provided by the Department of Conservation. Additionally, the project site is not under a Williamson Act Contract. The site is developed and does not contain forestry resources.

[10] California Department of Conservation. "Farmland Mapping and Monitoring Program." Accessed August 16, 2022. http://www.conservation.ca.gov/dlrp/fmmp/Pages/Index.aspx.
[11] California Department of Conservation. "Williamson Act." http://www.conservation.ca.gov/dlrp/lca.
[12] Forest Land is land that can support 10 percent native tree cover and allows for management of forest resources (California Public Resources Code Section 12220(g)); Timberland is land not owned by the federal government or designated as experimental forest land that is available for, and capable of, growing trees to produce lumber and other products, including Christmas trees (California Public Resources Code Section 4526); and Timberland Production is land used for growing and harvesting timber and compatible uses (Government Code Section 51104(g)).
[13] California Department of Forestry and Fire Protection. "Fire and Resource Assessment Program." Accessed August 16, 2022. http://frap.fire.ca.gov/.

3.2.2 Impact Discussion

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

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

3.2.2.1 *Project Impacts*

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

There are no agricultural resources located on-site including, Prime Farmland; Unique Farmland; or Farmland of Statewide Importance, as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency. The project would have no impact on agricultural resources. **(No Impact)**

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

The project site is not subject to a Williamson Act contract. The site is located within the Industrial Park zoning district and would not conflict with any agricultural zoning. **(No Impact)**

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

The project site is zoned for Industrial Park and is identified as Urban and Built-Up Land on the California Department of Conservation database of agriculturally related data. The project site is not zoned for forestland, timberland, or timberland zoned Timberland Production. The project would not impact these resources by conflicting with existing zoning for forest land, timberland, or timberland zoned Timberland Production. **(No Impact)**

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

The project site is fully developed and does not contain land uses that could serve as forest land. Therefore, the project would not result in the conversion of forest land to non-forest uses. **(No Impact)**

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

The project site is fully developed and does not contain land uses that could serve as agricultural or forest land. Therefore, the project would not result in the conversion of agricultural or forest land to non-agricultural or non-forest uses. **(No Impact)**

3.2.2.2 *Cumulative Impacts*

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

The proposed project would not cause impacts to agricultural or forestry resources on or near the project site and would not result in impacts to any other agricultural or forestry resources surrounding the project site. Therefore, the proposed project would not result in a cumulatively considerable impact to agricultural and forestry resources when combined with other past, present, and responsibly foreseeable projects with Santa Clara County. **(No Cumulative Impact)**

3.3 AIR QUALITY

The information in this section is based in part on the Air Quality Assessment prepared for the project by Illingworth and Rodkin dated January 13, 2023. This report is included in Appendix A of this document.

3.3.1 Environmental Setting

3.3.1.1 *Background Infrastructure*

Criteria Pollutants

Air quality in the Bay Area is assessed related to six common air pollutants (referred to as criteria pollutants), including ground-level ozone (O_3), nitrogen oxides (NO_x), particulate matter (PM), carbon monoxide (CO), sulfur oxides (SO_x), and lead.[14] Criteria pollutants are regulated because they result in health effects. An overview of the sources of criteria pollutants and their associated health are summarized in Table 3.3-1. The most commonly regulated criteria pollutants in the Bay Area are discussed further below.

Table 3.3-1: Health Effects of Air Pollutants

Pollutants	Sources	Primary Effects
O_3	Atmospheric reaction of organic gases with nitrogen oxides in sunlight	• Aggravation of respiratory and cardiovascular diseases • Irritation of eyes • Cardiopulmonary function impairment
Nitrogen Dioxide (NO_2)	Motor vehicle exhaust, high temperature stationary combustion, atmospheric reactions	• Aggravation of respiratory illness • Reduced visibility
Fine Particulate Matter ($PM_{2.5}$) and Coarse Particulate Matter (PM_{10})	Stationary combustion of solid fuels, construction activities, industrial processes, atmospheric chemical reactions	• Reduced lung function, especially in children • Aggravation of respiratory and cardiorespiratory diseases • Increased cough and chest discomfort • Reduced visibility
Toxic Air Contaminants (TACs)	Cars and trucks, especially diesel-fueled; industrial sources, such as chrome platers; dry cleaners and service stations; building materials and products	• Cancer • Chronic eye, lung, or skin irritation • Neurological and reproductive disorders

High O_3 levels are caused by the cumulative emissions of reactive organic gases (ROG) and NO_x. These precursor pollutants react under certain meteorological conditions to form high O_3 levels. Controlling the emissions of these precursor pollutants is the focus of the Bay Area's attempts to reduce O_3 levels. The highest O_3 levels in the Bay Area occur in the eastern and southern inland

[14] The area has attained both state and federal ambient air quality standards for CO. The project does not include substantial new emissions of sulfur dioxide or lead. These criteria pollutants are not discussed further.

valleys that are downwind of air pollutant sources.

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

Toxic Air Contaminants

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

Diesel exhaust is the predominant TAC in urban air and is estimated to represent about three-quarters of the cancer risk from TACs. Diesel exhaust is a complex mixture of gases, vapors, and fine particles. Medium- and heavy-duty diesel trucks represent the bulk of DPM emissions from California highways. The majority of DPM is small enough to be inhaled into the lungs. Most inhaled particles are subsequently exhaled, but some deposit on the lung surface or are deposited in the deepest regions of the lungs (most susceptible to injury).[15] Chemicals in diesel exhaust, such as benzene and formaldehyde, have been previously identified as TACs by the California Air Resources Board (CARB).

Sensitive Receptors

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

3.3.1.2 *Regulatory Framework*

Federal and State

Clean Air Act

At the federal level, the United States Environmental Protection Agency (EPA) is responsible for overseeing implementation of the Clean Air Act and its subsequent amendments. The federal Clean Air Act requires the EPA to set national ambient air quality standards for the six common criteria pollutants (discussed previously), including PM, O_3, CO, SO_x, NO_x, and lead.

[15] California Air Resources Board. "Overview: Diesel Exhaust and Health." Accessed August 16, 2022. https://ww2.arb.ca.gov/resources/overview-diesel-exhaust-and-health.

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

Risk Reduction Plan

To address the issue of diesel emissions in the state, CARB developed the Risk Reduction Plan to Reduce Particulate Matter Emissions from Diesel-Fueled Engines and Vehicles. In addition to requiring more stringent emission standards for new on-road and off-road mobile sources and stationary diesel-fueled engines to reduce particulate matter emissions by 90 percent, the plan involves application of emission control strategies to existing diesel vehicles and equipment to reduce DPM (in additional to other pollutants). Implementation of this plan, in conjunction with stringent federal and CARB-adopted emission limits for diesel fueled vehicles and equipment (including off-road equipment), will significantly reduce emissions of DPM and NO_X.

Regional

2017 Clean Air Plan

The Bay Area Air Quality Management District (BAAQMD) is the agency primarily responsible for assuring that the federal and state ambient air quality standards are maintained in the San Francisco Bay Area. Regional air quality management districts, such as BAAQMD, must prepare air quality plans specifying how state and federal air quality standards will be met. BAAQMD's most recently adopted plan is the Bay Area 2017 Clean Air Plan (2017 CAP). The 2017 CAP focuses on two related BAAQMD goals: protecting public health and protecting the climate. To protect public health, the 2017 CAP describes how BAAQMD will continue its progress toward attaining state and federal air quality standards and eliminating health risk disparities from exposure to air pollution among Bay Area communities. To protect the climate, the 2017 CAP includes control measures designed to reduce emissions of methane and other super-greenhouse gases (GHGs) that are potent climate pollutants in the near-term, and to decrease emissions of carbon dioxide by reducing fossil fuel combustion.[16]

CEQA Air Quality Guidelines

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

[16] BAAQMD. *Final 2017 Clean Air Plan.* April 19, 2017. http://www.baaqmd.gov/plans-and-climate/air-quality-plans/current-plans.

Community Air Risk Evaluation Program

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

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

Envision San José 2040 General Plan

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

General Plan Policies – Air Quality	
Policy	**Description**
MS-10.1	Assess projected air emissions from new development in conformance with the BAAQMD CEQA Guidelines and relative to state and federal standards. Identify and implement feasible air emission reduction measures.
MS-10.2	Consider the cumulative air quality impacts from proposed developments for proposed land use designation changes and new development, consistent with the region's Clean Air Plan and State law.
MS-10.5	In order to reduce vehicle miles traveled and traffic congestion, require new development within 2,000 feet of an existing or planned transit station to encourage the use of public transit and minimize the dependence on the automobile through the application of site design guidelines and transit incentives.
MS-11.1	Require completion of air quality modeling for sensitive land uses such as new residential developments that are located near sources of pollution such as freeways and industrial uses. Require new residential development projects and projects categorized as sensitive receptors to incorporate effective mitigation into project designs or be located an adequate distance from sources of toxic air contaminants (TACs) to avoid significant risks to health and safety.
MS-11.2	For projects that emit toxic air contaminants, require project proponents to prepare health risk assessments in accordance with BAAQMD-recommended procedures as part of environmental review and employ effective mitigation to reduce possible health risks to a less than significant level. Alternatively, require new projects (such as, but not limited to, industrial, manufacturing, and processing facilities) that are sources of TACs to be located an adequate distance from residential areas and other sensitive receptors.

MS-11.5	Encourage the use of pollution absorbing trees and vegetation in buffer areas between substantial sources of TACs and sensitive land uses.
MS-11.7	Consult with BAAQMD to identify stationary and mobile TAC sources and determine the need for and requirements of a health risk assessment for proposed developments.
MS-11.8	For new projects that generate truck traffic, require signage which reminds drivers that the State truck idling law limits truck idling to five minutes.
MS-13.1	Include dust, particulate matter, and construction equipment exhaust control measures as conditions of approval for subdivision maps, site development and planned development permits, grading permits, and demolition permits. At minimum, conditions shall conform to construction mitigation measures recommended in the current BAAQMD CEQA Guidelines for the relevant project size and type.
MS-13.2	Construction and/or demolition projects that have the potential to disturb asbestos (from soil or building material) shall comply with all the requirements of the California Air Resources Board's air toxic control measures (ATCMs) for Construction, Grading, Quarrying, and Surface Mining Operations.
MS-13.4	Adopt and periodically update dust, particulate, and exhaust control standard measures for demolition and grading activities to include on project plans as conditions of approval based upon construction mitigation measures in the BAAQMD CEQA Guidelines.

3.3.1.3 *Existing Conditions*

Air quality is determined by the concentration of various pollutants in the atmosphere. The amount of a given pollutant in the atmosphere is determined by the amount of pollutants released within an area, transport of pollutants to and from surrounding areas, local and regional meteorological conditions, and the surrounding topography of the air basin.

The project is located in Santa Clara County, which is in the San Francisco Bay Area Air Basin. BAAQMD is responsible for assuring that the national and state ambient air quality standards are attained and maintained in the Bay Area. Air quality studies generally focus on four criteria pollutants that are most commonly measured and regulated: CO, O_3, NO_2, and PM_{10} and $PM_{2.5}$. These pollutants are considered criteria pollutants by the U.S. Environmental Protection Agency (U.S. EPA) and CARB as they can result in health effects such as respiratory impairment and heart/lung disease symptoms. Table 3.3-2 shows violations of state and federal standards at the monitoring station in downtown San José (the nearest monitoring station to the project site) during the 2017-2019 period (the most recent years for which data is available).[17]

[17] PM refers to Particulate Matter. Particulate matter is referred to by size (i.e., 10 or 2.5) because the size of particles is directly linked to their potential for causing health problems.

Table 3.3-2: Ambient Air Quality Standards Violations and Highest Concentrations				
Pollutant	**Standard**	**Days Exceeding Standard**		
		2017	**2018**	**2019**
SAN JOSÉ STATION				
Ozone	State 1-hour	3	0	1
	Federal 8-hour	4	0	2
Carbon Monoxide	Federal 8-hour	0	0	0
	State 8-hour	0	0	0
Nitrogen Dioxide	State 1-hour	0	0	0
PM_{10}	Federal 24-hour	0	0	0
	State 24-hour	6	4	4
$PM_{2.5}$	Federal 24-hour	6	15	0

Source: Bay Area Air Quality Management District. "Annual Bay Area Air Quality Summaries." Accessed January 19, 2023. http://www.baaqmd.gov/about-air-quality/air-quality-summaries.

"Attainment" status for a pollutant means that a given air district meets the standard set by the EPA and/or CARB. The Bay Area meets all ambient air quality standards with the exception of state and federal standards for ground-level ozone and respirable particulate matter (PM_{10}), and state standards for fine particulate matter ($PM_{2.5}$). The Bay Area is considered in attainment or unclassified for all other pollutants.

The nearest sensitive receptors to the project site are the multi-family residences to the east, south, and west, with single-family residences at further distances to the west and northwest.

3.3.2 Impact Discussion

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

1) Conflict with or obstruct implementation of the applicable air quality plan?
2) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard?
3) Expose sensitive receptors to substantial pollutant concentrations?
4) Result in other emissions (such as those leading to odors) adversely affecting a substantial number of people?

3.3.2.1 *Significance Thresholds*

As discussed in CEQA Guidelines Section 15064(b), the determination of whether a project may have a significant effect on the environment calls for judgment on the part of the lead agency and must be based to the extent possible on scientific and factual data. The City of San José has considered the air quality thresholds updated by BAAQMD in May 2017 and regards these thresholds to be based on the best information available for the San Francisco Bay Area Air Basin and conservative in terms of the assessment of health effects. The BAAQMD CEQA Air Quality

thresholds used in this analysis are identified in Table 3.3-3 below. In developing thresholds of significance for air pollutants, BAAQMD considered the emission levels for which a project's individual emissions would be cumulatively considerable and contribute to unhealthy air. BAAQMD's thresholds are set to be protective of human health and are designed to allow the air basin to achieve the state and federal ambient air quality standards. If a project makes a less than cumulatively considerable contribution to the criteria air pollutants for which the basin is in nonattainment, the project would not have significant adverse health effects.

Table 3.3-3: Air Quality Significance Thresholds

Criteria Air Pollutant	***Construction Thresholds***	***Operational Thresholds***	
	Average Daily Emissions (lbs./day)	**Average Daily Emissions (lbs./day)**	**Annual Average Emissions (tons/yr.)**
ROG	54	54	10
NO_x	54	54	10
PM_{10}	82 (Exhaust)	82	15
$PM_{2.5}$	54 (Exhaust)	54	10
CO	Not Applicable	9.0 ppm (8-hr. average) or 20.0 ppm (1-hr. average)	
Fugitive Dust	Construction Dust Ordinance or Other Best Management Practices	Not Applicable	
Health Risks and Hazards	**Single Sources Within 1,000-foot Zone of Influence**	**Combined Sources (Cumulative from all Sources Within 1,000-foot Zone of Influence)**	
Excess Cancer Risk	> 10.0 per one million	> 100 per one million	
Hazard Index	>1.0	>10.0	
Incremental Annual $PM_{2.5}$ >0.3	> 0.3µg/m^3	> 0.8µg/m3	

Note: ROG = reactive organic gases, NOx = nitrogen oxides, PM10 = course particulate matter or particulates with an aerodynamic diameter of 10 micrometers (µm) or less, PM2.5 = fine particulate matter or particulates with an aerodynamic diameter of 2.5µm or less.

3.3.2.2 *Project Impacts*

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

Plan Consistency

As demonstrated below in Table 3.3-4 and 3.3-5 below, the proposed project would not result in construction or operational criteria pollutant emissions which exceed BAAQMD CEQA Air Quality Guidelines Operational Criteria Pollutant impact thresholds. The proposed project, therefore, would not conflict with the 2017 CAP because it would result in emissions lower than the BAAQMD thresholds (shown in Table 3.3-3), is considered urban infill, and would be located near bike paths and transit with regional connections. Because the project would not exceed the BAAQMD impact thresholds, it would not result in the generation of operational-related criteria air pollutants and/or precursors that exceed the thresholds shown in Table 3.3-3. Thus, the project is not required to incorporate project-specific control measures listed in the 2017 CAP. Further, implementation of the

project would not inhibit BAAQMD or partner agencies from continuing progress toward attaining state and federal air quality standards and eliminating health-risk disparities from exposure to air pollution among Bay Area communities, as described within the 2017 CAP.

Construction Criteria Pollutant Emissions

The California Emissions Estimator model (CalEEMod) Version 2020.4.0 was used to estimate annual emissions from project construction. The following proposed land uses were input into CalEEMod, which included 42 dwelling units entered as "Condo/Townhouse", 287 dwelling units entered as "Apartments Mid-Rise", 343 parking spaces entered as "Enclosed Parking Structure with Elevator", and eight parking spaces entered as parking lot. Demolition of existing building on-site and soil export were also input into CalEEMod (refer to Appendix A of this document). Construction of the proposed project has an estimated start date of January 2025 and an estimated construction period approximately 261 construction days over the course of 32 months.[18] During construction, worker trips, on-site construction operations, and truck traffic would contribute to criteria pollutants in the area of the project site. Construction emissions for the proposed project are summarized in Table 3.3-4.

Table 3.3-4: Construction Emissions

Scenario	ROG	NOx	PM_{10} Exhaust	$PM_{2.5}$ Exhaust
Construction Emissions Per Year (Tons)				
2025	6.88	3.69	0.18	0.14
Average Daily Construction Emissions Per Year (pounds/day)				
2025 (261 construction workdays)	52.75	28.28	1.39	1.11
BAAQMD Thresholds (lbs. per day)	*54 lbs/day*	*54 lbs/day*	*82 lbs./day*	*54 lbs/day*
Exceed Threshold?	No	No	No	No

Source: Illingworth and Rodkin Inc. 210 Baypointe Parkway Residential Project Air Quality Assessment. January 13, 2023.

As shown in Table 3.3-4, the ROG, NOx, and exhaust PM emissions during construction would not exceed the established BAAQMD thresholds.

All proposed projects are required to implement BAAQMD's basic best management practices for fugitive dust control (PM_{10} and $PM_{2.5}$) from construction activities, which have been adopted by the City as Standard Permit Conditions. Implementation of the following Standard Permit Conditions would further reduce fugitive dust emissions from construction activity.

[18] The 261 construction days are equivalent to the number of work days in a 12 month period, but the full extent of construction would occur over 29 months for the Townhouse component of the project and 32 months for the apartment component. The analysis took into account all active work days and captured the full extent of impacts of the proposed project.

Standard Permit Conditions:

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

- Water active construction areas at least twice daily or as often as needed to control dust emissions.
- Cover trucks hauling soil, sand, and other loose materials and/or ensure that all trucks hauling such materials maintain at least two feet of freeboard.
- Remove visible mud or dirt track-out onto adjacent public roads using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.).
- Pave new or improved roadways, driveways, and sidewalks as soon as possible.
- Lay building pads as soon as possible after grading unless seeding or soil binders are used.
- All vehicle speeds on unpaved roads shall be limited to 15 mph.
- Replant vegetation in disturbed areas as quickly as possible.
- Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
- Minimize idling times either by shutting off equipment when not in use, or reducing the maximum idling time to five minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations). Provide clear signage for construction workers at all access points.
- Maintain and property tune construction equipment in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
- Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints.

The proposed project would result in a less than significant criteria pollutant emissions impact during construction of the proposed project and would not conflict with or obstruct implementation of the Bay Area 2017 CAP. **(Less than Significant Impact)**

Operational Period Emissions – Criteria Pollutants

Operational criteria pollutant emissions associated with the project would be generated primarily from project generators and vehicles driven by future residents of the site.[19] The project does not propose to install a generator(s) and, therefore, would have no stationary TAC emission sources. The modeled emissions for the proposed project operations (estimated using CalEEMod) are shown below in Table 3.3-5.

[19] Ground floor equipment (such as HVAC systems) do not generate PM emissions; therefore, those types of equipment were not included in the analysis.

Table 3.3-5 Operational Criteria Air Pollutants Emissions				
Scenario	**ROG**	**NOx**	**Total PM10**	**Total PM2.5**
Operational Year 2026	2.83	0.49	0.98	0.26
Threshold - Tons/year	10.0	10.0	15.0	10.0
Average Daily Emissions (lbs/day)				
Operational Year 2025	15.49	2.71	5.35	1.42
Threshold – lbs/day	54.0	54.0	82.0	54.0
Thresholds Exceeded?	**No**	**No**	**No**	**No**
Source: Illingworth and Rodkin Inc. 210 Baypointe Parkway Residential Project Air Quality Assessment. January 13, 2023.				

Operation of the proposed project would not exceed BAAQMD significance thresholds. Therefore, the proposed project would result in a less than significant operational criteria pollutants impact and would not conflict with or obstruct implementation of the Bay Area 2017 CAP. **(Less than Significant Impact)**

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

The Bay Area is considered a non-attainment area for ground-level O_3, PM_{10}, and $PM_{2.5}$ under both the federal Clean Air Act and state Clean Air Act. The proposed project would increase criteria pollutants in the Bay Area, contributing to existing violations of O_3 standards. Per the BAAQMD CEQA Air Quality Guidelines, air pollution by its nature is largely a cumulative impact. No single project is sufficient in size by itself, to result in nonattainment of ambient air quality standards. If a project exceeds the identified significance thresholds, its emissions would be cumulatively considerable, resulting in significant adverse air quality impacts to the region's existing air quality conditions. As discussed above, the proposed project would not result in any air criteria pollutant emissions exceeding BAAQMD's significance thresholds. As a result, the proposed project would not result in a cumulatively considerable net increase of any criteria pollutant for which the region is in non-attainment. **(Less than Significant Impact)**

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

Project Construction – Dust Emissions

During construction, the proposed project would result in dust from vehicles and other construction activities. Based on the estimates in the Air Quality Assessment, the fugitive dust emissions for the construction of the proposed project were calculated to be approximately 0.02 tons per year for the entirety of the construction period, which is below BAAQMD significance thresholds. In addition, the proposed project would be required to comply with the City's Standard Permit Condition listed under checklist question a, which would further reduce construction-related fugitive dust emissions. Therefore, while the fugitive particulate matter produced by the proposed project would be below the significance threshold, the aforementioned Standard Permit Conditions would further reduce particulate matter emissions. As a result, the project would have a less than significant impact.

Project Construction – Community Risk Impacts

Construction of the proposed project would result in the release of emissions from diesel equipment and heavy-duty truck traffic (DPM and $PM_{2.5}$) known to result in health risks to sensitive receptors. The Air Quality Assessment analyzed potential health effects of TACs sensitive receptors within 1,000 feet of the project site. The CalEEMod and EMFAC2021 models were used which provides total annual PM_{10} exhaust emissions (DPM) for the off-road construction equipment and on-road vehicles. Additionally, the U.S. EPA AERMOD dispersion model was used to predict construction-related DPM and $PM_{2.5}$ concentrations at existing sensitive receptors (e.g., residences and students) in the vicinity of the project construction area. The U.S. EPA AERMOD dispersion model, assumptions, and results are described further in Appendix A of this document.

The maximum-modeled annual DPM and $PM_{2.5}$ concentrations were identified at the residence located at the multi-family building southwest of the project site. The cancer risk maximum exposed individual (MEI) was located on the third floor and the $PM_{2.5}$ concentration MEI was located on the second floor. (refer to Figure 3.3-1). Sensitive receptors are designated in green and the maximum exposed individual (MEI) from construction is designated in red.

The results of the modeling are summarized below in Table 3.3-6.

Table 3.3-6 Construction TAC Risks

Source	Cancer Risk	Annual PM 2.5	Hazard Index
Maximally Effected Individual			
Project Construction	**42.40 (infant)**	0.29	0.05
BAAQMD Threshold	10	0.3	1.0
Exceed Threshold?	**Yes**	No	No

Source: Illingworth and Rodkin Inc. 210 Baypointe Parkway Residential Project Air Quality Assessment. January 13, 2023.

The proposed project would result in an exceedance of the BAAQMD threshold for infant cancer risk.

Impact AIR-1 The proposed project would have a cancer risk of 42.40 cases per million which would exceed the Bay Area Air Quality Management District threshold of 10 cases per million during construction of the project.

Mitigation Measures

The following measure will be required to be implemented during all phases of construction.

MM AIR-1.1 All construction equipment larger than 25 horsepower used at the site for more than two continuous days or 20 hours total shall meet U.S. EPA Tier 4 emission standards for PM (PM_{10} and $PM_{2.5}$).

If Tier 4 equipment is not available, alternatively the project will use equipment that meets U.S. EPA emission standards for Tier 3 engines and include particulate matter emissions control equivalent to CARB Level 3 verifiable diesel emission control devices that altogether achieve an 80

percent reduction in particulate matter exhaust in comparison to uncontrolled equipment; alternatively (or in combination).

MM AIR-1.2 Alternatively, in lieu of implementing mitigation measure AIR-1.1, the applicant may request the development of a construction operations plan from a qualified air quality specialist demonstrating that the construction equipment used on-site would achieve a reduction in construction diesel particulate matter emissions by 80 percent or greater. Elements of the plan could include a combination of the following measures:

- Implementation of the statement above to use Tier 4 engines or alternatively fueled equipment,
- Installation of electric power lines during early construction phases to avoid use of diesel generators and compressors,
- Use of electrically-powered equipment,
- Forklifts and aerial lifts used for exterior and interior building construction shall be electric or propane/natural gas powered,
- Change in construction build-out plans to lengthen phases, and
- Implementation of different building techniques that result in less diesel equipment usage.

The plan shall be submitted to the City of San José Director of Planning, Building and Code Enforcement or the Director's designee for review and approval prior to the issuance of any demolition, grading, or building permits (whichever occurs earliest).

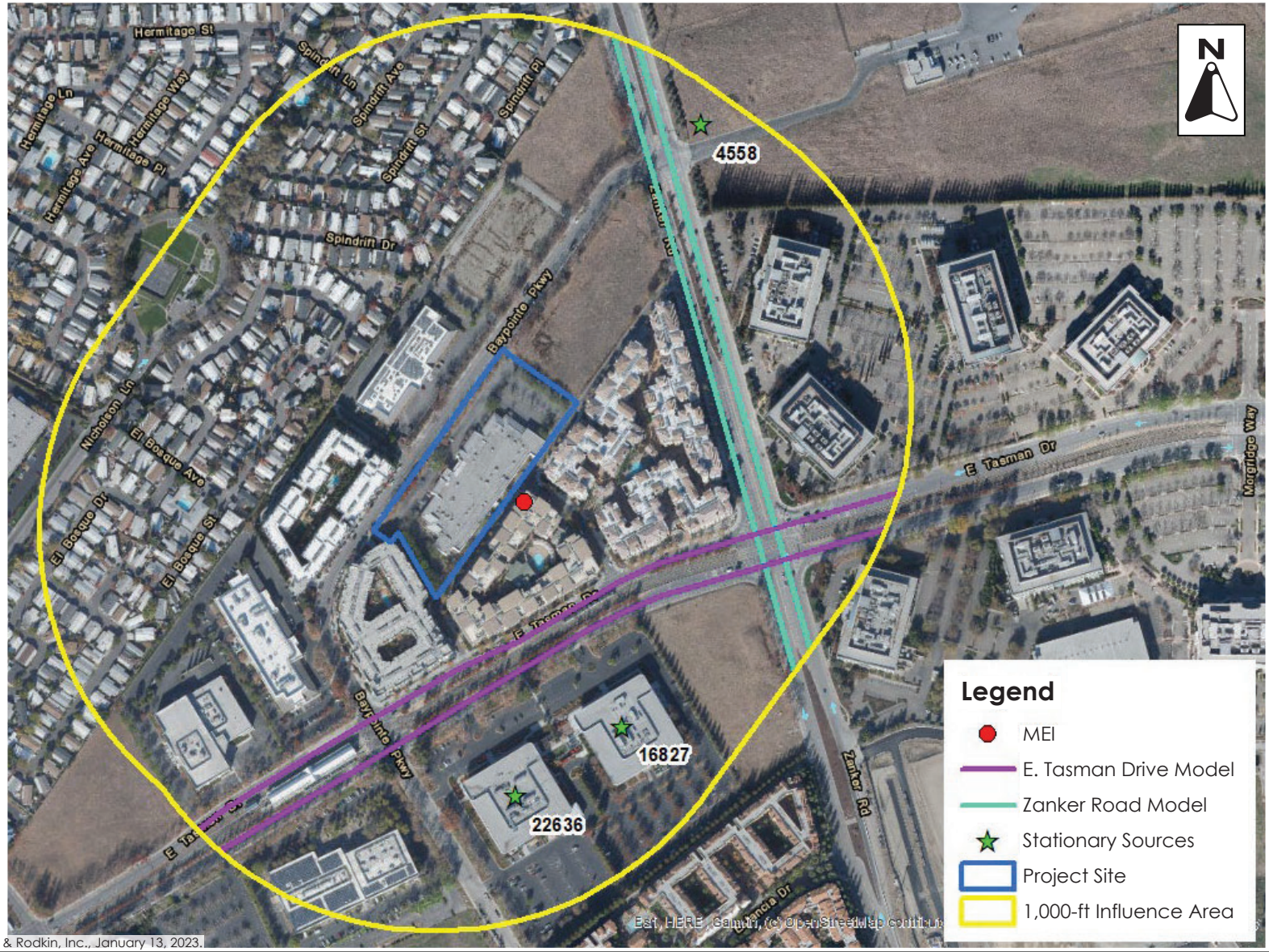
With implementation of MM-AIR-1.1 or MM-AIR-1.2, and the Standard Permit Conditions for dust control, the proposed project would reduce the cancer risk associated with the proposed project by approximately 83 percent to 7.37 cases per million which is below the BAAQMD threshold of 10 per million as seen in Table 3.3-7 below.

Table 3.3-7 Construction TAC Risks - Mitigated

Source	Cancer Risk	Annual PM 2.5	Hazard Index
Maximally Effected Individual -			
Project Construction	7.37 (infant)	0.06	0.01
BAAQMD Threshold	10	0.3	1.0
Exceed Threshold?	No	No	No

Source: Illingworth and Rodkin Inc. 210 Baypointe Parkway Residential Project Air Quality Assessment. January 13, 2023.

Therefore, with mitigation incorporated the proposed project would result in less than significant construction TAC impacts. **(Less than Significant Impact with Mitigation Incorporated)**



Source: Illingworth & Rodkin, Inc., January 13, 2023.

MEI FOR CONSTRUCTION EMISSIONS | FIGURE 3.3-1

Operational Community Risk Impacts

Stationary equipment that could emit substantial TACs (e.g., emergency generators) are not proposed as part of the project. Diesel powered vehicles are the primary concern with local traffic generated TAC impacts. Operation of the project would, however, have long-term emissions from mobile sources (i.e., traffic). Based on trip generation data from the Local Transportation Analysis performed for the proposed project, this project would generate 1,585 daily trips dispersed on the roadway system, with a majority of the trips being from light-duty vehicles (i.e., passenger automobiles). Passenger automobiles and trucks are not significant sources of TAC's because they are not primarily diesel vehicles. Additionally, BAAQMD identifies any roadway with less than 10,000 daily vehicle trips from light duty vehicles as a less than significant risk of operational air quality TAC's, and the proposed project would only contribute approximately 15 percent of this level of trips. Therefore, operational emissions of TACs from the project would be negligible and would result in a less than significant impact.

Criteria Pollutant Emissions

In a 2018 decision (*Sierra Club v. County of Fresno*), the state Supreme Court determined that CEQA requires that when a project's criteria air pollutant emissions would exceed applicable thresholds and contribute a cumulatively considerable contribution to a significant cumulative regional criteria pollutant impact, the potential for the project's emissions to affect human health in the air basin must be disclosed. State and federal ambient air quality standards are health-based standards and exceedances of those standards result in continued unhealthy levels of air pollutants. As stated in the 2017 BAAQMD CEQA Air Quality Guidelines, air pollution by its nature is largely a cumulative impact. No single project is sufficient in size, by itself, to result in nonattainment of ambient air quality standards. Instead, a project's individual emissions contribute to existing cumulatively significant adverse air quality impacts. In developing thresholds of significance for air pollutants, BAAQMD considered the emission levels for which a project's individual emissions would be cumulatively considerable. If a project has a less than significant impact for criteria pollutants, it is assumed to have no adverse health effect.

As discussed under checklist question a above, the proposed project would result in a less than significant project-level operational and construction criteria pollutant impact. As a result, the project would result in a less than significant health impact to sensitive receptors. **(Less than Significant Impact)**

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

The proposed project would introduce a residential development to the project site which is currently developed with a commercial building. During construction of the proposed project, operation of construction vehicles may result in temporary odors related to fuel combustion, but these would be temporary and would not result in a significant impact. Operation of the proposed project would not produce emissions which would create unpleasant odors for residents around the project site. Therefore, the proposed project would have a less than significant impact from odors produced on-site. **(Less than Significant Impact)**

3.3.2.3 *Cumulative Impacts*

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

In concert with the projects mitigated construction emissions, the nearby stationary sources of emissions and emissions from nearby roadways were calculated to determine the cumulative emissions of all TAC sources in the project area. Two nearby stationary sources of TACs were located using the BAAQMD permitted stationary sources database (identified in Table 3.3-8 below). Emissions from East Tasman Drive and Zanker Road were included because these roadways have more than 10,000 average daily traffic trips. Additionally, $PM_{2.5}$ emissions from vehicle tire and brake wear and from re-entrained roadway dust were included in the emissions estimate. The estimated emissions impacts for the cumulative sources are summarized in Table 3.3-7 below.

Table 3.3-8 Cumulative Construction TAC Risks

Source	Cancer Risk	Annual $PM_{2.5}$	Hazard Index
Project Construction - **Mitigated**	7.37 (infant)	0.06	0.01
East Tasman Drive, ADT 33,432	0.90	0.08	<0.01
Zanker Road, ADT 28,264	0.27	0.02	<0.01
Netscout Systems (Facility ID #16827, Generator), MEI at 600 feet	0.81	<0.01	<0.01
LBA RIV-Company XXV LLC (Facility #22636, Generator), MEI at 700 feet	0.20	<0.01	<0.01
Combined Sources	9.55	<0.18	<0.05
Cumulative BAAQMD Threshold	**100**	**0.8**	**10.0**
Exceed Threshold?	No	No	No

Source: Illingworth and Rodkin Inc. 210 Baypointe Parkway Residential Project Air Quality Assessment. January 13, 2023.

The project's unmitigated construction maximum cancer risk would exceed the BAAQMD single-source threshold. With the implementation of Mitigation Measure AIR-1.1 and AIR-1.2, the project's cancer risk would be below the single source threshold. The annual $PM_{2.5}$ concentration and Hazard Index do not exceed the single-source or cumulative-source thresholds. These emissions, when combined with emissions from other nearby sources, would not exceed BAAQMD's cumulative threshold. Because there would be no cumulative impact and the project-level impact is below BAAQMD thresholds, the project would not result in a cumulatively considerable contribution to a cumulative TAC impact. **(Less than Significant Cumulative Impact)**

3.3.3 Non-CEQA Effects

Per *California Building Industry Association v. Bay Area Air Quality Management District,* 62 Cal. 4th 369 *(BIA v. BAAQMD)*, effects of the environment on the project are not considered CEQA impacts. The following discussion is included for informational purposes only because the City of San José has policies that address existing air quality conditions affecting a proposed project.

Pursuant to General Plan policies MS-10.1, MS-11.1, and MS-11.2, a health risk assessment was prepared to ensure that future sensitive receptors on-site are not exposed to substantial TAC emissions. The same TAC sources identified previously were used in this health risk assessment.

Local Roadways – East Tasman Drive and Zanker Road

Maximum increased cancer risks were calculated for the residents at the project site using the maximum modeled TAC concentrations. A 30-year exposure period was used in calculating cancer risks assuming the residents would be in the residences for 24 hours per day, 350 days per year. The highest impacts from all roadways adjacent to the project site occurred for residents on the first floor in the southern corner of the multi-family building. Cancer risks associated with the roadways are greatest closest to the roadways and decrease with distance from the roads. These are included in Table 3.3-7 above.

Stationary Sources

Stationary sources affecting the project site are the same as those analyzed as affecting the sensitive receptors surrounding the project site and are included in Table 3.3-7 above.

Summary of Cumulative Health Risks at the Project Site

Health risk impacts from the existing and TAC sources upon the project site are shown in Table 3.3-9 below. The risks from the singular TAC sources are compared against the BAAQMD single-source threshold. The risks from all the sources are then combined and compared against the BAAQMD cumulative-source threshold. As shown, none of the sources exceed the single-source or cumulative-source thresholds. Therefore, the proposed project would not result in a health risk to future residents of the project site.

Table 3.3-9 Cumulative Construction TAC Risks on New Residents

Source	Cancer Risk	Annual $PM_{2.5}$	Hazard Index
East Tasman Drive, ADT 33,432	1.52	0.12	<0.01
Zanker Road, ADT 28,264	0.72	0.05	<0.01
Netscout Systems (Facility ID #16827, Generator), MEI at 600 feet	0.81	<0.01	<0.01
LBA RIV-Company XXV LLC (Facility #22636, Generator), MEI at 700 feet	0.26	<0.01	<0.01
BAAQMD Single-Source Threshold	**10**	**0.3**	**1.0**
Exceed Threshold	No	No	No
Cumulative Total	3.31	<0.19	<0.04
Cumulative BAAQMD Threshold	**100**	**0.8**	**10.0**
Exceed Threshold?	No	No	No

Source: Illingworth and Rodkin Inc. 210 Baypointe Parkway Residential Project Air Quality Assessment. January 13, 2023.

3.4 BIOLOGICAL RESOURCES

The information in this section is based in part on the Arborist Report prepared by HortScience/Bartlett Consulting in September 2022. This report is included in Appendix B of this EIR.

3.4.1 Environmental Setting

3.4.1.1 *Regulatory Framework*

Federal and State

Endangered Species Act

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

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

Migratory Bird Treaty Act

The federal Migratory Bird Treaty Act (MBTA) prohibits killing, capture, possession, or trade of migratory birds except in accordance with regulations prescribed by the Secretary of the Interior. Hunting and poaching are also prohibited. This includes direct and indirect acts, except for harassment and habitat modification, which are not included unless they result in direct loss of birds, nests, or eggs. The CDFW also protects migratory and nesting birds under California Fish and Game Code Sections 3503, 3503.5, and 3800. The CDFW defines taking as causing abandonment and/or loss of reproductive efforts through disturbance.

Sensitive Habitat Regulations

Wetland and riparian habitats are considered sensitive habitats under CEQA. They are also afforded protection under applicable federal, state, and local regulations, and are generally subject to regulation by the United States Army Corps of Engineers (USACE), Regional Water Quality Control Board (RWQCB), CDFW, and/or the USFWS under provisions of the federal Clean Water Act (e.g., Sections 303, 304, 404) and State of California Porter-Cologne Water Quality Control Act.

Fish and Game Code Section 1602

Streambeds and banks, as well as associated riparian habitat, are regulated by the CDFW per Section 1602 of the Fish and Game Code. Work within the bed or banks of a stream or the adjacent riparian habitat requires a Streambed Alteration Agreement from the CDFW.

Regional and Local

Santa Clara Valley Habitat Plan/Natural Community Conservation Plan

The Santa Clara Valley Habitat Plan/Natural Community Conservation Plan (Habitat Plan) covers approximately 520,000 acres, or approximately 62 percent of Santa Clara County. It was developed and adopted through a partnership between Santa Clara County, the Cities of San José, Morgan Hill, and Gilroy, Santa Clara Valley Water District (Valley Water), VTA, USFWS, and CDFW. The Habitat Plan is intended to promote the recovery of endangered species and enhance ecological diversity and function, while accommodating planned growth in southern Santa Clara County. The Santa Clara Valley Habitat Agency is responsible for implementing the plan.

Envision San José 2040 General Plan

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

General Plan Policies – Biological Resources	
Policy	**Description**
CD-1.23	Further the Community Forest Goals and Policies in this Plan by requiring new development to plant and maintain trees at appropriate locations on private property and along public street frontages. Use to help soften the appearance of the built environment, help provide transitions between land uses, and shade pedestrian and bicycle areas.
CD-1.25	Within new development projects, including preservation of ordinance-sized and other significant trees, particularly natives. Any adverse effect on the health and longevity of such trees should be avoided through design measures, construction, and best management practices. When tree preservation is not feasible include replacement or alternative mitigation measures in the project to maintain and enhance our Community Forest.
ER-5.1	Avoid implementing activities that result in loss of active native birds' nests, including both direct loss and indirect loss through abandonment, of native birds. Avoidance of activities that could result in impacts to nests during the breeding season or maintenance of buffers between such activities and active nests would avoid such impacts.
ER-5.2	Require that development projects incorporate measures to avoid impacts to nesting migratory birds.
MS-21.4	Encourage the maintenance of mature trees, especially natives, on public and private property as an integral part of the community forest. Prior to allowing the removal of any mature tree, pursue all reasonable measures to preserve it.
MS-21.5	As part of the development review process, preserve protected trees (as defined by the Municipal Code), and other significant trees. Avoid any adverse effect on the health and longevity of protected or other significant trees through appropriate design measures and construction practices. Special priority should be given to the preservation of native oaks

	and native sycamores. When tree preservation is not feasible, include appropriate tree replacement, both in number and spread of canopy.
MS-21.6	As a condition of new development, require, where appropriate, the planting and maintenance of both street trees and trees on private property to achieve a level of tree coverage in compliance with and that implements City laws, policies, and guidelines.

Tree Removal Ordinance

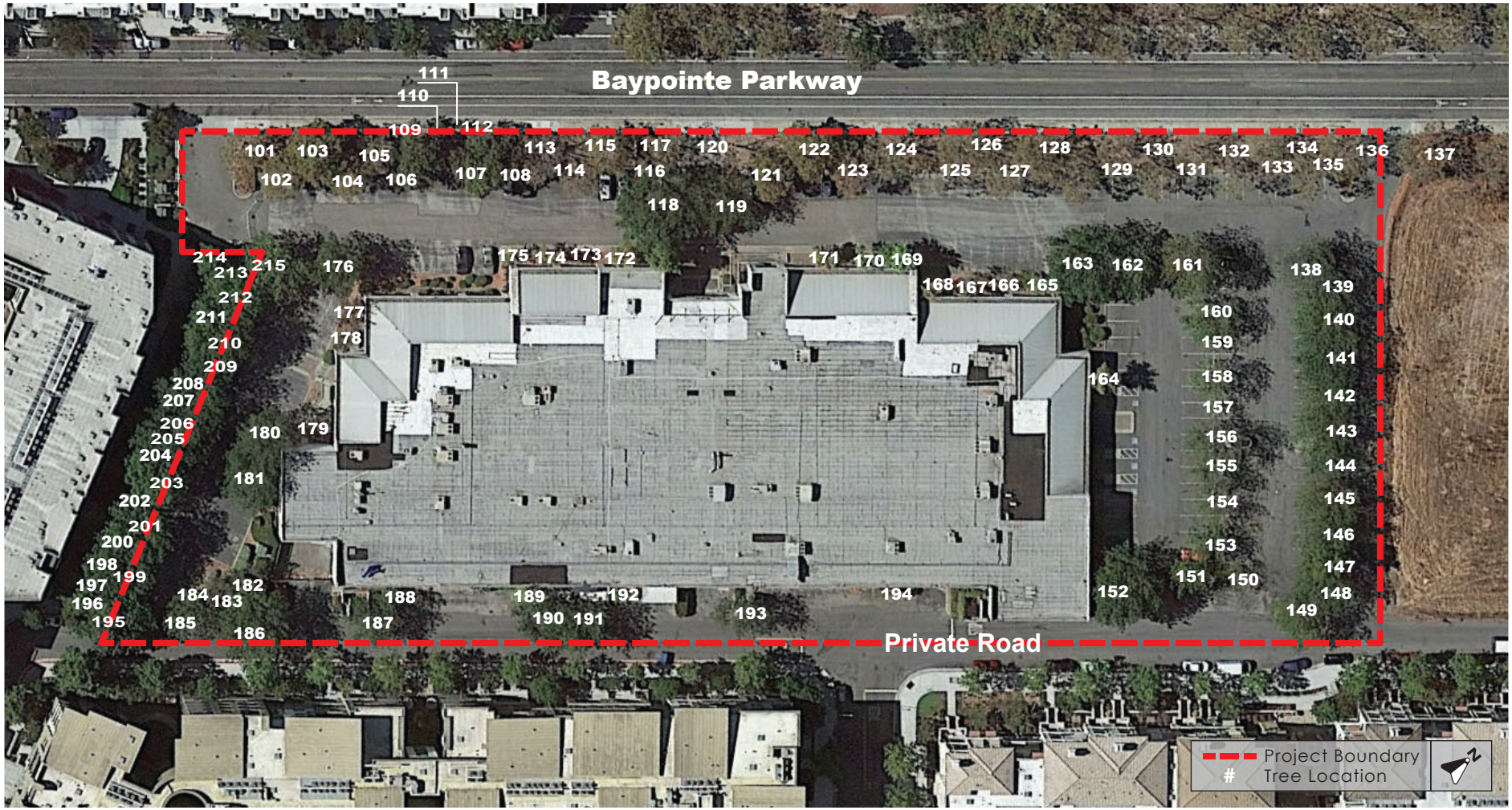
The City of San José Tree Removal Controls (San José Municipal Code, Sections 13.31.010 to 13.32.100) serve to protect all trees having a trunk that measures 38 inches or more in circumference (12.1 inches in diameter) at the height of 54 inches (4.5 feet) above the natural grade of slope. The ordinance protects both native and non-native tree species. A tree removal permit is required from the City of San José for the removal of ordinance-sized trees. On private property, tree removal permits are issued by the Department of Planning, Building and Code Enforcement. Removal of or modifications to all trees on public property (e.g., street trees within a parking strip or the area between the curb and sidewalk) are handled by the City Arborist. In addition, any tree found by the City Council to have special significance can be designated as a Heritage Tree, regardless of tree size or species. It is unlawful to vandalize, mutilate, remove, or destroy such Heritage Trees. Under the City's Tree Removal Ordinance, specific criteria or findings must be made before a permit for removal of a live or dead Heritage Tree would be granted.

3.4.1.2 *Existing Conditions*

The project site is currently occupied by a large industrial building and a parking lot with trees throughout. There are also trees and landscaping located in and around the site along Baypointe Parkway and the interior private road. A map of the on-site trees is included in Figure 3.4-1 below.

Existing Natural Habitat

The area around the project site is mostly developed with some open lots featuring grasses and scattered trees. There are small amounts of mature native vegetation primarily in the form of park spaces, street trees, and in some parking lots. These areas provide habitat for common wildlife species tolerant of human disturbance such as squirrels, racoons, and small birds. Most special-status species occurring in the Bay Area use habitats that are not present on the project site, including salt marsh, freshwater marsh, and serpentine grassland habitats. Since the native vegetation of the area is no longer present on-site, native wildlife species have been supplanted by species (like those noted above) that are more compatible with an urbanized area.



Source: HortScience | Bartlett Consulting, September 2022.

ON-SITE TREE LOCATIONS

FIGURE 3.4-1

The nearest natural area to the project site is the Guadalupe River riparian area which contains mixed riparian forest, aquatic, and shaded riparian aquatic habitats. Riparian habitats generally support rich animal communities and serve as important corridors of movement, particularly for birds and fish. Additionally, the project is east of the Coyote Creek Riparian area. The project site is located approximately 0.55 miles west of the Coyote Creek riparian area and approximately 0.7 miles east of the Guadalupe River.

On-site Biological Resources

There are 105 trees on-site and 10 trees adjacent to the site. A summary of the trees on-site is provided in Table 3.4-1 below. The full list of species of tree and specifications of each tree is provided in the arborist report in Appendix B at the end of this document. Two trees are not accounted for because they were dead.

Table 3.4-1: Tree Summary

Specifies (Common Name)	Native/Non-Native	Number of Trees by Size (Circumference)		
		Less than 19 Inches	19 to 38 Inches	Greater than 38 Inches
London Plane	Non-Native	---	20	6
Callery Pear	Non-Native	8	2	6
Evergreen Ash	Non-Native	7	20	28
Sweetgum	Non-Native	1	11	---
Water Gum	Non-Native	2	2	---
Note: includes off-site trees				

Other than the on-site trees, the fully developed and paved site does not contain other biological habitats or resources and is considered an urban environment.

3.4.2 Impact Discussion

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

2) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife (CDFW) or United States Fish and Wildlife Service (USFWS)?
3) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the CDFW or USFWS?
4) Have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?
5) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?

6) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?
7) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?Project Impacts

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

The environment surrounding the project site consists of developed industrial and office lots which do not provide habitats suitable for species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the CDFW or USFWS. The vacant lot to the west of the project site includes grasses and weeds and is managed and disced regularly by the property owner with vegetation removal. There are no trees on the vacant site, however, there are some small trees on the perimeter of the site away from the project site. The proposed project would remove the trees on-site which may provide nesting and/or foraging habitat for migratory birds, including raptors.

There are currently 105 trees on and around the project site which are proposed to be removed. Migratory birds, like nesting raptors, are protected under the Migratory Bird Treaty Act and CDFW Code Sections 3503, 3503.5, and 3800. The CDFW defines "taking" as causing abandonment and/or loss of reproductive efforts through disturbance. Construction activities on the project site could result in the loss of eggs or nests. Any loss of fertile eggs, nesting raptors, or any activities resulting in nest abandonment would constitute a significant impact.

Impact BIO-1: Construction activities associated with the proposed project could result in the loss of fertile eggs, nesting raptors or other migratory birds, or nest abandonment which would constitute a significant impact under the Migratory Bird Treaty Act (MBTA) and California Department of Fish and Wildlife (CDFW) Code Sections 3503, 3503.5, and 3800.

Mitigation Measures:

In accordance with the MBTA, CDFW, and General Plan Policies ER-5.1 and ER-5.2, the following mitigation measure is included to reduce impacts to raptors and migratory birds during construction.

MM BIO-1.1: Tree removal and construction shall be scheduled to avoid the nesting season. The nesting season for most birds, including most raptors in the San Francisco Bay area, extends from February 1st through August 31st, inclusive.

If tree removals and construction cannot be scheduled outside of nesting season, a qualified ornithologist shall complete pre-construction surveys to identify active raptor nests that may be disturbed during project implementation. This survey shall be completed no more than 14 days prior to the initiation of demolition/construction activities during the early part of the

breeding season (February 1st through April 30th, inclusive) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May 1st through August 31st, inclusive), unless a shorter pre-construction survey is determined to be appropriate based on the presence of a species with a shorter nesting period, such as Yellow Warblers. During this survey, the qualified ornithologist shall inspect all trees and other possible nesting habitats in and immediately adjacent to the construction areas for nests. If an active nest is found in an area that will be disturbed by construction, the qualified ornithologist shall designate a construction-free buffer zone (typically 250 feet) to be established around the nest, in consultation with California Department of Fish and Wildlife (CDFW). The buffer would ensure that raptor or migratory bird nests will not be disturbed during project construction.

Prior to any tree removal, or approval of any grading or demolition permits, the project applicant shall submit a report indicating the results of the survey and any designated buffer zones to the satisfaction of the Director of Planning, Building and Code Enforcement or Director's designee.

With implementation of Mitigation Measure BIO-1.1, the project's impact on nesting birds and raptors would be less than significant. **(Less than Significant Impact with Mitigation Incorporated)**

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

There are no riparian habitats or other sensitive natural communities in the immediate project area. The only sensitive natural communities in the vicinity of the project site are the Coyote Creek and Guadalupe River corridors, the former of which is located 0.55 miles east of the project site. The proposed project would replace the existing building and parking lot on-site with a residential development which would not adversely affect any riparian habitat or sensitive natural community. **(Less than Significant Impact)**

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

The project site is 88 percent impervious and does not contain state or federally protected wetland areas. In addition, there are no state or federally protected wetlands in proximity to the site. Therefore, the project would not impact state or federally protected wetlands through direct removal, filling, hydrological interruption, or other means. **(Less than Significant Impact)**

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

The project site is in a developed area of San José where no natural habitat exists on-site that would support endangered, threatened, or special status wildlife species. The project site is not used as a wildlife corridor by any native resident or migratory fish or wildlife species. Therefore, implementation of the proposed project would not interfere with the movement of any fish or wildlife species. **(Less than Significant Impact)**

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

Trees in the area provide biological value in the form of nesting, cover, and foraging habitat for a variety of birds, mammals, and insects. To construct the project, the 105 trees on-site would be removed. Additionally, six trees on an adjacent parcel (121 Tasman) and four street trees would require removal. No on-site trees would be retained. Trees removed as a result of the project would be required to implement the following Standard Permit Conditions.

Standard Permit Condition

The project shall be required to implement the following measures:

- **Tree Replacement.** Trees removed for the project shall be replaced at ratios required by the City, as provided in Table 3.4-2 below, as amended:

Table 3.4-2: Tree Replacement Ratios

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

*x:x = tree replacement to tree loss ratio

Note: Trees greater than or equal to 38-inch circumference measured at 54 inches above natural grade shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees. For Multi-Family residential, Commercial and Industrial properties, a permit is required for removal of trees of any size.

A 38-inch tree equals 12.1 inches in diameter.

** A 24-inch box replacement tree = two 15-gallon replacement trees

Single Family and Two-dwelling properties may replace trees at a ratio of 1:1.

As mentioned above, 105 on-site and 10 off site trees would be removed. Two were dead and would not require replacement therefore, 113 total trees were calculated in the removal calculations. 18 trees would be replaced at a 1:1 ratio, 55 trees would be replaced at a 2:1 ratio, and 40 trees would be replaced at a 4:1 ratio. The total number of replacement trees required to be planted on-site is 278. The species of trees to be planted would be determined in consultation with the City Arborist and the Department of Planning, Building and Code Enforcement.

- If there is insufficient area on the project site to accommodate the required replacement trees, one or more of the following measures shall be implemented, to the satisfaction of the Director of Planning, Building and Code Enforcement or Director's designee. Changes to an approved landscape plan requires the issuance of a Permit Adjustment or Permit Amendment
    - The size of a 15-gallon replacement tree may be increased to 24-inch box and count as two replacement trees to be planted on the project site.
    - Pay Off-Site Tree Replacement Fee(s) to the City, prior to the issuance of building permit(s), in accordance with the City Council approved Fee Resolution in effect at the time of payment. The City will use the off-site tree replacement fee(s) to plant trees at alternative sites.

Therefore, with the standard permit condition above included in the proposed project, the trees removed from the site would be replaced, and the proposed project would have a less than significant impact. **(Less than Significant Impact)**

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

The project site is located within the SCVHP[20] and is designated as "Urban-Suburban" land. Private development in the plan area is subject to the SCVHP if it meets the following criteria:

- The activity is subject to either ministerial or discretionary approval by the County or one of the cities;
- The activity is described in Section 2.3.2 Urban Development or in Section 2.3.7 Rural Development;
- In Figure 2-5 of the SCVHP, the activity is located in an area identified as "Private Development is Covered," or the activity is equal to or greater than two acres and;[21]
    - The project is located in an area identified as "Rural Development Equal to or Greater than 2 Acres is Covered," or "Urban Development Equal to or Greater than 2 Acres is Covered" or,
    - The activity is located in an area identified as "Rural Development is not Covered"

[20] Santa Clara Valley Habitat Agency. "GIS Data & Key Maps." Accessed August 18, 2022. http://www.hcpmaps.com/habitat/.

[21] Covered activities in urban areas include residential, commercial, and other types of urban development within the Cities of Gilroy, Morgan Hill, and San José planning limits of urban growth in areas designated for urban or rural development, including areas that are currently in the unincorporated County (i.e., in "pockets" of unincorporated land inside the cities' urban growth boundaries).

but, based on land cover verification of the parcel (inside the Urban Service Area) or development area, the project is found to impact serpentine, wetland, stream, riparian, or pond land cover types; or the project is located in occupied or occupied nesting habitat for western burrowing owl.

- The proposed project would require discretionary approval by the City and is consistent with the activity described in Section 2.3.2 of the SCVHP. Consistent with the SCVHP, the project applicant shall implement the following Standard Permit Condition.

Standard Permit Condition:

- The project may be subject to applicable SCVHP conditions and fees (including the nitrogen deposition fee) prior to issuance of any grading permits. The project applicant shall submit the Santa Clara Valley Habitat Plan Coverage Screening Form (https://www.scv-habitatagency.org/DocumentCenter/View/151/Coverage-Screening-Form?bidId=) to the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee for approval and payment of the nitrogen deposition fee prior to the issuance of a grading permit. The Habitat Plan and supporting materials can be viewed at https://scv-habitatagency.org/178/Santa-Clara-Valley-Habitat-Plan.

With implementation of the identified Standard Permit Condition, the project would not conflict with the provisions of the SCVHP. **(Less than Significant Impact)**

3.4.2.1 *Cumulative Impacts*

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

The project site does not contain sensitive, wetland, or riparian habitat and, therefore, the project's impact on biological resources would not be cumulatively considerable.

The proposed project would have a less than significant impact on migratory birds and from loss of trees with implementation of the identified mitigation measures and Standard Permit. The impacts of the proposed project would be limited to the project site and there are no nearby projects which would combined with the proposed project to cause a cumulative impact.

Because there would be no cumulative impact and project-level impacts would all be mitigated to less than significant, the project would not result in a cumulatively considerable contribution to a cumulative biological impact. **(Less than Significant Cumulative Impact)**

3.5 CULTURAL RESOURCES

The archaeological discussion is based upon a Cultural Resources Study prepared by ESA dated July 6, 2022. The report is on file at the Department of Planning, Building and Code Enforcement and available for review with appropriate credentials.

3.5.1 Environmental Setting

3.5.1.1 *Regulatory Framework*

Federal and State

National Historic Preservation Act

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

California Register of Historical Resources

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

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

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

[22] California Office of Historic Preservation. "CEQA Guidelines Section 15064.5(a)(3) and California Office of Historic Preservation Technical Assistance Series #6." Accessed August 16, 2022. http://www.ohp.parks.ca.gov/pages/1069/files/technical%20assistance%20bulletin%206%202011%20update.pdf.

California Native American Historical, Cultural, and Sacred Sites Act

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

Public Resources Code Sections 5097 and 5097.98

Section 15064.5 of the CEQA Guidelines specifies procedures to be used in the event of an unexpected discovery of Native American human remains on non-federal land. These procedures are outlined in Public Resources Code Sections 5097 and 5097.98. These codes protect such remains from disturbance, vandalism, and inadvertent destruction, establish procedures to be implemented if Native American skeletal remains are discovered during construction of a project, and establish the Native American Heritage Commission (NAHC) as the authority to resolve disputes regarding disposition of such remains.

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

Local

Envision San José 2040 General Plan

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

General Plan Policies - Cultural Resource	
Landmarks and Districts	
Policy LU-13.2	Preserve candidate or designated landmark buildings, structures and historic objects, with first priority given to preserving and rehabilitating them for their historic use, second to preserving and rehabilitating them for a new use, or third to rehabilitation and relocation on-site. If the City concurs that no other option is feasible, candidate or designated landmark structures should be rehabilitated and relocated to a new site in an appropriate setting.
Policy LU-13.4	Require public and private development projects to conform to the adopted City Council Policy on the Preservation of Historic Landmarks.
Policy LU-13.8	Require that new development, alterations, and rehabilitation/remodels adjacent to a designated or candidate landmark or Historic District be designed to be sensitive to its character.
Policy LU-13.15	Implement City, State, and Federal historic preservation laws, regulations, and codes to ensure the adequate protection of historic resources.
Archaeology	

General Plan Policies - Cultural Resource	
Policy ER-9.2	Recognizing that Native American human remains may be encountered at unexpected locations, impose a requirement on all development permits and tentative subdivision maps that upon their discovery during construction, development activity will cease until professional archaeological examination confirms whether the burial is human. If the remains are determined to be Native American, applicable state laws shall be enforced.
Policy ER-10.1	For proposed development sites that have been identified as archaeologically or paleontologically sensitive, require investigation during the planning process in order to determine whether potentially significant archeological or paleontological information may be affected by the project and then require, if needed, that appropriate mitigation measures be incorporated into the project design.
Policy ER-10.3	Ensure that City, State, and Federal historic preservation laws, regulations, and codes are enforced, including laws related to archaeological and paleontological resources, to ensure the adequate protection of historic and pre-historic resources.

3.5.1.2 *Existing Conditions*

Native Americans occupied Santa Clara Valley and the greater Bay Area for more than 5,000 years. The exact time period of the Ohlone (originally referred to as Costanoan) migration into the Bay Area is debated by scholars. Dates of the migration range between 3,000 B.C. and 500 A.D. Regardless of the actual time frame of their initial occupation of the Bay Area and, in particular, Santa Clara Valley, it is known that the Ohlone had a well-established population of approximately 7,000 to 11,000 people with a territory that ranged from the San Francisco Peninsula and the East Bay south through the Santa Clara Valley and down to Monterey and San Juan Bautista. Artifacts pertaining to the Ohlone occupation of San José have been found primarily along the City's major waterways. The project site is located approximately 0.8 miles east and 0.55 miles west of the Guadalupe River and Coyote Creek, respectively.

A search of files was conducted by ESA on March 29, 2022 through the Sonoma State University. This study was conducted for the area within 0.25 miles of the site. The findings of the records search determined that 26 previous studies had been conducted for the study area, including five studies which covered the entire project site.

No prehistoric or historic-era archaeological resources have been recorded within a 0.25-mile radius of the site, and no cultural resources (built environment resources and prehistoric and historic-era archaeological resources) have been recorded on the project site. The only recorded resources in the search area, two historic buildings, are more than 0.10 miles from the project site. The site is in an area of moderate to high archaeological sensitivity based on the City's General Plan.

The literature search also determined that there are no recorded historic resources on-site. The existing building on-site was constructed in the 1990's and is not eligible as a historic resource under any criteria.

3.5.2 Impact Discussion

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

the project:

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

3.5.2.1 *Project Impacts*

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

The literature search conducted by ESA determined that no historic resources are present on-site. The on-site structure is not considered to be historic, and its removal would not create a substantial adverse change pursuant to CEQA Guidelines Section 15064.5. Furthermore, there are no historic structures in proximity to the project site that would be physically impacts by the project. Therefore, the proposed project would have no impact in historic resources. **(No Impact)**

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

No prehistoric or historic-era archaeological resources have been recorded on the project site. While no resources have been previously recorded, the site's proximity to Guadalupe River Coyote Creek create the potential for as yet unrecorded subsurface resources to be encountered during excavation of the site.

Impact CUL-1 Project ground disturbing activities could result in a substantial adverse change in the significance of an archaeological resource.

Mitigation Measure

The following mitigation measures shall be implemented to reduce impacts to archaeological resources that may be present on the site.

MM CUL-1.1: **Cultural Sensitivity Training.** Prior to issuance of any grading permit, the project applicant shall be required to conduct a Cultural Awareness Training for construction personnel. The training shall be facilitated by a qualified archaeologist in collaboration with a Native American representative registered with the Native American Heritage Commissions for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3. Documentation verifying that Cultural Awareness Training has been conducted shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee.

MM CUL-1.2: **Sub-Surface Monitoring**. A qualified archeologist, in collaboration with a Native American monitor, registered with the Native American Heritage Commission for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3, shall be present during applicable earthmoving activities including, but not limited to, trenching, initial or full grading, lifting of foundations, boring on-site, or major landscaping. If evidence of historic or prehistoric era resources are found during monitoring, then an archaeological resources treatment plan (as described in MM CUL-1.3) shall be prepared and implemented.

MM CUL-1.3: **Treatment Plan.** If required pursuant to MM CUL-1.2, a qualified archeologist in collaboration with a Native American monitor, registered with the Native American Heritage Commission for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3, shall prepare and implement a treatment plan that reflects permit-level detail pertaining to depths and locations of excavation activities. The treatment plan shall be prepared and submitted to the Director of Planning, Building and Code Enforcement or Director's designee for review and approval prior to implementation of the plan. The plan shall be fully implemented prior to the issuance of building permits activities. The treatment plan shall contain, at a minimum:

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

The treatment plan shall utilize data recovery methods to reduce impacts on subsurface resources. Once implementation of the Treatment Plan is complete, no further mitigation is required on the project site.

MM CUL-1.4: **Evaluation.** The project applicant shall notify the Director of Planning, Building and Code Enforcement or Director's designee of any finds during earthmoving activities or during implementation of the treatment plan. Any historic or prehistoric material recovered in the project area during implementation of the treatment plan shall be evaluated by a qualified archeologist for eligibility for listing in the California Register of Historic Resources as determined by the California Office of Historic Preservation. Data recovery methods may include, but are not limited to, backhoe trenching, shovel test units, hand augering, and hand-excavation. The techniques used for data recovery shall follow the protocols identified in the approved treatment plan. All documentation and recordation shall be submitted to the Northwest Information Center and Native American Heritage Commission (NAHC) Sacred Land Files, and/or equivalent prior to the issuance of an occupancy permit. A copy of the evaluation shall be submitted to the Director of Planning, Building and Code Enforcement or Director's designee.

With implementation of the Mitigation Measures MM CUL-1.1 through 1.4 listed above, impacts to unrecorded subsurface cultural resources would be less than significant. **(Less than Significant with Mitigation Incorporated)**

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

The proposed project would require approximately six feet of subsurface excavation for utilities which may result in the discovery and disturbance of human remains, including those interred outside of dedicated cemeteries. The proposed project would be required to implement the following Standard Permit Conditions to reduce the impacts on human remains.

Standard Permit Conditions

If any human remains are found during any field investigations, grading, or other construction activities, all provisions of California Health and Safety Code Sections 7054 and 7050.5 and Public Resources Code Sections 5097.9 through 5097.99, as amended per Assembly Bill 2641, shall be followed. If human remains are discovered during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The project applicant shall immediately notify the Director of Planning, Building and Code Enforcement or the Director's designee and the qualified archaeologist, who shall then notify the Santa Clara County Coroner. The Coroner will make a determination as to whether the remains are Native American. If the remains are believed to be Native American, the Coroner will contact the Native American Heritage Commission (NAHC) within 24 hours. The NAHC will then designate a Most Likely Descendant (MLD). The MLD will inspect the remains and make a recommendation on the treatment of the remains and associated artifacts. If one of the following condition occurs, the landowner or his authorized representative shall work with the Coroner to reinter the Native American human remains and associated grave goods with appropriate dignity in a location not subject to further subsurface disturbance:

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

With implementation of the Standard Permit Conditions listed above, redevelopment of the site would have a less than significant impact on human remains, including those interred outside of dedicated cemeteries. **(Less than Significant Impact)**

3.5.2.2 *Cumulative Impacts*

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

The cumulative impact area for cultural resources is the project site and adjacent properties. The projects impact to cultural resources would be limited to the project site and would not affect the historical relevance of nearby structures or contribute to the disturbance of cultural resources in the project area. Additionally, mitigation measures incorporated by the proposed project would reduce any impact to cultural resources on-site through monitoring and, if necessary, recovery. Therefore, the proposed project would not result in a cumulatively considerable impact on cultural resources. **(Less than Significant Cumulative Impact with Mitigation Incorporated)**

3.6 ENERGY

3.6.1 Environmental Setting

3.6.1.1 *Regulatory Framework*

Federal and State

Energy Star and Fuel Efficiency

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

Renewables Portfolio Standard Program

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

Executive Order B-55-18 To Achieve Carbon Neutrality

In September 2018, Governor Brown issued an executive order, EO-B-55-18 To Achieve Carbon Neutrality, setting a statewide goal "to achieve carbon neutrality as soon as possible, and no later than 2045, and achieve and maintain net negative emissions thereafter." The executive order requires CARB to "ensure future Scoping Plans identify and recommend measures to achieve the carbon neutrality goal." EO-B-55-18 supplements EO S-3-05 by requiring not only emissions reductions, but also that, by no later than 2045, the remaining emissions be offset by equivalent net removals of CO_2 from the atmosphere through sequestration.

California Building Standards Code

The Energy Efficiency Standards for Residential and Nonresidential Buildings, as specified in Title 24, Part 6 of the California Code of Regulations (Title 24), was established in 1978 in response to a legislative mandate to reduce California's energy consumption. Title 24 is updated approximately every three years.[23] Compliance with Title 24 is mandatory at the time new building permits are issued by city and county governments.[24]

[23] California Building Standards Commission. "California Building Standards Code." Accessed May 13, 2022. https://www.dgs.ca.gov/BSC/Codes#@ViewBag.JumpTo.
[24] California Energy Commission (CEC). "2019 Building Energy Efficiency Standards." Accessed May 13, 2022. https://www.energy.ca.gov/programs-and-topics/programs/building-energy-efficiency-standards/2019-building-energy-efficiency.

California Green Building Standards Code

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

Advanced Clean Cars Program

CARB adopted the Advanced Clean Cars program in 2012 in coordination with the EPA and National Highway Traffic Safety Administration. The program combines the control of smog-causing pollutants and GHG emissions into a single coordinated set of requirements for vehicle model years 2015 through 2025. The program promotes development of environmentally superior passenger cars and other vehicles, as well as saving the consumer money through fuel savings.[25]

Regional and Local

Climate Smart San José

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

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

Sustainable City Strategy

The Sustainable City Strategy is a statement of the City's commitment to becoming an environmentally and economically sustainable city by ensuring that development is designed and built in a manner consistent with the efficient use of resources and environmental protection. Programs promoted under this strategy include recycling, waste disposal, water conservation, transportation demand management and energy efficiency.

Municipal Code

The City's Municipal Code includes regulations associated with energy efficiency and energy use. City regulations include a Green Building Ordinance (Chapter 17.84) to foster practices to minimize the use and waste of energy, water and other resources in the City of San José, Water Efficient

[25] California Air Resources Board. "The Advanced Clean Cars Program." Accessed August 16, 2022. https://www.arb.ca.gov/msprog/acc/acc.htm.

Landscape Standards for New and Rehabilitated Landscaping (Chapter 15.10), requirements for Transportation Demand Programs for employers with more than 100 employees (Chapter 11.105), and a Construction and Demolition Diversion Deposit Program that fosters recycling of construction and demolition materials (Chapter 9.10).

Reach Building Code

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

Envision San José 2040 General Plan

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

General Plan Policies - Energy	
Policy	**Description**
MS-1.1	Demonstrate leadership in the development and implementation of green building policies and practices. Ensure that all projects are consistent with or exceed the City's Green Building Ordinance and City Council Policies as well as State and/or regional policies which require that projects incorporate various green building principles into design and construction.
MS-2.3	Utilize solar orientation, (i.e., building placement), landscaping, design, and construction techniques for new construction to minimize energy consumption.
MS-3.1	Require water-efficient landscaping, which conforms to the State's Model Water Efficient Landscape Ordinance, for all new commercial, institutional, industrial, and developer installed residential development unless for recreation or other area functions.
MS-5.5	Maximize recycling and composting from all residents, businesses, and institutions in the City.
MS-6.5	Reduce the amount of waste disposed in landfills through waste prevention, reuse, and recycling of materials at venues, facilities, and special events.
MS-6.8	Maximize reuse, recycling, and composting citywide.
MS-14.2	Enhance existing neighborhoods by adding a mix of uses that facilitate biking, walking, or transit ridership through improved access to shopping, employment, community services, and gathering places.
MS-14.3	Consistent with the California Public Utilities Commission's California Long Term Energy Efficiency Strategy Plan, as revised and when technological advances make it feasible, require all new residential and commercial construction to be designed for zero net energy use.

General Plan Policies - Energy	
MS-14.4	Implement the City's Green Building Policies (see Green Building Section) so that new construction and rehabilitation of existing buildings fully implements industry best practices, including the use of optimized energy systems, selection of materials and resources, water efficiency, sustainable site selection, and passive solar building design and planting of trees and other landscape materials to reduce energy consumption.
MS-17.2	Ensure that development within San José is planned and built in a manner consistent with fiscally and environmentally sustainable use of current and future water supplies by encouraging sustainable development practices, including low-impact development, water-efficient development and green building techniques. Support the location of new development within the vicinity of the recycled water system and promote expansion of the South Bay Water Recycling (SBWR) system to areas planned for new development. Residential development outside of the Urban Service Area can be approved only at minimal levels and only allowed to use non-recycled water at urban intensities. For residential development outside of the Urban Service Area, restrict water usage to well water, rainwater collection, or other similar sustainable practice. Non-residential development may use the same sources and potentially make use of recycled water, provided that its use will not result in conflicts with other 2040 General Plan policies, including geologic or habitat impacts. To maximize the efficient and environmentally beneficial use of water, outside of the Urban Service Area, limit water consumption for new development so that it does not diminish the water supply available for projected development in areas planned for urban uses within San José or other surrounding communities.
MS-18.5	Reduce citywide per capita water consumption by 25% by 2040 from a baseline established using the 2010 Urban Water Management Plans of water retailers in San José.
MS-18.6	Achieve by 2040, 50 million gallons per day of water conservation savings in San José, by reducing water use and increasing water use efficiency.
PR-6.4	Consistent with the Green Vision, complete San José's trail network and where feasible develop interconnected trails with bike lanes to facilitate bicycle commuting and recreational uses.
TR-1.4	Through the entitlement process for new development fund needed transportation improvements for all modes, giving first consideration to improvement of bicycling, walking, and transit facilities. Encourage investments that reduce vehicle travel demand.
TR-2.8	Require new development where feasible to provide on-site facilities such as bicycle storage and showers, provide connections to existing and planned facilities, dedicate land to expand existing facilities or provide new facilities such as sidewalks and/or bicycle lanes/paths, or share in the cost of improvements.
TR-3.3	As part of the development review process, require that new development along existing and planned transit facilities consist of land use and development types and intensities that contribute toward ridership. In addition, require that new development is designed to accommodate and to provide direct access to transit facilities.

3.6.1.2 *Existing Conditions*

Total energy usage in California was approximately 6,956.6 trillion British thermal units (Btu) in the year 2020, the most recent year for which this data was available.[26] Out of the 50 states, California is ranked second in total energy consumption and 49th in energy consumption per capita. The breakdown by sector was approximately 21.8 percent (1,507.7 trillion Btu) for residential uses, 19.6 percent (1,358.3 trillion Btu) for commercial uses, 24.6 percent (1,701.2 trillion Btu) for industrial uses, and 34 percent (2,355.5 trillion Btu) for transportation.[27] This energy is primarily supplied in the form of natural gas, petroleum, nuclear electric power, and hydroelectric power.

Electricity

In 2020, California produced approximately 70 percent of the electricity it consumed and the rest was imported from outside the state, including from Mexico.[28] California's non-carbon dioxide emitting electric generation (from nuclear, large hydroelectric, solar, wind, and other renewable sources) accounted for more than 46 percent of total in-state generation for 2020.[29] Electricity from coal-powered plants located out of state has continued to decrease since 2006 due to a state law limiting new long-term financial investments in power plants that meet California emissions standards.

California's total system electric generation in 2021 was approximately 197,165,106 megawatt-hours (MWh), which was down three percent from 2020's total generation of approximately 201,784,204 MWh.[30] In 2020 natural gas represented the largest portion of the state's electricity sources (at 54 percent). Solar and wind generation accounted for more than 65 percent of all renewable electricity generation.[31]

Electricity in Santa Clara County in 2021 was consumed primarily by the non-residential sector (74 percent), followed by the residential sector consuming 23 percent. In 2021, a total of approximately 16,904 gigawatt hours (GWh) of electricity was consumed in Santa Clara County.[32]

Electricity

Electricity in Santa Clara County in 2019 was consumed primarily by the commercial sector (76 percent), followed by the residential sector consuming 24 percent. In 2019, a total of approximately 16,664 gigawatt hours (GWh) of electricity was consumed in Santa Clara County.[33]

[26] United States Energy Information Administration. "State Profile and Energy Estimates, 2020." Accessed March 13, 2023. https://www.eia.gov/state/?sid=CA#tabs-2.
[27] United States Energy Information Administration. "State Profile and Energy Estimates, 2020." Accessed March 13, 2023. https://www.eia.gov/state/?sid=CA#tabs-2.
[28] U.S. Energy Information Administration. State Profile and Energy Estimates: California. March 13, 2023. https://www.eia.gov/state/?sid=CA#tabs-3
[29] Ibid.
[30] U.S. Energy Information Administration. *State Electricity Profiles; California Electricity Profile 2019.* November 2, 2020. And Ibid. *California Electricity Profile 2020.* March 13, 2023.
[31] U.S. Energy Information Administration. State Profile and Energy Estimates: California. March 13, 2023. https://www.eia.gov/state/?sid=CA#tabs-3
[32] California Energy Commission. Energy Consumption Data Management System. "Electricity Consumption by County." Accessed March 13, 2023. http://ecdms.energy.ca.gov/elecbycounty.aspx.
[33] California Energy Commission. Energy Consumption Data Management System. "Electricity Consumption by County." Accessed August 31, 2021. http://ecdms.energy.ca.gov/elecbycounty.aspx.

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

Fuel for Motor Vehicles

In 2022, California produced 122 million barrels of crude oil and in 2019, 19.2 billion gallons of gasoline were sold in California. [34] [35] The average fuel economy for light-duty vehicles (autos, pickups, vans, and sport utility vehicles) in the United States has steadily increased from about 13.1 miles per gallon (mpg) in the mid-1970s to 25.4 mpg in 2021.[36] Federal fuel economy standards have changed substantially since the Energy Independence and Security Act was passed in 2007. That standard, which originally mandated a national fuel economy standard of 35 miles per gallon by the year 2020, was updated in April 2022 to require all cars and light duty trucks achieve an overall industry average fuel economy of 49 mpg by model year 2026. [37,38]

3.6.2 Impact Discussion

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

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

3.6.2.1 *Project Impacts*

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

Energy Use During Construction

Construction activities would include demolition of the existing buildings, shoring, grading, excavation, below slab utilities, foundation, and building interior/exterior. The overall construction

[34] U.S. Energy Information Administration. "Petroleum & Other Liquids, California Field Production of Crude Oil." February 28, 2023. https://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=pet&s=mcrfpca1&f=a
[35] California Department of Tax and Fee Administration. "Net Taxable Gasoline Gallons." Accessed February 3, 2023. https://www.cdtfa.ca.gov/dataportal/dataset.htm?url=VehicleTaxableFuelDist.
[36] United States Environmental Protection Agency. "The 2021 EPA Automotive Trends Report: Greenhouse Gas Emissions, Fuel Economy, and Technology since 1975." November 2021. https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P1010U68.pdf
[37] United States Department of Energy. *Energy Independence & Security Act of 2007.* Accessed March 13, 2023. http://www.afdc.energy.gov/laws/eisa.
[38] United States Department of Transportation. USDOT Announces New Vehicle Fuel Economy Standards for Model Year 2024-2026." Accessed March 13, 2023. https://www.nhtsa.gov/press-releases/usdot-announces-new-vehicle-fuel-economy-standards-model-year-2024-2026

schedule and process is already designed to be efficient in order to avoid excess monetary costs. That is, equipment and fuel would not be used wastefully on the site because of the added expense associated with renting the equipment, maintaining it, and fueling it. Therefore, the opportunities for future efficiency gains during construction are limited. The proposed project does, however, include several measures that would improve the efficiency of the construction process. Implementation of the City's Standard Permit Conditions detailed in *Section 4.3 Air Quality* of this document, would restrict equipment idling times to five minutes or less and would require the applicant to post signs on the project site reminding workers to shut off idle equipment. With implementation of the Standard Permit Conditions, energy would not be wasted or used inefficiently by construction equipment and waste from idling would be reduced. **(Less than Significant Impact)**

Operational Energy Use

The project would result in redevelop of a 4.3-acre site. Operation of the proposed project would consume energy (in the form of electricity) primarily for building heating and cooling, lighting, and water heating. The estimated annual energy use of the proposed project is shown in Table 3.6-1, below. Existing uses on-site were not accounted for because energy usage data was not available.

Table 3.6-1: Estimated Annual Energy Use of Proposed Development

Development	Electricity Use (kWh)	Natural Gas Use (kBtu)*	Gasoline[39] (gallons per year)
Mid-Rise Apartments – 292 units	1,814,660	0	**112,506**
Townhouses – 42 units	416,084	0	
Parking Lots	504	0	
Enclosed Parking with Elevator	695232	0	
Total:	**2,890,480**	**0**	

Source: Illingworth and Rodkin Inc. 210 Baypointe Parkway Residential Project Air Quality Assessment. January 13, 2023.
*Natural gas would not be used on-site because the San José Reach Code requires full electrification of new residential development

The proposed project would use approximately 2,890,480 kWh of electricity and would have no consumption of natural gas. Using the U.S. EPA fuel economy estimates (25.1 mpg), the project would result in the consumption of approximately 112,506 gallons of gasoline per year for associated automobile trips.

The proposed project would be required to be built in accordance with CALGreen requirements, which includes insulation and design provisions to minimize wasteful energy consumption. Additionally, the proposed project would be constructed in compliance with City of San José Council Policy 6-32, the Private Sector Green Building Policy, which requires green building features and water conservation on new developments. The project site is located approximately 800 feet from the Baypointe light rail transit (LRT) Station. Bus stops in the vicinity of the project site serve Altamont Corridor Express (ACE) Purple Shuttle Route and VTA Route 59. The nearest westbound bus stop is located at the northeast corner of the Zanker Road/ East Tasman Drive intersection, approximately 550 feet in walking distance from the project site.

[39] 2,823,911 daily VMT / 25.1 mpg = 112,506 gallons of gasoline.

The site's proximity to transit would incentivize the use of alternative methods of transportation to and from the site. Additionally, the proposed project would include 168 bicycle parking spaces and would comply with existing state energy standards. For these reasons, the project would not result in a significant environmental impact due to inefficient consumption of energy during project operation. **(Less than Significant Impact)**

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

Electricity on-site would be provided by SJCE. The project would be required to comply with the City's Green Building Ordinance and the most recent CALGreen requirements. As a result, the project would not conflict with or obstruct state or local plans for renewable energy or energy efficiency. **(Less than Significant Impact)**

3.6.2.2 *Cumulative Impacts*

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

The cumulative impact area for energy resources is within the energy providers territory. The proposed project would be constructed in compliance with applicable policies and clean energy ordinances which reduce the demand for energy resources of the proposed project. Compliance with policies which reduce the demand for energy would make the project consistent with state and local energy regulations on a regional or state level. Therefore, the proposed project would not conflict with these policies controlling energy consumption on a statewide level and would result in less than significant cumulative contribution to energy impacts. **(Less than Significant Cumulative Impact)**

3.7 GEOLOGY AND SOILS

The information in this section is based in part on the Preliminary Geotechnical Investigation prepared by Rockridge Geotechnical in April 2022. This document is included in Appendix C.

3.7.1 Environmental Setting

3.7.1.1 *Regulatory Framework*

Alquist-Priolo Earthquake Fault Zoning Act

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

Seismic Hazards Mapping Act

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

California Building Standards Code

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

California Division of Occupational Safety and Health Regulations

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

Public Resources Code Section 5097.5

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

City of San José

City of San José Policies

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

Envision San José 2040 General Plan

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

General Plan Policies - Geology, Soils, and Seismic Hazards	
Policy	**Description**
ES-4.9	Permit development only in those areas where potential danger to the health, safety, and welfare of persons in that area can be mitigated to an acceptable level.
ES-4.10	Update, as necessary, the San José Building Code, Fire Prevention Code and Municipal Code to address geologic, fire, flooding and other hazards, and to respond to changes in applicable State Codes.
EC-3.1	Design all new or remodeled habitable structures in accordance with the most recent California Building Code and California Fire Code as amended locally and adopted by the City of San José, including provisions regarding lateral forces.
EC-3.2	Within seismic hazard zones identified under the Alquist-Priolo Fault Zoning Act, California Seismic Hazards Mapping Act and/or by the City of San José, complete geotechnical and geological investigations and approve development proposals only when the severity of seismic hazards have been evaluated and appropriate mitigation measures are provided as reviewed and approved by the City of San José Geologist. State guidelines for evaluating and mitigating seismic hazards and the City-adopted California Building Code will be followed.

General Plan Policies - Geology, Soils, and Seismic Hazards	
EC-3.4	The City of San José will maintain up-to-date seismic hazard maps with assistance from the California Geological Survey (or other state agencies) under the Alquist-Priolo Earthquake Fault Zoning Act and the California Seismic Hazards Mapping Act.
EC-4.1	Design and build all new or remodeled habitable structures in accordance with the most recent California Building Code and municipal code requirements as amended and adopted by the City of San José, including provisions for expansive soil, and grading and storm water controls.
EC-4.2	Approve development in areas subject to soils and geologic hazards, including un-engineered fill and weak soils and landslide-prone areas, only when the severity of hazards have been evaluated and if shown to be required, appropriate mitigation measures are provided. New development proposed within areas of geologic hazards shall not be endangered by, nor contribute to, the hazardous conditions on the site or on adjoining properties. The City of San José Geologist will review and approve geotechnical and geological investigation reports for projects within these areas as part of the project approval process.
EC-4.4	Require all new development to conform to the City of San José's Geologic Hazard Ordinance.
EC-4.5	Ensure that any development activity that requires grading does not impact adjacent properties, local creeks and storm drainage systems by designing and building the site to drain properly and minimize erosion. An Erosion Control Plan is required for all private development projects that have soil disturbance of one acre or more, are adjacent to a creek/river, and/or are located in hillside areas. Erosion Control Plans are also required for any grading occurring between October 15 and April 15.
EC-4.7	Consistent with the San José Geologic Hazard Ordinance, prepare geotechnical and geological investigation reports for projects in areas of known concern to address the implications of irrigated landscaping to slope stability and to determine if hazards can be adequately mitigated.

3.7.1.2 *Existing Conditions*

Seismic Conditions

The project site is located in the Coast Ranges Geomorphic Province of California, which is characterized by northwest-trending valleys and ridges controlled by the seismic activity of the San Andreas Fault system. The San Andreas Fault is more than 600 miles long from Point Arena in the north to the Gulf of California in the south. The Coast Ranges Geomorphic Province is bounded on the east by the Great Valley and on the west by the Pacific Ocean.

The major active faults in the project area are the Hayward, Calaveras, Monte Vista and San Andreas faults. Numerous damaging earthquakes have occurred along these faults in recorded time. The average shaking expected from these faults is summarized below in Table 3.7-1.

Table 3.7-1 Regional Faults and Seismicity	
Fault	**Distance from Site**
Hayward Fault	4.4 miles northeast
Calaveras	7.5 miles east
Monte Vista	9.9 miles west
San Andreas	13.7 miles southwest

Geologic Hazards

During a major earthquake on one of the nearby faults, strong to very strong shaking is expected to occur at the project site. Strong shaking during an earthquake can result in ground failure such as that associated with soil liquefaction[40], lateral spreading[41], and cyclic densification (soil compaction and collapse)[42].

Ground Shaking

The seismicity of the site is governed by the activity of the Hayward and San Andreas faults, although ground shaking from future earthquakes on other faults will also be felt at the site. The intensity of earthquake ground motion at the site will depend upon the characteristics of the generating fault, distance to the earthquake epicenter, and magnitude and duration of the earthquake.

Fault Rupture

Historically, ground surface ruptures closely follow the trace of geologically young faults. The site is not located in an Earthquake Fault Zone, as defined by the Alquist-Priolo Earthquake Fault Zoning Act, and no known active or potentially active faults exist on the site. Therefore, the risk of fault offset at the site from a known active fault is very low.

Liquefaction and Associated Hazards

Strong shaking during an earthquake can result in ground failures such as those associated with soil liquefaction and lateral spreading. Soil susceptible to liquefaction includes loose to medium dense sand and gravel, low-plasticity silt, and some low-plasticity clay deposits.

The project site is within an area mapped for liquefaction potential[43]. The geotechnical analysis prepared for the site conducted ground borings which determined that these liquefiable layers are located in thin layers 16 to 28 feet below the ground surface.

Considering the site topography is relatively flat and the potentially liquefiable layers are not continuous, the risk of lateral spreading on-site is very low.

[40] Liquefaction is a phenomenon where loose, saturated, cohesionless soil experiences temporary reduction in strength during cyclic loading such as that produced by earthquakes.
[41] Lateral spreading is a phenomenon in which surficial soil displaces along a shear zone that has formed within an underlying liquefied layer. Upon reaching mobilization, the surficial blocks are transported downslope or in the direction of a free face by earthquake and gravitational forces.
[42] Cyclic densification is a phenomenon in which non-saturated, cohesionless soil is compacted by earthquake vibrations, causing ground-surface settlement.
[43] California Geological Survey. Earthquake Zones of Required Investigation, Milpitas Quadrangle, Official Map. October 19, 2004.

Soil Compaction and Collapse

Soil compaction and collapse can occur if strong ground shaking acts on low cohesion soils. The project site contains soils that have normal cohesive properties, and these soils are not susceptible to soil compaction or collapse during strong ground shaking.

Expansive Soils

Based on soil samples collected during the site investigation conducted as part of the geotechnical report, the near-surface clay on-site has high to very high expansion potential. This soil would undergo volume changes due to seasonal fluctuations in moisture content.

Groundwater

The depth to groundwater was measured as part of the geotechnical investigation for the proposed project. Based on this measurement and information for the California Geologic Survey, the groundwater levels are expected to fluctuate from five to 13 feet below the ground surface depending on hydrologic conditions. The geotechnical investigation recommends the use of six feet below ground surface for the purposes of this environmental report.

3.7.2 Impact Discussion

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

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

3.7.2.1 *Project Impacts*

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

The project site is located within the seismically active San Francisco Bay Area which has a 72 percent probability of experiencing at least one magnitude 6.7 earthquake by 2045. As mentioned above in Section 3.7.1.2, no active faults have been mapped on-site and, as a result, the risk of fault rupture is low. The project site and area are relatively flat and have a low potential for lateral spreading during seismic events. Additionally, the project site is located within an area of high to very high expansion potential. The project would be required to comply with the following Standard Permit Condition.

Standard Permit Condition

A Geotechnical Report shall be submitted, reviewed, and approved by the City Geologist. The Geotechnical Report shall determine the site-specific soil conditions and identify the appropriate design and construction techniques to minimize risks to people and structures, including but not limited to foundation, earthwork, utility trenching, retaining and drainage recommendations. The investigation should be consistent with State of California guidelines for the preparation of seismic hazard evaluation reports (CGS Special Publication 117A, 2008, and the Southern California Earthquake Center report, SCEC, 1999). A recommended minimum depth of 50 feet should be explored and evaluated in the investigation. The City Geologist will review the Geotechnical Report and issue a Geologic Clearance.

With implementation of the above Standard Permit Condition, the proposed project would not expose people or structures to substantial adverse effects due to ground shaking; nor would the project exacerbate existing geological hazards on the project site such that it would impact (or worsen) off-site geological and soil conditions. **(Less than Significant Impact)**

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

Construction Impacts

Ground disturbance during construction of the project would expose soils, increasing the potential for wind and/or water erosion at the site. The proposed project would be required to implement the following Standard Permit Conditions to reduce significant construction-related soil erosion.

Standard Permit Conditions:

To reduce soil erosion the proposed project would implement the following measures:

- All excavation and grading work shall be scheduled in dry weather months or construction sites shall be weatherized.
- Stockpiles and excavated soils shall be covered with secured tarps or plastic sheeting.

- Ditches shall be installed to divert runoff around excavations and graded areas if necessary.
- The project shall be constructed in accordance with standard engineering practices in the California Building Code, as adopted by the City of San José. A grading permit from the San José Department of Public Works shall be obtained prior to the issuance of a Public Works clearance. These standard practices would ensure that the future building on the site is designed to properly account for soils-related hazards on the site.

In addition to the Standard Permit Conditions, the project would be required to prepare a Storm Water Pollution Prevention Plan (SWPPP) under the National Pollution Discharge Elimination System (NPDES) General Construction Permit and the City's Municipal Code (refer to Section 3.10, Hydrology and Water Quality). Implementation of the Standard Permit Conditions and applicable policies and regulations would reduce soil erosion impacts to a less than significant level. **(Less than Significant Impact)**

Operational Impacts

The proposed project would cover a large amount of the site with impervious surfaces and would not have large areas of exposed soil or unplanted landscaping. These areas would not contribute to the release of significant sediment through erosion and most erosion would be contained within the planters or landscaped areas. Therefore, operation of the proposed project would have a less than significant impact resulting from loss of topsoil or erosion. **(Less than Significant Impact)**

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

Geologic Hazards

Based on the findings in the Geotechnical Report, the project site is located within a liquefication zone, but the potential for lateral spreading to occur on-site is low due to the topography of the site and discontinuity of the liquefiable layers. The layers of liquefiable soils are located at depth and are thinly distributed which would result in limited instability on-site as a result of liquefaction. Since the soils on-site have high to very high expansion potential, the proposed project would be required to use standard engineering and seismic safety design techniques during project construction. The proposed project would be constructed in conformance with the site-specific geotechnical investigation which would reduce the risk of hazardous geologic conditions (refer to Standard Permit Condition above).

The site does not contain soil that is or would become unstable and result of on- or off-site landslide, lateral spreading, subsidence or collapse. Therefore, the proposed project would not result in impacts related to these geologic hazards. **(Less than Significant Impact)**

Groundwater

Groundwater on-site is estimated at a depth of approximately five to 13 feet below the ground surface (bgs) and the project site would be excavated to a depth of approximately six feet for the

below-grade utilities. Since excavation activities on-site would have a chance to encounter groundwater, the proposed project would require dewatering during construction (refer to Section 3.10 Hydrology and Water Quality of this document). The project would implement the following Standard Permit Condition to reduce impacts related to dewatering.

Standard Permit Condition:

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.

Because the proposed project would comply with the Standard Permit Condition, the soils on-site would not become unstable as a result of the project. **(Less than Significant Impact)**

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

The geotechnical report determined that the project site has high to very high expansion potential which would result in damage to building foundations without remediation. The preliminary geotechnical report identified the following features and improvements to improve the stability of the site for development.
The proposed project would prepare a design-level geotechnical report as stated above in Geology Impact a). The design level geotechnical document would provide methods for avoiding expansive soils issues which may include the following:

- Foundations and slabs will be designed and constructed to resist the effects of the expansive clay. These effects can be mitigated by moisture-conditioning the expansive soil below slabs, providing non-expansive soil below slabs, and either supporting foundations below the zone of severe moisture change or providing a stiff, shallow foundation that can limit deformation of the superstructure as the underlying soil shrinks and swells.

- The upper 18 inches of soil subgrade beneath slab-on-grade floors and exterior concrete flatwork will be replaced with non-expansive fill. This may consist of lime-treated onsite clay or select fill. Select fill would consist of imported or on-site soil that is:

    - free of organic matter
    - contains no rocks or lumps larger than three inches in greatest dimension
    - has a liquid limit less than 40 and plasticity index less than 12
    - approved by the Geotechnical Engineer.

- For slab-on-grade floors, the 18 inches of non-expansive fill will be measured from the bottom of the capillary moisture break. The 18 inches of non-expansive fill can be omitted if the building is supported on a mat foundation that is at least 18 inches thick.

- Exterior slabs will thicken the slab edges and add additional reinforcement. In addition,

where slabs provide access to buildings, the entrance will be doweled to permit rotation of the slab as the exterior ground shrinks and swells and to prevent a vertical offset at the entries.

With implementation of necessary design features consistent with the Condition of Approval, the proposed project would not result in direct or indirect impacts to life or property as a result of expansive soils. Therefore, the proposed project would result in a less than significant impact. **(Less than Significant Impact)**

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

The project site is served by the local sewer system and would not need septic tanks or alternative waste disposal systems to be installed. Therefore, the project would have no impact regarding septic tanks or alternative waste disposal systems. **(No Impact)**

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

Paleontological resources are the fossilized remains of organisms from prehistoric environments found in geologic strata. Most of the City is situated on alluvial fan deposits of Holocene age that have a low potential to contain significant nonrenewable paleontological resources; however, older Pleistocene sediments present at or near the ground surface at some locations have high potential to contain these resources. These older sediments, often found at depths of greater than 10 feet bgs, have yielded the fossil remains of plants and extinct terrestrial Pleistocene vertebrates.

The proposed project would not require excavation below seven feet and, therefore, would not encounter sediments where fossilized remains are commonly discovered. Although the proposed project is unlikely to encounter fossilized remains, the proposed project could disturb paleontological resources during excavation, grading and construction activities. The project will be required to implement the following Standard Permit Condition for avoiding and reducing construction-related paleontological resources impacts.

Standard Permit Condition

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

With implementation of the identified Standard Permit Condition, the proposed project would have a less than significant paleontological resources impact. **(Less than Significant Impact)**

3.7.2.2 *Cumulative Impacts*

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

The cumulative impact area for geologic impacts are the project site and adjacent parcels. The proposed project was determined to result in less than significant impacts related to geologic hazards affecting the project site. These impacts are limited to the extent of the project site and would not exacerbate any existing off-site geologic issues. Therefore, the proposed project would not have a cumulatively considerable contribution to a cumulative geology and soils impact. **(Less than Significant Cumulative Impact)**

3.7.3 Non-CEQA Effects

Per *California Building Industry Association v. Bay Area Air Quality Management District,* 62 Cal. 4th 369 *(BIA v. BAAQMD)*, effects of the environment on the project are not considered CEQA impacts. The following discussion is included for informational purposes only because the City of San José has policies that address existing geology and soils conditions affecting a proposed project.

General Plan Policy EC-4.2 states that development is allowed in areas subject to soils and geologic hazards, including unengineered fill and weak soils and landslide-prone areas, only when the severity of hazards have been evaluated and if shown to be required, appropriate mitigation measures are provided. New development proposed within areas of geologic hazards shall not be endangered by, nor contribute to, the hazardous conditions on-site or on adjoining properties. Policy EC-4.4 requires all new development to conform to the City of San José's Geologic Hazard Ordinance.

The project site is located within a liquefication zone, but the potential for lateral spreading to occur on-site is low due. The site is also a seismically active area containing soils with high to very high expansion potential. Pursuant to General Plan Action EC-4.11 and the Standard Permit Conditions, prior to issuance of grading or building permits, a design-level geotechnical investigation shall be prepared and submitted to the City of San José Public Works department for review and confirmation that the proposed development fully complies with the CBC and all City policies and ordinances.

This would ensure that the new development proposed within areas of geologic hazards would not be endangered by hazardous site conditions.

Because the proposed project would comply with the design-specific geotechnical report, the CBC, and regulations identified in the Envision 2040 General Plan FEIR, the project would comply with General Plan Policies EC-4.2 and EC-4.4, and Action EC-4.11.

3.8 GREENHOUSE GAS EMISSIONS

This section references the Greenhouse Gas Reduction Strategy (GHGRS) Checklists prepared for the project by the project applicant, which are attached as Appendix D to this EIR.

3.8.1 Environmental Setting

3.8.1.1 *Background Information*

Gases that trap heat in the atmosphere, GHGs, regulate the earth's temperature. This phenomenon, known as the greenhouse effect, is responsible for maintaining a habitable climate. In GHG emission inventories, the weight of each gas is multiplied by its global warming potential (GWP) and is measured in units of CO_2 equivalents (CO_2e). The most common GHGs are carbon dioxide (CO_2) and water vapor but there are also several others, most importantly methane (CH_4), nitrous oxide (N_2O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF_6). These are released into the earth's atmosphere through a variety of natural processes and human activities. Sources of GHGs are generally as follows:

- CO_2 and N_2O are byproducts of fossil fuel combustion.
- N_2O is associated with agricultural operations such as fertilization of crops.
- CH_4 is commonly created by off-gassing from agricultural practices (e.g., keeping livestock) and landfill operations.
- Chlorofluorocarbons (CFCs) were widely used as refrigerants, propellants, and cleaning solvents, but their production has been stopped by international treaty.
- HFCs are now used as a substitute for CFCs in refrigeration and cooling.
- PFCs and SF_6 emissions are commonly created by industries such as aluminum production and semiconductor manufacturing.

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

3.8.1.2 *Regulatory Framework*

State

Assembly Bill 32

Under the California Global Warming Solutions Act, also known as AB 32, CARB established a statewide GHG emissions cap for 2020, adopted mandatory reporting rules for significant sources of

GHGs, and adopted a comprehensive plan, known as the Climate Change Scoping Plan, identifying how emission reductions would be achieved from significant GHG sources.

In 2016, SB 32 was signed into law, amending the California Global Warming Solution Act. SB 32, and accompanying Executive Order B-30-15, require CARB to ensure that statewide GHG emissions are reduced to 40 percent below the 1990 level by 2030. CARB updated its Climate Change Scoping Plan in December of 2017 to express the 2030 statewide target in terms of million metric tons of CO_2e ($MMTCO_2e$). Based on the emissions reductions directed by SB 32, the annual 2030 statewide target emissions level for California is 260 $MMTCO_2e$.

Senate Bill 375

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

Consistent with the requirements of SB 375, the Metropolitan Transportation Commission (MTC) partnered with the Association of Bay Area Governments (ABAG), BAAQMD, and the Bay Conservation and Development Commission to prepare the region's Sustainable Communities Strategy (SCS) as part of the Regional Transportation Plan process. The SCS is referred to as Plan Bay Area 2050. Plan Bay Area 2050 establishes a course for reducing per capita GHG emissions through the promotion of compact, high-density, mixed-use neighborhoods near transit, particularly within identified Priority Development Areas (PDAs).

Regional and Local

2017 Clean Air Plan

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

CEQA Air Quality Guidelines

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

Climate Smart San José

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

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

Reach Building Code

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

San José 2030 Greenhouse Gas Reduction Strategy

The 2030 Greenhouse Gas Reduction Strategy (GHGRS) is the latest update to the City's GHGRS and is designed to meet statewide GHG reduction targets for 2030 set by Senate Bill 32. As a qualified Climate Action Plan, the 2030 GHGRS allows for tiering and streamlining of GHG analyses under CEQA. The GHGRS identifies General Plan policies and strategies to be implemented by development projects in the areas of green building/energy use, multimodal transportation, water conservation, and solid waste reduction. Projects that comply with the policies and strategies outlined in the 2030 GHGRS, would have less than significant GHG impacts under CEQA.[44]

Envision San José 2040 General Plan

The following policies in the City's General Plan have been adopted for the purpose of reducing or avoiding impacts related to greenhouse gas emissions and are applicable to the project. In addition, goals and policies throughout the 2040 General Plan encourage a reduction in vehicle miles traveled through land use, pedestrian, bicycle, and access to transit improvements, parking strategies that reduce automobile travel through parking supply and pricing management, and requirements for Transportation Demand Management programs for large employers.

General Plan Policies – GHG Emissions	
Policy	**Description**
MS-1.1	Demonstrate leadership in the development and implementation of green building policies and practices. Ensure that all projects are consistent with or exceed the City's Green Building Ordinance and City Council Policies as well as State and/or regional policies

[44] City of San José. Greenhouse Gas Reduction Strategy. November 2020. https://www.sanjoseca.gov/your-government/department-directory/planning-building-code-enforcement/planning-division/environmental-planning/greenhouse-gas-reduction-strategy.

	which require that projects incorporate various green building principles into their design and construction.
MS-1.4	Foster awareness of San José's business and residential communities of the economic and environmental benefits of green building practices. Encourage design and construction of environmentally responsible commercial and residential buildings that are also operated and maintained to reduce waste, conserve water, and meet other environmental objectives.
MS-2.3	Utilize solar orientation (i.e., building placement), landscaping, design, and construction techniques for new construction to minimize energy consumption.
MS-2.6	Promote roofing design and surface treatments that reduce the heat island effect of new and existing development and support reduced energy use, reduced air pollution, and a healthy urban forest. Connect businesses and residents with cool roof rebate programs through City outreach efforts.
MS-2.11	Require new development to incorporate green building policies, including those required by the Green Building Ordinance. Specifically, target reduced energy use through construction techniques (e.g., design of building envelopes and systems to maximize energy performance), through architectural design (e.g., design to maximize cross ventilation and interior daylight) and through site design techniques (e.g., orienting buildings on sites to maximize effectiveness of passive solar design).
MS-5.5	Maximize recycling and composting from all residents, businesses, and institutions in the City.
MS-5.6	Enhance the construction and demolition debris recycling program to increase diversion from the building sector.
MS-14.4	Implement the City's Green Building Policies so that new construction and rehabilitation of existing buildings fully implements industry best practices, including the use of optimized energy systems, selection of materials and resources, water efficiency, sustainable site selection, passive solar building design, and planting of trees and other landscape materials to reduce energy consumption.
MS-21.1	Manage the Community Forest to achieve San José's environmental goals for water and energy conservation, wildlife habitat preservation, stormwater retention, heat reduction in urban areas, energy conservation, and the removal of carbon dioxide from the atmosphere.

3.8.1.3 *Existing Conditions*

Unlike emissions of criteria and toxic air pollutants, which have regional and local impacts, emissions of GHGs have a broader, global impact. Global warming is a process whereby GHGs accumulating in the upper atmosphere contribute to an increase in the temperature of the earth and changes in weather patterns.

The project site is currently developed with a 67,984 square foot industrial building in a developed area of north San José. GHG emissions are generated by daily traffic trips to and from the project site as well as electricity required for lighting, heating, and cooling the building.

3.8.2 Impact Discussion

For the purpose of determining the significance of the project's impact on greenhouse gas emissions, would the project:

1) Generate GHG emissions, either directly or indirectly, that may have a significant impact on the environment?
2) Conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing the emissions of GHGs?

3.8.2.1 *Project Impacts*

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

Construction Emissions

Construction-related GHG emissions vary depending on the level of activity, length of the construction period, specific construction operations, types of equipment, and number of personnel. Construction of the proposed project would occur over a period of 12 months, beginning in January 2025, which would result in a temporary increase in GHG emissions from operation of construction equipment, haul truck trips to and from the site, and emissions from construction workers' personal vehicles traveling to and from the project site. Neither the City of San José nor BAAQMD has established a quantitative threshold or standard for determining whether a project's construction related GHG emissions are significant. Project construction would occur over a period of approximately 32 months and would not result in a permanent increase in emissions. Therefore, the proposed project would not interfere with the implementation of SB 32. **(Less than Significant Impact)**

Operational Emissions

Per CEQA Guidelines Section 15064(b), the determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the Lead Agency and must be based to the extent possible on scientific and factual data. As discussed under Impact GHG-2, the project would implement all applicable GHG reduction strategies in the GHGRS intended to reduce GHG emissions, and if a project is consistent with the City's GHGRS, it can be presumed that the project would not have significant GHG emissions under CEQA, pursuant to BAAQMD's most recent CEQA Guidelines. The project would comply with the 2030 GHGRS as discussed below in checklist question b; therefore, the project would result in a less than significant GHG emissions impact. **(Less than Significant Impact)**

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

Envision San José 2040 General Plan

The project is consistent with the General Plan policies identified in Section 3.8.1.1 Regulatory Framework to reduce GHG emissions by:

- Constructing in accordance with CALGreen and Title 24
- Planting trees for shade
- Providing bicycle parking

The project would be consistent with the City's General Plan policies intended to reduce GHG emissions. **(Less than Significant Impact)**

2030 San José Greenhouse Gas Reduction Strategy

BAAQMD adopted the most recent CEQA Air Quality Guidelines in May 2017. In April 2022, BAAQMD adopted new CEQA Thresholds for evaluating the significance of climate impacts from land use projects and plans. The BAAQMD CEQA Air Quality Guidelines include thresholds of significance for GHG emissions. Pursuant to the latest CEQA Air Quality Guidelines and GHG thresholds of significance, a local government may prepare a Qualified GHGRS that is consistent with AB 32 goals. The City of San José adopted the updated 2030 GHGRS in 2020. If a project is consistent with the City's GHGRS, it can be presumed that the project would not have significant GHG emissions under CEQA. The proposed project's consistency with GHGRS measures is summarized below (refer to Appendix E for more details).

To be consistent with the GHGRS, development projects shall demonstrate consistency with the General Plan Land Use and Circulation Diagram and General Plan policies related to green building pedestrian, bicycle and transit site design, and water conservation and urban forestry. In addition, projects shall demonstrate consistency with the seven GHG reduction strategies identified in the GHGRS which include implementation of San José Clean Energy, implementing the City's Reach Code Ordinance, expanding development of rooftop solar energy, supporting the transition to building decarbonization, diverting 90 percent of waste from landfills, modernization of Caltrain, and water conservation.

As discussed in Section 3.11 Land Use and Planning, the project is consistent with the General Plan land use designation, TERO for the site and planned growth from build out of the General Plan EIR. The proposed project would comply with the City's Green Building Ordinance, and CBC requirements as well as General Plan Action MS-2.11 which requires development to incorporate green building practices through construction, architectural design, and site design techniques. Furthermore, consistent with Council Policy 6-32, the project would be designed to achieve LEED Silver standards. The project would include 208 bicycle parking spaces including secure long-term spaces for residents within the apartment building and townhouses and additional short-term spaces for guests on the exterior of the building, consistent with General Policies TR-1.1 and TR-2.8 which call for development projects to encourage use of non-automobile transportation modes and provide

on-site facilities such as bicycle storage and connections to existing and planned bicycle facilities, respectively. As noted in Section, 2.2 Project Description, the project would include water-efficient landscaping which conforms to the State's Model Water Efficient Landscape Ordinance in accordance with General Plan Policy MS-3.1 and GHGRS Strategy #5. The project would include the planting of 160 new 24-inch box trees on-site consistent with the City's tree replacement policy, urban forestry goals and GHGRS Strategy #7.

Furthermore, consistent with the GHG reduction Strategies #1 through #4, the project would be designed to comply with the City's Reach Code ordinance, exclude natural gas infrastructure, and include rooftop solar panels in support of San José Clean Energy and the transition to decarbonize buildings. Consistent with Strategy #5, the project would include recycling containers would be provided for future residents, diverting waste from landfills. The project is not located within 0.5miles of a Caltrain Station; however, the project is located approximately 800 feet from Baypointe Light Rail Station and includes bicycle amenities such as bicycle parking, encouraging residents to use bicycles and reduce vehicle miles traveled consistent with Strategy #6. To further ensure compliance with the goals of the GHGRS checklist, the project is required to adhere to the following standard permit condition.

Standard Permit Condition

Proof of Enrollment in SJCE. Prior to issuance of any Certificate of Occupancy for the project, the occupant shall provide to the Director of the Department of Planning, Building and Code Enforcement (PBCE), or Director's designee, proof of enrollment in the San Jose Community Energy (SJCE) GreenSource program (approx. 60% renewable energy) assumed in the approved environmental clearance for the project in accordance with the California Environmental Quality Act (CEQA). If it is determined the project's environmental clearance requires enrollment in the TotalGreen program, neither the occupant, nor any future occupant, may opt out of the TotalGreen program.

For these reasons, the project would implement all applicable GHG consistency measures intended to reduce GHG emissions.

Climate Smart San José

Climate Smart San José is a communitywide initiative intended to create a more sustainable, connected, and economically inclusive City. Climate Smart San José is aligned with General Plan growth patterns and General Plan policies which prioritize automobile-alternative transportation modes, encourage denser development, and ensure energy-efficient features are included in new buildings.

The proposed project would increase development density in proximity to existing transit facilities (Baypointe Light Rail Station). The project would be designed and constructed in compliance with the City's Green Building Ordinance. In addition, Action MS-2.11 of the General Plan requires new development to incorporate energy conservation and efficiency in site design, architectural design, and construction techniques. Additionally, the project would include drought tolerant plans and water efficient irrigation systems in the proposed landscaping. For these reasons, the project would be consistent with the City's climate action goals as set forth in Climate Smart San José.

The project would be consistent with applicable GHGRS measures and Climate Smart San José. Therefore, the project would not conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing the emissions of GHGs. **(Less than Significant Impact)**

3.8.2.2 *Cumulative Impacts*

Would the project result in a cumulatively considerable contribution to a significant cumulative GHG emissions impact?

As discussed in Section 3.8.1, by its nature, GHG emissions are cumulative. Past, present, and future development projects (including the cumulative projects) worldwide contribute to global climate change. No single project is sufficient in size to, by itself, change the global average temperature.[45] Therefore, due to the nature of GHG impacts, if a project does not result in a significant GHG impact, then the project would not result in significant cumulative GHG impact. As discussed above, the proposed project would not generate GHG emissions that would have a significant impact on the environment or conflict with a plan, policy, or regulation adopted for the purpose of reducing GHG emissions. The project, therefore, would not result in a cumulatively considerable contribution to a GHG impact. **(Less than Significant Cumulative Impact)**

[45] Bay Area Air Quality Management District. *CEQA Guidelines*. May 2017. Page 2-1.

3.9 HAZARDS AND HAZARDOUS MATERIALS

This section is based in part on the Phase 1 and Limited Phase II Environmental Site Assessment Prepared for the project by Roux Associates Inc. on June 24, 2022. These reports are included in Appendix E of this EIR.

3.9.1 Environmental Setting

3.9.1.1 *Regulatory Framework*

Overview

The storage, use, generation, transport, and disposal of hazardous materials and waste are highly regulated under federal and state laws. In California, the EPA has granted most enforcement authority over federal hazardous materials regulations to the California Environmental Protection Agency (CalEPA). In turn, local agencies have been granted responsibility for implementation and enforcement of many hazardous materials regulations under the Certified Unified Program Agency (CUPA) program.

Worker health and safety and public safety are key issues when dealing with hazardous materials. Proper handling and disposal of hazardous material is vital if it is disturbed during project construction. Cal/OSHA enforces state worker health and safety regulations related to construction activities. Regulations include exposure limits, requirements for protective clothing, and training requirements to prevent exposure to hazardous materials. Cal/OSHA also enforces occupational health and safety regulations specific to lead and asbestos investigations and abatement.

Federal and State

Federal Aviation Regulations Part 77

Federal Aviation Regulations, Part 77 Objects Affecting Navigable Airspace (FAR Part 77) sets forth standards and review requirements for protecting the airspace for safe aircraft operation, particularly by restricting the height of potential structures and minimizing other potential hazards (such as reflective surfaces, flashing lights, and electronic interference) to aircraft in flight. These regulations require that the Federal Aviation Administration (FAA) be notified of certain proposed construction projects located within an extended zone defined by an imaginary slope radiating outward for several miles from an airport's runways, or which would otherwise stand at least 200 feet in height above the ground.

Comprehensive Environmental Response, Compensation, and Liability Act

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), commonly known as Superfund, was enacted by Congress on December 11, 1980. This law created a tax on the chemical and petroleum industries and provided broad federal authority to respond directly to releases or threatened releases of hazardous substances that may endanger public health or the environment. Over five years, $1.6 billion was collected and the tax went to a trust fund for cleaning up abandoned or uncontrolled hazardous waste sites. CERCLA accomplished the following objectives:

- Established prohibitions and requirements concerning closed and abandoned hazardous waste sites;
- Provided for liability of persons responsible for releases of hazardous waste at these sites; and
- Established a trust fund to provide for cleanup when no responsible party could be identified.

The law authorizes two kinds of response actions:

- Short-term removals, where actions may be taken to address releases or threatened releases requiring prompt response; and
- Long-term remedial response actions that permanently and significantly reduce the dangers associated with releases or threats of releases of hazardous substances that are serious, but not immediately life-threatening. These actions can be completed only at sites listed on the EPA's National Priorities List.

CERCLA also enabled the revision of the National Contingency Plan (NCP). The NCP provided the guidelines and procedures needed to respond to releases and threatened releases of hazardous substances, pollutants, or contaminants. The NCP also established the National Priorities List. CERCLA was amended by the Superfund Amendments and Reauthorization Act on October 17, 1986.[46]

Resource Conservation and Recovery Act

The Resource Conservation and Recovery Act (RCRA), enacted in 1976, is the principal federal law in the United States governing the disposal of solid waste and hazardous waste. RCRA gives the EPA the authority to control hazardous waste from the "cradle to the grave." This includes the generation, transportation, treatment, storage, and disposal of hazardous waste. RCRA also sets forth a framework for the management of non-hazardous solid wastes.

The Federal Hazardous and Solid Waste Amendments (HSWA) are the 1984 amendments to RCRA that focused on waste minimization, phasing out land disposal of hazardous waste, and corrective action for releases. Some of the other mandates of this law include increased enforcement authority for the EPA, more stringent hazardous waste management standards, and a comprehensive underground storage tank program.[47]

Government Code Section 65962.5

Section 65962.5 of the Government Code requires CalEPA to develop and update a list of hazardous waste and substances sites, known as the Cortese List. The Cortese List is used by state and local agencies and developers to comply with CEQA requirements. The Cortese List includes hazardous substance release sites identified by the Department of Toxic Substances Control (DTSC) and State

[46] United States Environmental Protection Agency. "Superfund: CERCLA Overview." Accessed August 16, 2022. https://www.epa.gov/superfund/superfund-cercla-overview.
[47] United States Environmental Protection Agency. "Summary of the Resource Conservation and Recovery Act." Accessed August 16, 2022. https://www.epa.gov/laws-regulations/summary-resource-conservation-and-recovery-act.

Water Resources Control Board (SWRCB).[48]

Toxic Substances Control Act

The Toxic Substances Control Act (TSCA) of 1976 provides the EPA with authority to require reporting, record-keeping and testing requirements, and restrictions relating to chemical substances and/or mixtures. Certain substances are generally excluded from TSCA, including, among others, food, drugs, cosmetics, and pesticides. The TSCA addresses the production, importation, use, and disposal of specific chemicals including polychlorinated biphenyls (PCBs), asbestos, radon, and lead-based paint.

California Accidental Release Prevention Program

The California Accidental Release Prevention (CalARP) Program aims to prevent accidental releases of regulated hazardous materials that represent a potential hazard beyond the boundaries of a property. Facilities that are required to participate in the CalARP Program use or store specified quantities of toxic and flammable substances (hazardous materials) that can have off-site consequences if accidentally released. The Santa Clara County Department of Environmental Health reviews CalARP risk management plans as the CUPA.

Asbestos-Containing Materials

Friable asbestos is any asbestos-containing material (ACM) that, when dry, can easily be crumbled or pulverized to a powder by hand, allowing the asbestos particles to become airborne. Common examples of products that have been found to contain friable asbestos include acoustical ceilings, plaster, wallboard, and thermal insulation for water heaters and pipes. Common examples of non-friable ACMs are asphalt roofing shingles, vinyl floor tiles, and transite siding made with cement. The EPA began phasing out use of friable asbestos products in 1973 and issued a ban in 1978 on manufacture, import, processing, and distribution of some asbestos-containing products and new uses of asbestos products.[49] The EPA is currently considering a proposed ban on on-going use of asbestos.[50] National Emission Standards for Hazardous Air Pollutants (NESHAP) guidelines require that potentially friable ACMs be removed prior to building demolition or remodeling that may disturb the ACMs.

CCR Title 8, Section 1532.1

The United States Consumer Product Safety Commission banned the use of lead-based paint in 1978. Removal of older structures with lead-based paint is subject to requirements outlined by the Cal/OSHA Lead in Construction Standard, CCR Title 8, Section 1532.1 during demolition activities. Requirements include employee training, employee air monitoring, and dust control. If lead-based paint is peeling, flaking, or blistered, it is required to be removed prior to demolition.

[48] California Environmental Protection Agency. "Cortese List Data Resources." Accessed August 16, 2022. https://calepa.ca.gov/sitecleanup/corteselist/.
[49] United States Environmental Protection Agency. "EPA Actions to Protect the Public from Exposure to Asbestos." Accessed August 16, 2022. https://www.epa.gov/asbestos/epa-actions-protect-public-exposure-asbestos
[50] Ibid.

Regional and Local

Municipal Regional Permit Provision C.12.f

Polychlorinated biphenyls (PCBs) were produced in the United States between 1955 and 1978 and used in hundreds of industrial and commercial applications, including building and structure materials such as plasticizers, paints, sealants, caulk, and wood floor finishes. In 1979, the EPA banned the production and use of PCBs due to their potential harmful health effects and persistence in the environment. PCBs can still be released to the environment today during demolition of buildings that contain legacy caulks, sealants, or other PCB-containing materials.

With the adoption of the San Francisco Bay Region Municipal Regional Stormwater National Pollutant Discharge Elimination System (NPDES) Permit (MRP) by the San Francisco Bay Regional Water Quality Control Board on November 19, 2015, Provision C.12.f requires that permittees develop an assessment methodology for applicable structures planned for demolition to ensure PCBs do not enter municipal storm drain systems.[51] Municipalities throughout the Bay Area are currently modifying demolition permit processes and implementing PCB screening protocols to comply with Provision C.12.f. Buildings constructed between 1950 and 1980 that are proposed for demolition must be screened for the presence of PCBs prior to the issuance of a demolition permit. Single family homes and wood-frame structures are exempt from these requirements.

City of San José

Envision San José 2040 General Plan

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

General Plan Policies - Hazards and Hazardous Materials	
Hazardous Materials	
EC-6.1	Require all users and producers of hazardous materials and wastes to clearly identify and inventory the hazardous materials that they store, use or transport in conformance with local, state and federal laws, regulations and guidelines.
EC-6.2	Require proper storage and use of hazardous materials and wastes to prevent leakage, potential explosions, fires, or the escape of harmful gases, and to prevent individually innocuous materials from combining to form hazardous substances, especially at the time of disposal by businesses and residences. Require~~s~~ proper disposal of hazardous materials and wastes at licensed facilities.
EC-6.6	Address through environmental review all proposals for new residential, park and recreation, school, day care, hospital, church or other uses that would place a sensitive population in close proximity to sites on which hazardous materials are or are likely to be located, the likelihood of an accidental release, the risks posed to human health and for sensitive populations, and mitigation measures, if needed, to protect human health.

[51] California Regional Water Quality Control Board. *San Francisco Bay Region Municipal Regional Stormwater NPDES Permit.* November 2015.

General Plan Policies - Hazards and Hazardous Materials	
Environmental Contamination	
EC-7.1	For development and redevelopment projects, require evaluation of the proposed site's historical and present uses to determine if any potential environmental conditions exist that could adversely impact the community or environment.
EC-7.2	Identify existing soil, soil vapor, groundwater and indoor air contamination and mitigation for identified human health and environmental hazards to future users and provide as part of the environmental review process for all development and redevelopment projects. Mitigation measures for soil, soil vapor and groundwater contamination shall be designed to avoid adverse human health or environmental risk, in conformance with regional, state and federal laws, regulations, guidelines and standards.
EC-7.3	Where a property is located in proximity to known groundwater contamination with volatile organic compounds or within 1,000 feet of an active or inactive landfill, evaluate and mitigate the potential for indoor air intrusion of hazardous compounds to the satisfaction of the City's Environmental Compliance Officer and appropriate regional, state and federal agencies prior to approval of a development or redevelopment project.
EC-7.4	On redevelopment sites, determine the presence of hazardous building materials during the environmental review process or prior to project approval. Mitigation and remediation of hazardous building materials, such as lead-paint and asbestos-containing materials, shall be implemented in accordance with state and federal laws and regulations.
EC-7.5	On development and redevelopment sites, require all sources of imported fill to have adequate documentation that it is clean and free of contamination and/or acceptable for the proposed land use considering appropriate environmental screening levels for contaminants. Disposal of groundwater from excavations on construction sites shall comply with local, regional, and state requirements.
EC-7.8	Where an environmental review process identifies the presence of hazardous materials on a proposed development site, the City will ensure that feasible mitigation measures that will satisfactorily reduce impacts to human health and safety and to the environment are required of or incorporated into the projects. This applies to hazardous materials found in the soil, groundwater, soil vapor, or in existing structures.
EC-7.9	Ensure coordination with the County of Santa Clara Department of Environmental Health, Regional Water Quality Control Board, Department of Toxic Substances Control or other applicable regulatory agencies, as appropriate, on projects with contaminated soil and/or groundwater or where historical or active regulatory oversight exists.
EC-7.10	Require review and approval of grading, erosion control and dust control plans prior to issuance of a grading permit by the Director of Public Works on sites with known soil contamination. Construction operations shall be conducted to limit the creation and dispersion of dust and sediment runoff.
EC-7.11	Require sampling for residual agricultural chemicals, based on the history of land use, on sites to be used for any new development or redevelopment to account for worker and

General Plan Policies - Hazards and Hazardous Materials	
	community safety during construction. Mitigation to meet appropriate end use such as residential or commercial/industrial shall be provided.
Safe Airport	
TR-14.2	Regulate development in the vicinity of airports in accordance with Federal Aviation Administration regulations to maintain the airspace required for the safe operation of these facilities and avoid potential hazards to navigation.
Community Health, Safety, and Wellness	
CD-5.8	Comply with applicable Federal Aviation Administration regulations identifying maximum heights for obstructions to promote air safety.

3.9.1.2 *Existing Conditions*

Historic Uses of the Project Site

Historical uses of the project site were derived from aerial photography and historical topographic maps of the project site and surrounding areas. Sanborn maps were not available for this project site.

In 1889, the project site is undeveloped and a small trail appears to run west-east through the northern corner of the site. By 1939, the eastern portion of the project site was being used for agricultural purposes and the western portion of the project site was empty and undeveloped. The 1953 historical topographic map identified the project site as part of the Rincon de Los Esteros (Alviso) neighborhood. Agricultural development of the site continued through 1961 when the project site is fully utilized for this use. The project site was used for agricultural purposes until 1993, when the project site was developed with the existing structure.

Existing Uses of the Project Site

The project site has two inactive Hazardous Waste Tracking System (HWTS) listings. One listing was created for Indusys Technology Inc in September 2011 and went inactive in March 2012. The other listing was created for Stryker Endoscopy in August 1990 and went inactive in June 1997.

The project site is listed in the HAZNET database for generating wastes of aqueous solution with total organic residues less than 10 percent in 1995, waste oil and mixed oil in 1994, and waste hydrocarbon solvents in 1990.

None of these listings are indicative of a release and are not recognized environmental conditions.

Due to the presence of historical agricultural activities on-site, soil testing was competed to determine the presence of contaminants associated with the agricultural use. Arsenic, cobalt, lead, and nickel were found on-site. Arsenic was detected at concentrations ranging from 1.6 to 61 mg/kg, above the natural background concentration of 11 mg/kg in 14 of the 16 samples; cobalt was detected at concentrations ranging from 10 to 64 mg/kg, above its Residential ESL of 23 mg/kg in four samples; lead was detected at concentrations ranging from 1.1 to 210 mg/kg, above its Residential

ESL of 80mg/kg in five samples; and nickel was detected at concentrations ranging from 84 to 1,500 mg/kg, above its Residential ESL of 820 mg/kg in two samples. The levels of these metals were found to be in excess of the residential Environmental Screening Levels (ESLs). The project site currently has one open voluntary cleanup agreement occurring to treat the soil on-site for agricultural contamination.

Lead and Asbestos

The project site is occupied by buildings built after 1990. The building was constructed after laws regulating the use of asbestos and lead based paints during construction were enacted. Therefore, the buildings on-site would not contain asbestos or lead-based paint.

Historic Uses of Surrounding Areas

In 1889, the majority of the area surrounding the project site was partially developed, with a sparse network of roads and buildings present. The Agnew Asylum (later known as the Agnew State Hospital, West Area)) was present approximately 1.25 miles southwest of the site. By 1939, the area surrounding the project site was primarily being used for agricultural purposes. The Agnew State Hospital (East Area) complex (as identified in the 1953 Historical Topographic Map) was present approximately 750 feet southeast of the site.

By 1953, the area surrounding the project site had more roads present. The development of the Agnew State Hospital (East Area), and the Agnew State Hospital (West Area) complex continued through 1968. Additionally, by 1961, State Route 237 was constructed in its present-day configuration approximately 0.5 miles to the north of the project site. In 1963, a small residential development, consisting of approximately four to five buildings, had been constructed on the adjacent lot northwest of the project site. By 1973, a network of roads and houses associated with a large residential development had been constructed on the adjacent lot to the north of the project site. The other areas around the project site continued to predominantly be used for agriculture.

In 1979, the housing development to the north of the project site had expanded to the northwest and west and in 1980 this site was identified as a trailer park. By 1993, commercial buildings had been developed on the lots to the south and north of the project site. The residential complex to the north of the project site had continued to expand.

By 2006 more commercial buildings had been constructed to the south of the project site. From 2009 to 2012, the commercial buildings near the project site to the southeast were demolished. By 2016, apartment complexes in their present-day configurations had been constructed on the lots to the west, southwest, and southeast of the project site.

Current Uses of Surrounding Areas

Directly northwest of the project site is Baypointe Parkway. Beyond Baypointe Parkway to the north of the site is the University of Silicon Valley, a private university. The site northeast of the project site is an undeveloped lot. Beyond Baypointe Parkway, to the west of the project site, is the Enzo apartment complex. Directly south of the project site are two apartment complexes. Directly east of the project site is a private road, beyond which is the Verdant apartment complex.

The following environmental conditions were identified by the Phase I report on surrounding properties upgradient from the project site.

Fujitsu Laboratories of America Inc (3811 Zanker Road)

The 3811 Zanker Road site is located 463 feet east of the project site. The site is listed in the CUPA Santa Clara database for on-site hazardous waste generation and treatment/tiered permit program, listed in the HAZNET database for multiple tons of hazardous waste disposed of between 1993 and 2004, and is listed in the RCRA NonGen/NLR, FINDS, ECHO, EMI, WDS, and CERS databases for hazardous waste handling and/or generation. The site also has an inactive listing in the HWTS that was created in April 1992 and went inactive in June 2005.

In the DTSC Envirostor database, the site is listed as inactive and needing evaluation. No further details on past uses that caused contamination, potential contaminants of concern, or potential media affected, are available. Based on the lack of reported releases, this site is not of concern to the project site.

Cisco Systems Inc – Building 8 (3750 Zanker Road)

The 3750 Zanker Road site is located 1,115 feet east of the project site. This site is listed in the CUPA Santa Clara Database as participating in the hazardous materials business plan program. In the San José HAZMAT database, the site is listed as an auto wrecking/miscellaneous facility. Additionally, in the CIWQS database, the parking structure at the site was under storm water construction regulations during construction from September 2012 to March 2013. Based on the lack of reported releases, this site is not of concern to the project site.

Agnew East (3500 Zanker Road)

The 3500 Zanker Road site is located 2,497 feet southeast of the project site. This site was previously used for agricultural farming until the 1930s, and a former mental health institution and developmentally disabled service center. This site is listed in Envirostor as active as of December 2011. As part of redevelopment plans to turn the site into a school, the site underwent extensive soil, groundwater, and soil vapor testing. No contamination was found in groundwater or soil vapor that exceeded risk levels; however, pesticides, arsenic, lead, polychlorinated biphenyls, and naturally occurring asbestos was found in soil above acceptable risk levels. Approximately 1,500 cubic yards of soil was removed as part of soil remediation, and caps were placed over naturally occurring asbestos rock formations. This site is additionally listed in the SCH, HAZMAT, and CERS databases. Due to the distance from the site and the lack of contaminants found in mobile media at this site, this site is not of concern to the project site.

3.9.2 Impact Discussion

For the purpose of determining the significance of the project's impact on hazards and hazardous materials, would the project:

1) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?

2) 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) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?
4) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?
5) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, result in a safety hazard or excessive noise for people residing or working in the project area?
6) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?
7) Expose people or structures, either directly or indirectly, to a significant risk of loss, injury, or death involving wildland fires?

3.9.2.1 *Project Impacts*

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

Construction Impacts

During construction of the proposed project the soil hauled from the project site may contain residual agricultural chemicals. The off-site transport of these soils, including determination of haul routes and containment methods, would be carried out under the oversight of the City of San José and DTSC which regulate the methods for hauling and handling of these materials. Additionally, this would be a temporary condition and would not significantly expose any specific receptors to hazardous levels of chemicals. Therefore, the proposed project would not result in an impact associated with transport of or disposal of hazardous materials during construction of the proposed project.

Operational Impacts

The Envision 2040 General Plan FEIR identified that new residential development may include the use, storage, or disposal of hazardous materials. The proposed residential building would routinely use limited amounts of cleaning materials during project operations consistent with the adjacent residential developments, but would not pose a risk to adjacent land uses. Given the limited amount of common cleaning materials that would be used on-site, the project would not result in a significant hazard to the public. **(Less than Significant Impact)**

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

On-Site Contamination

Construction of the proposed project would require the use of some chemicals and petroleum products which may result in spills on-site. These accidental conditions would be required to follow standard cleanup procedures common with construction sites and would not represent a significant risk of hazardous materials being released into the environment. As stated in the existing conditions section, the site has soils containing pesticide and fertilizer related metals in excess of the residential ESLs. Due to the exceedances of pesticide-based metals identified in soil above residential ESLs, construction of the project could result in exposure of construction workers and the public to metal contamination.

Impact HAZ-1 Ground disturbing activities during construction would result in construction worker exposure to soils which contain arsenic, cobalt, lead, and nickel in excess of residential environmental screening levels. **(Significant Impact)**

Mitigation Measure

The following mitigation measure shall be implemented to reduce impacts from hazards and hazardous materials on-site.

MM HAZ-1.1: Prior to issuance of any excavation or grading permits, the applicant shall enter into an agreement with the Department of Toxic Substances Control (DTSC). The applicant shall meet with DTSC and perform additional sampling and testing to adequately define the known and suspected contamination from past agricultural use and any other past uses of concern. A Site Management Plan (SMP), Corrective Action Plan, Remedial Action Plan, or other equivalent plan shall be prepared and submitted to DTSC for their approval. The Plan shall include a Health & Safety Plan (HASP) and shall establish remedial measures and/or soil management practices to ensure construction worker safety and the health of future site occupants and visitors. The SMP shall include a plan for management of soil during construction, dust control measures, and waste management.

If the contaminated materials are planned to be capped during construction by site improvements (landscape beds, buildings, pavements, turf sections, etc.), it shall be included in the SMP or similar document, for approval under the regulatory oversight of the Department of Toxic Substances Control (DTSC). If the contaminated soils are planned to be removed from the site, these shall be hauled off-site and disposed of at a licensed hazardous materials disposal site in accordance with applicable regulatory requirements. Capped areas (if and as included in the SMP) will likely require institutional controls by DTSC which may include a deed restriction for the affected areas and an operations and maintenance (O&M) Plan.

The DTSC-approved plan(s) shall be submitted to the Director of Planning, Building and Code Enforcement or Director's designee, and the City's Environmental Compliance Officer in the City of San José's Environmental Services Department, prior to issuance of grading or excavation permits.

With implementation of MM HAZ-1.1, the proposed project would reduce the risk of exposure for construction personnel to contaminated soils to a less than significant level and the proposed project would result in a less than significant impact with mitigation incorporated.

Off-Site Contamination

The Phase 1 site assessment did not identify off-site contamination representing a recognized environmental condition affecting the project site. Therefore, the proposed project would not result in the accidental upset or accidental encountering of hazardous materials and would result in less than significant impacts. **(Less than Significant Impact)**

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

The proposed project is located more than one half mile away from the nearest school site located at 3556 Zanker Road. Additionally, the proposed project would not result in the emission or handling of hazardous materials on-site because the proposed project would construct residential units. Further, during construction any transport of materials which may result as a part of the proposed project would be managed by DTSC and polices of the City of San José to reduce any associated hazards to a less than significant level. Therefore, the proposed project would result in a less than significant impact. **(Less than Significant Impact)**

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

As explained in the Phase I and Phase II, the proposed project has one open voluntary cleanup action to address the on-site soil contamination from past agricultural uses. The historic agricultural activities used pesticides and fertilizers which resulted in the accumulation of arsenic, cobalt, lead, and nickel in the soil. The limited Phase II found these chemicals to be at concentrations above the respective residential screening levels. This would represent a health hazard to construction workers if they were exposed to contaminated soils; therefore, construction of the project would constitute a significant impact. As stated above in Impact b), the proposed project would implement mitigation measure HAZ-1.1 to sample soils and remove or cap contaminated soils on-site. Therefore, with the inclusion of mitigation MM HAZ-1.1 , the proposed project would have a less than significant impact from hazardous materials sites compiled pursuant to Government Code Section 65962.5. **(Less than Significant Impact with Mitigation Incorporated)**

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

The proposed project would be construction on a site located approximately 2.5 miles away from the nearest airport, the Norman Y. Mineta San José International Airport. This is outside of any airport land use plan and would not represent a safety hazard or excessive noise for people residing in the project area. **(Less than Significant Impact)**

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

The proposed project is consistent with the General Plan land use designation of the project site and would not alter evacuation routes. In addition, the project would be constructed in accordance with current building and fire codes and would be required to be maintained in accordance with applicable City policies identified in the Envision 2040 General Plan FEIR to avoid unsafe building conditions. Therefore, the proposed project would be consistent with existing emergency response plans and emergency evacuation plans and would have a less than significant impact. **(Less than Significant Impact)**

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

The project site is not in a fire hazard severity zone as identified by Calfire, therefore, the project would not result in the exposure of significant risk of loss, injury, or death involving wildland fires. **(Less than Significant Impact)**

3.9.2.2 *Cumulative Impacts*

Would the project result in a cumulatively considerable contribution to a significant cumulative hazards and hazardous materials impact?

The impacts from hazardous materials associated with the proposed project are limited to the effects on the project site and surrounding areas. The impacts of the proposed project would not worsen any other existing hazardous conditions on sites adjacent to the project site. Therefore, the proposed project would not result in cumulatively considerable contributions to hazards and hazardous materials impact. **(No Cumulative Impact)**

3.9.3 Non-CEQA Effects

Per California Building Industry Association v. Bay Area Air Quality Management District, 62 Cal. 4th 369 (BIA v. BAAQMD), effects of the environment on the project are not considered CEQA impacts. The following discussion is included for informational purposes only because the City of San José has policies that address existing hazards and hazardous materials conditions affecting a proposed project.

Policy EC-7.2 states that all redevelopment projects must analyze impacts of contaminated soils on residents to avoid hazardous conditions for future site occupants. The proposed project would place residents on a site that is identified as having contaminated soils with arsenic, cobalt, lead, and nickel in excess of the established ESLs for residential uses. The proposed project includes mitigation measures to cap the contaminated soils under impermeable materials in hardscape areas and under clean import fill in softscape areas under DTSC's oversight. Therefore, the proposed project would comply with Policy EC-7.2 by protecting on-site residents from exposure to hazardous soils conditions.

3.10 HYDROLOGY AND WATER QUALITY

3.10.1 Environmental Setting

3.10.1.1 *Regulatory Framework*

Federal and State

The federal Clean Water Act and California's Porter-Cologne Water Quality Control Act are the primary laws related to water quality in California. Regulations set forth by the Environmental Protection Agency (EPA) and the State Water Resources Control Board (SWRCB) have been developed to fulfill the requirements of this legislation. EPA regulations include the National Pollutant Discharge Elimination System (NPDES) permit program, which controls sources that discharge pollutants into the waters of the United States (e.g., streams, lakes, bays, etc.). These regulations are implemented at the regional level by the Regional Water Quality Control Boards (RWQCBs). The project site is within the jurisdiction of the San Francisco Bay RWQCB.

Under Section 303(d) of the federal Clean Water Act, the SWRCB and RWQCBs are required to identify impaired surface water bodies that do not meet water quality standards and develop total maximum daily loads (TMDLs) for contaminants of concern. The list of the state's identified impaired surface water bodies, known as the "303(d) list" can be found on the on the RWQCB's website.[52]

National Flood Insurance Program

The Federal Emergency Management Agency (FEMA) established the National Flood Insurance Program (NFIP) to reduce impacts of flooding on private and public properties. The program provides subsidized flood insurance to communities that comply with FEMA regulations protecting development in floodplains. As part of the program, FEMA publishes Flood Insurance Rate Maps (FIRMs) that identify Special Flood Hazard Areas (SFHAs). An SFHA is an area that would be inundated by the one-percent annual chance flood, which is also referred to as the base flood or 100-year flood.

Statewide Construction General Permit

The SWRCB has implemented an NPDES General Construction Permit for the State of California (Construction General Permit). For projects disturbing one acre or more of soil, a Notice of Intent (NOI) must be filed with the RWQCB by the project sponsor, and a Storm Water Pollution Prevention Plan (SWPPP) must be prepared by a qualified professional prior to commencement of construction and filed with the RWQCB by the project sponsor. The Construction General Permit includes requirements for training, inspections, record keeping, and, for projects of certain risk levels, monitoring. The general purpose of the requirements is to minimize the discharge of pollutants and to protect beneficial uses and receiving waters from the adverse effects of construction-related storm water discharges.

[52] San Francisco Regional Water Quality Control Board. "The 303(d) List of Impaired Water Bodies." Accessed August 16, 2022. https://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/TMDLs/303dlist.html.

Regional and Local

San Francisco Bay Basin Plan

The San Francisco Bay RWQCB regulates water quality in accordance with the Water Quality Control Plan for the San Francisco Bay Basin (Basin Plan). The Basin Plan lists the beneficial uses that the San Francisco Bay RWQCB has identified for local aquifers, streams, marshes, rivers, and the San Francisco Bay, as well as the water quality objectives and criteria that must be met to protect these uses. The San Francisco Bay RWQCB implements the Basin Plan by issuing and enforcing waste discharge requirements, including permits for nonpoint sources such as the urban runoff discharged by a City's stormwater drainage system. The Basin Plan also describes watershed management programs and water quality attainment strategies.

Municipal Regional Permit Provision C.3

The San Francisco Bay RWQCB re-issued the Municipal Regional Stormwater NPDES Permit (MRP) in May 2022 to regulate stormwater discharges from municipalities and local agencies (co-permittees) in Alameda, Contra Costa, San Mateo, and Santa Clara Counties, and the cities of Fairfield, Suisun City, and Vallejo.[53] Under Provision C.3 of the MRP 3.0, new and redevelopment projects that create or replace 5,000 square feet or more of impervious surface area cumulatively on and off-site are required to implement site design, source control, and Low Impact Development (LID)-based stormwater treatment controls to treat post-construction stormwater runoff. LID-based treatment controls are intended to maintain or restore the site's natural hydrologic functions, maximizing opportunities for infiltration and evapotranspiration, and using stormwater as a resource (e.g. rainwater harvesting for non-potable uses). The MRP also requires that stormwater treatment measures are properly installed, operated, and maintained. The proposed project filed for an SB 330 filing prior to June 30, 2023 and was grandfathered into the MRP 2.0 (R2-2015-0049). MRP 2.0 requires that projects which create or replace 10,000 square feet or more of impervious surface area implement stormwater control. MRP 2.0 does not require projects to treat off-site improvements.

In addition to water quality controls, the MRP requires new development and redevelopment projects that create or replace one acre or more of impervious surface to manage development-related increases in peak runoff flow, volume, and duration, where such hydromodification is likely to cause increased erosion, silt pollutant generation, or other impacts to local rivers, streams, and creeks. Projects may be deemed exempt from these requirements if: (1) the post-project impervious surface area is less than, or the same as, the pre-project impervious surface area; (2) the project is located in a catchment that drains to a hardened (e.g., continuously lined with concrete) engineered channel or channels or enclosed pipes, which extend continuously to the Bay, Delta, or flowcontrolled reservoir, or, in a catchment that drains to channels that are tidally influenced; or (3) the project is located in a catchment or subwatershed that is highly developed (i.e., that is 70 percent or more impervious).[54]

[53] California Regional Water Quality Control Board San Francisco Region. *Municipal Regional Stormwater NPDES Permit, Order No. R2-2022-0018, NPDES Permit No. CAS612008*. May 11, 2022

[54] The Hydromodification Applicability Maps developed the permittees under Order No. R2-2009-0074 were prepared using this standard, adjusted to 65 percent imperviousness to account for the presence of vegetation on the photographic references used to determine imperviousness. Thus, the maps for Order No. R2-2009-0074 are accepted as meeting the 70 percent requirement.

Municipal Regional Permit Provision C.12.f

Provision C.12.f of the MRP requires co-permittee agencies to implement a control program for PCBs that reduces PCB loads by a specified amount during the term of the permit, thereby making substantial progress toward achieving the urban runoff PCBs wasteload allocation in the Basin Plan by March 2030.[55] Programs must include focused implementation of PCB control measures, such as source control, treatment control, and pollution prevention strategies. Municipalities throughout the Bay Area are updating their demolition permit processes to incorporate the management of PCBs in demolition building materials to ensure PCBs are not discharged to storm drains during demolition. Buildings constructed between 1950 and 1980 that are proposed for demolition must be screened for the presence of PCBs prior to the issuance of a demolition permit. Single-family residential and wood frame structures are exempt.

Water Resources Protection Ordinance and District Well Ordinance

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

2021 Groundwater Management Plan

The 2021 Groundwater Management Plan (GWMP) describes the Valley Water's comprehensive groundwater management framework, including existing and potential actions to achieve basin sustainability goals and ensure continued sustainable groundwater management. The GWMP covers the Santa Clara and Llagas subbasins, which are located entirely in Santa Clara County. Valley Water manages a diverse water supply portfolio, with sources including groundwater, local surface water, imported water, and recycled water. About half of the county's water supply comes from local sources and the other half comes from imported sources. Imported water includes the District's State Water Project and Central Valley contract supplies and supplies delivered by the San Francisco Public Utilities Commission (SFPUC) to cities in northern Santa Clara County. Local sources include natural groundwater recharge and surface water supplies. A small portion of the county's water supply is recycled water.

Local groundwater resources make up the foundation of the county's water supply, but they need to be augmented by the District's comprehensive water supply management activities to reliably meet the county's needs. These include the managed recharge of imported and local surface water and in-lieu groundwater recharge through the provision of treated surface water and raw water, acquisition of supplemental water supplies, and water conservation and recycling.[56]

Post-Construction Urban Runoff Management (City Council Policy No. 6-29)

The City of San José's Policy No. 6-29 implements the stormwater treatment requirements of

[55] California Regional Water Quality Control Board San Francisco Region. *Municipal Regional Stormwater NPDES Permit, Order No. R2-2022-0018, NPDES Permit No. CAS612008*. May 11, 2022

[56] Valley Water. *2021 Groundwater Management Plan, Santa Clara and Llagas Subbasins*. November 2021.

Provision C.3 of the MRP. City Council Policy No. 6-29 requires new development and redevelopment projects to implement post-construction Best Management Practices (BMPs) and Treatment Control Measures (TCMs). This policy also established specific design standards for post-construction TCMs for projects that create or replace 10,000 square feet or more of impervious surfaces.

Post-Construction Hydromodification Management (City Council Policy No. 8-14)

The City of San José's Policy No.8-14 implements the hydromodification management requirements of Provision C.3 of the MRP. Policy No. 8-14 requires new development and redevelopment projects that create or replace one acre or more of impervious surface area, and are located within a subwatershed that is less than 65 percent impervious, to manage development-related increases in peak runoff flow, volume, and duration, where such hydromodification is likely to cause increased erosion, silt generation, or other impacts to local rivers, streams, and creeks. The policy requires these projects to be designed to control project-related hydromodification through a Hydromodification Management Plan (HMP). Projects that do not meet the minimum size threshold, drain into tidally influenced areas or directly into the Bay, or are infill projects in subwatersheds or catchment areas that are greater than or equal to 65 percent impervious would not be subject to the HMP requirement.

Construction Dewatering Waste Discharge Requirements

Each of the RWQCBs regulate construction dewatering discharges to storm drains or surface waters within its Region under the NPDES program and Waste Discharge Requirements.

Floodplain Ordinance – Municipal Code 17.08

City of San José Municipal Code 17.08 covers the requirements for building in various types of flood zones. This includes requirements for elevation, fill, flood passage, flood-proofing, maximum flow velocities, and utility placement for development within a floodplain, based on land use type.

Envision San José 2040 General Plan

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

General Plan Policies - Hydrology and Water Quality	
Policy	**Description**
EC-5.1	The City shall require evaluation of flood hazards prior to approval of development projects within a Federal Emergency Management Agency (FEMA) designated floodplain. Review new development and substantial improvements to existing structures to ensure it is designed to provide protection from flooding with a one percent annual chance of occurrence, commonly referred to as the "100-year" flood or whatever designated benchmark FEMA may adopt in the future. New development should also provide protection for less frequent flood events when required by the State.

General Plan Policies - Hydrology and Water Quality	
EC-5.7	Allow new urban development only when mitigation measures are incorporated into the project design to ensure that new urban runoff does not increase flood risks elsewhere.
ER-8.1	Manage stormwater runoff in compliance with the City's Post-Construction Urban Runoff (6-29) and Hydromodification Management (8-14) Policies.
ER-8.3	Ensure that private development in San José includes adequate measures to treat stormwater runoff.
ER-8.4	Assess the potential for surface water and groundwater contamination and require appropriate preventative measures when new development is proposed in areas where storm runoff will be directed into creeks upstream from groundwater recharge facilities.
ER-8.5	Ensure that all development projects in San José maximize opportunities to filter, infiltrate, store and reuse or evaporate stormwater runoff onsite.
MS-3.5	Minimize area dedicated to surface parking to reduce rainwater that comes into contact with pollutants.
IN-1.1	Provide and maintain adequate water, wastewater, and stormwater services to areas in and currently receiving these services from the City.
IN-3.4	Maintain and implement the City's Sanitary Sewer Level of Service Policy and Sewer Capacity Impact Analysis (SCIA) Guidelines to: • Prevent sanitary sewer overflows (SSOs) due to inadequate capacity so as to ensure that the City complies with all applicable requirements of the Federal Clean Water Act and State Water Board's General Waste Discharge Requirements for Sanitary Sewer Systems and National Pollutant Discharge Elimination System permit. SSOs may pollute surface or ground waters, threaten public health, adversely affect aquatic life, and impair the recreational use and aesthetic enjoyment of surface waters. • Maintain reasonable excess capacity in order to protect sewers from increased rate of hydrogen sulfide corrosion and minimize odor and potential maintenance problems. • Ensure adequate funding and timely completion of the most critically needed sewer capacity projects. • Promote clear guidance, consistency and predictability to developers regarding the necessary sewer improvements to support development within the City.
IN-3.7	Design new projects to minimize potential damage due to storm waters and flooding to the site and other properties.
IN-3.9	Require developers to prepare drainage plans for proposed developments that define needed drainage improvements per City standards.

3.10.1.2 *Existing Conditions*

Hydrological Setting

The project site is located approximately 0.55 miles west of the Coyote Creek and 0.7 miles east of the Guadalupe River. The project site drains to existing stormwater drains in Casa Verde Street and Baypointe Parkway which output to Guadalupe River to the west. The site is within an area identified in the hydromodification map, established by the City of San José, which drains to a hardened

channel and/or tidal areas which do not result in hydrological modification of stream channels.[57] The site is comprised of approximately 88 percent impervious surfaces.

Groundwater

The project site has groundwater approximately five to 13 feet bgs. Fluctuations in the groundwater level may occur due to seasonal changes, variations in rainfall, and underground drainage patterns.

Floodplain Designation

The project site is within the Flood Hazard Zones X and AH. The AH Flood Zone is a special flood hazard area with flood depths of one to three feet with base flood elevation modeled by FEMA. Flood Zone X is defined as an area with a two percent annual chance of flooding with a depth less than one foot or with drainage areas of less than one square mile.[58]

Seiches, Tsunamis, and Mudflows

A seiche is the oscillation of water in an enclosed body of water such as a lake or the San Francisco Bay. There are no landlocked bodies of water near the project site that would affect the site in the event of a seiche.

A tsunami is a sea wave generated by an earthquake, landslide, or other large displacement of water in the ocean. There are no bodies of water near the project site that would affect the site in the event of a tsunami.[59]

A mudflow is the rapid movement of a large mass of mud formed from loose soil and water. The project site and surrounding area are relatively flat. The project site is not susceptible to mudflows.

Dam Failure and Sea Level Rise

The project site is located within the inundation areas for the Anderson Dam and Lexington Reservoir.[60] The project site is within an area in which sea level rise may result in inundation of the project site. Under a scenario in which sea levels rise approximately five feet, the project site and surrounding areas could encounter inundation during storm conditions.[61]

3.10.2 Impact Discussion

For the purpose of determining the significance of the project's impact on hydrology and water quality, would the project:

[57] City of San José. GIS Viewer. Accessed January 23, 2023. https://gis.sanjoseca.gov/maps/publicgisviewer/.
[58] FEMA. FEMA Flood Map Service Center. Accessed November 14, 2022. https://msc.fema.gov/portal/search?AddressQuery=san%20jose#searchresultsanchor.
[59] Association of Bay Area Governments. "Tsunami Maps and Information." Accessed November 14, 2022. http://resilience.abag.ca.gov/tsunamis/.
[60] Dam Breach Inundation Map Web Publisher. Accessed November 14, 2022. https://fmds.water.ca.gov/webgis/?appid=dam_prototype_v2.
[61] Point Blue Conservation Science. Our Coast Our Future Hazard Map. USGS. Accessed January 24, 2023. https://ourcoastourfuture.org/hazard-map/.

1) Violate any water quality standards or waste discharge requirements or otherwise substantially degrade surface or ground water quality?
2) Substantially decrease groundwater supplies or interfere substantially with groundwater recharge such that the project may impede sustainable groundwater management of the basin?
3) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river or through the addition of impervious surfaces, in a manner which would:
    - result in substantial erosion or siltation on- or off-site;
    - substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site;
    - create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff; or
    - impede or redirect flood flows?
4) In flood hazard, tsunami, or seiche zones, risk release of pollutants due to project inundation?
5) Conflict with or obstruct implementation of a water quality control plan or sustainable groundwater management plan?

3.10.2.1 *Project Impacts*

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

Construction Impacts

Implementation of the proposed project would involve excavation and grading activities on-site. Ground-disturbing activities would temporarily increase the amount of debris on-site and grading activities could increase erosion and sedimentation that could be carried by runoff into the San Francisco Bay. The project site is approximately 4.3 acre in size and would disturb more than one acre of soil; therefore, the project would be required to obtain an NPDES General Permit for Construction Activities. In addition, all development projects in the City are required to comply with the City of San José's Grading Ordinance[62] whether or not the project is required to obtain an NDPES General Construction Permit. Prior to the issuance of a permit for grading activity occurring during the rainy season (October 1st to April 30th), the applicant shall submit an Erosion Control Plan to the Director of Public Works for review and approval. The Erosion Control Plan shall detail BMPs that would be implemented to prevent the discharge of stormwater pollutants.

Pursuant to City requirements, the following Standard Permit Conditions have been included in the project to reduce potential construction-related water quality impacts.

[62] The San José Grading Ordinance requires the use of erosion and sediment controls to protect water quality when a site is under construction.

Standard Permit Condition

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

Construction General Permit Requirements. Prior to initiating grading activities, the project applicant will file a Notice of Intent (NOI) with the SWRCB and prepare a 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. All measures shall be included in the project's SWPPP and printed on all construction documents, contracts, and project plans. The SWPPP will include but not be limited to the following construction BMPs:

- Restrict grading to the dry season or meet City requirements for grading during the rainy season.
- Use effective, site-specific erosion and sediment control methods during the construction period. Provide temporary cover of all disturbed surfaces to help control erosion during construction. Provide permanent cover as soon as is practical to stabilize the disturbed surfaces after construction has been completed.
- Cover soil, equipment, and supplies that could contribute non-visible pollution prior to rainfall events or perform monitoring of runoff with secure plastic sheeting or tarps.
- Implement regular maintenance activities such as sweeping driveways between the construction area and public streets. Clean sediments from streets, driveways, and paved areas on-site using dry sweeping methods. Designate a concrete truck washdown area.
- Dispose of all wastes properly and keep site clear of trash and litter. Clean up leaks, drips, and other spills immediately so that they do not contact stormwater.

- Place fiber rolls or silt fences around the perimeter of the site. Protect existing storm and sewer inlets in the project area from sedimentation with filter fabric and sand or gravel bags.

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.

When the construction phase is complete, a Notice of Termination (NOT) will be filed with the RWQCB and DTSC, in conformance with the Construction General Permit requirements and requests from DTSC based on potential for sea level rise inundation of the project site. The NOT will 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.

With implementation of the identified Standard Permit Conditions, construction of the proposed project would have a less than significant impact on water quality. **(Less than Significant Impact)**

Post Construction Impacts

Under existing conditions, the project site is 88 percent (approximately 169,526 square feet) covered with impervious surface area. Upon completion of the proposed project, the site would be covered with approximately 88.7 percent (170,393 square feet) of impervious surfaces, a net increase of 867 square feet. Construction of the project would result in the replacement of more than 10,000 square feet of impervious surface area; therefore, the project would be required to comply with the City of San José's Post-Construction Urban Runoff Policy 6-29 and the MRP.

The proposed project would include 10 concrete lined flow-through planters with underdrains and two self-retaining areas on-site to provide retention and filtration of stormwater on-site. Additionally, the proposed project includes two media filtration systems to filter stormwater runoff before it enters the stormwater system.

These water filtration and retention systems would be sized according to the C.3 Stormwater Handbook to meet the MRP requirements and, therefore, the proposed project would not result in degradation of surface quality during operations of the project. **(Less than Significant Impact)**

Dewatering

Groundwater is estimated to be approximately five to 13 feet below ground surface. The proposed project would not include subterranean parking and would not require excavation beyond six feet in depth for utilities. Therefore, the proposed project would potentially require dewatering during project construction. Considering the contaminants present in the soil, he the SWPPP shall include provisions for the proper management of dewatering effluent. At a minimum, all dewatering effluent will be contained prior to discharge to allow the sediment to settle out, and be filtered, if necessary, to ensure that only clear water is discharged to the storm or sanitary sewer system. In areas of suspected groundwater contamination (i.e., underlain by fill or near sites where chemical releases are known or suspected to have occurred), groundwater would be analyzed by a state-certified laboratory for the suspected pollutants prior to discharge. Based on the results of the analytical testing, the

applicant will work with the RWQCB and/or the local wastewater treatment plant to determine appropriate disposal options.

Therefore, the proposed project would not result in degradation of water quality. **(Less than Significant Impact)**

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

The project site is not located within a designated groundwater recharge zone.[63] As stated in Geologic Resources, Section 3.7, the proposed project would require some excavation to six feet in depth which would extend into the groundwater table. The proposed project would implement the Standard Permit Condition included in Section 3.7.2.1 Impact c) to comply with regulations for dewatering and groundwater pumping. Additionally, the proposed project would not increase extraction of groundwater resources on-site and would not decrease the supply of groundwater directly or indirectly during operations. Therefore, the proposed project would not result in impacts to groundwater supplies. Further, although the proposed project would result in an increase of 867 square feet of impervious surfaces on-site, the proposed project would comply with the MRP which would include LID measures allowing for greater infiltration on-site through these project features. Therefore, the proposed project would result in a less than significant impact on groundwater supplies and groundwater recharge for the project site. **(Less than Significant Impact)**

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

As stated above, the proposed project would not substantially alter the impervious surface area on the project site and would result in a 867 square foot increase in impervious surfaces. The amount of impervious and pervious surfaces on-site can be seen below in Table 3.10-1.

Table 3.10-1 Site Impervious Surface Calculation

	Existing Condition	Project Conditions	Difference
Impervious Surfaces	168,998	168,342	-656
Roadways (impervious)	528	2,051	+1,523
Pervious Surfaces	22,566	21,699	-867
	192,092	192,092	-
Note: This amounts to greater than 4.3 acres due to the inclusion of some impervious surfaces off-site			

[63] Valley Water. Annual Groundwater Report for Calendar Year 2020. 2020.

Additionally, the proposed project would be located in an area defined by the City of San José as draining to a concrete channel or tidal area which are not susceptible to hydrological modification.[64] The proposed project would direct runoff on the project site to existing storm drainage systems serving the site which are located under Baypointe Parkway and Casa Verde Street and which flow to the outfall into the Guadalupe River. Further, the proposed project would include low impact development measures which would slow the release of water into the stormwater drainage system by retaining and filtering some of the water on-site. Therefore, the proposed project would not result in a significant increase in surface runoff, or on-site flooding which would result in exceedance of capacity of stormwater drainage systems and would have a less than significant impact. **(Less than Significant Impact)**

d) Would the project risk release of pollutants due to project inundation in flood hazard, tsunami, or seiche zones?

Due to the location of the project site, the project would not be subject to inundation by seiche or tsunami. In addition, the project area is flat and there are no mountains in proximity. As a result, development of the project site would not cause mudflows that would impact adjacent properties.

As stated in Section 3.10.1.2 above, the project site could be inundated by sea water during storm events if five feet of global sea level rise occurs. In the event that this scenario occurs, any agricultural soil contamination remaining on-site may be released into the water. Although inundation could occur on-site, the scenario of five feet of sea level rise would result in widespread flooding of all surrounding areas in addition to the project site. These soils would contain similar contaminants and the potential for sea level rise of this intensity would require higher GHG emission than existing trends globally.[65] Further, the construction of the proposed project would not result in greater risk of contamination during inundation because the same impact from agricultural soils would occur if the proposed project was not constructed due to the similar impervious surface coverage and the actions of the proposed project would . Furthermore, implementation of the proposed project would result in the removal and/or encapsulation of contaminated soils on-site which would reduce the contaminated soils that could be exposed to the flood waters. Therefore, inundation from sea level rise would result in a less than significant impact from risk of release of pollutants.

A portion of the project site is located in special flood hazard area AH, and the site would be inundated in the event that Anderson Dam or Lexington Reservoir had a failure. The California Division of Safety of Dams (DSOD) inspects dams on an annual basis and Valley Water routinely monitors the 10 dams, including the Lexington and Anderson Dams Therefore, the likelihood of flooding from dam failure is low and the project would not release pollutants due to dam inundation.

Although the site could be inundated under storm conditions due to flooding and sea level rise, the proposed project would not introduce uses to the project site (industrial) which would result in pollutants being present on-site in large quantities and would clean up some of the soil contamination

[64] Santa Clara Valley Urban Runoff Pollution Prevention Program. Classification of Subwatersheds and Catchment Areas for Determining Applicability of HMP Requirements. July 2011.
[65] NOAA. Climate Change: Global Sea Level. Accessed January 24, 2023. https://www.climate.gov/news-features/understanding-climate/climate-change-global-sea-level.

on-site. Additionally, the proposed project would elevate the apartment base floor to 13 feet above the ground surface to be placed above flood waters in the area identified as Zone AH. An Elevation Certificate for each proposed structure is required prior to issuance of a Building Permit and another Elevation Certificate is required prior to issuance of an Occupancy Permit. Therefore, in the event of inundation, the proposed project would not result in the significant release of pollutants into water bodies near the project site. **(Less than Significant Impact)**

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

The proposed project would comply with the City of San José's Post-Construction Urban Runoff Policy 6-29 and the MRP; therefore, implementation of the project would not significantly impact water quality. The project site is not located within a groundwater recharge area and would not interfere with groundwater recharge or permanently alter any groundwater aquifer as discussed under questions a) and b). For these reasons, the project would not conflict with implementation of a water quality or groundwater management plan. **(Less than Significant Impact)**

3.10.2.2 *Cumulative Impacts*

Would the project result in a cumulatively considerable contribution to a significant cumulative hydrology and water quality impact?

The proposed project impacts would be limited to the project site and would not affect the drainage or hydrology of projects in the surrounding area. This project and any projects in the area around the project site would be required to comply with City of San José's Standard Permit Conditions and applicable regulatory requirements to protect water quality and hydrological conditions. Therefore, the proposed project would not result in cumulatively considerable contribution to a hydrology or water quality impact. **(Less than Significant Cumulative Impact)**

3.11 LAND USE AND PLANNING

3.11.1 Environmental Setting

3.11.1.1 *Regulatory Framework*

Local

Envision San José 2040 General Plan

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

General Plan Policies – Land Use	
Policy	**Description**
IP-1.8	Use standard Zoning Districts to promote consistent development patterns when implementing new land use entitlements. Limit use of the Planned Development Zoning process to unique types of development or land uses which cannot be implemented through standard Zoning Districts, or to sites with unusual physical characteristics that require special considerations due to those constraints.
IP-1.9	Consider and address potential land use compatibility issues, the form of surrounding development, and the availability and timing of infrastructure to support the proposed land use when reviewing rezoning or prezoning proposals.
CD-4.9	For development subject to design review, ensure the design of new or remodeled structures is consistent or complementary with the surrounding neighborhood fabric (including but not limited to prevalent building scale, building materials, and orientation of structures to the street).
LU-9.5	Require that new residential development be designed to protect residents from potential conflicts with adjacent land uses.
TR-14.3	For development in the Airport Influence Area overlays, ensure that land use and development are consistent with the height, safety, and noise policies identified in the Santa Clara County Airport Land Use Commission (ALUC) comprehensive land use plans or Mineta San José International and Reid-Hillview airports, or find, by a two-thirds vote of the governing body, that the proposed action is consistent with the purposes of Article 3.5 of Chapter 4 of the State Aeronautics Act, Public Utilities Code Section 21670 et seq.

Industrial Park General Plan Designation

The Industrial Park designation is an industrial designation intended for a wide variety of industrial users such as research and development, manufacturing, assembly, testing and offices. This designation is differentiated from the Light Industrial and Heavy Industrial designations in that Industrial Park uses are limited to those for which the functional or operational characteristics of a hazardous or nuisance nature can be mitigated through design controls. Hospitals may be appropriate within this designation, if it can be demonstrated that they will not be incompatible with Industrial Park uses or other nearby activities. Areas identified exclusively for Industrial Park uses may contain a very limited number of supportive and compatible commercial uses, when those uses are of a scale and design providing support only to the needs of businesses and their employees in the immediate

industrial area. These commercial uses should typically be located within a larger industrial building to protect the character of the area and maintain land use compatibility. Additional flexibility may be provided for retail and service commercial uses, including hotels within North San José and the Edenvale Development Policy area through the City's discretionary review and permitting process. One primary difference between this use category and the "Light Industrial" category is that, through the Zoning Ordinance, performance and design standards are more stringently applied to Industrial Park uses.

Zoning Ordinance

The Zoning Ordinance serves as an implementing tool for the General Plan by establishing detailed, parcel-specific development regulations and standards. The Zoning Ordinance divides the City of San José into zoning districts to guide future land uses.

The project site is within the Industrial Park zoning designation. The Industrial Park zoning designation is an exclusive designation intended for a wide variety of industrial users such as research and development, manufacturing, assembly, testing, and offices. Industrial uses are consistent with this designation insofar as any functional or operational characteristics of a hazardous or nuisance nature can be mitigated through design controls. Areas exclusively for industrial uses may contain a very limited amount of supportive commercial uses, in addition to industrial uses, when those uses are of a scale and design providing support only to the needs of businesses and their employees in the immediate industrial area. These commercial uses should be located within a larger industrially utilized building to protect the character of the area and maintain land use compatibility. In addition, warehouse retail uses are allowed where they are compatible with adjacent industrial uses and will not constrain future use of the subject site for industrial purposes.

TERO General Plan Overlay

The General Plan TERO designation supports residential development as an alternate use at a minimum average density of 75 units per acre. These sites would continue to be allowed to develop consistent with the underlying designation of Industrial Park. The TERO designation permits development with commercial uses on the first two floors and residential use on upper floors, as well as entirely residential projects.

Development within this category is intended to make efficient use of land to provide residential units in support of nearby industrial employment centers. Site specific land use issues and compatibility with adjacent uses are addressed through the development permit process. Land within this overlay area may also be converted for the development of new schools and parks as needed to support residential development.

3.11.1.2 *Existing Conditions*

Project Site

The project site is located in north San José and was previously subject to the North San José Area Development Policy ("NSJA Development Policy"). In May 2022, the San José City Council approved the recission of the NSJA Development Policy as well as amendments to the General Plan and Zoning map to allow for the creation of the TERO Overlay.

The TERO General Plan Overlay applies to certain sites within the North San José Employment Center area that would be appropriate for residential development. This designation permits residential and mixed-use developments as an alternative use to make efficient use of land and provide residential units in support of nearby industrial employment centers. Developments consistent with the underlying designation are also permitted. Land within this overlay area may also be converted for the development of new schools and parks as needed to support residential development. Site specific land use issues and compatibility with adjacent uses should be addressed through the development permit process. This overlay has a maximum residential density of 75 to 250 dwelling units per acre.

The maximum building height for structures in the TERO Zoning Overlay is 270 feet.

Surrounding Land Uses

The project site is surrounded by a variety of land uses including industrial, commercial, and residential developments, as well as undeveloped parcels. The Coyote Creek and Coyote Creek trail are located approximately 0.55 miles east of the project site. The Guadalupe River and Guadalupe River trail are located approximately 0.7 miles west of the project site. Buildings in the project area range from one- to five- stories. North of the project site Baypointe Parkway is a two-lane local roadway. Adjacent to the east of the project site is a vacant undeveloped parcel.

3.11.2 Impact Discussion

For the purpose of determining the significance of the project's impact on land use and planning, would the project:

1) Physically divide an established community?
2) Cause a significant environmental impact due to a conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect?

3.11.2.1 *Project Impacts*

a) Would the project physically divide an established community?

Examples of projects that have the potential to physically divide an established community include new freeways and highways, major arterial streets, and railroad lines. The project would include construction of six three-story townhouse buildings and a seven-story apartment building and landscaping on an infill site. The proposed uses are allowed under the existing TERO General Plan and Zoning Overlay and would not include construction of dividing infrastructure. The project site is located in a neighborhood with similar uses and, therefore, implementation of the project would not physically divide an established community. For these reasons, the project would have a less than significant impact. **(Less than Significant Impact)**

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

The TERO General Plan and Zoning Overlay for the site allows for residential development with building heights up to 270 feet and densities of 75 to 250 dwelling units per acre.

The project proposes development of six three-story, 45-foot tall townhouse buildings containing 42 units and a seven-story, 95-foot tall 292-unit apartment building. The combined density for the site under the proposed project would be 77.8 units per acre. Therefore, the project would be consistent with the current General Plan land use designation and zoning for the site through the application of the TERO Overlay.

Furthermore, with the implementation of applicable General Plan policies, mitigation measures, and Standard Permit Conditions identified throughout this EIR, the project would not result in a significant environmental effect due to a conflict with any land use plan or policy. The project is located outside of the AIA for Norman Y. Mineta San José International Airport and, therefore, the project would not conflict with any Airport Comprehensive Land Use Plan. For these reasons, the project would not conflict with an adopted land use plan, policy, or regulation adopted for avoiding or mitigation an environmental effect and impacts would be less than significant. **(Less than Significant Impact)**

3.11.2.2 *Cumulative Impacts*

Would the project result in a cumulatively considerable contribution to a significant cumulative land use and planning impact?

The geographic area for cumulative land use impact is the north San José area. Like the proposed project, construction of the cumulative projects would generally consist of redevelopment of previously developed sites. Development of a number of these sites would result in a change in use and/or an intensification of development.

The compatibility of new development with adjacent land uses, and the general character of surrounding areas are considered as part of San José's architectural and environmental review processes. Through appropriate site design review of these urban projects, impacts due to conflict with applicable plans and policies would be avoided.

Future projects would be subject to General Plan goals, policies, and actions that require appropriate buffers, edges, and transition areas between dissimilar land uses. In addition, the setbacks, design, and operational requirements of the San José Municipal Code would minimize land use impacts. The project, in conformance with the applicable General Plan goals, policies, and actions and with implementation of mitigation measures, would not result in significant land use impacts or conflict with a policy or regulation adopted for the purpose of avoiding or mitigating an environmental impact. For these reasons, the proposed project, in combination with the other cumulative projects, would not result in a cumulatively considerable contribution to a cumulatively significant land use impact. **(Less than Significant Cumulative Impact)**

3.12 MINERAL RESOURCES

3.12.1 Environmental Setting

3.12.1.1 *Regulatory Framework*

State

Surface Mining and Reclamation Act

The Surface Mining and Reclamation Act (SMARA) was enacted by the California legislature in 1975 to address the need for a continuing supply of mineral resources, and to prevent or minimize the negative impacts of surface mining to public health, property, and the environment. As mandated under SMARA, the State Geologist has designated mineral land classifications in order to help identify and protect mineral resources in areas within the state subject to urban expansion or other irreversible land uses which would preclude mineral extraction. SMARA also allowed the State Mining and Geology Board (SMGB), after receiving classification information from the State Geologist, to designate lands containing mineral deposits of regional or statewide significance.

Pursuant to the mandate of the SMARA, the SMGB has designated the Communications Hill Area (Sector EE), bounded generally by the Southern Pacific Railroad, Curtner Avenue, SR 87, and Hillsdale Avenue as containing mineral deposits that are of regional significance as a source of construction aggregate materials. Neither the State Geologist nor the SMGB have classified any other areas in San José as containing mineral deposits of statewide significance or requiring further evaluation.

3.12.1.2 *Existing Conditions*

The project site is located in north San José which is not known to contain mineral resources of local or state importance. The nearest mineral resources identified in the General Plan are located approximately nine miles south at Communications Hill.[66]

3.12.2 Impact Discussion

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

1) Result in the loss of availability of a known mineral resource that would be of value to the region and residents of the state?
2) Result in the loss of availability of a locally important mineral resource recovery site delineated on a local general plan, specific plan, or other land use plan?

[66] City of San José. Downtown Strategy 2040 FEIR. December 2018. https://www.sanjoseca.gov/Home/ShowDocument?id=44054.

3.12.2.1 *Project Impacts*

a) Would the project result in the loss of availability of a known mineral resource that would be of value to the region and residents of the state?

The project site is located in the northern San José area which is located nine miles north of the nearest identified mineral resources, therefore, the proposed project would not result in the loss of availability of a known mineral resource that would be of value to the region and residents of the state. **(No Impact)**

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

The project site is located in the northern San José area which is located nine miles north of the nearest identified mineral resources, therefore the project would not result in the loss of availability of a locally important mineral resource recovery site delineated on a local general plan, specific plan, or other land use plan. **(No Impact)**

3.12.2.2 *Cumulative Impacts*

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

The impact study area for cumulative mineral resources impacts includes any identified mineral recovery area. The proposed project would not result in mineral resources impacts and would not contribute to a greater impact cumulatively with the impacts of other nearby projects. Therefore, the proposed project would not result in a cumulatively considerable contribution to impacts on mineral resources. **(No Cumulative Impact)**

3.13 NOISE AND VIBRATION

The information in this section is based in part on the Noise and Vibration Assessment prepared by Illingworth and Rodkin on January 12, 2023. This report is included in Appendix F of this document.

3.13.1 Environmental Setting

3.13.1.1 *Background Information*

Noise

Factors that influence sound as it is perceived by the human ear, include the actual level of sound, period of exposure, frequencies involved, and fluctuation in the noise level during exposure. Noise is measured on a decibel scale, which serves as an index of loudness. The zero on the decibel scale is based on the lowest sound level that the healthy, unimpaired human ear can detect. Each 10 decibel increase in sound level is perceived as approximately a doubling of loudness. Because the human ear cannot hear all pitches or frequencies, sound levels are frequently adjusted or weighted to correspond to human hearing. This adjusted unit is known as the A-weighted decibel, or dBA.

Since excessive noise levels can adversely affect human activities and human health, federal, state, and local governmental agencies have set forth criteria or planning goals to minimize or avoid these effects. Noise guidelines are generally expressed using one of several noise averaging methods, including L_{eq}, DNL, or CNEL.[67] These descriptors are used to measure a location's overall noise exposure, given that there are times when noise levels are higher (e.g., when a jet is taking off from an airport or when a leaf blower is operating) and times when noise levels are lower (e.g., during lulls in traffic flows on freeways or in the middle of the night). L_{max} is the maximum A-weighted noise level during a measurement period.

Vibration

Ground vibration consists of rapidly fluctuating motions or waves with an average motion of zero. Vibration amplitude can be quantified using Peak Particle Velocity (PPV), which is defined as the maximum instantaneous positive or negative peak of the vibration wave. PPV has been routinely used to measure and assess ground-borne construction vibration. Studies have shown that the threshold of perception for average persons is in the range of 0.008 to 0.012 inches/second (in/sec) PPV.

[67] L_{eq} is a measurement of average energy level intensity of noise over a given period of time. Day-Night Level (DNL) is a 24-hour average of noise levels, with a 10 dB penalty applied to noise occurring between 10:00 PM and 7:00 AM. Community Noise Equivalent Level (CNEL) includes an additional five dB applied to noise occurring between 7:00 PM and 10:00 PM. Where traffic noise predominates, the CNEL and DNL are typically within two dBA of the peak-hour L_{eq}.

3.13.1.2 *Regulatory Framework*

State and Local

California Building Standards Code

The CBC establishes uniform minimum noise insulation performance standards to protect persons within new buildings housing people, including hotels, motels, dormitories, apartments, and dwellings other than single-family residences. Title 24 mandates that interior noise levels attributable to exterior sources not exceed 45 L_{dn}/CNEL in any habitable room. Exterior windows must have a minimum Sound Transmission Class (STC) of 40 or Outdoor-Indoor Transmission Class (OITC) of 30 when the property falls within the 65 dBA DNL noise contour for a freeway or expressway, railroad, or industrial source.

California Green Building Standards Code

For commercial uses, CALGreen (Section 5.507.4.1 and 5.507.4.2) requires that wall and roof-ceiling assemblies exposed to the adjacent roadways have a composite STC rating of at least 50 or a composite OITC rating of no less than 40, with exterior windows of a minimum STC of 40 or OITC of 30 when the commercial property falls within the 65 dBA Ldn or greater noise contour for a freeway or expressway, railroad, or industrial or stationary noise source. The state requires interior noise levels to be maintained at 50 dBA $L_{eq(1\text{-}hr)}$ or less during hours of operation at a proposed commercial use.

San José 2040 General Plan

The 2040 General Plan includes noise compatibility guidelines for various land uses. For reference, these guidelines are provided in Table 3.13-1 below.

Table 3.13-1: General Plan Land Use Compatibility Guidelines (GP Table EC-1)

Land Use Category	Exterior DNL Value in Decibels					
	55	60	65	70	75	80
1. Residential, Hotels and Motels, Hospitals and Residential Care						
2. Outdoor Sports and Recreation, Neighborhood Parks and Playgrounds						
3. Schools, Libraries, Museums, Meeting Halls, and Churches						
4. Office Buildings, Business Commercial, and Professional Offices						
5. Sports Arena, Outdoor Spectator Sports						
6. Public and Quasi-Public Auditoriums, Concert Halls, and Amphitheaters						

Normally Acceptable:
Specified land use is satisfactory, based upon the assumption that any buildings involved are of normal conventional construction, without any special noise insulation requirements.

Conditionally Acceptable:

Table 3.13-1: General Plan Land Use Compatibility Guidelines (GP Table EC-1)						
Land Use Category	**Exterior DNL Value in Decibels**					
	55	**60**	**65**	**70**	**75**	**80**
Specified land use may be permitted only after detailed analysis of the noise reduction requirements and noise mitigation features included in the design.						
Unacceptable: New construction or development should generally not be undertaken because mitigation is usually not feasible to comply with noise element policies. Development will only be considered when technically feasible mitigation is identified that is also compatible with relevant design guidelines.						

In addition, various policies in the City's 2040 General Plan have been adopted for the purpose of reducing or avoiding impacts related to noise, as listed in the table below.

General Plan Policies - Noise and Vibration	
Policy EC-1.1	Interior Noise Levels • The City's standard for interior noise levels in residences, hotels, motels, residential care facilities, and hospitals is 45 dBA DNL. Include appropriate site and building design, building construction and noise attenuation techniques in new development to meet this standard. For sites with exterior noise levels of 60 dBA DNL or more, an acoustical analysis following protocols in the City-adopted California Building Code is required to demonstrate that development projects can meet this standard. The acoustical analysis shall base required noise attenuation techniques on expected Envision General Plan traffic volumes to ensure land use compatibility and General Plan consistency over the life of this plan. Exterior Noise Levels • The City's acceptable exterior noise level objective is 60 dBA DNL or less for residential and most institutional land uses (Table EC-1). The acceptable exterior noise level objective is established for the City, except in the environs of the Norman Y. Mineta San José International Airport, the Downtown Core Area, and along major roadways. For the remaining areas of the City, the following standards apply: – For new multi-family residential projects and for the residential component of mixed-use development, use a standard of 60 dBA DNL in usable outdoor activity areas, excluding balconies and residential stoops and porches facing existing roadways. There will be common use areas available to all residents that meet the 60 dBA exterior standard. Use noise attenuation techniques such as shielding by buildings and structures for outdoor common use areas. – For single-family residential uses, use a standard of 60 dBA DNL for exterior noise in private usable outdoor activity areas, such as back yards.
Policy EC-1.2	Minimize the noise impacts of new development on land uses sensitive to increased noise levels (Categories 1, 2, 3 and 6) by limiting noise generation and by requiring use of noise attenuation measures such as acoustical enclosures and sound barriers, where feasible. The City considers significant noise impacts to occur if a project would: • Cause the DNL at noise sensitive receptors to increase by five dBA DNL or more where the noise levels would remain "Normally Acceptable"; or

General Plan Policies - Noise and Vibration	
	• Cause the DNL at noise sensitive receptors to increase by three dBA DNL or more where noise levels would equal or exceed the "Normally Acceptable" level.
Policy EC-1.3	New nonresidential land uses will mitigate noise generation to 55 dBA DNL at the property line when located adjacent to existing or planned noise sensitive residential and public/quasi-public land uses.
Policy EC-1.6	Regulate the effects of operational noise from existing and new industrial and commercial development on adjacent uses through noise standards in the City's Municipal Code.
Policy EC-1.7	Require construction operations within San José to use best available noise suppression devices and techniques and limit construction hours near residential uses per the City's Municipal Code. The City considers significant construction noise impacts to occur if a project located within 500 feet of residential uses or 200 feet of commercial or office uses would: • Involve substantial noise generating activities (such as building demolition, grading, excavation, pile driving, use of impact equipment, or building framing) continuing for more than 12 months. For such large or complex projects, a construction noise logistics plan that specifies hours of construction, noise and vibration minimization measures, posting or notification of construction schedules, and designation of a noise disturbance coordinator who would respond to neighborhood complaints will be required to be in place prior to the start of construction and implemented during construction to reduce noise impacts on neighboring residents and other uses.
Policy EC-1.9	Noise studies are required for land use proposals where known or suspected loud intermittent noise sources occur which may impact adjacent existing or planned land uses. For new residential development affected by noise from heavy rail, light rail, BART or other single-event noise sources, mitigation will be implemented so that recurring maximum instantaneous noise levels do not exceed 50 dBA Lmax in bedrooms and 55 dBA Lmax in other rooms.
Policy EC-2.1	Near light and heavy rail lines or other sources of ground-borne vibration, minimize vibration impacts on people, residences, and businesses through the use of setbacks and/or structural design features that reduce vibration to levels at or below the guidelines of the Federal Transit Administration. Require new development within 100 feet of rail lines to demonstrate prior to project approval that vibration experienced by residents and vibration sensitive uses would not exceed these guidelines.
Policy EC-1.11	Continue to require safe and compatible land uses within the Norman Y. Mineta International Airport noise zone (defined by the 65 CNEL contour as set forth in State law) and encourage aircraft operating procedures that minimize noise.

General Plan Policies - Noise and Vibration	
Policy EC-2.3	Require new development to minimize continuous vibration impacts to adjacent uses during demolition and construction. For sensitive historic structures, including ruins and ancient monuments or buildings that are documented to be structurally weakened, a continuous vibration limit of 0.08 in/sec PPV (peak particle velocity) will be used to minimize the potential for cosmetic damage to a building. A continuous vibration limit of 0.20 in/sec PPV will be used to minimize the potential for cosmetic damage at buildings of normal conventional construction. Avoid use of impact pile drivers within 125 feet of any buildings, and within 300 feet of a historical building, or building in poor condition. On a project-specific basis, this distance of 300 feet may be reduced where warranted by a technical study by a qualified professional that verifies that there will be virtually no risk of cosmetic damage to sensitive buildings from the new development during demolition and construction.

City of San José Municipal Code

Section 20.100.450 of the Municipal Code restricts construction hours within 500 feet of a residential unit to 7:00 AM to 7:00 PM Monday through Friday, unless otherwise expressly allowed in a Development Permit or other planning approval.[68]

3.13.1.3 *Existing Conditions*

The project site is bordered by Baypointe Parkway, the University of Silicon Valley, and an apartment building to the northwest, a vacant lot to the northeast, a private road and apartment buildings to the southeast, and an apartment building to the southwest. The noise environment at the site and in the surrounding area results primarily from local vehicular traffic along Baypointe Parkway, background vehicular traffic on East Tasman Drive and Zanker Road, and aircraft associated with the Norman Y. Mineta San José International Airport.

A noise monitoring survey consisting of two long-term noise measurements and two short-term noise measurements was completed between Tuesday, December 13, 2022, and Thursday, December 15, 2022 by Illingworth and Rodkin.

The long-term noise measurements were taken approximately 50 feet southeast of the centerline of Baypointe Parkway (LT-1) and approximately 15 feet northwest of the centerline of the private road along the southeast side of the property (LT-2). The main source of noise at the first monitoring location was traffic along Baypointe Parkway and the main source of noise at the second location was background traffic along East Tasman Drive, with local traffic, aircraft, and apartment complex operations also contributing to the noise environment.

The hourly average noise levels at the LT-1 site typically ranged from 57 to 64 dBA Leq during daytime hours (7:00 a.m. to 10:00 p.m.) and from 47 to 59 dBA Leq during nighttime hours (10:00 p.m. to 7:00 a.m.). The total average noise level was 62 dBA DNL.

[68] The Municipal Code does not establish quantitative noise limits for demolition or construction activities occurring in the City.

The hourly average noise levels at the LT-2 site typically ranged from 52 to 59 dBA Leq during daytime hours and from 44 to 55 dBA Leq during nighttime hours. Abnormal hourly average noise levels ranging from 59 to 76 dBA Leq were produced by landscaping and garbage removal activities. The total average noise level was 59 dBA DNL.

Short-term noise measurement are summarized in Table 3.13-2 below. The main sources of noise at the ST-1 location were traffic along Baypointe Parkway and aircraft; and at the ST-2 location noise was from a combination of sources including vehicular traffic and truck deliveries, pedestrian activities, light rain trains, and aircraft. The locations of these measurements can be seen in Figure 3.13-1.

Table 3.13-2 Summary of Short-Term Noise Measurements

Noise Measurement Location	Measured Noise Level, dBA					
	L_{max}	$L_{(1)}$	$L_{(10)}$	$L_{(50)}$	$L_{(90)}$	L_{eq}
ST-1: 190 feet southeast of the centerline of Baypointe Parkway	61	59	56	51	47	53
ST-2: 30 feet northeast of the centerline of Casa Verde Street	77	71	63	55	50	60

Source: Illingworth and Rodkin. 210 Baypointe Parkway Noise and Vibration Assessment. January 2023.

The noise survey results establish existing conditions for receptors near the ground. Measured noise from SR 237 and East Tasman Drive affecting the project site and vicinity is shielded by the intervening apartment buildings.

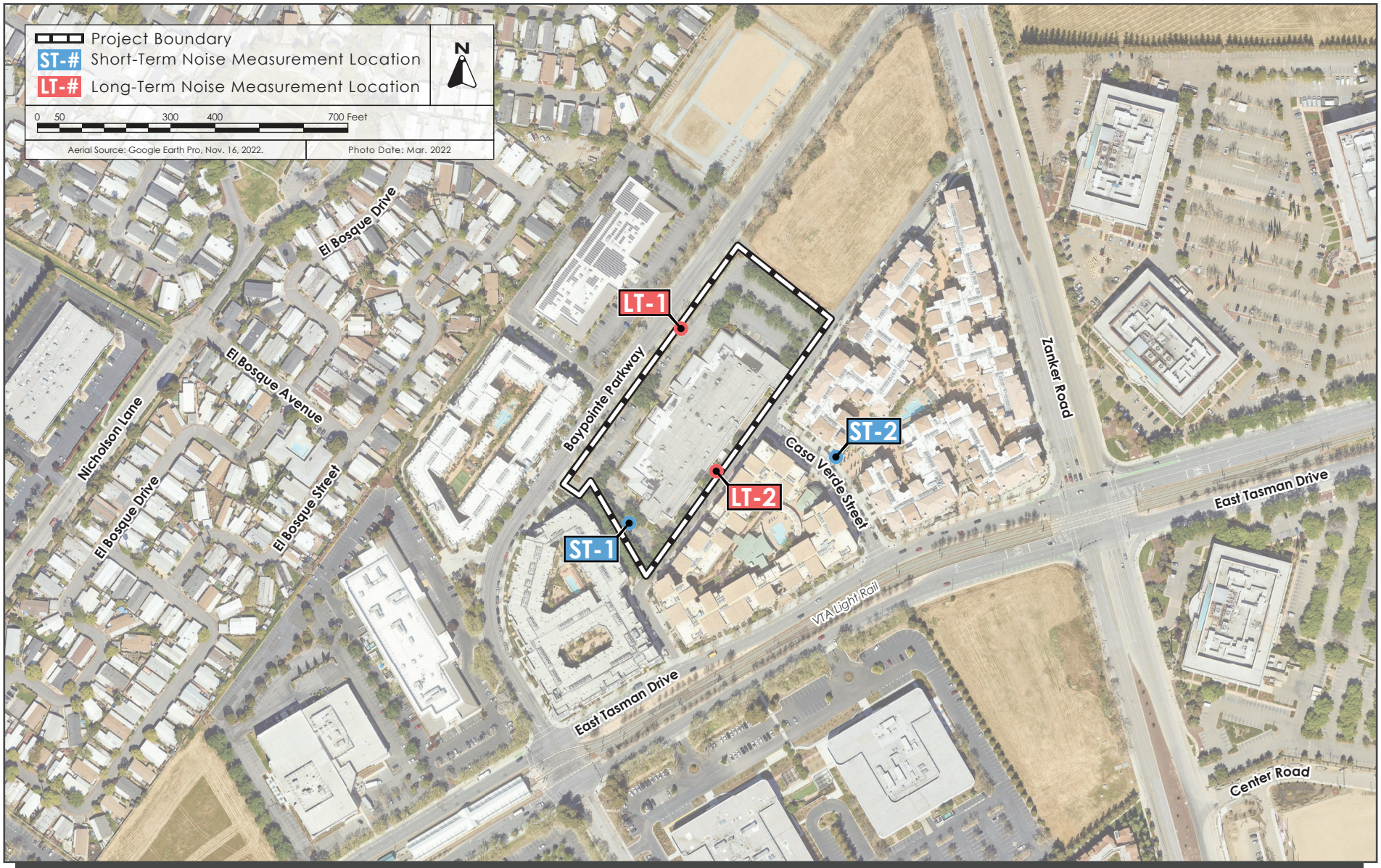
Sensitive Receptors

The nearest sensitive receptors are the residences located approximately five feet from the western edge of the project site.

3.13.2 Impact Discussion

For the purpose of determining the significance of the project's impact on noise, would the project result in:

1) Generation of a substantial temporary or permanent increase in ambient noise levels in the vicinity of the project in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?
2) Generation of excessive groundborne vibration or groundborne noise levels?
3) For a project located within the vicinity of a private airstrip or an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?



NOISE MEASUREMENT LOCATIONS | FIGURE 3.13-1

Appendix G of the CEQA Guidelines states that a project would normally be considered to result in significant noise impacts if noise levels conflict with adopted environmental standards or plans or if noise generated by the project would substantially increase existing noise levels at sensitive receivers on a permanent or temporary basis. Based on the applicable noise standards and policies for the site, a significant noise impact would result if exterior noise levels at the proposed residential uses exceed 60 dBA DNL (except in the environs of the Norman Y. Mineta San José International Airport and the Downtown) and/or if interior day-night average noise levels exceed 45 dBA DNL (General Plan Policy EC-1.1).

The CEQA Guidelines state that a project will normally be considered to have a significant impact if noise levels conflict with adopted environmental standards or plans, or if noise levels generated by the project will substantially increase existing noise levels at noise-sensitive receivers on a permanent or temporary basis. CEQA does not define what noise level increase would be substantial. However, the City defines substantial noise increases in General Plan Policy EC-1.2, as discussed below.

City of San José Standards

The City of San José relies on the following standards for new development to avoid impacts above the CEQA thresholds of significance outlined above.

Construction Noise

For temporary construction-related noise to be considered significant, construction noise levels would have to exceed ambient noise levels by five dBA L_{eq} or more and exceed the normally acceptable levels of 60 dBA L_{eq} at the nearest noise-sensitive land uses or 70 dBA L_{eq} at office or commercial land uses for a period of more than 12 months, as defined in General Plan Policy EC-1.7.

Operational Noise

Development allowed by the General Plan would result in increased traffic volumes along roadway throughout San José. The City of San José considers a significant noise impact to occur where existing noise sensitive land uses would be subject to permanent noise level increases of three dBA DNL or more where noise levels would equal or exceed the “Normally Acceptable” level, or five dBA DNL or more where noise levels would remain normally acceptable, as defined in General Plan Policy EC-1.2.

Construction Vibration

The City of San José relies on guidance developed by Caltrans to address vibration impacts from development projects in San José. A vibration limit of 12.7 millimeters per second (mm/sec; 0.5 inch/sec) PPV is used for buildings that are structurally sound and designed to modern engineering standards. Per General Plan Policy EC-2.3, vibration limit of five mm/sec (0.2 inches/sec) PPV has been used for to minimize the potential for cosmetic damage at buildings of normal conventional construction. For historic buildings or buildings that are documented to be structurally weakened, a limit of two mm/sec (0.08 inches/sec) PPV is used to provide the highest level of protection.

3.13.2.1 *Project Impacts*

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

Construction Noise Impacts

The construction of the proposed project would require the use of high noise equipment for the duration of construction. Construction would start in approximately January 2025 and continue for a period of approximately 32 months. This would include work on Saturdays from 8:00 am to 5:00 pm. Each phase of construction including demolition, site preparation, grading, trenching, building construction, architectural coating, and paving require different equipment and would have varying noise intensities based on the amount of equipment operating and location on site.

Policy EC-1.7 of the City's General Plan requires that all construction operations within the City use best available noise suppression devices and techniques and to limit construction hours within 500 feet of a residential land use per the Municipal Code to between the hours of 7:00 a.m. and 7:00 p.m. Monday through Friday. Further, the City considers significant construction noise impacts to occur if a project located within 500 feet of residential uses or 200 feet of commercial or office uses and would involve substantial noise-generating activities (such as building demolition, grading, excavation, pile driving, use of impact equipment, or building framing) continuing for more than 12 months.

While the City of San José has Policy EC-1.7 and the Municipal Code to manage construction noise, the City does not set specific quantifiable noise thresholds for the determination of substantial construction noise impacts. To determine how substantial noise is during construction, the noise and vibration assessment utilized the Federal Transit Administration (FTA) levels which states that a substantial noise impact would be an exterior threshold of 80 dBA Leq at residential land uses and 90 dBA Leq at commercial and industrial land uses during daytime hours.

For the proposed project, no pile driving is required or proposed. The typical range of maximum noise levels from equipment would range from 70 to 90 dBA at a distance of 50 feet. These levels would drop off at about six dBA for each doubling of distance from the source of sound. Further, the level of noise would be reduced by shielding from terrain or other buildings. Below is a summary of the expected noise levels created by each phase of construction.

Table 3.13-3 Estimated Construction Noise Levels for the Apartment Building							
	Noise in each Phase of Construction in dBA						
Sensitive Receptor	**Demolition**	**Site Preparation**	**Grading / Excavation**	**Trenching/ Foundation**	**Building Exterior**	**Building Interior/ Coating**	**Paving**
Southeast Residential (170 feet)	78	73	76	69	75	68	72
Southwest Residential (180 feet)	77	73	76	69	75	68	71
West Residential (190 feet)	77	72	76	68	74	67	71
North School (200 feet)	76	72	75	68	74	67	71
East Residential (280 feet)	74	69	72	65	71	64	70
Source: Illingworth and Rodkin. 210 Baypointe Parkway Noise and Vibration Assessment. January 2023.							

Table 3.13-4 Estimated Construction Noise Levels for the Townhouse Complex							
	Noise in each Phase of Construction in dBA						
Sensitive Receptor	**Demolition**	**Grading/ Excavation**	**Trenching**	**Fine Grading/ Paving**	**Building Foundation**	**Building Exterior**	**Building Interior**
Southeast Residential (170 feet)	74	73	65	71	62	62	66
Southwest Residential (180 feet)	68	67	60	65	56	57	61
West Residential (190 feet)	70	69	62	67	59	59	63
North School (200 feet)	77	75	68	73	65	65	69
East Residential (280 feet)	78	76	69	74	66	66	70
Source: Illingworth and Rodkin. 210 Baypointe Parkway Noise and Vibration Assessment. January 2023.							

As shown in the table 3.13-3 above, during the construction of the apartment building, the following ranges of expected hourly average noise levels would be as follows:

- apartment building to the southwest - 68 to 77 dBA Leq
- apartment building to the southeast - 68 to 78 dBA Leq
- apartment building to the east - 64 to 74 dBA Leq

- apartment building to the west - 67 to 77 dBA Leq
- school building to the north - 67 to 76 dBA Leq

These areas also feature outdoor areas which would be shielded from noise by the buildings around them and they would not experience noise greater than the values stated above.

As shown in Table 3.13-4 above during the construction of the townhouse complex component, the range of expected hourly average noise levels would be as follows:

- apartment building to the southwest - 56 to 68 dBA Leq
- apartment building to the southeast - 62 to 74 dBA Leq
- apartment building to the east - 66 to 78 dBA Leq
- apartment building to the west - 59 to 70 dBA Leq
- school building to the north - 65 to 77 dBA Leq

Since project construction is located within 500 feet of existing residential uses, would last for a period of approximately 32 months, require work on Saturday between 8:00 am and 5:00 pm, and noise levels would intermittently exceed 80 dBA Leq when construction equipment is being used along property lines, construction of the proposed project would be considered significant in accordance with Policy EC-1.7 of the City's General Plan.

Impact NOI-1 The proposed project could result in ambient noise levels in excess of 80 dBA when construction is occurring on the boundaries of the project site, which is within the 500 foot distance for construction noise disturbance. **(Significant Impact)**

Mitigation Measure

MM NOI-1.1 Pursuant to General Plan Policy EC-1.7, prior to provision of demolition or grading permits, a construction noise logistics plan shall be prepared that specifies hours of construction, noise and vibration minimization measures, posting or notification of construction schedules, and designation of a noise disturbance coordinator who would respond to neighborhood complaints will be required to be in place prior to the start of construction and implemented during construction to reduce noise impacts on neighboring residents and other uses. Project construction operations shall use best available noise suppression devices and techniques including, but not limited to the following:

- Limit construction hours to between 7:00 AM and 7:00 PM, Monday through Friday, unless permission is granted with a development permit or other planning approval. No construction activities are permitted on the weekends at sites within 500 feet of a residence. Construction outside of these hours may be approved through a development permit based on a site-specific "construction noise mitigation plan" and a

finding by the Director of PBCE that the construction noise mitigation plan is adequate to prevent noise disturbance of affected residential uses.

- Construct solid plywood fences around construction sites adjacent to operational business, residences, or other noise-sensitive land uses. A temporary eight-foot noise barrier shall be constructed along the southeast property line and a portion of the northwest property line of the project site to shield adjacent residential buildings within 100 feet of the property lines from ground-level construction equipment and activities. The noise barrier shall be solid over the face and at the base of the barrier in order to provide a five dBA noise reduction. The first floor of the residential building to the southwest is a parking garage, and a noise barrier is not needed in this location.
- Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment.
- Prohibit unnecessary idling of internal combustion engines.
- Locate stationary noise-generating equipment such as air compressors or portable power generators as far as possible from sensitive receptors. Construct temporary noise barriers to screen stationary noise-generating equipment when located near adjoining sensitive land uses.
- Utilize "quiet" air compressors and other stationary noise sources where technology exists.
- Control noise from construction workers' radios to a point where they are not audible at existing residences bordering the project site.
- Notify all adjacent business, residences, and other noise-sensitive land uses of the construction schedule, in writing, and provide a written schedule of "noisy" construction activities to adjacent land uses and nearby residences.
- Designate a "disturbance coordinator" who would be responsible for responding to any complaints about construction noise. The disturbance coordinator will determine the cause of the noise complaint (e.g., bad muffler, etc.) and will require that reasonable measures be implemented to current the problem. Conspicuously post a telephone number for the disturbance coordinator at the construction site and include it in the notice sent to neighbors regarding the construction schedule.

Implementation of the mitigation measure above would ensure compliance with City of San José policies for construction noise and would reduce temporary noise during construction to a less than significant level for nearby sensitive receptors. **(Less than Significant Impact with Mitigation Incorporated)**

Operational Noise Impacts

The City of San José General Plan Policy EC-1.2 states that, a significant permanent noise increase would occur if the project would substantially increase noise levels at existing sensitive receptors in the project vicinity. A substantial increase would occur if a project results in a noise level increase of five dBA DNL or greater with a future noise level of less than 60 dBA DNL at residences; or if the noise level increase is three dBA DNL or greater, with a future noise level of 60 dBA DNL or greater at residences.

Noise levels at sensitive land uses currently exceed 60 dBA DNL along Baypointe Parkway; therefore, a significant impact would occur if traffic or operational noise resulting from the proposed project would permanently increase ambient levels by three dBA DNL at these locations. Noise levels at other adjacent sensitive land uses, further from Baypointe Parkway and located within apartment developments, do not currently exceed 60 dBA DNL; therefore, a significant impact would result if traffic or operational noise created by the proposed project would permanently increase ambient levels by five dBA DNL at these locations.

The City's General Plan does not include thresholds for equipment noise generated at residential buildings; however, the Municipal Code requires mechanical equipment noise to be maintained at or below 55 dBA for residential properties with a shared property line when operational noise is generated at residential sources.

The proposed project would primarily create operational noise through vehicle trips, operation of mechanical equipment, and through loading or unloading of trucks. Each of these sources is described further below.

Project Traffic Increase

The traffic study prepared for the project included existing traffic volumes and traffic volumes with the proposed project at eight intersections in the vicinity of the project site. By comparing these two metrics, the total contribution of the project to the overall noise level increase was determined to be two dBA DNL along Baypointe Parkway. All other roadway segments in the project vicinity would have an increase of less than one dBA. Therefore, the project would not result in a permanent noise increase of three dBA DNL or more at the most noise-sensitive receptors in the project vicinity.

Mechanical Equipment

The proposed project includes an enclosed trash area on the ground level of the southern corner and east corner of the apartment building. Additionally, at the southern corner of the building, the proposed project would have two transformers located on the ground level, as well as a loading area for deliveries and move-in traffic.

The transformers would be 480-watt, which typically generate noise levels up to 47 dB at a distance of three feet. Assuming the transformers run continuously during daytime and nighttime hours, the day-night average noise level would be 53 dBA DNL at a distance of three feet. At the nearest property line, approximately 10 feet from the transformers, the DNL would be 45 dBA from the

combined noise from the two transformers, well below the 55 dBA DNL threshold. Noise levels from the transformers would be less than 55 dBA DNL at all other property lines in the vicinity.

The proposed project would also include HVAC equipment on the rooftops of the apartment structure 75 feet above grade. The rooftop itself, as well as the three-foot parapet wall and the intervening distance would reduce noise from the rooftop HVAC reaching nearby properties. The estimated mechanical equipment noise levels with attenuation are 47 dBA Leq at the residential buildings to the southwest and southeast, 38 dBA Leq at the residential building to the east, 43 dBA Leq at the residential building to the west, 36 dBA Leq at the school building to the north, and 43 dBA Leq at the future residential building to the northeast. Therefore, noise levels from the rooftop equipment would be less than 55 dBA DNL at all property lines in the vicinity.

The mechanical equipment rooms included throughout the project would be totally enclosed within the building. Equipment within these rooms would not affect noise levels on adjacent properties.

Truck Loading and Unloading

The loading zone and trash area at the south corner of the apartment building would create some intermittent noise when vehicles visit the site. Intermittent truck loading and unloading, as well as scheduled trash collection associated with the project would be consistent with the existing activities in the vicinity and is not expected to generate noise levels exceeding the City's noise threshold at the nearby noise-sensitive land uses.

Therefore, accounting for all three of these operational noise sources, the proposed project would not result in noise levels in excess of General Plan Policy EC-1.2 and would result in a less than significant impact. **(Less than Significant Impact)**

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

Construction activities associated with the proposed project would require machinery that can cause vibrations that may be perceptible at nearby buildings. The project site is not located near historic structures which are more susceptible to vibratory impacts, therefore, according to General Plan Policy EC-2.3 a vibration limit of 0.20 inches per second has been used for the determination of impacts on the conventional buildings adjacent to the project site. Vibration levels vary depending on location and soil type, as well as the expected equipment to be used on site. A summary of the vibratory levels of the construction equipment is shown in Table 3.13-5 below.

Table 3.13-5 Vibration Source Levels for Construction Equipment

Equipment		PPV at 25 ft. (In/sec)	Minimum Distance to Meet 0.2 in/sec PPV (feet)
Clam Shovel Drop		0.202	26
Hydromill (slurry wall)	in soil	0.008	2
	in rock	0.017	3
Vibratory Roller		0.210	27
Hoe Ram		0.089	13

Large Bulldozer	0.089	13
Caisson drilling	0.089	13
Loaded Trucks	0.076	11
Jackhammer	0.035	6
Small Bulldozer	0.003	<1
Source: Illingworth and Rodkin. 210 Baypointe Parkway Noise and Vibration Assessment. January 2023.		

Construction activities would potentially generate vibration levels up to 0.145 in/sec PPV at the nearest apartment building adjacent to the project site if construction activities occurred within five feet of the property line. No threshold would be exceeded and no cosmetic damage, minor, or major damage would be expected at all other residential buildings in the project vicinity. At these locations, and in other surrounding areas where vibration would not be expected to cause cosmetic damage, vibration levels may still be perceptible. However, as with any type of construction, this would be anticipated and would not be considered significant, given the intermittent use of equipment which have the highest potential of producing vibration.

Therefore, the proposed project would not result in vibratory impacts exceeding 0.20 inches per second for nearby residents or commercial spaces and would have a less than significant impact. **(Less than Significant Impact)**

c) For a project located within the vicinity of a private airstrip or an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?

Norman Y. Mineta San José International Airport is located approximately 2.5 miles south of the project site. Based on the analysis in the Airport Master Plan Environmental Impact Report, the project site lies well outside the 60 dBA CNEL/DNL contour line established for the airport. According to Policy EC-1.11 of the City's General Plan, the required safe and compatible threshold for exterior noise levels would be at or below 65 dBA CNEL/DNL. Therefore, the proposed project would be compatible with the City's exterior noise standards for aircraft noise and would result in a less than significant impact. **(Less than Significant Impact)**

3.13.2.2 *Cumulative Impacts*

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

The area of study for cumulative noise impacts is the project site and adjacent parcels. The proposed project would not result in significant construction noise impacts with mitigation incorporated and would not result in a perceptible change in ambient noise levels on the surrounding roadways or from project operations. This is because the operational traffic would not substantively change the roadway operations and there are currently no construction projects that would be occurring near the project site at the expected time of project construction. For these reasons, the proposed project, would not result in a cumulatively considerable noise and vibration impact when combined with other past, present, and responsibly foreseeable projects near the project site in north San José. **(Less than Significant Cumulative Impact with Mitigation Incorporated)**

3.13.3 Non-CEQA Effects

Per *California Building Industry Association v. Bay Area Air Quality Management District,* 62 Cal. 4th 369 *(BIA v. BAAQMD)*, effects of the environment on the project are not considered CEQA impacts. The following discussion is included for informational purposes only because the City of San José has Policy EC-1.1 that address existing noise conditions affecting a proposed project.

The General Plan sets forth policies with the goal of minimizing the impact of noise on people through noise reduction and suppression techniques and through appropriate land use policies in the City of San José. The General Plan policies establish the following limits on residential land uses including the proposed project:

- The City's acceptable exterior noise level standard is 60 dBA DNL or less for the proposed residential land uses.
- The City's acceptable interior noise level standard is 45 dBA DNL or less for the proposed residential land uses.

The future noise environment affecting the project site would continue to result primarily from local vehicular traffic along Baypointe Parkway and East Tasman Drive, as well as from aircraft noise and nearby apartment complex operations. Comparing the traffic volumes before and after the proposed project would result in a one dBA DNL increase under future conditions along East Tasman Drive and a two dBA DNL increase under future conditions along Baypointe Parkway. Additionally, based on the General Plan EIR, the project site would expect an environmental noise increase of four dBA DNL by 2035 from build out of North San José areas.

Noise Impacts on Project Residences

Private balconies, decks, and front yards would not be considered outdoor use areas subject to the exterior noise thresholds for the proposed project. Common areas, including the central courtyard area of the apartment building, would be subject to the City's thresholds. The courtyard would be completely enclosed by the building itself, which would greatly reduce noise levels from local traffic. Future exterior noise levels within the courtyard were calculated to be approximately 51 dBA DNL or less. Future exterior noise levels at the paseo would range from approximately 63 dBA DNL on the south end, 58 dBA DNL at the midpoint, and 66 dBA DNL at Baypointe Road.

Portions of this paseo area would be subject to noise levels exceeding the City's 60 dBA DNL threshold without additional noise control. On the seventh floor of the apartment building the proposed project includes rooftop decks at the northeast and southeast corners of the building, and a dog park on the east side of the building. These outdoor areas would be shielded from the traffic noise below by the building itself and would have future exterior noise levels ranging from 45 to 53 dBA DNL. Future noise levels at all outdoor use areas would be below the City's threshold of 60 dBA DNL.

Future Interior Noise Environment

Standard residential construction methods provide for approximately 15 dBA of exterior noise reduction, assuming the windows are partially open for ventilation. Standard construction with the

windows closed provides approximately 20 to 25 dBA of noise reduction in interior spaces. Where exterior noise levels range from 60 to 65 dBA DNL, the inclusion of adequate forced-air mechanical ventilation would reduce interior noise levels to acceptable levels by closing the windows to control noise. Where noise levels exceed 65 dBA DNL, forced-air mechanical ventilation systems and sound-rated construction methods would be required.
The northwestern side of the buildings along Baypointe Parkway would be set back approximately 50 feet from the centerline of the roadway. At this distance, the lower-level units would be exposed to exterior noise levels of up to 66 dBA DNL. Assuming windows to be partially open, future interior noise levels in these units would be reduced to 51 dBA DNL.

The southeastern side of the buildings along the private road would be set back approximately 25 feet from the centerline of the roadway. At this distance, the lower-level units would be exposed to future exterior noise levels up to 63 dBA DNL. Assuming windows to be partially open, future interior noise levels in these units would be up to 48 dBA DNL.

The southwestern and northeastern sides of the building would be exposed to future exterior noise levels ranging from 58 to 63 dBA DNL. Assuming windows to be partially open, future interior noise levels in these units would range from 43 to 48 dBA DNL. To meet the interior noise requirements set forth by the City of San José of 45 dBA DNL, implementation of noise insulation features would be required to be incorporated in the project design.

Conditions of Approval

The following noise insulation features shall be incorporated into the proposed project to reduce interior noise levels to 45 dBA DNL or less at residential interiors:

- Provide a suitable form of forced-air mechanical ventilation, as determined by the local building official, so that windows can be kept closed at the occupant's discretion to control interior noise and achieve the interior noise standards.
- Preliminary calculations indicate that all residential units along the northwestern building façades would require windows and doors with a minimum rating of 26 STC with adequate forced-air mechanical ventilation to meet the interior noise threshold of 45 dBA DNL.
- Preliminary calculations indicate that residential units located along the southeastern façades would require windows and doors with a minimum rating of 26 STC with adequate forced-air mechanical ventilation to meet the interior noise threshold of 45 dBA DNL.
- Preliminary calculations indicate that residential units located along the northeastern and southwestern façades would require windows and doors with a minimum rating of 26 STC with adequate forced-air mechanical ventilation to meet the interior noise threshold of 45 dBA DNL.

The project applicant shall prepare final design plans that incorporate building design and acoustical treatments to ensure compliance with State Building Codes and City noise standards. The design shall incorporate controls to reduce interior noise levels to 45 dBA DNL or lower within the residential units. The project shall conform with any special building construction techniques requested by the City's Building Department, which may also include sound-rated windows and doors, sound-rated wall constructions, and acoustical caulking.

The implementation of these noise insulation features would reduce interior noise levels to 45 dBA DNL or less at residential uses consistent with Policy EC-1.1.

3.14 POPULATION AND HOUSING

3.14.1 Environmental Setting

3.14.1.1 *Regulatory Framework*

State

Housing-Element Law

State requirements mandating that housing be included as an element of each jurisdiction's general plan is known as housing-element law. The Regional Housing Need Allocation (RHNA) is the state-mandated process to identify the total number of housing units (by affordability level) that each jurisdiction must accommodate in its housing element. California housing-element law requires cities to: 1) zone adequate lands to accommodate its RHNA; 2) produce an inventory of sites that can accommodate its share of the RHNA; 3) identify governmental and non-governmental constraints to residential development; 4) develop strategies and a work plan to mitigate or eliminate those constraints; and 5) adopt a housing element and update it on a regular basis.[69] The City of San José Housing Element and related land use policies were last updated in October 2014.

Regional and Local

Plan Bay Area 2050

Plan Bay Area 2050 is a long-range plan for the nine-county San Francisco Bay Area that provides strategies that increase the availability of affordable housing, support a more equitable and efficient economy, improve the transportation network, and enhance the region's environmental resilience. Plan Bay Area 2050 promotes the development of a variety of housing types and densities within identified Priority Development Areas (PDAs). PDAs are areas generally near existing job centers or frequent transit that are locally identified for housing and job growth.[70]

ABAG allocates regional housing needs to each city and county within the San Francisco Bay Area, based on statewide goals. These allocations are designed to lay the foundation for Plan Bay Area 2050's long-term envisioned growth pattern for the region. ABAG also develops a series of forecasts and models to project the growth of population, housing units, and jobs in the Bay Area. ABAG, MTC, and local jurisdiction planning staff created the Forecasting and Modeling Report, which is a technical overview of the of the growth forecasts and land use models upon which Plan Bay Area 2050 is based.

3.14.1.2 *Existing Conditions*

According to Census Bureau data, as of July 2021, the City of San José has a population of approximately 983,489.[71] The city contains approximately 324,340 households and has an average

[69] California Department of Housing and Community Development. "Regional Housing Needs Allocation and Housing Elements" Accessed August 16, 2022. https://hcd.ca.gov/housing-elements-hcd.
[70] Association of Bay Area Governments and Metropolitan Transportation Commission. *Plan Bay Area 2050*. October 21, 2021. Page 20.
[71] Census Bureau. QuickFacts City of San José. Accessed November 2022. https://www.census.gov/quickfacts/sanjosecitycalifornia.

household population of 3.08 people per household. The project site is currently occupied by a 67,984 square foot industrial building and does not directly contribute to the population of the City.

The jobs/housing balance is the relationship between the number of housing units required as a result of local jobs and the number of dwelling units available in the City. This relationship is quantified by the jobs/employed resident ratio. When the ratio reaches 1.0, a balance is struck between the supply of local housing and local jobs. The jobs/employed resident ratio is determined by dividing the number of local jobs by the number of employed residents that can be housed in local housing. According to the Downtown Strategy 2040 FEIR, the current ratio of jobs to employed residents in San José is estimated to be 0.8, making the City "housing rich", but this trend is projected to improve with full build out under the General Plan.

The site is designated in the 2040 General Plan as Industrial Park with a TERO, which allows residential development at an average density of 75–250 dwelling units per acre and a floor area ratio of 2.0–12.0. The site was previously subject to the North San José Area Development Policy ("NSJA Development Policy"). In May 2022, the City Council approved the rescission of the NSJA Development Policy and the zoning designation and General Plan.

3.14.2 Impact Discussion

For the purpose of determining the significance of the project's impact on population and housing, would the project:

1) Induce substantial unplanned population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?
2) Displace substantial numbers of existing people or housing, necessitating the construction of replacement housing elsewhere?

3.14.2.1 *Project Impacts*

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

A project can induce substantial population growth by: 1) proposing new housing beyond projected or planned development levels, 2) generating demand for housing as a result of new businesses, 3) extending roads or other infrastructure to previously undeveloped areas, or 4) removing obstacles to population growth (i.e., expanding capacity of a wastewater treatment plant beyond that necessary to serve planned growth).

The proposed project would construct 42 townhouses and 292 apartment units, which would increase the resident population of San José by approximately 1,028 people. [72] The proposed project is part of

[72] The average number of residents is calculated from the more conservative estimate of 3.08 persons per household from the Census Bureau data set https://www.census.gov/quickfacts/sanjosecitycalifornia. Department of Finance

planned growth in the General Plan because it would be consistent with the land use for the project site. While the project would increase housing within the City, it would not result in unplanned residential growth. **(Less than Significant Impact)**

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

The proposed project would not displace any residents and would contribute a significant number of dwelling units to the total housing available in the City of San José. Therefore, the proposed project would not displace substantial numbers of existing people or housing, necessitating the construction of replacement housing elsewhere. **(Less than Significant Impact)**

3.14.2.2 *Cumulative Impacts*

Would the project result in a cumulatively considerable contribution to a significant cumulative population and housing impact?

The General Plan is a cumulative area plan for the City of San José which includes impacts from planned growth based on the land uses defined in the General Plan. As stated above, the proposed project would be consistent with the land use of the project site and would be consistent with the growth included in the General Plan. In addition, the project would not result in the displacement of any existing residents or housing units. Therefore, the proposed project would not have a cumulatively considerable contribution to a cumulative population and housing impact because it is consistent with region wide planning efforts. **(Less than Significant Cumulative Impact)**

data estimates 2.98 people per household. https://dof.ca.gov/forecasting/demographics/estimates/e-5-population-and-housing-estimates-for-cities-counties-and-the-state-2020-2022/.

3.15 PUBLIC SERVICES

3.15.1 Environmental Setting

3.15.1.1 *Regulatory Framework*

State

Government Code Section 66477

The Quimby Act (included within Government Code Section 66477) requires local governments to set aside parkland and open space for recreational purposes. It provides provisions for the dedication of parkland and/or payment of fees in lieu of parkland dedication to help mitigate the impacts from new residential developments. The Quimby Act authorizes local governments to establish ordinances requiring developers of new residential subdivisions to dedicate parks, pay a fee in lieu of parkland dedication, or perform a combination of the two.

Government Code Section 65995 through 65998

California Government Code Section 65996 specifies that an acceptable method of offsetting a project's effect on the adequacy of school facilities is the payment of a school impact fee prior to the issuance of a building permit. Government Code Sections 65995 through 65998 set forth provisions for the payment of school impact fees by new development by "mitigating impacts on school facilities that occur (as a result of the planning, use, or development of real property" (Section 65996[a]). The legislation states that the payment of school impact fees "are hereby deemed to provide full and complete school facilities mitigation" under CEQA (Section 65996[b]).

Developers are required to pay a school impact fee to the school district to offset the increased demands on school facilities caused by the proposed residential development project. The school district is responsible for implementing the specific methods for mitigating school impacts under the Government Code.

Regional and Local

Countywide Trails Master Plan

The Santa Clara County Trails Master Plan Update is a regional trails plan approved by the Santa Clara County Board of Supervisors. It provides a framework for implementing the County's vision of providing a contiguous trail network that connects cities to one another, cities to the county's regional open space resources, County parks to other County parks, and the northern and southern urbanized regions of the County. The plan identifies regional trail routes, sub-regional trail routes, connector trail routes, and historic trails.

Envision San José 2040 General Plan

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

General Plan Policies – Public Services	
ES-3.1	Provide rapid and timely Level of Service response time to all emergencies: 1. For police protection, achieve a response time of six minutes or less for 60 percent of all Priority 1 calls, and of eleven minutes or less for 60 percent of all Priority 2 calls. 2. For fire protection, achieve a total response time (reflex) of eight minutes and a total travel time of four minutes for 80 percent of emergency incidents. 3. Enhance service delivery through the adoption and effective use of innovative, emerging techniques, technologies and operating models. 4. Measure service delivery to identify the degree to which services are meeting the needs of San José's community. 5. Ensure that development of police and fire service facilities and delivery of services keeps pace with development and growth in the city.
ES-3.8	Use the Land Use/Transportation Diagram to promote a mix of land uses that increase visibility, activity and access throughout the day and to separate land uses that foster unsafe conditions.
ES-3.9	Implement urban design techniques that promote public and property safety in new development through safe, durable construction and publicly-visible and accessible spaces.
ES-3.10	Incorporate universal design measures in new construction, and retrofit existing development to include design measures and equipment that support public safety for people with diverse abilities and needs. Work in partnership with appropriate agencies to incorporate technology in public and private development to increase public and personal safety.
ES-3.11	Ensure that adequate water supplies are available for fire-suppression throughout the City. Require development to construct and include all fire suppression infrastructure and equipment needed for their projects.
ES-3.20	Require private property owners to remove excessive/overgrown vegetation (e.g., trees, shrubs, weeds) and rubbish to the satisfaction of the Fire Chief to prevent and minimize fire risks to surrounding properties.
FS-5.7	Encourage school districts and residential developers to engage in early discussions regarding the nature and scope of proposed projects and possible fiscal impacts and mitigation measures early in the project planning stage, preferably immediately preceding or following land acquisition.
PR-1.1	Provide 3.5 acres per 1,000 population of neighborhood/community serving parkland through a combination of 1.5 acres of public park and 2.0 acres of recreational school grounds open to the public per 1,000 San José residents.
PR-1.2	Provide 7.5 acres per 1,000 population of citywide /regional park and open space lands through a combination of facilities provided by the City of San José and other public land agencies
PR-1.12	Regularly update and utilize San José's Parkland Dedication Ordinance/Parkland Impact Ordinance (PDO/PIO) to implement quality facilities.
PR-2.4	To ensure that residents of a new project and existing residents in the area benefit from new amenities, spend Park Dedication Ordinance (PDO) and Park Impact Ordinance (PIO) fees for neighborhood serving elements (such as playgrounds/tot-lots, basketball courts, etc.) within a ¾ mile radius of the project site that generates the funds.

General Plan Policies – Public Services	
PR-2.5	Spend, as appropriate, PDO/PIO fees for community serving elements (such as soccer fields, community gardens, community centers, etc.) within a 3-mile radius of the residential development that generates the PDO/PIO funds.

3.15.1.2 *Existing Conditions*

Fire Protection Services

Fire protection services in the City are provided by the San José Fire Department (SJFD). Fire stations are located throughout the City to provide adequate response times to calls for service. The SJFD responds to all fires, hazardous materials spills, and medical emergencies in the City. Emergency response is provided by 33 fire stations, 33 engine companies, nine truck companies, and three squad units.[73] The nearest fire station to the site are Station No. 29, located at 199 Innovation Drive, located approximately 0.85 miles southwest of the project site. The General Plan identifies a service goal of eight minutes and a total travel time of four minutes or less for 80 percent of emergency incidents.

Police Protection Services

Police protection services for the project site is provided by the San José Police Department (SJPD). Officers are dispatched from police headquarters, located at 201 West Mission Street, approximately 4.7 miles southeast of the project site. The General Plan identifies a service goal of six minutes or less for 60 percent of all Priority 1 (emergency) calls and 11 minutes of less for 60 percent of all Priority 2 (nonemergency) calls.

School

The project site is located within the Santa Clara Unified School District. The existing site does not generate demand for school services however the nearest schools to the project site are Abram Agnew Elementary School (3534 Zanker Road), Dolores Huerta Middle School (3556 Zanker Road), and Mission Early College High School (3000 Mission College Boulevard).

Parks

The City's Department of Parks, Recreation, and Neighborhood Services is responsible for the development, operation, and maintenance of all City park facilities. The City operates and maintains approximately 200 neighborhood-serving parks, three golf courses, and 10 regional parks.[74] The nearest park is Baypointe Interim Park (225 Baypointe Parkway) approximately 100 feet northeast of the project site.

Libraries

The San José Public Library is the largest public library system between San Francisco and Los

[73] City of San José. "Annual Report on City Services 2021-22". Accessed March 6, 2023. https://www.sanjoseca.gov/home/showpublisheddocument/93154/638104332248530000.
[74] City of San José. "Annual Report on City Services 2021-22". Accessed March 6, 2023. https://www.sanjoseca.gov/home/showpublisheddocument/93154/638104332248530000.

Angeles. The San José Public Library system consists of one main library (Dr. Martin Luther King Jr. Library) and 24 open branch libraries. The nearest library to the site is Alviso Branch Library, located approximately 1.74 miles northwest of the project site.

3.15.2 Impact Discussion

For the purpose of determining the significance of the project's impact on public services, would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times, or other performance objectives for any of the public services:

1) Fire protection?
2) Police protection?
3) Schools?
4) Parks?
5) Other public facilities?

3.15.2.1 *Project Impacts*

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

New buildings, including the proposed project, are required to be constructed in accordance with current fire and building codes. According to the General Plan 2040 FEIR, development allowed under the General Plan would not require the construction of new fire stations, other than those already planned. The project is part of the planned growth in the north San José area and would not result in a substantial adverse physical impact associated with the need for additional fire protection services or facilities to meet performance objectives. **(Less than Significant Impact)**

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

Full build out of the General Plan 2040 FEIR would increase the demand for police protection services. The project, by itself, would not require additional police facilities since it would be constructed in accordance with current building codes and would be required to be maintained in accordance with applicable City policies to avoid unsafe building conditions and promote public safety. The project would be consistent with full build out of the General Plan 2040 plan and would not prevent the SJPD from meeting their service goals or require the construction of new or expanded

police facilities. **(Less than Significant Impact)**

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

The proposed project is part of the planned growth in the City and would not increase students in the school district beyond what was anticipated in the General Plan. Based on SCUSD student generation rates the proposed project would result in approximately 14 new students contributed to nearby schools.[75]

State law (Government Code Section 65996) specifies an acceptable method of offsetting a project's effect under CEQA on the adequacy of school facilities as the payment of a school impact fee prior to issuance of a building permit. The affected school district(s) are responsible for implementing the specific methods for mitigating school effects under the Government Code, including setting the school impact fee amount consistent with State law. The school impact fees and the school districts' methods of implementing measures specified by Government Code Section 65996 would partially offset project-related increases in student enrollment. The project would be required to pay school impact fees pursuant to Government Code section 65996 which would reduce impacts to public school facilities.

With payment of the school impact fees, the proposed project would have a less than significant impact on school services and would not, by itself, require new school facilities to be constructed. **(Less than Significant Impact)**

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

The City of San José has a PDO which requires new housing projects to provide 3.0 acres of neighborhood/community serving parkland per 1,000 population, provide recreational facilities on-site, and/or pay an in-lieu fee. The proposed project would increase the City population by 1,028 new residents. The project proposes a pool and spa on landscaped podium courtyard, rooftop decks, a clubroom and fitness studio for the apartments; and common open space with amenities in the paseo including seating for the townhouses. In addition to the recreational facilities proposed on-site, the project would be required pay the applicable PDO and Park Impact Ordinance PIO fees. The project's PDO/PIO fees would be used for neighborhood serving elements (such as playgrounds and basketball courts) within 0.75 miles of the project site, and/or community serving elements (such as soccer fields and community gardens) within a three-mile radius of the project site, consistent with

[75] 0.02 students per household for apartment units and 0.18 students per household for townhomes
0.02 x 292 units = 5.8 students / 0.18 x 42 townhome units = 7.56 students / Total students = 14 students

General Plan Policies PR-2.4 and PR-2.5.

Since the proposed project would be include on-site amenities and be required to comply with payment of the PDO/PIO fees, implementation of the project would not result in significant impacts to park and recreational facilities or performance objectives in San José. **(Less than Significant Impact)**

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

The City of San José has been expanding and constructing new library facilities over the last decade to meet the needs of current residents. The General Plan policies maintain the City's current policy of providing at least 0.59 square feet of library space per capita. Development and redevelopment allowed under the General Plan would increase the City's residential population to 1,313,811. The City's existing and planned facilities would provide approximately 0.68 square feet of library space for the anticipated population under the proposed General Plan by 2040.

The General Plan 2040 FEIR concluded that development and redevelopment allowed under the proposed General Plan would be adequately served by existing and planned library facilities. The proposed increase in residents at the project site were analyzed as part of the planned residential growth in the City. Therefore, implementation of the project would not result in significant impacts to library facilities or performance objectives in San José. **(Less than Significant Impact)**

3.15.2.2 *Cumulative Impacts*

Would the project result in a cumulatively considerable contribution to a significant cumulative public services impact?

The cumulative impact area for public services is Citywide. As stated above, the proposed project would be consistent with the General Plan which determined that planned development within the City of San José would not have significant impacts on City services. Through consistency with the General Plan the public services would be adequate to serve the project and other development under the General Plan. Therefore, because the proposed project would not result significant impacts to public services, the proposed project would not have a cumulatively considerable impact on public services in conjunction with other past, current, or reasonably foreseeable future projects on public services. **(Less than Significant Cumulative Impact)**

3.16 RECREATION

3.16.1 Environmental Setting

3.16.1.1 *Regulatory Framework*

State

Government Code Section 66477

The Quimby Act (included within Government Code Section 66477) requires local governments to set aside parkland and open space for recreational purposes. It provides provisions for the dedication of parkland and/or payment of fees in lieu of parkland dedication to help mitigate the impacts from new residential developments. The Quimby Act authorizes local governments to establish ordinances requiring developers of new residential subdivisions to dedicate parks, pay a fee in lieu of parkland dedication, or perform a combination of the two.

City of San José

Activate San José Strategic Plan (2020-2040)

ActivateSJ is a people-focused, service-driven plan adopted by the City of San José in 2020. The plan focuses on guiding principles of stewardship, nature, equality and access, identity, and public life. The five guiding principles speak directly to what San José residents value and expect from a parks and recreation department in the 10th largest city in the nation. They are strategic priorities that will carry San José into the future, help us identify opportunities and guide decisions, which may include the development of regional capital-centric Greenprints.

The plan is a 20-year strategic plan for the City of San José's Department of Parks, Recreation and Neighborhood Services which will ensure that neighborhood parks continue to be destinations for residents, that regional parks showcase the best of San José, that community centers continue to serve as points of connection, and that the Parks and Recreation Department continues to enhance the quality of life in our diverse neighborhoods.

Parkland Dedication Ordinance and the Park Impact Ordinance

The City of San José has adopted the Parkland Dedication Ordinance (PDO, Municipal Code Chapter 19.38) and Park Impact Ordinance (PIO, Municipal Code Chapter 14.25) requiring new residential development to either dedicate sufficient land to serve new residents or pay fees to offset the increased costs of providing new park facilities for new development. Under the PDO and PIO, a project can satisfy half of its total parkland obligation by providing private recreational facilities on-site. For projects over 50 units, it is the City's decision as to whether the project will dedicate land for a new public park site or accept a fee in-lieu of land dedication. Deed-restricted affordable housing projects that meet the City's affordability criteria are subject to the PDO and PIO and receive a 50 percent credit toward the parkland obligation. The acreage of parkland required is based on the minimum acreage dedication formula outlined in the PDO.

Envision San José 2040 General Plan

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

General Plan Policies – Recreation	
PR-1.1	Provide 3.5 acres per 1,000 population of neighborhood/community serving parkland through a combination of 1.5 acres of public park and 2.0 acres of recreational school grounds open to the public per 1,000 San José residents.
PR-1.2	Provide 7.5 acres per 1,000 population of citywide/regional park and open space lands through a combination of facilities provided by the City of San José and other public land agencies
PR-1.3	Provide 500 square feet per 1,000 population of community center space.
PR-2.4	To ensure that residents of a new project and existing residents in the area benefit from new amenities, spend Park Dedication Ordinance (PDO) and Park Impact Ordinance (PIO) fees for neighborhood serving elements (such as playgrounds/ tot-lots, basketball courts, etc.) within a 3/4 mile radius of the project site that generates the funds.
PR-2.5	Spend, as appropriate, PDO/PIO fees for community serving elements (such as soccer fields, dog parks, sport fields, community gardens, community centers, etc.) within a 3-mile radius of the residential development that generates the PDO/PIO funds.
PR-2.6	Locate all new residential developments over 200 units in size within 1/3 of a mile walking distance of an existing or new park, trail, open space or recreational school grounds open to the public after normal school hours or include one or more of these elements in its project design.
PR-3.2	Provide access to an existing or future neighborhood park, a community park, recreational school grounds, a regional park, open space lands, and/or a major City trail within a 1/3-mile radius of all San José residents by either acquiring lands within 1/3 mile or providing safe connections to existing recreation facilities outside of the 1/3-mile radius. This is consistent with the United Nation's Urban Environmental Accords, as adopted by the City for recreation open space.

3.16.1.2 *Existing Conditions*

The City of San José Department of Parks, Recreation, and Neighborhood Services owns and maintains approximately 3,537 acres of parkland, including neighborhood parks, community parks, and regional parks.[76] The City operates 200 neighborhood parks, 48 community centers, 10 regional parks, and over 63 miles of trails. The nearest park is Baypointe Interim Park (225 Baypointe Parkway) approximately 100 feet northeast of the project site. The nearest community center is Alviso Youth Center, located approximately 2.28 miles northeast of the project site. [77]

3.16.2 Impact Discussion

For the purpose of determining the significance of the project's impact on recreation:

1) Would the project increase the use of existing neighborhood and regional parks or other

[76] City of San José. *Fast Facts*. October 8, 2019.
[77] City of San José. "Annual Report on City Services 2021-22". Accessed March 6, 2023. https://www.sanjoseca.gov/home/showpublisheddocument/93154/638104332248530000.

recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?

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

3.16.2.1 *Project Impacts*

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

The City of San José has a PDO which requires new housing projects to provide 3.0 acres of neighborhood/community serving parkland per 1,000 population, provide recreational facilities onsite, and/or pay an in-lieu fee. The proposed project would increase the City population by 1,028 new residents. The project proposes a pool and spa on a landscaped podium courtyard, rooftop decks, a clubroom and fitness studio for the apartments; and common open space with amenities in the paseo including seating for the townhouses. In addition to the recreational facilities proposed on-site, the project would be required pay the applicable Parkland Dedication Ordinance (PDO) and Park Impact Ordinance (PIO) fees. The project's PDO/PIO fees would be used for neighborhood serving elements (such as playgrounds and basketball courts) within 0.75 miles of the project site, and/or community serving elements (such as soccer fields and community gardens) within a three-mile radius of the project site, consistent with General Plan Policies PR-2.4 and PR-2.5.

Since the proposed project would include on-site amenities and be required to comply with payment of the PDO/PIO fees, the increase in residences resulting from the project would not result in a substantial physical deterioration of park or recreation facilities that would necessitate the construction of new facilities. **(Less than Significant Impact)**

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

The project does not propose the construction or expansion of additional recreational facilities. In addition, due to the proposed facilities on-site and the payment of PDO fees, the project would not require the construction or expansion of recreational facilities for the City to meet its service goals. As a result, implementation of the project would not result in an adverse physical effect on the environment. **(Less than Significant Impact)**

3.16.2.2 *Cumulative Impacts*

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

The cumulative impact area for recreational services is Citywide. As stated above the proposed project would be consistent with the General Plan which determined that planned development

within the City of San José would not have significant impacts on City recreational facilities with the payment of PDO/PIO fees. Through payment of the fees, the recreational resources would be adequate to serve the project and other development under the General Plan. Therefore, because the proposed project would not result significant impacts to recreational facilities, the proposed project would not have a cumulatively considerable impact on recreational facilities in conjunction with other past, current, or reasonably foreseeable future projects. **(Less than Significant Cumulative Impact)**

3.17 TRANSPORTATION

The information in this section is based in part on the Local Transportation Analysis (LTA) prepared by Hexagon Transportation Consultants on December 21, 2022 (see Appendix G). This report is included in appendix G of this document.

3.17.1 Environmental Setting

3.17.1.1 *Regulatory Framework*

State

Regional Transportation Plan

MTC is the transportation planning, coordinating, and financing agency for the nine-county San Francisco Bay Area, including Santa Clara County. MTC is charged with regularly updating the Regional Transportation Plan, a comprehensive blueprint for the development of mass transit, highway, airport, seaport, railroad, bicycle, and pedestrian facilities in the region. MTC and ABAG adopted Plan Bay Area 2040 in July 2017, which includes a Regional Transportation Plan to guide regional transportation investment for revenues from federal, state, regional and local sources through 2040.

Senate Bill 743

SB 743 establishes criteria for determining the significance of transportation impacts using a vehicle miles traveled (VMT) metric intended to promote the reduction of GHG emissions, the development of multimodal transportation networks, and a diversity of land uses. Specifically, SB 743 requires analysis of VMT in determining the significance of transportation impacts. Local jurisdictions were required by Governor's Office of Planning and Research (OPR) to implement a VMT policy by July 1, 2020.

SB 743 did not authorize OPR to set specific VMT impact thresholds, but it did direct OPR to develop guidelines for jurisdictions to utilize. CEQA Guidelines Section 15064.3(b)(1) describes factors that might indicate whether a development project's VMT may be significant. Notably, projects located within 0.50 mile of transit should be considered to have a less than significant transportation impact based on OPR guidance.

Regional and Local

Congestion Management Program

VTA oversees the Congestion Management Program (CMP), which is aimed at reducing regional traffic congestion. The relevant state legislation requires that urbanized counties in California prepare a CMP in order to obtain each county's share of gas tax revenues. State legislation requires that each CMP define traffic LOS standards, transit service standards, a trip reduction and transportation demand management plan, a land use impact analysis program, and a capital improvement element. VTA has review responsibility for proposed development projects that are expected to affect CMP-designated intersections.

Transportation Analysis Policy (City Council Policy 5-1)

As established in City Council Policy 5-1, Transportation Analysis Policy, the City of San José uses VMT as the metric to assess transportation impacts from new development. According to the policy, a residential project's transportation impact would be less than significant if the project VMT is 15 percent or more below the existing average citywide VMT per capita, respectively. Screening criteria have been established to determine which projects require a detailed VMT analysis. If a project meets the relevant screening criteria, it is considered to a have a less than significant VMT impact.

If a project's VMT does not meet the established thresholds, mitigation measures would be required, where feasible. The policy also requires preparation of a Local Transportation Analysis to analyze non-CEQA transportation issues, including local transportation operations, intersection level of service, site access and circulation, and neighborhood transportation issues such as pedestrian and bicycle access and recommend transportation improvements. The VMT policy does not negate Area Development policies and Transportation Development policies approved prior to adoption of Policy 5-1; however, it does negate the City's Protected Intersection policy as defined in Policy 5-3.

Envision San José 2040 General Plan

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

General Plan Policies - Transportation	
Policy	**Description**
CD-2.3	Enhance pedestrian activity by incorporating appropriate design techniques and regulating uses in private developments, particularly in Downtown, Urban Villages, Corridors, Main Streets, and other locations where appropriate: o Include attractive and interesting pedestrian-oriented streetscape features such as street furniture, pedestrian scale lighting, pedestrian oriented way-finding signage, clocks, fountains, landscaping, and street trees that provide shade, with improvements to sidewalks and other pedestrian ways. o Strongly discourage drive-up services and other commercial uses oriented to occupants of vehicles in pedestrian-oriented areas. Uses that serve the vehicle, such as car washes and service stations, may be considered appropriate in these areas when they do not disrupt pedestrian flow, are not concentrated in one area, do not break up the building mass of the streetscape, are consistent with other policies in this Plan, and are compatible with the planned uses of the area. o Provide pedestrian connections as outlined in the Urban Design Connections Goal and Policies. o Local retail and other active uses at the street level. o Create easily identifiable and accessible building entrances located on street frontages or paseos. o Accommodate the physical needs of elderly populations and persons with disabilities.

<table>
<tr><td></td><td>Integrate existing or proposed transit stops into project designs.</td></tr>
<tr><td>TR-1.1</td><td>Accommodate and encourage use of non-automobile transportation modes to achieve San José's mobility goals and reduce vehicle trip generation and vehicle miles traveled (VMT).</td></tr>
<tr><td>TR-1.2</td><td>Consider impacts on overall mobility and all travel modes when evaluating transportation impacts of new developments or infrastructure projects.</td></tr>
<tr><td>TR-1.3</td><td>Increase substantially the proportion of commute travel using modes other than the single-occupant vehicle. The 2040 commute mode split targets for San José residents and workers are present in the following table:
<table>
<tr><td colspan="3">Commute Mode Split Targets for 2040</td></tr>
<tr><td rowspan="2">Mode</td><td colspan="2">Commute Mode Split Targets for 2040</td></tr>
<tr><td>2008</td><td>2040 Goal</td></tr>
<tr><td>Drive alone</td><td>77.8%</td><td>No more than 40%</td></tr>
<tr><td>Carpool</td><td>9.2%</td><td>At least 10%</td></tr>
<tr><td>Transit</td><td>4.1%</td><td>At least 20%</td></tr>
<tr><td>Bicycle</td><td>1.2%</td><td>At least 15%</td></tr>
<tr><td>Walk</td><td>1.8%</td><td>At least 15%</td></tr>
<tr><td>Other means (including work at home)</td><td>5.8</td><td>See Note 1</td></tr>
<tr><td colspan="3">Source: 2008 data from American Community Survey (2008)
Note1: Working at home is not included in the transportation model, so the 2040 Goal shows percentages for only those modes currently included in the model.</td></tr>
</table></td></tr>
<tr><td>TR-1.4</td><td>Through the entitlement process for new development, fund needed transportation improvements for all transportation modes, giving first consideration to improvement of bicycling, walking and transit facilities. Encourage investments that reduce vehicle travel demand.</td></tr>
<tr><td>TR-1.6</td><td>Require that public street improvements provide safe access for motorists and pedestrians along development frontages per current City design standards.</td></tr>
<tr><td>TR-2.8</td><td>Require new development where feasible to provide on-site facilities such as bicycle storage and showers, provide connections to existing and planned facilities, dedicate land to expand existing facilities or provide new facilities such as sidewalks and/or bicycle lanes/paths, or share in the cost of improvements.</td></tr>
<tr><td>TR-3.3</td><td>As part of the development review process, require that new development along existing and planned transit facilities consist of land use and development types and intensities that contribute towards transit ridership. In addition, require that new development is designed to accommodate and to provide direct access to transit facilities.</td></tr>
<tr><td>TR-5.3</td><td>Develop projects' effects on the transportation network will be evaluated during the entitlement process and will be required to fund or construct improvements in proportion to their impacts on the transportation system. Improvements will prioritize multimodal improvements that reduce VMT over automobile network improvements.</td></tr>
</table>

TR-8.4	Discourage, as part of the entitlement process, the provision of parking spaces significantly above the number of spaces required by code for a given use.
TR-8.6	Allow reduced parking requirements for mixed-use developments and for developments providing shared parking or a comprehensive TDM program, or developments located near major transit hubs or within Villages and Corridors and other growth areas.
TR-8.9	Consider adjacent on-street and City-owned off-street parking spaces in assessing need for additional parking required for a given land use or new development.

3.17.1.2 *Existing Conditions*

Roadway Network

Regional Access

Regional access to the project site is provided via SR 237.

State Route 237 is a six-lane freeway near the project site which extends west towards El Camino Real and east toward I-880 in Milpitas. A toll lane is provided in the westbound direction between I-880 and North First Street. The freeway ends at I-880 and turns into Calaveras Boulevard heading into Milpitas. Access to the project site is provided by interchanges with Zanker Road and North First Street.

Local Access

Local access to the project site is provided via Tasman Drive, Zanker Road, North First Street, and Baypointe Parkway.

Tasman Drive is an east and west roadway that extends from Lawrence Expressway to I-880. The roadway is generally four-lanes north San José area but widens to six-lanes east of McCarthy Boulevard heading towards I-880 in Milpitas.

East of I-880, Tasman Drive changes into Great Mall Parkway heading into Milpitas. The VTA LRT system is located within the median on this street between the cities of Sunnyvale and Milpitas. On-street parking is not allowed in the area near the project site. Access to the project site is provided at intersections with Baypointe Parkway and Zanker Road.

North First Street is a north-south street that extends from downtown San José to north San José with the VTA light rail transit service running within the median. No parking is allowed along North First Street. North First Street provides access to the project site through its intersection with Tasman Drive.

Zanker Road is a north-south connector street that extends from SR 237 to the north to Old Bayshore Road to the south. In the vicinity of the project site, Zanker Road is two lanes in each direction. Parking is prohibited along both sides of the street. Zanker Road provides access by its intersections with Baypointe Parkway and Tasman Drive.

Baypointe Parkway is a two-lane street that extends from Zanker Road to the north, to near the North Park Apartment Homes in the south. Curb parking is allowed on both sides of the street. Baypointe Parkway provides direct access to the project site.

Pedestrian and Bicycle Facilities

Pedestrian facilities in the project area consist primarily of sidewalks along the streets and crosswalks with pedestrian signal heads at intersections. Sidewalks are found along all previously described local roadways and the existing network of sidewalks and crosswalks provides adequate connectivity for pedestrians between the project site and other surrounding land uses and transit stops.

Crosswalks with pedestrian signal heads and push buttons are located at all the signalized intersections with the exception of the following roadway segments:

- East leg of the Baypointe Parkway & Tasman Driver intersection
- North, east, and south legs of Zanker Road (south) & SR 237 Ramps
- East and south legs of Zanker Road (north) & SR 237 Ramps

Bicycle facilities in the project area are shown on Figure 3.17-1 and described below. Class II bikeways, which are striped bike lanes on roadways that are marked by signage and pavement markings, are present on the following roadway segments.

- Zanker Road, south of SR 237
- Baypointe Parkway, north of Tasman Drive
- Tasman Drive, within the City of San José limits (and extending into Sunnyvale to the west and Milpitas to the east)
- First Street, from Alviso to Brokaw Road

Guadalupe River Park Trail

The Guadalupe River trail system runs through the City of San José along the Guadalupe River and is shared between pedestrians and bicyclists and separated from car traffic. The Guadalupe River trail is an 11-mile continuous Class I bikeway from Curtner Avenue to Alviso in the north. This trail system can be accessed through trailheads on Tasman Drive, approximately one mile west of the project site (measured to nearest trailhead).

Existing Transit Facilities

Existing transit service in the project vicinity is provided by the VTA. The project area is served by two light rail lines and Local Bus Route 59 (see Figure 3.17-2). The nearest light rail station is located at Baypointe Station. Local Route 59 ends at the intersection of Baypointe Parkway/Tasman Drive, which is also the location of Baypointe Station.

Local Route 59 provides service between Stevens Creek Boulevard/Saratoga Avenue and Baypointe Station via Alviso. Route 59 operates along Tasman Drive and First Street in the project study area, with 30-minute headways during the weekday peak commute hours. Bus stops are located on Tasman Drive, approximately 700 feet west of the project site.

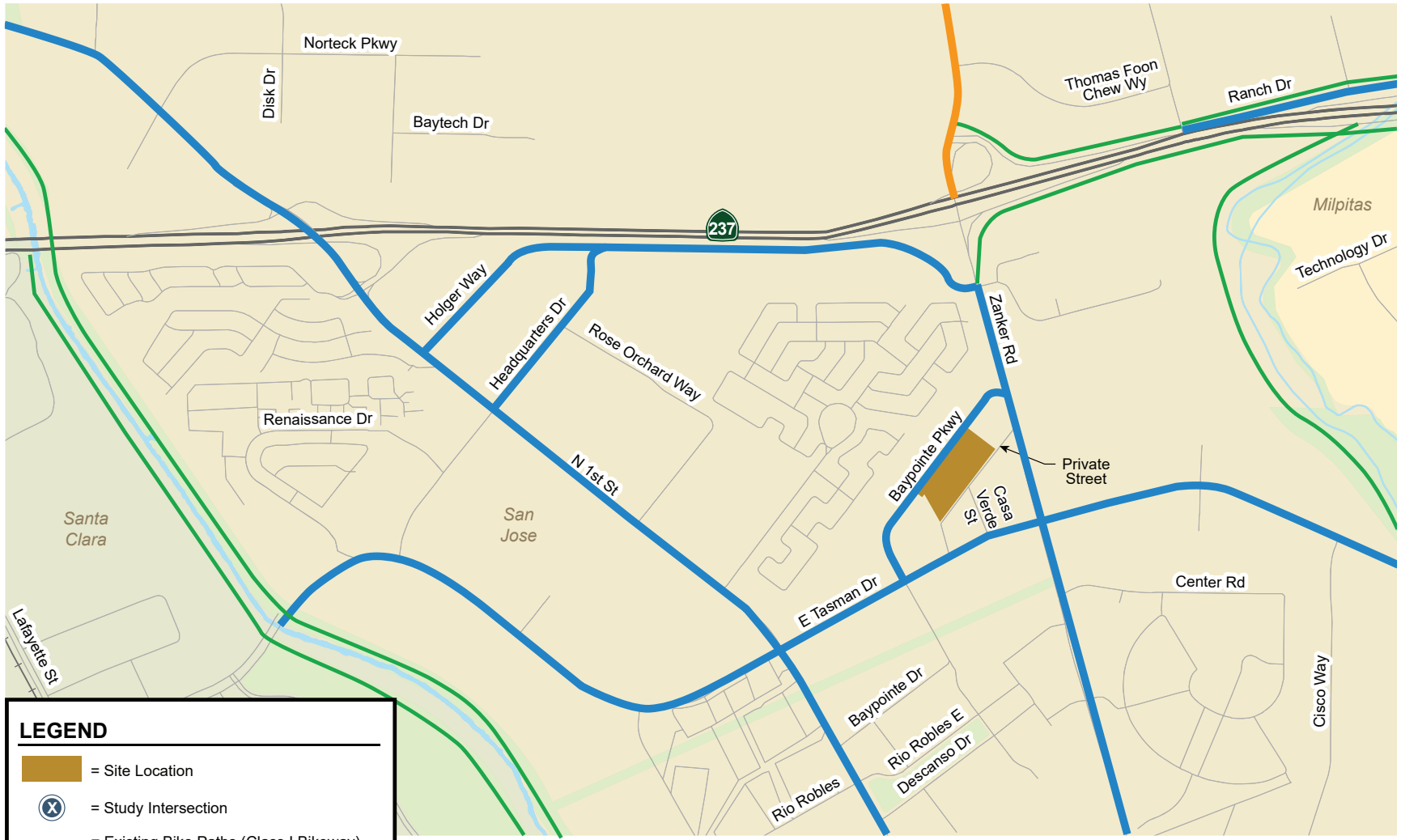
The Orange Line LRT provides service between Mountain View and Alum Rock. The Orange Line operates every 15 minutes during the weekday peak commute hours. Access to light rail is via Baypointe Station, located approximately 700 feet west of the project site.

The Blue Line LRT provides service between the Baypointe and Santa Teresa stations. The Blue Line operates every 15 minutes during the weekday peak commute hours. Access to light rail is via Baypointe Station, located approximately 700 feet west of the project site.

3.17.2 Impact Discussion

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

1) Conflict with a program, plan, ordinance or policy addressing the circulation system, including transit, roadways, bicycle lanes, and pedestrian facilities?
2) Conflict or be inconsistent with CEQA Guidelines Section 15064.3, subdivision (b)?
3) Substantially increase hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?
4) Result in inadequate emergency access?



Source: Hexagon Transportation Consultants, Inc., November 30, 2022.

BICYCLE TRANSPORTATION FACILITIES

FIGURE 3.17-1

3.17.2.1 *Project Impacts*

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

Pedestrian Facilities

Crosswalks with pedestrian signals are located at all the signalized intersections in the study area. The existing pedestrian facilities provide adequate connectivity between the project site and nearby bus stops and other points of interest.

The proposed project would connect to the existing pedestrian network and would reconstruct any pedestrian infrastructure that would be disturbed by construction of the proposed project. Specifically, the project will construct a 10 foot' wide sidewalk along the Baypointe Parkway frontage. Additionally, the proposed project would contribute to improvements to increase the safety of pedestrian infrastructure near the site including the pedestrian plaza that is part of the project. This safety would be provided by the paseo allowing protected pedestrian traffic across the site which would allow access to transit and businesses on East Tasman Drive.

The Project would construct two new curb ramps and provide crosswalk striping at the intersection of Casa Verde Street and the private street. All pedestrian infrastructure would continue to serve the proposed project and surrounding developments and the proposed project would not conflict with the plans or policies controlling pedestrian circulation around the project site. **(Less than Significant Impact)**

Bicycle Facilities

The project would not remove any bicycle facilities, nor would it conflict with any adopted plans or policies for new bicycle facilities. Existing bicycle facilities in the study area consist of Class II striped and buffered bike lanes in the immediate vicinity of the project site. The proposed project would be required by the City of San José to contribute funds to future Class IV protected bike lanes that are planned along Baypointe Parkway. The proposed project would improve access to bicycle pathways near the project site by adding bicycle parking at the project site. Therefore, through improvements included in the project design and paid improvements required by the City, the proposed project would have a less than significant impact on bicycle infrastructure around the project site. **(Less than Significant Impact)**

Transit Services

Existing bus service in the project vicinity is provided by the VTA. The project area is served by light rail and local bus route 59, and all transit options are available at Baypointe Station, located approximately 700 feet southwest of the project site. The light rail station and the existing bus stop for Route 59 are easily accessible via the network of sidewalks and crosswalks along Baypointe Parkway and the private street. It is estimated that the small increase in transit demand generated by the project could be accommodated by the current available ridership capacity of light rail and the VTA bus service. Therefore, the proposed project would result in less than significant impacts to transit services. **(Less than Significant Impact)**

Source: Hexagon Transportation Consultants, Inc., November 30, 2022.

TRANSIT LINES NEAR THE PROJECT SITE

FIGURE 3.17-2

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

City Council Policy 5-1 has established screening criteria to determine which projects require a detailed VMT analysis. Within the screening criteria, residential projects or components of projects would be exempt from VMT analysis under the following conditions: 1) the site is located within a Planned Growth Area as defined by the General Plan; 2) the site is located within 0.5 miles of an existing major transit stop or an existing stop along a high-quality transit corridor; 3) the site is located in an area in which the per capita VMT is less than or equal to the CEQA significance threshold for the land use; 4) the project has a minimum of 35 units per acre; 5) the project has no more than the minimum number of parking spaces required; and 6) the project would not negatively impact transit, bike or pedestrian infrastructure.

The project is located within a Planned Growth Area, based on the VMT Evaluation Tool, is located within one-half mile of high-quality transit (Baypointe LRT Station), is located in an area in which the per-capita VMT is less than or equal to the CEQA significance threshold, would have a residential density of 78.6 dwelling units per acre, would provide the minimum amount of parking required, and would not negatively impact transit, bike or ped infrastructure, as stated in question a). Therefore, the proposed project would be screened out of detailed VMT analysis and would have a less than significant VMT impact. **(Less than Significant Impact)**

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

The proposed project would primarily contribute passenger vehicle trips to nearby roadways and would not require substantial changes to circulation of vehicles which may result in hazardous geometric design features, such as through the inclusion of new driveway locations or street realignments. The proposed project would be accessible through three entrances including two driveways on Baypointe Parkway and one at the southeast corner of the project site. The access points to the proposed project site would provide proper sight distance of oncoming traffic compliant with San José City regulations. Therefore, the proposed project would not introduce increased hazards from new geometric design features or incompatible uses. **(Less than Significant Impact)**

d) Would the project result in inadequate emergency access?

The City of San José Fire Department requires that all portions of the apartment buildings be within 150 feet of a fire department access road, requires a minimum of six feet clearance from the property line along all sides of the building, and requires a minimum of 13.5 feet of vertical clearance to enter a parking structure. The proposed project meets the fire access requirements since all portions of the building are within 150 feet of a fire department access road, and access to the parking garage is not needed for emergency vehicles.

Additionally, for the townhouses, the City of San José Fire Department requires that all portions of the buildings be within 150 feet of a fire department access road and requires a minimum of six feet clearance from the property line along all sides of the building. The proposed project would meet the

fire access requirements. Therefore, because the proposed project would be consistent with emergency access requirements, the proposed project would not result in inadequate emergency access. **(Less than Significant Impact)**

3.17.2.2 *Cumulative Impacts*

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

The cumulative study area for Transportation Impacts is Citywide. The proposed project would be consistent with the General Plan designation of the site and is within an area of low VMT. The proposed project would not increase VMT in the project area. Further the proposed project would not result in impacts to pedestrian, bicycle, or transit facilities near the project site. The project has been designed consistent with all applicable codes and standards. Therefore, the proposed project would have a less than significant transportation impact and would not have a cumulatively considerable contribution to cumulative impacts with other nearby projects. **(Less than Significant Cumulative Impact)**

3.17.3 Non-CEQA Effects

Per *California Building Industry Association v. Bay Area Air Quality Management District,* 62 Cal. 4th 369 *(BIA v. BAAQMD)*, effects of the environment on the project are not considered CEQA impacts. A Local Transportation Analysis (LTA) has been prepared pursuant to Council Policy 5-1 to identify operational issues associated with the project. The following discussion is included for informational purposes only.

Project Trip Generation

The trip generation of the proposed project is included in Table 3.17-1 below. The proposed project would generate approximately 1,283 gross trips for surrounding areas after reductions based on location and residential density of the project site.

Table 3.17-1 Project Trip Generation Estimates

Land Use	Size	Daily Trips	AM Peak Hour			PM Peak Hour		
			In	Out	Total	In	Out	Total
Condominiums	42	198	5	11	16	16	10	26
Apartments	292	1,387	52	41	93	37	48	85
Gross Project Trips		1585	57	52	109	53	58	111
Location Based Reduction		-190	-7	-6	-13	-6	-7	-13
Project Specific Trip Reduction		-112	-4	-4	-8	-4	-4	-8
Total Net Project Trips		1283	46	42	88	43	47	90

Source: Hexagon. 210 Baypointe Parkway Residential Local Transportation Analysis. November 30, 2022.

Parking

The project's off-street parking requirements for automobiles and bicycles are based on the City of San José parking standards (San José Municipal Code Chapter 20.90, Tables 20-210 and 20-250).

Apartment Vehicle Parking

The City of San José's off-street parking requirements as described in the City's Zoning Code (Chapter 20.90, Table 20-210) for multiple dwellings with all open parking are 1.25 parking spaces for studio and one-bedroom units, 1.7 parking spaces for two-bedroom units, and 2.0 parking spaces for three-bedroom units.

Based on the City's off-street parking requirements, the 292-unit apartment building, which would consist of 209 one-bedroom units, 77 two-bedroom units, and six three-bedroom units, would require a total of 404 parking spaces.[78]

Since the project site is located within 2,000 feet of the Baypointe Light Rail Station, the project qualifies for a 20 percent reduction in the City's parking requirement, which would be reduce the number of spaces required by the proposed project to 323 residential parking spaces.[79]

The project is proposing to provide 332 residential parking spaces, including nine guest spaces, within the parking garage. As proposed, the number of parking spaces provided would meet the City's residential parking requirement.

Townhouse Vehicle Parking

The City of San José's off-street parking requirements as described in the City's Zoning Code (Chapter 20.90, Table 20-210) for one-family dwellings are two covered parking spaces per unit. As proposed, the project would include a two-car garage on the ground level of each townhouse. The townhouse portion of the project would also include eight guest parking spaces.

Bicycle Parking

The City requires one bicycle parking space for every four residential units (per Chapter 20.90, Table 20-210 of the City's Zoning Code). Thus, the project is required to provide a total of 73 bicycle parking spaces.

According to the site plan, the project is proposing to provide a total of 208 ground level bicycle parking spaces, which would exceed the City's bicycle parking requirements. The site plan shows a bike room with 146 long-term bicycle parking spaces along Baypointe Parkway and a second bike room along the private street with 42 long-term bicycle parking spaces. 20 total short-term bicycle parking spaces (bike racks) would also be provided.

[78] (214 DU x 1.25 spaces per unit)+(72 DU x 1.7 spaces per unit)+(6 DU x 2 spaces per unit) = 402 spaces
[79] 401.9 x 0.8 = 322 spaces

3.18 TRIBAL CULTURAL RESOURCES

3.18.1 Environmental Setting

3.18.1.1 *Regulatory Framework*

State

Assembly Bill 52

AB 52, effective July 2015, established a new category of resources for consideration by public agencies called Tribal Cultural Resources (TCRs). AB 52 requires lead agencies to provide notice of projects to tribes that are traditionally and culturally affiliated with the geographic area if they have requested to be notified. Where a project may have a significant impact on a tribal cultural resource, consultation is required until the parties agree to measures to mitigate or avoid a significant effect on a tribal cultural resource or until it is concluded that mutual agreement cannot be reached.

Under AB 52, TCRs are defined as follows:

- Sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe that are also either:
    - Included or determined to be eligible for inclusion in the California Register of Historic Resources, or
    - Included in a local register of historical resources as defined in Public Resources Code Section 5020.1(k).
- A resource determined by the lead agency to be a TCR.

City of San Jose

General Plan Policies ER-9.2, ER-10.1, and ER-10.3 are relevant to Tribal Cultural Resources and are provided in the General Plan Policies table in *Section 3.3, Cultural Resources*.

3.18.1.2 *Existing Conditions*

The project site is located within a mile of Coyote Creek and the Guadalupe River. In response to tribal consultation emails, Chairperson Quirina Luna Geary of the Tamien Nation responded that that the Tribe's records indicate that this is a culturally sensitive area with known tribal cultural resources.

3.18.2 Impact Discussion

For the purpose of determining the significance of the project's impact on tribal cultural resources, would the project cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code Section 21074 as either a site, feature, place, cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American tribe, and that is:

1) Listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code Section 5020.1(k)?

2) A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code Section 5024.1? In applying the criteria set forth in subdivision (c) of Public Resources Code Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe.

3.18.2.1 *Project Impacts*

a) Would the project cause a substantial adverse change in the significance of a tribal cultural resource that is listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code Section 5020.1(k)?

As mentioned in Section 3.3, the project area is moderately to highly sensitive for historic-era archaeological deposits. Based on the site's distance from the Guadalupe River and Coyote Creek, the project site has a moderate potential for Native American resources. No tribal cultural features, including sites, features, places, cultural landscapes or sacred places have been identified based on available public information.

Although there are no known sites listed or eligible for listing in the CRHR, or in a local register of historical resources as defined in Public Resources Code section 5020.1(k), Assembly Bill 52 requires lead agencies to complete formal consultations with California Native American tribes, upon request, during the CEQA process to identify previously undocumented tribal cultural resources that may be subject to significant impacts by a project. Where a project may have a significant impact on a tribal cultural resource, the lead agency's environmental document must discuss the impact and whether feasible alternatives or mitigation measures could avoid or substantially lessen the impact. This consultation requirement applies only if the tribes have sent written requests for notification of projects to the Lead Agency. In 2017, the City had sent a letter to tribal representatives in the area to welcome participation in consultation process for all ongoing, proposed, or future projects within the City's Sphere of Influence or specific areas of the City. In May 28, 2021, the Tamien Nation requested notification of all projects requiring a Negative Declaration, a Mitigated Negative Declaration, or an Environmental Impact Report within the City of San José.[80]

In response to tribal consultation emails sent on October 24, 2022, the City of San José did not receive any responses requesting further consultation for the project site. Therefore, the proposed project is not expected to have the potential to impact a tribal cultural resource during construction of the proposed project. Further, to prevent any impacts to unknown resources on site, the proposed project would implement cultural sensitivity training and other mitigation measures to protect and preserve tribal cultural resources which are listed in Cultural Resources, Section 3.5, as MM CUL-1.1 through MM CUL-1.4. Through the inclusion of these measures, the construction would be carried out in a manner to protect any resources found on site through collaboration with the local tribes. **(Less than Significant Impact with Mitigation Incorporated)**

[80] The Ohlone Tribe also submitted a request for project notifications in July 2018, but only within the downtown area of San José.

b) Would the project cause a substantial adverse change in the significance of a tribal cultural resource that is determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code Section 5024.1?

As stated above the proposed project would not result in impacts to tribal cultural resources with the implementation of mitigation measures MM CUL-1.1 through MM CUL-1.4. Therefore, the proposed project would not result in substantial adverse change in the significance of a tribal cultural resource that is determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code Section 5024.1. **(Less than Significant Impact with Mitigation Incorporated)**

3.18.2.2 *Cumulative Impacts*

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

The cumulative impact area for tribal cultural resources is the project site and adjacent parcels (within 1,000 feet). The proposed project would not result in significant impacts to sensitive tribal cultural resources on-site with the implementation of identified mitigation. Because the proposed project would reduce its impacts to a less than significant level it would not contribute considerably to impacts on tribal cultural resources when combined with other past, present, and responsibly foreseeable projects near the project site in north San José. **(Less than Significant Cumulative Impact with Mitigation Incorporated)**

3.19 UTILITIES AND SERVICE SYSTEMS

3.19.1 Environmental Setting

3.19.1.1 *Regulatory Framework*

State

State Water Code

Pursuant to the State Water Code, water suppliers providing water for municipal purposes to more than 3,000 customers or supplying more than 3,000 acre-feet (approximately 980 million gallons) of water annually must prepare and adopt an urban water management plan (UWMP) and update it every five years. As part of a UWMP, water agencies are required to evaluate and describe their water resource supplies and projected needs over a 20-year planning horizon, water conservation, water service reliability, water recycling, opportunities for water transfers, and contingency plans for drought events. The City of San José adopted its most recent UWMP in June 2021.

Assembly Bill 939

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

Assembly Bill 341

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

Assembly Bill 1826 (2014)

AB 1826 sets forth the requirements of the statewide mandatory commercial organics recycling program for businesses and multi-family dwellings with five or more units that generate two or more cubic yards of commercial solid waste per week. AB 1826 sets a statewide goal for 50 percent reduction in organic waste disposal by the year 2020.

Senate Bill 1383

SB 1383 establishes targets to achieve a 50 percent reduction in the level of the statewide disposal of organic waste from the 2014 level by 2020 and a 75 percent reduction by 2025. The bill grants CalRecycle the regulatory authority required to achieve the organic waste disposal reduction targets and establishes an additional target that at least 20 percent of currently disposed edible food is recovered for human consumption by 2025. CalRecycle released an analysis titled “Analysis of the Progress Toward the SB 1383 Organic Wase Reduction Goals” in August of 2020, which

recommended maintaining the disposal reduction targets set forth in SB 1383.[81]

California Green Building Standards Code

In January 2010, the State of California adopted the California Green Building Standards Code, establishing mandatory green building standards for all buildings in California. The code covers five categories: planning and design, energy efficiency, water efficiency and conservation, material conservation and resources efficiency, and indoor environmental quality. These standards include the following mandatory set of measures, as well as more rigorous voluntary guidelines, for new construction projects to achieve specific green building performance levels:

- Reducing indoor water use by 20 percent;
- Reducing wastewater by 20 percent;
- Recycling and/or salvaging 65 percent of nonhazardous construction and demolition debris, or meeting the local construction and demolition waste management ordinance, whichever is the more stringent (see San José-specific CALGreen building code requirements in the local regulatory framework section below); and
- Providing readily accessible areas for recycling by occupants.

Local

Envision San José 2040 General Plan

The Envision San José 2040 General contains the following policies which are specific to utilities and service systems and applicable to the proposed project:

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

[81] CalRecycle. Analysis of the Progress Toward the SB 1383 Organic Wase Reduction Goals. August 18, 2022. https://www2.calrecycle.ca.gov/Publications/Details/1693#:~:text=Analysis%20of%20the%20Progress%20Toward,(DRRR%2D2020%2D1693)&text=SB%201383%20establishes%20targets%20to,75%20percent%20reduction%20by%202025.

IN-3.10	Incorporate appropriate stormwater treatment measures in development projects to achieve stormwater quality and quantity standards and objectives in compliance with the City's National Pollutant Discharge Elimination System (NPDES) permit.
IN-4.1	Monitor and regulate growth so that the cumulative wastewater treatment demand of all development can be accommodated by San José's share of the treatment capacity at the San José/Santa Clara Regional Wastewater Facility.
IN-4.2	Maintain adequate operational capacity for wastewater treatment and water reclamation facilities to accommodate the City's economic and population growth.
IN-4.4	Maintain and operate wastewater treatment and water reclamation facilities in compliance with all applicable local, State and federal clean water, clean air, and health and safety regulatory requirements.
IN-5.3	Use solid waste reduction techniques, including source reduction, reuse, recycling, source separation, composting, energy recovery and transformation of solid wastes to extend the life span of existing landfills and to reduce the need for future landfill facilities and to achieve the City's Zero Waste goals.
MS-3.1	Require water-efficient landscaping, which conforms to the State's Model Water Efficient Landscape Ordinance, for all new commercial, institutional, industrial, and developer-installed residential development unless for recreation needs or other area functions.
MS-3.2	Promote use of green building technology or techniques that can help to reduce the depletion of the City's potable water supply as building codes permit.
MS-3.3	Promote the use of drought tolerant plants and landscaping materials for nonresidential and residential uses.
MS-17.1	Manage the limited water supply in an environmentally, fiscally, and economically sustainable manner, by working with local, regional and statewide agencies to establish policies that promote water use efficiency programs, including recycled water programs to support the expanded use of recycled water within San José and neighboring jurisdictions.
MS-19.1	Require new development to contribute to the cost-effective expansion of the recycled water system in proportion to the extent that it receives benefit from the development of a fiscally and environmentally sustainable local water supply.
MS-19.4	Require the use of recycled water wherever feasible and cost-effective to serve existing and new development.
EC-5.16	Implement the Post-Construction Urban Runoff Management requirements of the City's Municipal NPDES Permit to reduce urban runoff from project sites.
IP-17.1[82]	Use San José's adopted Green Vision as a tool to advance the 2040 General Plan Vision for Environmental Leadership. San José's Green Vision is a comprehensive fifteen-year plan to create jobs, preserve the environment, and improve quality of life for our community, demonstrating that the goals of economic growth, environmental stewardship and fiscal sustainability are inextricably linked. Adopted in 2007, San José's Green Vision,

[82] Policy IP-17.1, as shown, is modified in this list to reflect only those items relevant to the discussion of solid waste.

	adopted in 2007, establishes the following Environmental Leadership goals for the City through 2022: 5. Divert 100 percent of the waste from our landfill and convert waste to energy; Although the City has one of the highest waste diversion rates of any large city in the nation, many waste reduction opportunities remain. If San José and other local cities achieve no further waste reduction efforts over the next 15 years, solid waste landfill space in the region could reach capacity.

In addition to the above-listed San José General Plan policies, new development in San José is also required to comply with programs that mandate the use of water-conserving features and appliances and the Santa Clara County Integrated Watershed Management (IWM) Program, which minimizes solid waste.

San José Zero Waste Strategic Plan/Climate Smart San José

The Climate Smart San José provides a comprehensive approach to achieving sustainability through new technology and innovation. The Zero Waste Strategic Plan outlines policies to help the City of San José foster a healthier community and achieve its Climate Smart San José goals, including 75 percent waste diversion by 2013 and zero waste by 2022. The Climate Smart San José also includes ambitious goals for economic growth, environmental sustainability, and enhanced quality of life for San José residents and businesses.

California Green Building Standards Code Compliance for Construction, Waste Reduction, Disposal and Recycling

The City of San José requires 75 percent diversion of nonhazardous construction and demolition debris for projects that quality under CALGreen, which is more stringent than the state requirement of 65 percent (San José Municipal Code Section 9.10.2480).

San José Construction & Demolition Diversion Program

The Construction and Demolition Diversion Deposit Program (CDDD) requires projects to divert at least 50 percent of total projected project waste to be refunded the deposit. Permit holders pay this fully refundable deposit upon application for the construction permit with the City if the project is a demolition, alteration, renovation, or a certain type of tenant improvement. The minimum project valuation for a deposit is $2,000 for an alteration-renovation residential project and $5,000 for a non-residential project. There is no minimum valuation for a demolition project and no square footage limit for the deposit applicability. The deposit is fully refundable if construction and demolition materials were reused, donated, or recycled at a City-certified processing facility. Reuse and donation require acceptable documentation, such as photos, estimated weight quantities, and receipts from donations centers stating materials and quantities.

San José Sewer System Management Plan

The purpose of the Sewer System Management Plan (SSMP) is to provide guidance to the City in the operation, maintenance, and rehabilitation of the sewer assets of the City of San José. The SSMP includes construction standards and specifications for the installation and repair of the collection system and its associated infrastructure.

Private Sector Green Building Policy

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

3.19.1.2 *Existing Conditions*

Water Supply

Water service is provided to the City of San José by three water retailers, San José Water (SJW), the City of San José Municipal Water System, and the Great Oaks Water Company. Water service to the project site is provided by San José Municipal Water. The San José Municipal Water System is owned and operated by the City of San José and supplies water to more than 100,000 people making it the fourth-largest water retailer in Santa Clara County.[83]

The project site is occupied by an industrial building and uses approximately 39,719 gallons per day.[84] The existing infrastructure located in Baypointe Parkway is an eight-inch water line.

Wastewater

Wastewater from the City of San José is treated at the San José-Santa Clara Regional Wastewater Facility (the Facility) which is administered and operated by the City Department of Environmental Services. The Facility treats an average of 110 million gallons of wastewater per day and serves 1.4 million residents. The City generates approximately 69.8 million gallons per day (mgd) of dry weather sewage flow. The City's capacity allocation at the Facility is approximately 108.6 mgd, leaving the City with approximately 38.8 mgd of excess treatment capacity. The General Plan FEIR states that average wastewater flow rates are approximately 70 to 80 percent of domestic water use and 85 to 95 percent of business use (assuming no internal recycling or reuse programs).

The project site generates approximately 37,733 gallons per day of wastewater disposal.[85] The existing infrastructure is an eight-inch sanitary sewer pipe in Baypointe Parkway.

Storm Drainage

The City of San José owns and maintains the municipal stormwater drainage system which serves the project site. Existing utilities consist of a 27 to 30-inch storm drain line located in Baypointe Parkway. Storm drain inlets are located at the southwestern corner of the project site. The project site

[83] City of San José. History of the Water System. https://www.sanjoseca.gov/your-government/environment/water-utilities/drinking-water/about-san-jose-municipal-water-system. Accessed December 7, 2022.
[84] 231,250 gallons per 1,000 square feet per year x 67,984 square feet = 14,497,588 gallons per year = 39,719 gallons per day
[85] CalEEMod Water Use Rates.
39,719 gallons per day x 0.95 = 37,733 gallons per day

is currently 88 percent (169,526 square feet) impervious surface area which contributes to runoff from the site.

Solid Waste

Santa Clara County's Integrated Waste Management Plan (IWMP) was approved by the California IWMB in 1996 and was reviewed in 2004 and 2007. Based on the IWMP, the County has adequate landfill capacity. In October 2007, the San José City Council adopted a Zero Waste Resolution which set a goal of 75 percent waste diversion by 2013 and zero waste by 2022. The City landfills approximately 700,000 tons per year of solid waste including 578,000 tons per year at landfill facilities in San José. The total permitted landfill capacity of the five operating landfills in the City is approximately 5.3 million tons per year. According to the IWMP, the County has adequate disposal capacity beyond 2030.[86]

All solid waste in San José is landfilled at Newby Island Sanitary Landfill (NISL). The City has an existing contract with NISL through 2041 with the option to extend the contract for as long as the landfill is open. The estimated closure date for NISL is 2041.[87] The City has an annual disposal allocation for 395,000 tons per year. As of December 2019, NISL had approximately 14.6 million cubic yards of capacity remaining.[88]

Solid waste disposal at the project site is provided by Republic Services. The project site currently generates 462 pounds of solid waste per day.[89]

3.19.2 Impact Discussion

For the purpose of determining the significance of the project's impact on utilities and service systems, would the project:

1) Require or result in the relocation or construction of new or expanded water, wastewater treatment or stormwater drainage, electric power, natural gas, or telecommunications facilities, the construction or relocation of which could cause significant environmental effects?
2) Have insufficient water supplies available to serve the project and reasonably foreseeable future development during normal, dry and multiple dry years?
3) Result in a determination by the wastewater treatment provider which serves or may serve the project that it does not have adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?
4) Generate solid waste in excess of state or local standards, or in excess of the capacity of local infrastructure, or otherwise impair the attainment of solid waste reduction goals?
5) Be noncompliant with federal, state, or local management and reduction statutes and regulations related to solid waste?

[86] Santa Clara County. *Five-Year CIWMP/RAIWMP Review Report*. June 2016.
[87] North, Daniel. General Manager, Republic Services. Personal communications. November 14, 2019.
[88] Ibid.
[89] CalEEMod Waste Generation Rates.
1.24 tons per 1,000 square feet per year x 67,984 square feet = 84.30 tons per year = 462 pounds per day

3.19.2.1 *Project Impacts*

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

The proposed project would result in construction of 42 townhouses and 292 apartment units which would add approximately 1,028 residents to the site. The water use for the proposed project would be approximately 97,206 gallons per day, a net increase of 57,487 gallons per day compared to existing conditions.[90] As stated above the wastewater consumption assumed for residential developments in the General Plan FEIR is 80 percent of total water usage. The proposed project would create approximately 77,764 gallons of wastewater per day, a net increase of 40,031gallons per day compared to existing conditions.[91] The project would connect three new storm drain laterals to the existing 27 to 30-inch RCP storm main along Baypointe Parkway and three new sanitary sewer laterals to the existing eight-inch VCP sanitary main along Baypointe Parkway.

Water Consumption

The General Plan concludes that new or expanded entitlements for water supplies would not be required to serve future development under the proposed General Plan conditions which include policies and regulations for water conservation. The proposed General Plan also includes policies that only allow new development to occur when adequate water supply and facilities exist to serve that development. The proposed project would be consistent with the General Plan land use assumptions for the project site and would comply with all water consumption policies to reduce water use on -site. Additionally, recycled water infrastructure is available for the site and would be used to irrigate ground level landscaping on the project site. Therefore, the proposed project would result in a less than significant impact on water consumption and would not require the construction of new or expanded water facilities. **(Less than Significant Impact)**

Wastewater Utilities

The project would increase demand for wastewater treatment which would increase the processing requirements of the Facility. According to the General Plan, development included in the General Plan would not exceed the processing capabilities of the Facility due to policies, existing regulations, and local programs included in the General Plan. The proposed project is consistent with the expected land use defined in the General Plan and is currently served by wastewater infrastructure; therefore, the project would not result in a need for relocation of construction of new or expanded wastewater processing facilities. **(Less than Significant Impact)**

Stormwater Drainage

The proposed project is located within north San José, which is predominately developed and paved.

[90] Water use for Townhomes and midrise apartments is assumed to be the same
106,229 gallons per DU per year for indoor and outdoor use x (42 Townhomes + 292 DU) = 35,480,486 gal per year
This is equivalent to 97,206 gallons per day

[91] 97,206 gallons per day * 80 percent = 77,764 gallons per day

It was determined that implementation of the 2040 General Plan would not require or result in the construction of a new storm water facilities or expansion of existing facilities. Additionally, implementation of the 2040 General Plan policies would ensure that sufficient storm drainage facilities are incorporated into development plans and new development or redevelopment projects would not conflict with the use, operation, or maintenance of any existing storm drain lines. The proposed project would comply with existing stormwater management policies and would include measures to control stormwater on the project site. The project would not result in an increase in stormwater runoff compared to existing conditions (see Section 3.10). Therefore, the proposed project would not require additional drainage infrastructure to serve the site and would result in a less than significant impact. **(Less than Significant Impact)**

Electric Power, Natural Gas, or Telecommunications Facilities

The project would comply with CALGreen and the City's Private Sector Green Building Policy and would be consistent with planned growth in the General Plan 2040. Additionally, the project would comply with the policies and regulations identified in the General Plan 2040 FEIR. The project would utilize existing utility connections to connect to the City's electric and telecommunications facilities. Additionally, the proposed project would not include natural gas appliances or use natural gas throughout the development. Although the project would increase the demand on existing infrastructure in the City, relocation of existing or construction of new facilities would not be needed to serve the proposed project. As a result, the proposed project would have a less than significant impact on these facilities. **(Less than Significant Impact)**

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

Water demand could exceed water supply with implementation of the General Plan during dry and multiple dry years after 2025. Although the projected water demand would increase by 54,124 gallons per day, the project is included in the development assumptions of the General Plan. Therefore, there would be sufficient water supply available to serve the project. The project would have a less than significant impact on water supply. **(Less than Significant Impact)**

c) Would the project result in a determination by the wastewater treatment provider which serves or may serve the project that it does not have adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?

The proposed project would be consistent with planned growth from build out of the San José 2040 General Plan. Development allowed under the 2040 General Plan would not exceed the City's allocated capacity at the Facility; therefore, implementation of the project would have adequate capacity to serve the project's projected demand in addition to the Facility's existing commitments. **(Less than Significant Impact)**

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

The proposed project would add 334 residential units to the project site and would remove the existing industrial building. This would result in a net increase of approximately 379 pounds of waste per day over existing uses.[92] The proposed project is consistent with the General Plan land use for the project site and would, therefore, be consistent with the waste generation expected for full build out of the General Plan. The proposed project would not generate solid waste in excess of the capacity of local infrastructure, or otherwise impair the attainment of solid waste reduction goals. **(Less than Significant Impact)**

e) Would the project be noncompliant with federal, state, or local management and reduction statutes and regulations related to solid waste?

Consistent with CALGreen requirements, the proposed project would be required to provide on-site recycling facilities, develop a construction waste management plan, salvage at least 75 percent of nonhazardous construction/demolition debris (by weight), and implement other waste reduction measures. Additionally, the estimated increases in solid waste generation from future development would be avoided through implementation of the City's Zero Waste Strategic Plan. The Zero Waste Strategic Plan, in combination with existing regulations and programs, would ensure that the proposed project would not result in significant impacts on solid waste disposal capacity in excess of state or local standards or in excess of NISL capacity. **(Less than Significant Impact)**

3.19.2.2 *Cumulative Impacts*

Would the project result in a cumulatively considerable contribution to a significant cumulative utilities and service systems impact?

The cumulative study area for utilities is Citywide. As stated above the proposed project would comply with the goals and policies included in the General Plan and would be consistent with the General Plan land use of the project site. The General Plan identifies cumulative impacts of development planned within the City and determined that planned development would not result in cumulative impacts on utilities in the City. Therefore, the proposed project would not result in cumulatively considerable contribution to any significant cumulative utilities and service systems impacts. **(Less than Significant Cumulative Impact)**

[92] 0.46 tons per year per dwelling unit for a townhome/ midrise apartments.
0.46 x 334 DU = 153.64 tons per year = 841 pounds per day

3.20 WILDFIRE

3.20.1 Environmental Setting

3.20.1.1 *Regulatory Framework*

State

Fire Hazard Severity Zones

CAL FIRE is required by law to map areas of significant fire hazards based on fuels, terrain, weather, and other relevant factors. Referred to as Fire Hazard Severity Zones (FHSZs), these maps influence how people construct buildings and protect property to reduce risk associated with wildland fires. FHSZs are divided into areas where the state has financial responsibility for wildland fire protection, known as state responsibility areas (SRAs), and areas where local governments have financial responsibility for wildland fire protection, known as local responsibility areas (LRAs). Homeowners living in an SRA are responsible for ensuring that their property is in compliance with California's building and fire codes. Only lands zoned for very high fire hazard are identified within LRAs.

California Fire Code Chapter 47

Chapter 47 of the California Fire Code sets requirements for wildland-urban interface fire areas that increase the ability of buildings to resist the intrusion of flame or burning embers being projected by a vegetation fire, in addition to systematically reducing conflagration losses through the use of performance and prescriptive requirements.

California Public Resources Code Section 4442 through 4431

The California Public Resources Code includes fire safety regulations that restrict the use of equipment that may produce a spark, flame, or fire; require the use of spark arrestors on construction equipment that uses an internal combustion engine; specify requirements for the safe use of gasoline-powered tools on forest-covered land, brush-covered land, or grass-covered land; and specify fire suppression equipment that must be provided onsite for various types of work in fire-prone areas. These regulations include the following:

- Earthmoving and portable equipment with internal combustion engines would be equipped with a spark arrestor to reduce the potential for igniting a wildland fire (Public Resources Code Section 4442);
- Appropriate fire suppression equipment would be maintained during the highest fire danger period, from April 1 to December 1 (Public Resources Code Section4428);
- On days when a burning permit is required, flammable materials would be removed to a distance of 10 feet from any equipment that could produce a spark, fire, or flame, and the construction contractor would maintain appropriate fire suppression equipment (Public Resources Code Section 4427); and
- On days when a burning permit is required, portable tools powered by gasoline-fueled internal combustion engines would not be used within 25 feet of any flammable materials (Public Resources Code Section 4431).

California Code of Regulations Title 14

The California Board of Forestry and Fire Protection has adopted regulations, known as SRA Fire Safe Regulations, which apply basic wildland fire protection standards for building, construction, and development occurring in a SRA. The future design and construction of structures, subdivisions and developments in SRAs are required to provide for the basic emergency access and perimeter wildfire protection measures discussed in Title 14.

Fire Management Plans

CAL FIRE has developed an individual Unit Fire Management Plan for each of its 21 units and six contract counties. CAL FIRE has developed a strategic fire management plan for the Santa Clara County Unit, which covers the project area and addresses citizen and firefighter safety, watersheds and water, timber, wildlife and habitat (including rare and endangered species), unique areas (scenic, cultural, and historic), recreation, range, structures, and air quality. The plan includes stakeholder contributions and priorities and identifies strategic areas for pre-fire planning and fuel treatment as defined by the people who live and work with the local fire issues.

Local

San José Fire Department Wildland-Urban Interface Fire Conformance Policy

Buildings proposed to be built within the SJFD WUI shall comply with all WUI materials and construction methods per CBC Chapter 7A and CRC Section R337.[93] The applicant shall, prior to construction, provide sufficient detail to demonstrate that the building proposed to be built complies with this policy. Building Permit Plans are also to be approved by the SJFD.

3.20.1.2 *Existing Conditions*

The project site is located in an urbanized area is not located in a Fire Hazard Severity Zone according to Cal Fire, Fire Risk Assessment Program maps.[94]

3.20.2 Impact Discussion

For the purpose of determining the significance of the project's impact on wildfire, if located in or near state responsibility areas or lands classified as very high fire hazard severity zones, would the project:

1) Substantially impair an adopted emergency response plan or emergency evacuation plan?
2) Due to slope, prevailing winds, and other factors, exacerbate wildfire risks, and thereby expose project occupants to pollutant concentrations from a wildfire or the uncontrolled spread of a wildfire?
3) Require the installation or maintenance of associated infrastructure (such as roads, fuel breaks, emergency water sources, power lines, or other utilities) that may exacerbate fire risk

[93] San José Fire Department. *Wildland-Urban Interface (WUI) Fire Conformance Policy.* January 1, 2017. https://www.sanjoseca.gov/Home/ShowDocument?id=9345
[94] Cal Fire. Fire Hazard Severity Zone Viewer. Accessed September 6, 2022. https://egis.fire.ca.gov/FHSZ/.

or that may result in temporary or ongoing impacts to the environment?

4) Expose people or structures to significant risks, including downslope or downstream flooding or landslides, as a result of runoff, post-fire slope instability, or drainage changes?

3.20.2.1 *Project Impacts*

The project site is not located in or near state responsibility areas or lands classified as very high fire hazard severity zones; therefore, the project would not result in wildfire impacts. **(No Impact)**

3.20.2.2 *Cumulative Impacts*

The project site is not located in or near state responsibility areas or lands classified as very high fire hazard severity zones; therefore, the project would not result in cumulative wildfire impacts. **(No Cumulative Impact)**

SECTION 4.0 GROWTH-INDUCING IMPACTS

Impact GRO-1:	The project would not foster or stimulate significant economic or population growth in the surrounding environment. **(Less than Significant Impact)**

The CEQA Guidelines require that an EIR identify the likelihood that a proposed project could "foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment" (Section 15126.2[e]). This section of the Draft EIR is intended to evaluate the impacts of such growth in the surrounding environment. Examples of projects likely to have significant growth-inducing impacts include removing obstacles to population growth, for example by extending or expanding infrastructure beyond what is needed to serve the project. Other examples of growth inducement include increases in population that may tax existing community service facilities, requiring construction of new facilities that could cause significant environmental effects.

The proposed project would not result in a significant expansion in infrastructure because the project site is already served by utilities and public services. The proposed project would increase the permanent population of the site, however, this growth is anticipated in the General Plan and would not lead to increases in the use of community service facilities beyond those expected in the General Plan. Additionally, as stated in the Utilities and Service Systems Section (Section 3.19), the proposed project would not require the expansion of utilities facilities and, therefore, would not allow for future growth by expanding these utilities. The proposed project would not result in significant economic or population growth in the surrounding environment.

SECTION 5.0 SIGNIFICANT AND IRREVERSIBLE ENVIRONMENTAL CHANGES

CEQA and the CEQA Guidelines require that an EIR address "significant irreversible environmental changes which would be involved in the proposed project, should it be implemented." [§15126(c)] The proposed project would redevelop a currently developed site. The project would not result in significant and irreversible environmental changes to the project site.

Future development on-site would involve the use of non-renewable resources both during construction phases and future operations/use of the site. Construction would include the use of building materials, including materials such as petroleum-based products and metals that cannot reasonably be re-created. Construction also involves significant consumption of energy, usually petroleum-based fuels that deplete supplies of non-renewable resources. The proposed project would also result in the increased consumption of water.

The City of San José encourages the use of building materials that include recycled materials and makes information available on those building materials to developers. The new buildings would be built to current codes, which require insulation and design to minimize wasteful energy consumption. The proposed development would be constructed in compliance with the City's Council Policy 6-32 and the City's Green Building Ordinance. In addition, the project would be constructed consistent with City Council Policy 6-29 and the Regional Water Quality Control Board Municipal Regional Stormwater National Pollution Discharge Elimination System Permit to avoid impacts to waterways from any increase in impervious surfaces. Lastly, the site provides a residential building in proximity to existing transportation networks. The proposed project would, therefore, facilitate a more efficient use of resources over the lifetime of the project.

SECTION 6.0 SIGNIFICANT AND UNAVOIDABLE IMPACTS

The proposed project, with implementation of identified mitigation measures, would not result in any significant and unavoidable impacts.

SECTION 7.0 ALTERNATIVES

CEQA requires that an EIR identify alternatives to a project as it is proposed if the project would result in one or more significant unavoidable impacts. Two key provisions from the CEQA Guidelines pertaining to the discussion of alternatives are included below:

> **Section 15126.6(a). Consideration and Discussion of Alternatives to the Proposed Project.** An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. An EIR need not consider every conceivable alternative to a project. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decision making and public participation. An EIR is not required to consider alternatives which are infeasible. The lead agency is responsible for selecting a range of project alternatives for examination and must publicly disclose its reasoning for selecting those alternatives. There is no ironclad rule governing the nature or scope of the alternatives to be discussed other than the rule of reason.
>
> **Section 15126.6(b). Purpose.** Because an EIR must identify ways to mitigate or avoid the significant effects that a project may have on the environment (Public Resources Code Section 21002.1), the discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some degree the attainment of the project objectives, or be more costly.

Other elements of the Guidelines discuss that alternatives should include enough information to allow a meaningful evaluation and comparison with the proposed project. The CEQA Guidelines state that if an alternative would cause one or more additional impacts, compared to the proposed project, the discussion should identify the additional impact, but in less detail than the significant effects of the proposed project.

The three critical factors to consider in selecting and evaluating alternatives are, therefore: 1) the significant impacts from the proposed project which could be reduced or avoided by an alternative, 2) consistency with the project's objectives, and 3) the feasibility of the alternatives available. Each of these factors is discussed below.

7.1 OBJECTIVES OF THE PROJECT

As identified in Section 2.3, the applicant's objectives for the project are as follows:

- Develop a mix of rental and for-sale multi-family housing units (including affordable units in the apartment building) to address the regional housing shortage.
- Provide affordable housing units in accordance with the City of San José Housing Element.
- Provide a variety of housing near the Baypointe Santa Clara Valley Transportation Authority (VTA) Light Rail Station and employment centers to reduce Vehicle Miles Traveled (VMT).

- Replace an underutilized office building with modern Class-A residential construction consistent with the Transit Employment Residential Overlay District (TERO), North San José (NSJ) Design Guidelines and Citywide Design Standards and Guidelines.
- Improve public pedestrian and bicycle access in the neighborhood with a publicly accessible central paseo. Utilize this paseo and building frontages to create a desirable streetscape and improve Baypointe Parkway.
- Provide on-site open space amenities for future residents.
- Enhance the architectural and visual character of the neighborhood by building townhouses and an apartment building with setbacks, massing breaks, and roof deck elements on select townhouses.

7.2 SIGNIFICANT IMPACTS OF THE PROJECT

As mentioned above, the CEQA Guidelines advise that the alternatives analysis in an EIR should be limited to alternatives that would avoid or substantially lessen any of the significant effects of the project and would achieve most of the basic project objectives. Significant impacts of the project include:

- Air Quality: The proposed project would have a Cancer Risk rate of 42.40 cases per million which would exceed the Cancer Risk Threshold of 10 cases per million during construction of the project.
- Biological Resources: Construction activities associated with the proposed project could result in the loss of fertile eggs, nesting raptors or other migratory birds, or nest abandonment.
- Cultural Resources: Project ground disturbing activities could result in a substantial adverse change in the significance of an archaeological resource.
- Hazards and Hazardous Materials: Ground disturbing activities during construction and potential exposure to contamination during project occupancy would result in exposure of soils which contain arsenic, cobalt, lead, and nickel in excess of residential screening levels.
- Noise: The proposed project would result in substantial noise creation when construction is occurring on the boundaries of the project site which may exceed 80 dBA, which is beyond the Federal Transit Administration (FTA) standards for construction noise disturbance.

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

7.3 ALTERNATIVES

Pursuant to the CEQA Guidelines: "An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project and evaluate the comparative merits of the alternatives." (CEQA Guidelines, § 15126.6, subd. (a), italics added.) As this implies, "an agency may evaluate on-site alternatives, off-site alternatives, or both." (Mira Mar, supra, 119 Cal.App.4th at p. 491.) The CEQA Guidelines thus do not require analysis of

off-site alternatives in every case. Nor does any statutory provision in CEQA "expressly require a discussion of alternative project locations." (119 Cal.App.4th at p. 491 citing §§ 21001, subd. (g), 21002.1, subd. (a), 21061.) CEQA Guidelines Section 15126.6(c) provides: "Among the factors that may be used to eliminate alternatives from detailed discussion in an EIR are: (i) failure to meet most of the basic project objectives, (ii) infeasibility, or (iii) inability to avoid significant environmental impacts."

7.3.1 Feasibility of Alternatives

CEQA, the CEQA Guidelines, and the case law on the subject have found that feasibility can be based on a wide range of factors and influences. The Guidelines advise that such factors may include (but are not necessarily limited to) the suitability of an alternate site, economic viability, availability of infrastructure, consistency with a general plan or with other plans or regulatory limitations, jurisdictional boundaries, and whether the project proponent can "reasonably acquire, control or otherwise have access to the alternative site". (Section 15126.6[f][1]).

7.3.2 Analysis of Project Alternatives

7.3.2.1 *Alternatives Considered and Rejected from Further Consideration*

Location Alternative

CEQA Guidelines Section 15126.6(2)(A) provides: "The key question and first step in analysis is whether any of the significant effects of the project would be avoided or substantially lessened by putting the project in another location." Here, the project would not result in any significant unavoidable impacts. Even so, the possibility of an alternate project location was analyzed and determined to be infeasible for the following reasons.

In order to identify an alternative site that might be reasonably considered to "feasibly accomplish most of the basic purposes" of the project, and would also reduce significant impacts, it was assumed that such a site would ideally have the following characteristics:

- Vacant
- Controlled by the Applicant
- Would reduce impacts of the project

However, the location alternative would require the proposed project to be constructed at an alternative location owned or otherwise controlled by the project proponent. The project proponent is not a public agency capable of invoking eminent domain, therefore, any alternative location(s) would need to be sites which the applicant was capable of acquiring and which allow for high density residential uses.

The feasibility of the project proponent acquiring or controlling a similar property suitable for meeting the project objectives identified for the proposed project is unknown. Further, CEQA Guideline Section 15126.6(a) indicates an EIR shall "describe a range of reasonable alternatives to the project, or to the location," which case law has confirmed means an EIR need not always include a location alternative, which as noted above, is more meaningful for a public agency able to acquire

an alternative site through eminent domain, if needed, while a private project applicant is limited to a site(s) they can feasibly acquire or control. Additionally, a relocation of the project would not result in a reduction of impacts associated with the proposed project, because it would cause those impacts, largely related to construction activity near residences, to occur at another location. Residential uses are frequently placed near other similar uses and in residential neighborhoods, and constructing the project at an alternative location that was similarly situated near housing would lead to similar construction related impacts that would require essentially the same mitigation measures identified for the project to reduce impacts to less than significant levels. Therefore, discussion of an alternative location for the proposed project is not required or useful and this alternative is rejected from further consideration.

Reduced Scale Alternative

The primary impacts of the project would result from construction. Therefore, a reduced scaled alternative that would reduce the size of a project in massing or density would reduce the impacts of a proposed project by shortening the construction timeframe and/or reducing the number/duration of heavy equipment used on-site. Under a reduced scale alternative, the proposed project would be downsized sufficiently to reduce impacts created by the proposed project commensurately, such as construction air quality and noise.

This EIR discloses that no significant unavoidable project impacts would result simply from the scale of the project, since the proposed project is relatively similar in height (four to five story buildings) and massing of the nearby residential structures. Additionally, all impacts that would occur from implementation of the proposed project are capable of being mitigated to less than significant levels.

Impacts to air quality during construction were associated with the Cancer Risk Rate exceeding the thresholds established by BAAQMD. The proposed project was found to have a risk rate of approximately four times the established threshold without mitigation. Therefore, the reduced scale project would have to reduce the size of the project by approximately 75 percent to proportionally reduce the Cancer Risk Rate from construction activities below the thresholds (without mitigation). Additionally, if the scale was reduced, the project would likely have greater setbacks and vibratory equipment would not be needed along the boundaries of the site. A reduction of approximately 251 units would not, however, meet the project objectives or the City's development goals within a transit priority area. It would also significantly reduce the number of or possibly preclude inclusion of the proposed affordable residential units.

Any reduced size project that would reduce the number of units by less than 75 percent would also have a reduction in construction air quality and noise impacts, but the reduction would not be of sufficient size to fully avoid the identified construction impacts.

Reducing the scale of the project would still require the removal of trees and disturbance of soils underlaying the site. As a result, the biological, cultural resources, hazardous materials, and tribal cultural resources impacts would remain significant and would require mitigation to reduce impacts to less than significant. Therefore, reducing the scale of the project would not substantially lessen or avoid these impacts.

A reduction in the size of the project while still meeting the density requirements of the TERO

overlay would not reduce impacts significantly enough to result in changes in impacts of the proposed project. Additionally, a reduction in the scale of the proposed project to the level, significant enough to reduce air quality impacts, would not achieve the density goal of the General Plan Overlay for the project site and would not meet all the objectives of the project.

7.3.2.2 *Alternatives Considered*

No Project – No Development Alternative

The CEQA Guidelines [§15126(d)4] require that when a project would result in a significant unavoidable impact, an EIR must specifically discuss a "No Project" alternative, which shall address both "the existing conditions, as well as what would be reasonably expected to occur in the foreseeable future if the project is not approved, based on current plans and consistent with available infrastructure and community services."

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

No Project – Develop with Base General Plan and Zoning Development

The No Project – Develop with Base General Plan and Zoning Development Alternative would not construct the proposed project as designed and would instead allow for the future construction of another commercial or residential development consistent with the General Plan designation of Industrial Park and TERO overlay for the project site which allows housing with a density of between 75 and 250 dwelling units per acre. These would include a replacement commercial building with a similar or larger commercial building or development of a high-density residential project including a project larger than the proposed project with up to 250 dwelling units per acre likely similar or potentially larger in scale than the proposed project. Both options would require similar or greater site disturbance and would construct buildings of similar or larger scale to the proposed project adjacent to the same sensitive receptors. This would create construction impacts and require excavation comparable to the proposed project, which would result in similar impacts. Therefore, this alternative would not reduce or avoid any of the impacts identified for the proposed project.

7.3.3 Comparison of Environmental Impacts for Alternatives to the Project

A comparison of alternatives based upon whether they avoid or substantially lessen the significant environmental effects is shown in the table below.

Impacts	Proposed Project	No Project – No Development Alternative	No Project – Develop with Base General Plan and Zoning Development
The proposed project would have a Cancer Risk rate of 42.40 cases per million which would exceed the Cancer Risk Threshold of 10 cases per million during construction of the project.	LTSM	**NI**	LTSM
Construction activities associated with the proposed project could result in the loss of fertile eggs, nesting raptors or other migratory birds, or nest abandonment.	LTSM	**NI**	LTSM
Project ground disturbing activities could result in a substantial adverse change in the significance of an archaeological resource.	LTSM	**NI**	LTSM
Project ground disturbing activities would result exposure of soils which contain arsenic, cobalt, lead, and nickel in excess of residential screening levels.	LTSM	**NI**	LTSM
The proposed project would result in substantial noise creation when construction is occurring on the boundaries of the project site which may exceed 80 dBA, which is beyond the FTA standards for noise disturbance.	LTSM	**NI**	LTSM

7.3.4 Environmentally Superior Alternative

The CEQA Guidelines state that an EIR shall identify an environmentally superior alternative. If the environmentally superior alternative is the "No Project" alternative, the EIR shall also identify an environmentally superior alternative among the other alternatives (Section 15126.6(e)(2)).

Based on the above discussion, the environmentally superior alternative is the No Project – No Development Alternative. The No Project – No Development Alternative would retain the site in its current condition. Retaining the status quo on the site would avoid all construction and operational impacts associated with the project. Therefore, the No Project – No Development Alternative is the environmentally superior alternative; however, it would not achieve the project objectives.

Beyond the No Project – No Development Alternative, the Reduced Scale Alternative (which was considered but rejected) would be the environmentally superior alternative. The Reduced Scale Alternative would result in a reduction of air quality and noise impacts compared to the proposed project but would still require mitigation to reduce the impacts to less than significant. This

alternative would not achieve the density goal of the General Plan Overlay for the project site and would not meet all the objectives of the project.

SECTION 8.0 REFERENCES

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

Office of Planning and Research. "CEQA Review of Housing Projects Technical Advisory." Accessed August 15, 2022. https://opr.ca.gov/docs/20190208-TechAdvisory-Review_of_Housing_Exemptions.pdf.

California Department of Transportation. "Scenic Highways." Accessed August 15, 2022. https://dot.ca.gov/programs/design/lap-landscape-architecture-and-community-livability/lap-liv-i-scenic-highways.

California Department of Transportation. California State Scenic Highway System Map. 2018. https://caltrans.maps.arcgis.com/apps/webappviewer/index.html?id=465dfd3d807c46cc8e8057116f1aacaa

City of San José. Envision San José 2040 General Plan. November 1, 2011. Amended November 3, 2022. Chapter 4, P 27.

California Department of Conservation. "Farmland Mapping and Monitoring Program." Accessed August 16, 2022. http://www.conservation.ca.gov/dlrp/fmmp/Pages/Index.aspx.

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

California Department of Forestry and Fire Protection. "Fire and Resource Assessment Program." Accessed August 16, 2022. http://frap.fire.ca.gov/.

California Air Resources Board. "Overview: Diesel Exhaust and Health." Accessed August 16, 2021. https://ww2.arb.ca.gov/resources/overview-diesel-exhaust-and-health.

BAAQMD. Final 2017 Clean Air Plan. April 19, 2017. http://www.baaqmd.gov/plans-and-climate/air-quality-plans/current-plans.

Illingworth and Rodkin Inc. 210 Baypointe Parkway Residential Project Air Quality Assessment. January 13, 2023.

HortScience/Bartlett Consulting. Arborist Report. September 2022.

Santa Clara Valley Habitat Agency. "GIS Data & Key Maps." Accessed August 18, 2022. http://www.hcpmaps.com/habitat/.

California Office of Historic Preservation. "CEQA Guidelines Section 15064.5(a)(3) and California Office of Historic Preservation Technical Assistance Series #6." Accessed August 16, 2022.

http://www.ohp.parks.ca.gov/pages/1069/files/technical%20assistance%20bulletin%206%202011%20update.pdf.

California Building Standards Commission. "California Building Standards Code." Accessed May 13, 2022. https://www.dgs.ca.gov/BSC/Codes#@ViewBag.JumpTo.

California Energy Commission (CEC). "2019 Building Energy Efficiency Standards." Accessed May 13, 2022. https://www.energy.ca.gov/programs-and-topics/programs/building-energy-efficiency-standards/2019-building-energy-efficiency.

California Air Resources Board. "The Advanced Clean Cars Program." Accessed August 16, 2022. https://www.arb.ca.gov/msprog/acc/acc.htm.

California Geological Survey. Earthquake Zones of Required Investigation, Milpitas Quadrangle, Official Map. October 19, 2004.

Rockridge Geotechnical. Preliminary Geotechnical Investigation. April 2022.

City of San José. Greenhouse Gas Reduction Strategy. November 2020. https://www.sanjoseca.gov/your-government/department-directory/planning-building-code-enforcement/planning-division/environmental-planning/greenhouse-gas-reduction-strategy.

Bay Area Air Quality Management District. CEQA Guidelines. May 2017. Page 2-1.

United States Environmental Protection Agency. "Superfund: CERCLA Overview." Accessed August 16, 2022. https://www.epa.gov/superfund/superfund-cercla-overview.

United States Environmental Protection Agency. "Summary of the Resource Conservation and Recovery Act." Accessed August 16, 2022. https://www.epa.gov/laws-regulations/summary-resource-conservation-and-recovery-act.

California Environmental Protection Agency. "Cortese List Data Resources." Accessed August 16, 2022. https://calepa.ca.gov/sitecleanup/corteselist/.

United States Environmental Protection Agency. "EPA Actions to Protect the Public from Exposure to Asbestos." Accessed August 16, 2022. https://www.epa.gov/asbestos/epa-actions-protect-public-exposure-asbestos.

California Regional Water Quality Control Board. San Francisco Bay Region Municipal Regional Stormwater NPDES Permit. November 2015.

San Francisco Regional Water Quality Control Board. "The 303(d) List of Impaired Water Bodies." Accessed August 16, 2022. https://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/TMDLs/303dlist.html.

California Regional Water Quality Control Board San Francisco Region. Municipal Regional Stormwater NPDES Permit, Order No. R2-2022-0018, NPDES Permit No. CAS612008. May 11, 2022.

Valley Water. 2021 Groundwater Management Plan, Santa Clara and Llagas Subbasins. November 2021.

FEMA. FEMA Flood Map Service Center. Accessed November 14, 2022. https://msc.fema.gov/portal/search?AddressQuery=san%20jose#searchresultsanchor.

Association of Bay Area Governments. "Tsunami Maps and Information." Accessed November 14, 2022. http://resilience.abag.ca.gov/tsunamis/.

Dam Breach Inundation Map Web Publisher. Accessed November 14, 2022. https://fmds.water.ca.gov/webgis/?appid=dam_prototype_v2.

Valley Water. Annual Groundwater Report for Calendar Year 2020. 2020.

City of San José. Downtown Strategy 2040 FEIR. December 2018. https://www.sanjoseca.gov/Home/ShowDocument?id=44054.

Illingworth and Rodkin. 210 Baypointe Parkway Noise and Vibration Assessment. January 2023.

California Department of Housing and Community Development. "Regional Housing Needs Allocation and Housing Elements" Accessed August 16, 2022. https://hcd.ca.gov/housing-elements-hcd.

Association of Bay Area Governments and Metropolitan Transportation Commission. Plan Bay Area 2050. October 21, 2021. Page 20.

Census Bureau. QuickFacts City of San José. Accessed November 2022. https://www.census.gov/quickfacts/sanjosecitycalifornia.

City of San José. "Annual Report on City Services 2020-21". Accessed November 15, 2022. https://www.sanjoseca.gov/home/showpublisheddocument/80634/637800044609900000.

Hexagon Transportation Consultant. 210 Baypointe Parkway Residential Local Transportation Analysis. November 2022.

CalRecycle. Analysis of the Progress Toward the SB 1383 Organic Wase Reduction Goals. August 18, 2020. https://www2.calrecycle.ca.gov/Publications/Details/1693#:~:text=Analysis%20of%20the%20Progress%20Toward,(DRRR%2D2020%2D1693)&text=SB%201383%20establishes%20targets%20to,75%20percent%20reduction%20by%202025.

City of San José. History of the Water System. Accessed December 7, 2022. https://www.sanjoseca.gov/your-government/environment/water-utilities/drinking-water/about-san-jose-municipal-water-system.

Santa Clara County. Five-Year CIWMP/RAIWMP Review Report. June 2016.

North, Daniel. General Manager, Republic Services. Personal communications. November 14, 2019.

San José Fire Department. Wildland-Urban Interface (WUI) Fire Conformance Policy. January 1, 2017. https://www.sanjoseca.gov/Home/ShowDocument?id=9345.

Cal Fire. Fire Hazard Severity Zone Viewer. Accessed April 13, 2022. https://egis.fire.ca.gov/FHSZ/.

SECTION 9.0 LEAD AGENCY AND CONSULTANTS

9.1 LEAD AGENCY

City of San José
Department of Planning, Building and Code Enforcement
Christopher Burton - Director of Planning, Building and Code Enforcement for the City of San José
David Keyon - Principal Planner, City of San José Planning Department
Kara Hawkins - Planner, City of San José Planning Department

9.2 CONSULTANTS

David J. Powers & Associates, Inc.
Environmental Consultants and Planners
Shannon George, Principal Project Manager
Patrick Kallas, Associate Project Manager
Ryan Osako, Graphic Artist

Roux Associates Inc.
Phase I/Phase II Environmental Site Assessment
Angela Liang Cutting

Rockridge Geotechnical
Preliminary Geotechnical Investigation
Linda H.J. Liang

Hexagon Transportation Consultants
Traffic Consultants
Brian Jackson
Daniel Choi

Illingworth & Rodkin, Inc
Acoustic and Air Quality Consultants
James Reyff, Principal
Michael Thill
Casey Divine
Jordyn Bauer
Micah Black

ESA
Cultural Resources Study
Candace Ehringer

HortScience | Bartlett Consulting
Arborist Report
Pam Nagle