Draft Supplemental Environmental Impact Report to the Coleman Avenue/Autumn Street Improvement Project Final Focused Environmental Impact Report (SCH# 2007042035) and the Downtown Strategy 2040 Final Environmental Impact Report (SCH# 2003042127)

Milligan Parking Lot Project

File No. ER20-049

Prepared by

CITY OF SAN JOSE

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June 2023

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EXECUTIVE SUMMARY

Summary of the Project

The approximately 2.5-acre project site consists of five parcels (refer to Table 2.1-1) and is located in downtown San José. The site is occupied by an automobile repair shop with an attached warehouse, a vacant commercial building and additions, and a vacant single-family residential structure and garage. The project site currently contains 118 surface parking spaces used for SAP Center events.

The site is bordered by North Autumn Street to the west, West St. John Street to the south, the Guadalupe River to the east, and existing residential development to the north. The SAP Center at San José is located approximately 300 feet southwest of the project site, and the Guadalupe Freeway (SR-87) is located approximately 650 feet east of the site.

The City of San José, as the owner of the subject property, proposes to remove all existing buildings and construct an approximately 300-space surface parking lot. The proposed parking lot is intended to replace existing parking serving events at the nearby SAP Center at San José that would be lost due to future planned development within downtown San José (e.g., the Diridon Station area).

Summary of Significant Impacts and Mitigation Measures

Table ES-1 below contains a summary of the significant environmental impacts identified and discussed in the EIR, and the mitigation measures proposed to avoid or reduce those impacts. The project description and full discussion of the impacts and mitigation measures can be found in Section 2.0 Project Information and Description, and Section 3.0 Environmental Setting, Impacts, and Mitigation of this EIR, respectively.

Table ES-1: Summary of Significant Impacts and Mitigation Measures

Impact	Mitigation Measure
Biological Resources	
Impact BIO-1: Construction activities associated with the proposed project could result in loss of fertile eggs of nesting raptors or other migratory birds, or nest abandonment. **[Same Impact as Approved Project (Less than Significant Impact with Mitigation Incorporated)]**	**MM BIO-1.1:** Nesting Raptors and Migratory Birds: The project will be required to implement the following measures: • The City's contractor shall schedule demolition, tree removal, and construction 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 demolition, tree removals, and construction activities 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 ornithologist will 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 ornithologist will 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, grading, or demolition permits (whichever occur first), the City's contractor 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.
Impact BIO-2: The project's parking lot lighting could result in a significant impact to sensitive habitat and species along the Guadalupe River due to spillover illumination affecting foraging activity, increasing predation risk on fish and changing the composition of fish communities that occur across a day-night period. **[Same Impact as Approved Project (Less than Significant Impact with Mitigation Incorporated)]**	**MM BIO-2.1:** All lighting shall be fully shielded to block illumination from shining upward, or outward towards the Guadalupe River to the northeast. All fixtures on the site shall have a backlight, uplight, and glare (BUG) rating of U0, and any fixtures located along the site's northeast property line shall have a BUG rating of B0, as follows: • U0: 0 lumens (90–180 degrees). • B0: 110 lumens high (60–80 degrees), 220 lumens mid (30–60 degrees), and 110 lumens low (0–30 degrees) **MM BIO-2.2:** Except as indicated in mitigation measure MM BIO-2.1 above, fixtures shall comply with lighting zone LZ-2, Moderate Ambient, as recommended by the International Dark-Sky Association (2011) for light commercial business districts and high-density or mixed-use residential districts. The allowed total initial luminaire lumens for the project site is 2.5 lumens per square foot of hardscape, and the BUG rating for individual fixtures shall not exceed B3 or G2, as follows: • B3: 2,500 lumens high (60–80 degrees), 5,000 lumens mid (30–60 degrees), 2,500 lumens low (0–30 degrees) • G2: 225 lumens (forward/back light 80–90 degrees), 5,000 lumens (forward 60–80 degrees), 1,000 lumens (back light 60–80 degrees asymmetrical fixtures), 5,000 lumens (back light 60–80 degrees quadrilateral symmetrical fixtures)

	MM BIO-2.3: Exterior lighting shall be minimized (i.e., total outdoor lighting lumens shall be reduced by at least 30 percent or extinguished, consistent with recommendations from the International Dark-Sky Association [2011]) from 10:00 PM until sunrise, except as needed for safety and City code compliance.
Impact BIO-3: The project could result in a significant impact to adjacent riparian trees and habitat during construction. **[Same Impact as Approved Project (Less than Significant Impact with Mitigation Incorporated)]**	**MM BIO-3.1: Avoid Impacts to Riparian Trees and Habitat Prior to and During Construction.** Riparian trees and sensitive riparian habitat along the Guadalupe River to be avoided by the project will be clearly marked on plans as such. Riparian trees to remain will be protected with environmentally sensitive area (ESA) fencing installed at their driplines to provide a Tree Protection Zone (TPZ). Should any grading, staging, trenching, or other activity need to take place within a designated TPZ for a tree intended to be retained, the City's contractor shall hire an International Society of Arboriculture (ISA) Certified arborist to monitor the work, recommend any applicable measures to lessen impact on the tree, and following completion of the work, determine whether the tree has been injured to the degree that it may die from the impacts and therefore for removal. During the construction phase, the project is required to stabilize soils adjacent to riparian trees, minimize ground-disturbing impacts, and avoid planting species identified by the California Invasive Plant Council (Cal-IPC) as invasive. All temporarily disturbed soils are required to be revegetated with native plants or sterile, nonnative species, and temporarily disturbed areas such as staging areas will be returned to pre-project or ecologically improved conditions within one year of the completion of construction. **MM BIO-3.2** Avoid Impacts to Riparian Trees and Habitat During and Post Construction. During project construction and immediately after construction (based on Habitat Conditions 3 and 4), the City's contractor shall implement the following measures to protect riparian trees and habitat: • Removal of riparian vegetation and trees shall be limited to the minimum extent required to construct the project. • Seed mixtures, and if needed, shrubs and trees used for revegetation of the impacted riparian habitat shall not contain invasive non-native species but will be composed of native or sterile non-native species. If sterile non-native mixtures must be used for temporary erosion control, native seed mixtures will be used in subsequent treatments to provide long-term erosion control and prevent colonization by invasive non-native species. • The minimum amount of impermeable surface shall be used for the construction as is practicable. • The project shall prepare and implement sediment erosion control plans to prevent erosion or other disturbance-related impacts within the riparian corridor.

	• All construction within the riparian habitat shall take place during the dry season from June 15 to October 31. • Immediately after completion of project components located in the riparian habitat, and before close of seasonal work window, stabilize all exposed soil with mulch, seeding, and/or placement of erosion control blankets. **MM BIO-3.3:** Prevent Spread of Invasive Plant Species. Within the proposed planting areas in the 100-foot setback, no nonnative invasive species, as ranked by the California Invasive Plant Council and/or identified in Valley Water's Guidelines and Standards for Land Use Near Streams: A Manual of Tools, Standards, and Procedures to Protect Streams and Streamside Resources in Santa Clara County (Valley Water 2006) and the City of San José's Riparian Corridor, shall be planted. The City's contractor shall implement following BMPs for weed control to avoid and reduce the spread of invasive plant species. • Prior to grading or soil disturbance, infestations of non-native vegetation within areas of direct permanent or temporary disturbance will be removed and all vegetative material will be disposed of off-site. • All ground disturbing equipment used adjacent to the riparian corridors shall be washed (including tracks, and undercarriages) at a legally operating equipment yard both before and after being used at the site. • All applicable construction materials used on site, such as straw wattles, mulch, and fill material, shall be certified weed free. • The project shall follow a Stormwater Pollution Prevention Plan as per the NPDES General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (Construction General Permit; Water Board Order No. 2009-0009-DWQ). • All disturbed soils shall be stabilized and planted with a native seed mix from a local source following construction. • If excavating, soil and vegetation removed from weed-infested areas shall not be used in general soil stockpiles and shall not be redistributed as topsoil cover for the newly filled areas. All weed-infested soil shall be disposed of off-site at a landfill or buried at least 2.5 feet below final grade. The City's Director of Planning, Building and Code Enforcement, or the Director's designee shall review and approve the above measures prior to grading or soil disturbance.
Impact BIO-C-4.1: Development within the 35-foot riparian setback area (adjacent to the Guadalupe	**MM BIO-C-4.1:** Compensate for New Urban Development within the Setback. To compensate for the degradation of setback functions in the 100-foot setback within existing

River), would result in significant cumulative impacts to riparian habitat and bird communities. **[Same Impact as Approved Project (Less than Significant Impact with Mitigation Incorporated)]**	California annual grassland (0.17 acres) due to the construction of a new parking lot and landscape areas, the City's contractor shall restore native riparian tree and shrub habitat at a 1:1 (restored area: impacted area) ratio, on an acreage basis, on-site or off-site. The City shall also pay Habitat Plan fees to the to the Santa Clara Valley Habitat Agency for impacts on riparian trees prior to grading, demolition, tree removal, or initiation of impacts to currently undeveloped habitat within the riparian setback. **MM BIO-C-4.2: On-Site Mitigation**. If restoration is completed on-site, native riparian vegetation shall be planted in planting areas that are contiguous with the riparian corridor (i.e., not located in isolated planting wells) and located within the 100-foot setback. If the available planting area is smaller than the project's 0.17-acre impact area, then the City's contractor shall: (1) reduce the impact area within the California annual grassland land cover type, or (2) expand any landscape areas that are contiguous with the riparian corridor, to achieve a ratio of restored area to impacted area of 1:1. Locally native trees and shrubs appropriate to the area as identified in Valley Water's guidance and/or the City's Policy Study shall be planted and maintained on-site to provide additional wildlife habitat adjacent to the Guadalupe River. The on-site planting areas shall include locally native understory, mid-story, and overstory vegetation to provide high-quality habitat for birds; no nonnative vegetation (including "compatible" nonnatives that may be recommended for planting along streams by local jurisdictions) shall be planted within the restoration areas. Example overstory species include coast live oak, valley oak, and example understory species include holly-leaf redberry (Rhamnus ilicifolia) and holly-leaf cherry (Prunus ilicifolia). A qualified restoration ecologist shall develop a Riparian Setback Enhancement and Monitoring Plan (RSEP), which shall contain the following components (or as otherwise modified by regulatory agency permitting conditions): 1. Goal of the restoration to achieve no net loss of habitat functions and values. 2. Restoration design: 3. Planting plan 4. Soil amendments and other site preparation elements as appropriate 5. Maintenance plan 6. Remedial measures/adaptive management 7. Monitoring plan (including final and performance criteria, monitoring methods, data analysis, reporting requirements, monitoring schedule, etc.). At a minimum, success criteria shall include elimination of nonnative woody species from within the enhancement

area and establishment of a native tree and shrub canopy providing at least 50 percent canopy coverage of the mitigation area within 10 years of mitigation implementation.

8. Contingency plan for mitigation elements that do not meet performance or final success criteria.

On-site plantings shall be approved by the Director of Planning, Building and Code Enforcement, or the Director's designee prior to grading, demolition, tree removal, or initiation of impacts to currently undeveloped habitat within the riparian setback.

The RSEP must be approved by the City's Director of Planning, Building, and Code Enforcement prior to grading, demolition, tree removal, or initiation of impacts to currently undeveloped habitat within the riparian setback.

Monitoring of the restored habitat shall be implemented by the City and continue post-construction as indicated in the Monitoring Plan (10 years or greater).

MM BIO- C-4.3: Off-Site Mitigation. If adequate riparian habitat mitigation cannot be restored on-site, riparian habitat will be enhanced or restored to native habitat along the immediately adjacent riparian corridor, and/or elsewhere along the Guadalupe River and within the City of San José. If off-site mitigation is necessary and it is not possible to find a suitable mitigation site along the Guadalupe River, the mitigation shall be provided elsewhere on the Santa Clara Valley floor and within the City of San José.

Restoration/enhancement that shall be provided along the immediately adjacent riparian corridor would consist of the removal of nonnative trees, shrubs, and vines and the planting of native riparian vegetation. The off-site planting areas shall be restored/enhanced to incorporate native understory, mid-story, and overstory vegetation to provide high-quality habitat for birds; no nonnative vegetation (even including "compatible" nonnatives that may be recommended for planting along streams by local jurisdictions) shall be planted within the restoration areas. Acreage will be credited based on the areal extent of nonnative vegetation removal and native riparian vegetation planting.

Any off-site restoration/enhancement would need to be performed according to a Riparian Habitat Mitigation and Monitoring Plan, as described for on-site mitigation.

Cultural Resources	
Impact CUL-1: Implementation of the proposed project would result in the demolition of the historic Forman's arena building and a significant impact to the historic resource. **[New Significant Unavoidable Impact (Less Than Significant Impact with Mitigation)]**	**MM CUL-1.1:Action Plan**: Prior to any grading, demolition, or building activities or any other approval that would allow disturbance of the project site, the City's contractor shall prepare and submit, for review and approval by the Director of Planning, Building and Code Enforcement or the Director's designee in coordination with the City's Historic Preservation Officer, a Historic Resources Mitigation Action Plan (Action Plan) demonstrating that the following steps, actions, and documents have been satisfied for each of the four historic structures in accordance with the Action Plan timeline. The Action Plan shall include roles and responsibilities between the City's contractor, City staff, and outside individuals, groups, firms, and consultants. **Documentation (HABS)**: The Forman's arena building and associated features on the project site shall be documented in accordance with the guidelines established for the Level III Historic American Building Survey (HABS) consistent with the Secretary of the Interior's Standards for Architectural and Engineering Documentation and shall consist of the following components: A. Drawings – Prepare sketch floor plans. B. Photographs – Digital photographic documentation of the interior, exterior, and setting of the four buildings in compliance with the National Register Photo Policy Fact Sheet. C. Written Data – National Park Service Heritage Documentation Programs (HABS) written documentation in Outline Format. An architectural historian and historian meeting the Secretary of the Interior's Professional Qualification Standards shall

oversee the preparation of the sketch plans for a period of no less than 60 days, photographs, research and written data.

The documentation shall be submitted to the Director of Planning, Building or Code Enforcement or the Director's designee and the City's Historic Preservation Officer for review and approval. The required documentation after approval shall be filed with the San José Public Library's California Room and the Northwest Information Center at Sonoma State University, the repository for the California Historical Resources Information System. All documentation shall be submitted on archival paper and must first be reviewed and approved by the City's Historic Preservation Officer. Additional copies shall be made available to other local research institutions including History San José, and a copy with the City's Planning Division.

Three-Dimensional (3D) Laser Scans. Prior to issuance of any grading, demolition, or building permits or any other approval that would allow disturbance of the project site, the Forman's arena building and associated features at 447 West St. John Street shall be laser scanned by a qualified historic resources consultant meeting the qualifications in the Secretary of the Interior's Professional Qualification Standards The 3D laser scanning will utilize 3D Laser Scanning techniques to capture as-built survey of the existing exterior conditions of the property, to create a 3D point cloud model for digital documentation/archival purposes. A plan of the proposed procedures for the laser scanning shall be submitted as part of the required Action Plan prior to commencement. The documentation from the 3D Laser Scanning shall be reviewed and approved by the City's Historic Preservation Officer. After City approval, the documentation shall be submitted to the Director of Planning, Building and Code Enforcement or Director's designee and to History San José. Proof of receipt by History San José shall be submitted to the City following submittal

Relocation by the Applicant and/or a Third Party: Prior to issuance of any demolition activities, the City's contractor, or an interested third party, shall be required to advertise the availability of the four structures for relocation for a period of no less than 60 days. The advertisements must include notification in a newspaper of general circulation, on a website, and notice placed on the project site. The City contractor shall provide evidence (i.e., receipts, date and time stamped photographs, etc.) to the City's Historic Preservation Officer that this condition has been met prior to the issuance of demolition permits.

		If the City's contractor or third party agrees to relocate the structure, the following measures must be followed: 1. The Director of Planning, Building and Code Enforcement or Director's designee, based on consultation with the City's Historic Preservation Officer, must determine that the receiver site is feasible for the building. 2. Prior to relocation, the City's contractor or third party shall hire a historic preservation architect and a structural engineer to undertake an existing condition study that establishes the baseline condition of the building prior to relocation. The documentation shall take the form of written descriptions and visual illustrations, including those character-defining physical features of the resource that convey its historic significance and must be protected and preserved. The documentation shall be reviewed and approved by the City's Historic Preservation Officer prior to the structure being moved. 3. To protect the building during relocation, the City's contractor shall engage a building mover who has experience moving similar historic structures. A structural engineer shall also be engaged to determine how the building needs to be reinforced/stabilized before the move. 4. Once moved, the building shall be repaired and rehabilitated, as needed, by the City's contractor or third party in conformance with the Secretary of the Interior's Standards for the Treatment of Historic Properties. In particular, the character-defining features shall be retained in a manner that

	preserves the integrity of the building for the long-term preservation and reuse. Upon completion of the repairs, a qualified architectural historian shall document and confirm that work to the structure(s) were completed in conformance with the Secretary of the Interior's Standards for the Treatment of Historic Properties and character-defining features were preserved. The project applicant shall submit a memo report supplement to the Action Plan to the City's Historic Preservation Officer documenting the relocation, repair, and reuse. **Salvage:** If the City's contractor does not relocate the Foreman's Arena Building within the specified time, the structure(s) shall be made available to salvage companies facilitating the reuse of historic building materials. The City shall advertise the availability of the Foreman's Arena Building for salvage for a period of no less than 30 days. The advertisement must include notification in a newspaper of general circulation, on a website, and notice placed on the project site. The City's contractor shall provide evidence of the advertisement (i.e., receipts, date and time stamped photographs, etc.) to the Director of Planning, Building or Code Enforcement or the Director's designee. The City's contractor must provide evidence to the City's Historic Preservation Officer that this condition has been met prior to demolition activities. **Commemoration and Public Interpretation:** Prior to issuance of any building permits, the City shall retain a qualified historic resources consultant to initiate the development and design of a commemorative and interpretive program, exhibit, display including, but not limited to interpretive text and historic photographs, physical remnants from the site, art or sculpture, video, interactive media, and/or oral histories. The proposed concepts for commemoration and public interpretation shall be submitted to the City Historic Preservation Officer for review and approval prior to issuance of any building permits and shall be developed in coordination with the City as the project is implemented. The final product shall be reviewed and approved by the City's Historic Preservation Officer and implemented in a suitable publicly accessible location on the project site as determined by the Historic Preservation Officer, prior to the issuance of a certificate of occupancy.
Impact CUL-2: Project construction activities could result in the accidental disturbance and/or destruction of archaeological	**MM CUL-2.1:** Cultural Sensitivity Training. Prior to any grading activities, the City's contractor shall be required to conduct a Cultural Awareness Training for construction personnel. The training shall be facilitated by a qualified

resources. **[Same Impact as Approved Projects (Less than Significant Impact With Mitigation Incorporated)]**	archaeologist in collaboration with a Native American representative 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. 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-2.2: 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 foundation, boring on site, or major landscaping. Archaeological monitors have the authority to halt construction with the finding of an archaeological discovery and to authorize construction to resume. Monitoring shall continue until the monitor has determined that excavation has reached the maximum depth at which archaeological remains could be expected to occur. Monitoring is intended to ensure that appropriate cultural protective measures are effective prior to initiation of construction activities and to document and protect cultural resources from inadvertent damage. The results of the monitoring shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee within 14 days of completion of monitoring activities. If prehistoric or historic resources are encountered during excavation and/or grading of the site, all activity within a 50-foot radius of the find shall be stopped, and the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee and the City's Historic Preservation Officer shall be notified. The on-site archaeologist and Native American representative shall 1) evaluate the find(s) to determine if they meet the definition of a historical or archaeological resource; and (2) make appropriate recommendations regarding the disposition of such finds prior to issuance of building permits. Recommendations could include reinterment of artifacts and materials, recordation, and analysis of any significant cultural materials. A report of findings documenting any data recovery shall be submitted to the Director of PBCE or the Director's designee and the City's Historic Preservation Officer and the Northwest Information Center (if applicable). Project personnel shall not collect or move away any cultural materials.
Hazards and Hazardous Materials	
Impact HAZ-1: Residual soil contaminants associated with the	**MM HAZ-1.1:** Prior to any grading activities, a self-directed Site Management Plan (SMP) that includes a Health and Safety Plan (HASP) shall be prepared by a qualified environmental

former underground fuel tanks at 150 North Autumn Street exist at the site. In addition, concentrations of benzene, methylene chloride, and tetrachloroethene (PCE) in soil gas samples collected at 447 West St. John Street were above the vapor intrusion human health risk ESLs for commercial land use. The presence of these materials could expose construction workers to harmful pollutants during grading, earthwork, and trenching. **[Same Impact as Approved Projects (Less than Significant Impact with Mitigation Incorporated)]**	professional to guide activities during demolition, excavation, and construction due to the historic storage/use of hazardous materials on-site. The SMP is intended to provide guidelines and protocols in the event of encountering soil contamination during redevelopment to ensure construction worker safety. Components of the SMP shall include, but shall not be limited to: • Soil management protocol to manage contaminated soils if encountered on-site; • Proper procedures as needed for demolition of existing structures, including any groundwater wells if identified to be present within the project area; • Management of stockpiles, including sampling, disposal, and dust and runoff control measures; • Implementation of a stormwater pollution prevention program; • Procedures for transporting and disposing the waste material generated during removal activities; • Procedures for stockpiling soil on-site if such stockpiling is necessary; • Procedures to ensure that fill and cap materials are verified as clean; • Truck routes for export of soil; • Staging and loading procedures and record keeping requirements; • Procedures to follow if evidence of an unknown historic release of hazardous materials (e.g., underground storage tanks, polychlorinated biphenyls [PCBs], asbestos containing materials, lead-based paints, etc.) is discovered during excavation or demolition activities; • Details on dewatering for treatment and discharge to the sanitary sewer or for permitting from the Regional Water Quality Control Board (RWQCB) for treatment and discharge to the storm drain system. The SMP shall be provided to the Director of Planning, Building and Code Enforcement or the Director's designee, and Environmental Services Department (ESD) Municipal Compliance Officer prior to any grading activities.

Summary of Alternatives to the Proposed Project

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

Alternatives Considered but Rejected

The following alternatives were considered but rejected and are described in detail in Section 7.4.1.

- Location Alternative – Development of the project on an alternative site in the downtown area.
- Multi-level Parking with Retail Alternative -Development of a two- to three-story parking garage with retail.

Analyzed Alternatives

The following alternatives were evaluated as alternatives to the project and are described in detail in Section 7.4.2.

- No Project – No Development Alternative as required by CEQA – No new development, with continued operation of the existing parking lot and automobile repair use.
- Forman's Arena Building Retention Alternative – Retain existing historic Forman's Area building and utilize it for parking.

SECTION 1.0 INTRODUCTION

1.1 PURPOSE OF THE ENVIRONMENTAL IMPACT REPORT AND PROJECT BACKGROUND

The Milligan Parking Lot site (approximately 2.5 acres) is located at the northeast corner of West St. John Street and North Autumn Street in downtown San José. The site's addresses include 130 North Autumn Street, 150 North Autumn Street, 405 West St. John Street, 407 West St. John Street, and 447 West St. John Street. The proposed project would construct a 300-space surface parking lot to replace existing parking serving events at the nearby SAP Center at San José that will be lost due to future planned development in the Diridon Station area.

The City of San José, as the Lead Agency, has prepared this Draft Supplemental Environmental Impact Report (SEIR) for the Milligan Parking Lot in compliance with the California Environmental Quality Act (CEQA) and the CEQA Guidelines. This Draft SEIR has been prepared as part of the supplemental environmental review process needed to evaluate the proposed changes to the project analyzed in the previously certified Coleman Avenue and Autumn Street Improvement Project Focused EIR (Coleman Avenue/Autumn Street EIR) and Downtown Strategy 2040 EIR.

Purpose of a Supplemental Environmental Impact Report

CEQA Guidelines Section 15162(a) state that when an EIR has been certified or a negative declaration adopted for a project, no subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in the light of the whole record, one or more of the following:

1. Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;

2. Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or

3. New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:

    a. The project will have one or more significant effects not discussed in the previous EIR or negative declaration;
    b. Significant effects previously examined will be substantially more severe than shown in the previous EIR;
    c. Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the

project, but the project proponents decline to adopt the mitigation measure or alternative; or

d. Mitigation measures or alternatives which are considered different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

Under CEQA Guidelines Section 15163, the lead agency may choose to prepare a Supplement to the EIR if conditions in Section 15162 would require the preparation of a subsequent EIR and only minor additions or changes would be necessary to make the previous EIR adequately apply to the project in the changed situation. The supplement to the EIR needs to contain only the information necessary to make the previous EIR adequate for the project, as revised.

As described in CEQA Guidelines Section 15121(a), an SEIR 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 SEIR 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.

This SEIR tiers from the Coleman Avenue/Autumn Street EIR (State Clearinghouse [SCH] No. 2007042035), which evaluated the environmental impacts of the Coleman Avenue and Autumn Street Improvements project. The Coleman Avenue and Autumn Street project proposed the widening of Coleman Avenue to six lanes between Hedding Street and Autumn Street, a distance of approximately 0.8 mile. The Coleman Avenue and Autumn Street project also analyzed the widening, partial realignment, and extension of Autumn Street between Coleman Avenue and Park Avenue, which is a distance of approximately one mile. A segment of the Autumn Street alignment (between West Santa Clara Street and West St. John Street) would transect the 2.5-acre Milligan Parking Lot site. This segment would allow for up to four lanes of traffic during peak events (e.g., sporting events or concerts at the adjacent SAP Center). The City purchased the 2.5-acre Milligan Parking Lot property in 2018 to allow for the Autumn Street right-of-way. The Coleman Avenue/Autumn Street EIR stated that there may be a period of time between the City's acquisition of the right-of-way and the construction of the roadway improvements. The Coleman Avenue/Autumn Street EIR stated that if this occurred, the City would use some of the acquired property for surface parking on an interim basis until the project is constructed. The proposed Milligan Parking Lot project would be an interim (anticipated to be for 10 years) surface parking use for SAP Center events to make up the parking lost due to construction during the future planned development within downtown San José (e.g., the Diridon Station area). After the surface parking lot is no longer needed, it is currently anticipated the site would be redeveloped with the roadway improvements envisioned in the Coleman Avenue/Autumn Street EIR.

An SEIR is required for the proposed Milligan Parking Lot project since it includes the demolition of the Forman's arena located at 447 West St. John Street, a building identified as a Candidate City Landmark on the City's Historic Resources Inventory and eligible for state and federal listing. The

Coleman Avenue/Autumn Street EIR required that the structure be relocated to another site, however this project proposes to demolish the building. Therefore, cultural resources are evaluated in the SEIR. In addition, biological resources are evaluated given the project's proximity to the Guadalupe River (and detailed plans for the proposed parking lot were not available at the time the Coleman Avenue/Autumn Street EIR was prepared). Other resource topics discussed in the SEIR are air quality, greenhouse gas emissions, hazards and hazardous materials, hydrology, and transportation.

The project site is located in the Downtown area. The Downtown Strategy 2040 EIR was certified in 2019 and evaluated the environmental impacts of future residential, commercial, and retail development in the downtown area on a program level. Although future parking uses were not evaluated in the Downtown Strategy 2040 EIR, given the project site is within the downtown area, the project would comply with policies, mitigation measures, and Conditions of Approval[1] discussed in the Downtown Strategy 2040 EIR.

1.2 SEIR 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 SEIR. The NOP was circulated to local, state, and federal agencies on August 24, 2021. The standard 30-day comment period concluded on September 24, 2021. The NOP provided a general description of the proposed project and identified possible environmental impacts that could result from implementation of the project. During the scoping period, the project was presented to the City's Historic Landmarks Commission, on Wednesday, September 1, 2021. Appendix A of this SEIR includes the NOP and comments received on the NOP.

1.2.2 Draft SEIR Public Review and Comment Period

Publication of this Draft SEIR will mark the beginning of a 45-day public review period. During this period, the Draft SEIR 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 SEIR 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 SEIR during the 45-day public review period should be sent to:

Cassandra van der Zweep, Supervising Environmental Planner
City of San José
Department of Planning, Building and Code Enforcement
200 East Santa Clara Street, Tower 3rd Floor
San Jose, CA 95113
Phone: (408) 535-7659
Email: Cassandra.vanderZweep@sanjoseca.gov

[1] Conditions of Approval were identified as standard permit conditions in the Downtown Strategy 2040 EIR. Given the proposed project would be implemented by the City of San José (and not a private developer), the project would not be required to obtain permits from the City; therefore, Conditions of Approval are identified rather than standard permit conditions.

1.3 FINAL EIR/RESPONSES TO COMMENTS

Following the conclusion of the 45-day public review period, the City of San Jose will prepare a Final SEIR 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 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 approximately 2.5-acre project site consists of five parcels (refer to Table 2.1-1) and is located in downtown San José. The site is occupied by an automobile repair shop with an attached warehouse, a vacant commercial building and additions, and a vacant single-family residential structure and garage. The project site currently contains 118 surface parking spaces used for SAP Center events.

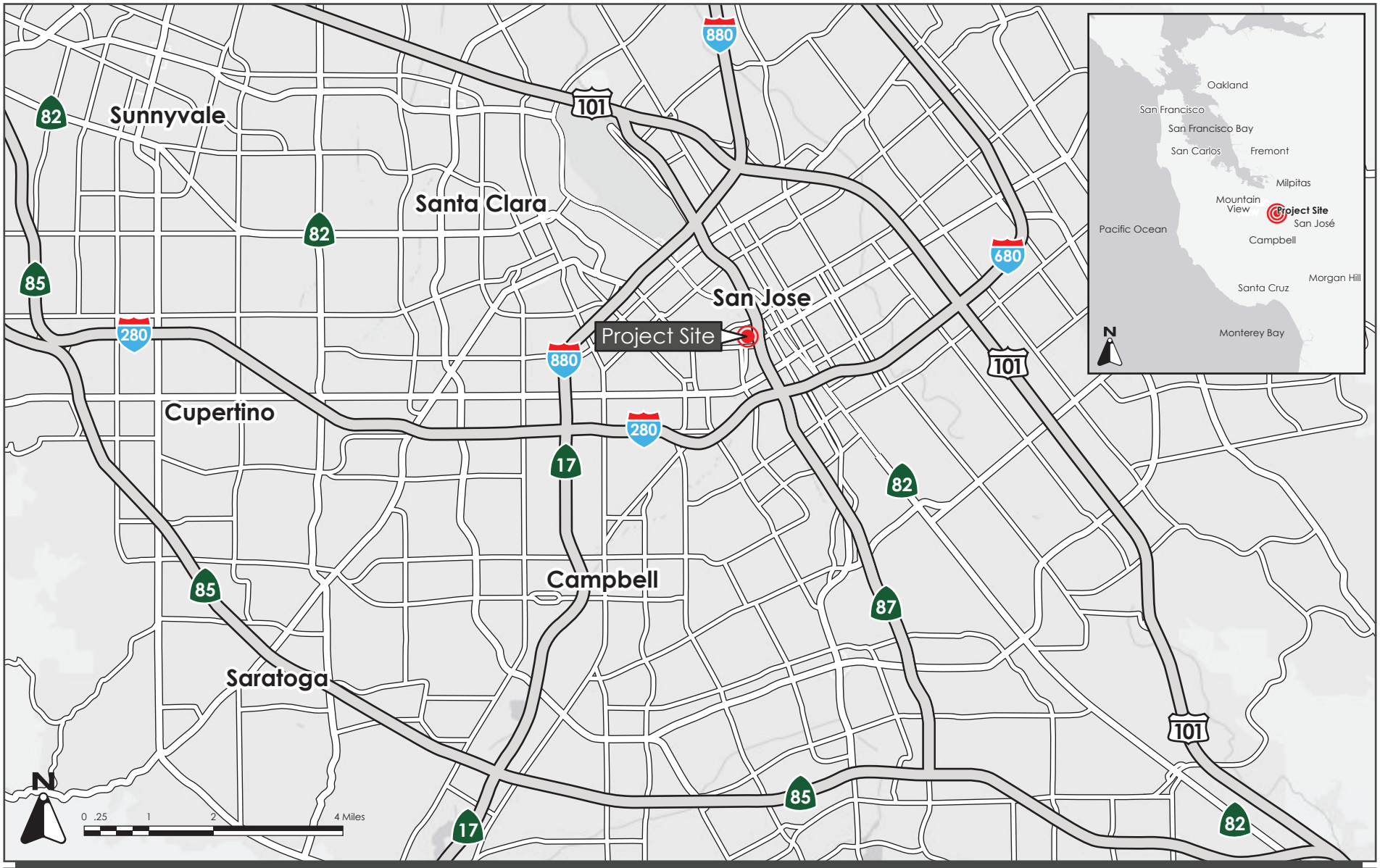
The site is bordered by North Autumn Street to the west, West St. John Street to the south, the Guadalupe River to the east, and existing residential development to the north. The SAP Center at San José is located approximately 300 feet southwest of the project site, and the Guadalupe Freeway (SR-87) is located approximately 650 feet east of the site.

Table 2.1-1: Parcels Included in the Project

APN Number	Address	Size (in acres)	Uses
259-29-032	447 West St. John Street*	0.41	Former Forman's area/automobile repair building and warehouse
259-29-033	130 N. Autumn Street	0.11	Surface parking lot
259-29-071	407 W. St. John Street*	0.11	Single-family residence, garage and shed
259-29-072	405 W. St. John Street*	0.21	Commercial loading dock building
259-29-102	150 N. Autumn Street*	1.7	Commercial building (former Milligan New Company)
Total		**2.54**	

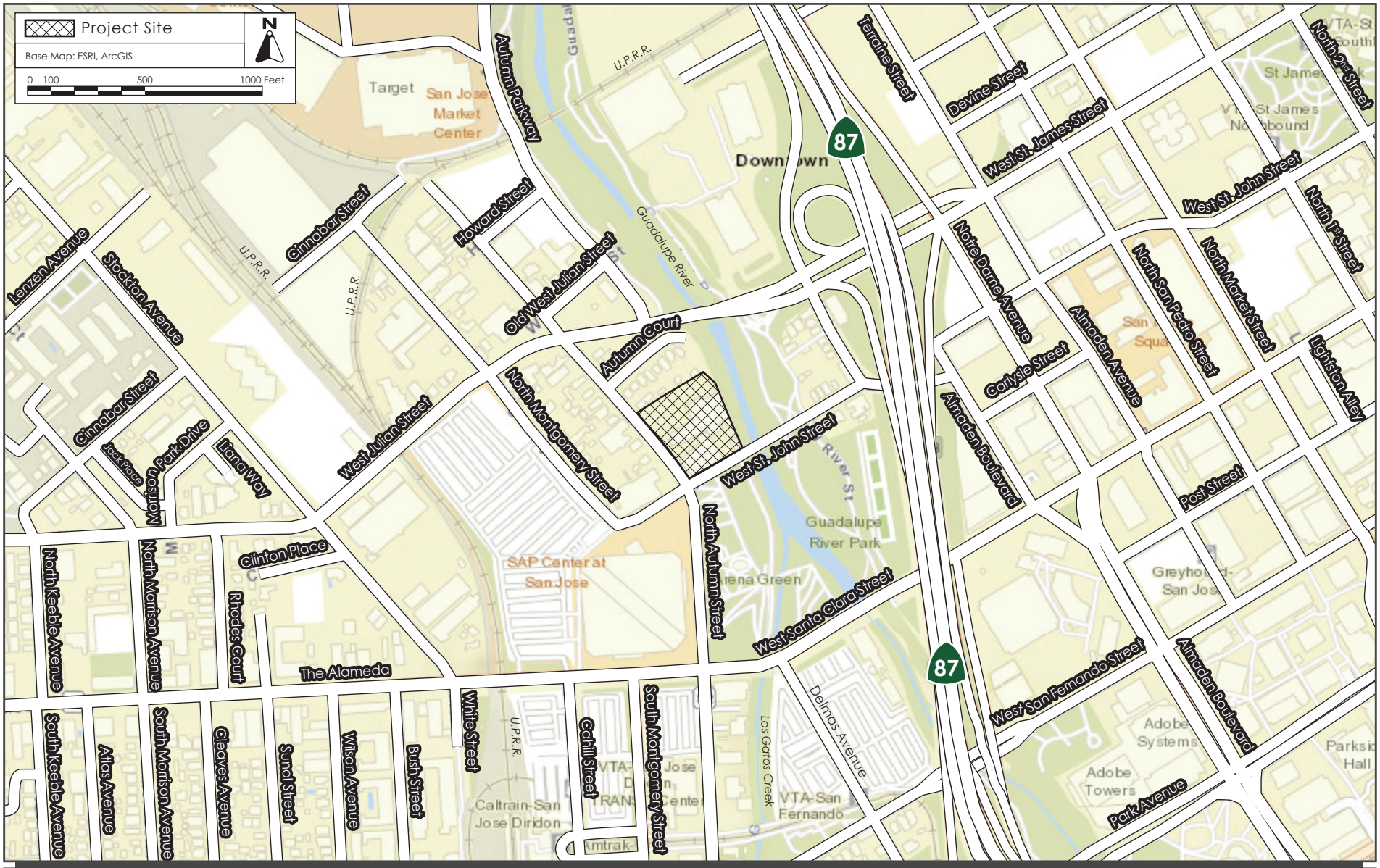
Regional, vicinity, and aerial maps of the project site are provided in Figures 2.1-1 through 2.1-3.

The project site is in the Downtown Primary Commercial (DC) Zoning District and has a General Plan land use designation of Commercial Downtown.



REGIONAL MAP

FIGURE 2.1-1



VICINITY MAP | FIGURE 2.1-2

AERIAL PHOTOGRAPH AND SURROUNDING LAND USES | FIGURE 2.1-3

2.2 PROJECT DESCRIPTION

The City of San José, as the owner of the subject property, proposes to remove all existing buildings and construct an approximately 300-space surface parking lot. The proposed parking lot is intended to replace existing parking serving events at the nearby SAP Center at San José that would be lost during construction of future planned development within downtown San José (e.g., the Diridon Station area). Refer to Figure 2.2-1, which shows parking locations within one third mile of the SAP that would be lost due to future anticipated development in the vicinity. The intent of the project is to provide a temporary surface parking lot during the construction activities occurring for the other projects in the vicinity, once those construction projects are complete, those sites will include parking for the San José SAP Event Center. When the project's surface parking is no longer needed, the project site is intended to be redeveloped with the roadway alignment and extension envisioned in the Coleman Avenue and Autumn Street Improvements Project.

Vehicles would access the site via two new 26-foot wide full-access driveways. One driveway would be located on West St. John Street (160 feet east of North Autumn Street) and the second driveway would be located on North Autumn Street (approximately 240 north of West St. John Street). The project's conceptual site plan is shown on Figure 2.2-2.

The project would be setback a minimum of 35-feet from the riparian corridor. The project would construct a six-foot tall masonry screen wall along the northern property line, between the residences to the north and the project site. The project would include lighting throughout the parking lot. The project would remove 28 trees, including 20 ordinance-sized trees and plant 26, 24-inch-box replacement trees. The project would utilize permeable pavements for on-site stormwater treatment. The project would connect the site's existing irrigation line to the existing water line on North Autumn Street.

The duration of construction would be four months. The project would export 3,400 cubic yards and import 5,000 cubic yards of soil during project construction.

The Downtown Primary Commercial Zoning District permits short-term parking lot uses or events other than on-site with a Special Use Permit. The proposed parking lot would serve commercial uses and would, therefore, be consistent with the Commercial Downtown General Plan land use designation.

2.2.1 Future Guadalupe River Trail Extension

A 600-foot-long future pedestrian trail or Class I paved bicycle and pedestrian trail would be constructed within the 35-foot setback area located between the proposed parking lot and the Guadalupe River. The trail would be approximately 12 feet wide, with two-foot-wide shoulders. The trail is intended to be permanent, and would connect to trail segments located adjacent to the Guadalupe River immediately north and south of the project site. Landscape vegetation would be planted along the trail; however, no structures or lighting are planned within this area. Riparian trees may need to be trimmed to support installation of the trail; no removal of riparian trees would occur.

Facility	Total Spaces
150 S. Montgomery	62
34 S. Autumn	46
510 W. San Fernando	135
65 N. Almaden Blvd.	43
80 S. Montgomery	14
Delmas East	453
Delmas West	324
Delmas Management Lot	115
Borschs	14
Cahill 1	180
Cahill 2	162
Cahill 3	90
Cahill 4	140
CSC Security (Water District)	70
NW San Fernando/Autumn (Palmero)	26
Templo la Hermosa	14
Montgomery/San Fernando (Patty's)	140
Lot D	228
Total	2,265

SURROUNDING PARKING TO BE REPLACED DUE TO PLANNED DEVELOPMENT | FIGURE 2.2-1

LEGEND

- PROPERTY LINE
- RIPARIAN LINE
- PARCEL LINE
- LANDSCAPING OR TO BE STRIPED OUT

PARKING TABLE

TOTAL PARKING PROVIDED:	305 STALLS
TOTAL ADA STALLS PROVIDED:	8/8
ADA VAN STALLS PROVIDED:	2/2
10% EV REQUIREMENTS PER JULY 1ST, 2021, CALGREEN SUPPLEMENT	
TOTAL EV STANDARD STALLS:	31/31
EV ADA STALLS:	1/1
EV ADA VAN STALLS:	1/1
AMBULATORY STALLS:	1/1

0 10 20 40 Feet

Source: Kimley-Horn, September 7, 2022.

CONCEPTUAL SITE PLAN

FIGURE 2.2-2

Detailed site plans of the future trail are not available at this time and, therefore, the trail is evaluated at a program-level in this SEIR. Supplemental environmental review will be required for the future trail, at the time detailed plans are available and prior to the City's approval of the trail.

2.3 PROJECT OBJECTIVES

- Maximize surface parking spaces available to provide off-street parking within one third mile of the San José SAP Center
- Facilitate the retention of professional sports teams in San José (Envision San José 2040 General Plan Policy IE-5.5) specifically through ensuring the San José SAP Center has the required parking to meet sports fan needs as identified in the Arena Management Agreement.
- Design parking lot to minimize conflicts between vehicles entering or exiting the site and area circulation, including bicyclists, pedestrians, or transit.
- Reduce the amount of impervious surface as a part of redevelopment of the site (Envision San José 2040 General Plan Policy EC-5.11)
- Develop the parking in a manner that allows easy conversion of the parking lot to a future use such as the Autumn Street widening, partial realignment, and extension

2.4 USES OF THE EIR

This SEIR provides decision makers in the City of San José and the general public with relevant environmental information to use in considering the proposed project. The SEIR will support the City's actions with the build out of the interim parking lot.

SECTION 3.0 ENVIRONMENTAL SETTING, IMPACTS, AND MITIGATION

As noted in Section 1.1, Purpose of the Environmental Impact Report above, an SEIR is required for this project because project-specific information regarding the historic significance of the existing Forman's arena building and the extent of project-specific air quality, biological resources, greenhouse gas emissions, hazards and hazardous materials, hydrology and water quality, transportation, and tribal cultural resources impacts were not available at the time the 2008 Coleman Avenue and Autumn Street Improvements Focused EIR was prepared.

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

3.1	Air Quality	3.5	Hazards and Hazardous Materials
3.2	Biological Resources	3.6	Hydrology and Water Quality
3.3	Cultural Resources	3.7	Transportation
3.4	Greenhouse Gas Emissions	3.8	Tribal Cultural Resources

Other resource topics such as aesthetics, agricultural and forestry resources, energy, geology and soils, land use and planning, mineral resources, noise and vibration, population and housing, public services, recreation, and utilities and service systems do not require a separate evaluation, as the impacts to these resource areas are consistent with the conclusions in the Downtown Strategy 2040 EIR and Coleman Avenue/Autumn Street Improvements EIR.

Consistent with the Downtown Strategy 2040 EIR and Coleman Avenue/Autumn Street Improvements EIR, with implementation of 2040 General Plan policies, regulations in the City's Municipal Code, and the City's Private Outdoor Lighting Policy 4.3, the proposed parking lot would have a less than significant aesthetics (including light and glare) impact.

Consistent with the conclusions of the previous EIRs, the site is not designated as important farmland and does not contain forestry resources. Therefore, the project would result in no agricultural and forestry resources impacts. The Coleman Avenue/Autumn Street Improvements EIR did not evaluate energy impacts. However, the proposed project is consistent with the Downtown Strategy 2040 EIR which concludes that future projects in the Downtown Strategy 2040 area would not result in a significant impact related to energy use associated with redevelopment and construction and that future projects would not result in result in the wasteful, inefficient or unnecessary use of energy for operational and transportation purposes. The project would result in limited grading and does not propose construction of a new building. Consistent with the Downtown Strategy 2040 EIR and Coleman Avenue/Autumn Street Improvements EIR, with the preparation of a design-level geotechnical investigation, the project would result in a less than significant geology and soils impact**.** The project site does not contain mineral resources and would not result in a mineral resources impact, consistent with the Downtown Strategy 2040 EIR conclusions.

Given the proposed project would replace existing parking and would not result in an increase in operational traffic trips, the project would not result in an increase in operational noise levels from traffic trips in the downtown area. Minimal noise from the parking lot operations could be generated such as opening and closing of vehicle doors, people talking, or car alarms comparable to the existing parking lot operations. The project would not result in substantial noise impacts to the residences north of the site or the Guadalupe River riparian area.

As stated in the Downtown Strategy 2040 EIR and General Plan Policy EC-1.7, a significant construction noise impact would occur if a project 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. The duration of project construction would be four months. Project construction would not require pile driving, use of impact equipment, or building framing. Noise-generating activities such as demolition, grading/excavation, and trenching would be completed within three months. Construction noise could temporarily impact the adjacent riparian area and residences. Since project construction would be less than 12 months and the project would comply with the measures identified in the Downtown Strategy 2040 EIR to reduce construction-related noise impacts; the project's construction noise impacts would be less than significant (consistent with the Downtown Strategy 2040 EIR and Coleman Avenue/Autumn Street Improvements EIR conclusions).

The project would not result in an increase in population and, therefore, would not result increase population and housing, public services, recreation, compared to what was evaluated in the Downtown Strategy 2040 EIR and Coleman Avenue/Autumn Street Improvements EIR. The project would require the removal of one residence which would not result in a substantial displacement of people or housing. The previous EIRs identified a less than significant impact to public services and recreation. The project would result in a less than significant population and housing impact (which is a lesser impact than identified in the Downtown Strategy 2040 EIR). The project would not increase the demand on utilities and service systems, compared to what evaluated in the Downtown Strategy 2040 EIR and Coleman Avenue/Autumn Street Improvements EIR. Therefore, consistent with the conclusions of these EIRs, the project would have a less than significant impact on utilities and service systems.

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

  Table 3.0-1 provides a summary of the approved but not yet constructed/occupied and pending projects within a one-quarter mile radius of the project site.

Table 3.0-1: Summary Project List Within One Quarter Mile Radius		
Project Name	**Location**	**Description**
Approved But Not Yet Constructed/Occupied		
Lot E Parking Structure	West St. John Street and North Autumn Street, 55 feet west of the site.	Construction of a 1,200-space multi-level public parking garage (up to six levels) on an approximately 2.3-acre site
Downtown West Mixed-Use Plan	Bordered by State Route 87 to the east, Lenzen Avenue to the north, Cahill Street to the west, and Auzerais Avenue to the south. Distance from site: Approximately 900 feet south of the site.	Development of a maximum of 7.3 million square feet, including 5,900 residential units, 500,000 square feet of active uses (e.g., commercial retail/restaurant, community center, and entertainment venues), 300 hotel rooms, 800 limited-term corporate accommodations, 100,000 square feet of event and conference space, and 100,000 square feet of logistic center space.
Stockton Hotel	292 Stockton Avenue Distance from the site: 0.2 miles west of the site	Construction of a nine-story hotel with 311 hotel units and 19 residential units
Carlysle	51 Notre Dame Avenue Distance from the site: 0.2 miles east of the site, across State Route 87	Construction of a 21-story mixed use building with 220 residential units, 4,000 sf of commercial space, and 70,000 sf of office space
Almaden Corner Hotel	8 North Almaden Boulevard Distance from the site: 0.25 southeast of the site, across State Route 87	Construction of a 19-story hotel with 272 guest rooms
Under Construction		
Platform 16: 440 West Julian Street Office Project	440 West Julian Street Distance from Site: Approximately 400 feet north of the site, across West Julian Street	Construction of approximately one million square feet of office space.
Pending		
Apollo Mixed Use	32 Stockton Avenue Distance from the site: 0.2 miles southwest	Construction of an 18-story building with 497 residential units and 8,500 sf of retail space.

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 3.0-2 provides a summary of the different geographic areas used to evaluate cumulative impacts.

Table 3.0-2: Geographic Considerations in Cumulative Analysis

Resource Area	Geographic Area
Air Quality	San Francisco Bay Area Air Basin
Biological Resources	Project site and adjacent parcels
Cultural Resources	Project site and adjacent parcels
Greenhouse Gas Emissions	Planet-wide
Hazards and Hazardous Materials	Project site and adjacent parcels
Hydrology and Water Quality	Guadalupe River watershed
Transportation/Traffic	Citywide
Tribal Cultural Resources	Project site and adjacent parcels
Wildfire	Within or adjacent to the wildfire hazard zone

3.1 AIR QUALITY

The following discussion is based, in part, on Construction Health Risk Assessment prepared by Illingworth & Rodkin, Inc. A copy of the report, dated March 2023, is attached to this SEIR as Appendix B.

3.1.1 Environmental Setting

3.1.1.1 *Background Information*

Criteria Pollutants

Air quality in the Bay Area is assessed related to six common air pollutants (referred to as criteria pollutants), including ground-level ozone (O_3), nitrogen oxides (NO_x), particulate matter (PM), carbon monoxide (CO), sulfur oxides (SO_x), and lead.[2] 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 3.1-1. The commonly regulated criteria pollutants in the Bay Area are discussed further below.

Table 3.1-1: Health Effects of Air Pollutants

Pollutants	Sources	Primary Effects
Ozone (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

[2] 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.

reduce O_3 levels. The highest O_3 levels in the Bay Area occur in the eastern and southern inland valleys that are downwind of air pollutant sources.

PM is a problematic air pollutant of the Bay Area. PM is assessed and measured in terms of respirable particulate matter or particles that have a diameter of 10 micrometers or less (PM_{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).[3] 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 people 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.

3.1.1.2 *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.

[3] California Air Resources Board. "Overview: Diesel Exhaust and Health." Accessed October 16, 2020. https://www.arb.ca.gov/research/diesel/diesel-health.htm.

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

Risk Reduction Plan

To address the issue of diesel emissions in the state, CARB developed the Risk Reduction Plan to Reduce Particulate Matter Emissions from Diesel-Fueled Engines and Vehicles. In addition to requiring more stringent emission standards for new on-road and off-road mobile sources and stationary diesel-fueled engines to reduce particulate matter emissions by 90 percent, the plan involves application of emission control strategies to existing diesel vehicles and equipment to reduce DPM (in 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.[4]

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.

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

Local

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 air quality-related impacts and are applicable to the project.

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 air emissions 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-10.3	Promote the expansion and improvement of public transportation services and facilities, where appropriate, to both encourage energy conservation and reduce air pollution.
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 11.4	Encourage the installation of appropriate air filtration at existing schools, residences, and other sensitive receptor uses adversely affected by pollution sources.
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-13.4	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.

3.1.1.3 *Existing Conditions*

The City of San José is located in the Santa Clara Valley within the San Francisco Bay Area Air Basin. The project area's proximity to both the Pacific Ocean and the San Francisco Bay has a moderating influence on the climate. The portion of Santa Clara Valley in which the project site is located is bounded by the San Francisco Bay to the north, the Santa Cruz Mountains to the southwest, and the Diablo Range to the east. The surrounding terrain influences winds in the valley, resulting in a prevailing wind that follows the valley's northwest-southeast axis.

The Bay Area is considered a non-attainment area for ground-level O_3 and $PM_{2.5}$ under both the federal Clean Air Act and state Clean Air Act. The area is also considered nonattainment for PM_{10} under the state act, but not the federal act. The area has attained both state and federal ambient air quality standards for CO. As part of an effort to attain and maintain ambient air quality standards for O_3 and PM_{10}, BAAQMD has established thresholds of significance for these air pollutants and their precursors. These thresholds are for O_3 precursor pollutants (ROG and NO_X), PM_{10}, and $PM_{2.5}$, and apply to both construction period and operational period impacts.

Local Community Risks/Toxic Air Contaminants

The project area includes both roadway and stationary sources of TAC emissions within 1,000 feet of the project sites. Roadway TAC sources with traffic volumes of over 10,000 vehicles per day and within 1,000 feet of the site include State Route 87, Julian Street, and West Santa Clara St. There are three stationary sources within 1,000 feet of the project site, including an automobile coating operation and two generators. Other TAC sources include a railroad located 960 feet northeast of the site, and ongoing construction of the Destination Diridon project located 950 feet southeast of the site. The location of the project site in relation to nearby TAC and $PM_{2.5}$ sources is shown on Figure 3.1-1.

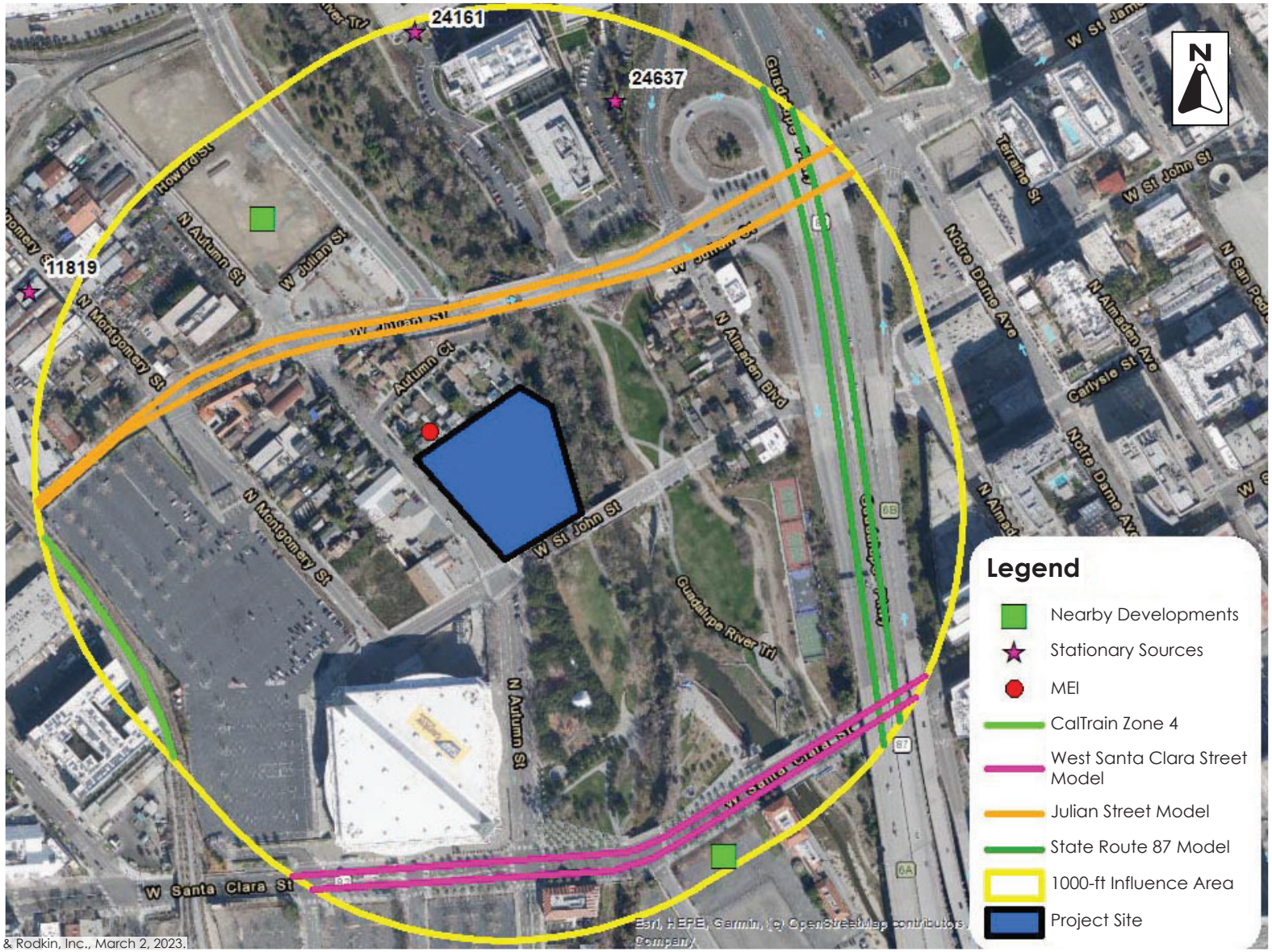
Sensitive Receptors

The nearest sensitive receptors to the project site would be the existing residences located on Autumn Court, adjacent to the site's northern boundary.

3.1.2 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?



Source: Illingworth & Rodkin, Inc., March 2, 2023.

PROJECT SITE AND NEARBY TAC SOURCES | FIGURE 3.1-1

3.1.2.1 *Bay Area Air Quality Management District*

As discussed in CEQA Guidelines Section 15064(b), the determination of whether a project may have a significant effect on the environment calls for judgment on the part of the lead agency and must be based to the extent possible on scientific and factual data. The City of San José has considered the air quality thresholds updated by BAAQMD in May 2017 and regards these thresholds to be based on the best information available for the San Francisco Bay Area Air Basin and conservative in terms of the assessment of health effects associated with TACs and $PM_{2.5}$. The BAAQMD CEQA Air Quality thresholds used in this analysis are identified in Table 3.1-2 below.

Table 3.1-2: BAAQMD Air Quality Significance Thresholds

Pollutant	Construction Thresholds	Operation Thresholds	
	Average Daily Emissions (pounds/day)	Annual Daily Emissions (pounds/year)	Annual Average Emissions (tons/year)
Criteria Air Pollutants			
ROG, NO_x	54	54	10
PM_{10}	82 (exhaust)	82	15
$PM_{2.5}$	54 (exhaust)	54	10
CO	Not Applicable	9.0 ppm (eight-hour) or 20.0 ppm (one-hour)	
Fugitive Dust	Dust Control Measures/Best Management Practices	Not Applicable	
Health Risks and Hazards for New Sources (within a 1,000-foot Zone of Influence)			
Health Hazard	**Single Source**	**Combined Cumulative Sources**	
Excess Cancer Risk	10 per one million	100 per one million	
Hazard Index	1.0	10.0	
Incremental Annual $PM_{2.5}$	0.3 µg/m^3	0.8 µg/m^3 (average)	

m^3 = micrograms per cubic meter.

3.1.2.2 *Project Impacts*

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

BAAQMD is the regional agency responsible for overseeing compliance with state and federal laws, regulations, and programs within the San Francisco Bay Area Air Basin (SFBAAB). BAAQMD, with assistance from the Association of Bay Area Governments (ABAG) and Metropolitan

Transportation Commission (MTC), has prepared and implements specific plans to meet the applicable laws, regulations, and programs. The most recent and comprehensive of which is the Bay Area 2017 Clean Air Plan. The primary goals of the Clean Air Plan are to attain air quality standards, reduce population exposure and protect public health, and reduce GHG emissions and protect the climate. The BAAQMD has also developed CEQA guidelines to assist lead agencies in evaluating the significance of air quality impacts. In formulating compliance strategies, BAAQMD relies on planned land uses established by local general plans. Land use planning affects vehicle travel, which in turn affects region-wide emissions of air pollutants and GHGs.

The 2017 Clean Air Plan, adopted by BAAQMD in April 2017, includes control measures that are intended to reduce air pollutant emissions in the Bay Area either directly or indirectly. Plans must show consistency with the control measures listed within the Clean Air Plan. At the project-level, there are no consistency measures or thresholds. The proposed project would not conflict with the latest Clean Air planning efforts, since: 1) the project would not result in a net increase in automobile-related emissions because the proposed parking lot would replace SAP Center parking that is currently provided elsewhere in the vicinity of the site; and 2) the project would be considered urban infill. For these reasons, the project would not result in a significant impact related to consistency with the 2017 CAP.

Construction Criteria Pollutants

The project could result in construction-related increases criteria pollutants in the surrounding area due to grading and other site-preparation activities involving the use of diesel-powered equipment. The California Emissions Estimator Model (CalEEMod) Version 2022.1 was used to estimate emissions from construction of the proposed 306-space surface parking lot. A construction duration of four months was assumed (equivalent to 80 workdays). The results of the emissions estimates are shown in Table 3.1-3.

Table 3.1-3: Construction Period Emissions

Year	ROG	NOx	PM_{10} Exhaust	$PM_{2.5}$ Exhaust
Construction Emissions Per Year (Tons)				
2024	0.03	0.50	0.25	0.25
Annualized Daily Construction Emissions (pounds/day)				
2024 (80 workdays)	0.75	12.5	0.25	0.25
BAAQMD Thresholds (pounds per day)	*54* lbs./day	*54* lbs./day	*82* lbs./day	*54* lbs./day
Exceed Threshold?	No	No	No	No

Source: Illingworth & Rodkin, Inc. *Milligan Parking Lot Construction Health Risk Assessment*. March 2023.

Construction activities, particularly during site preparation and grading, would temporarily generate fugitive dust in the form of PM_{10} and $PM_{2.5}$. Sources of fugitive dust would include disturbed soils at the construction site and trucks carrying uncovered loads of soils. The BAAQMD CEQA Air Quality Guidelines consider these impacts to be less than significant if best management practices (BMPs) are implemented to reduce these emissions.

Conditions of Approval*:* The project applicant/contractor shall implement the following measures (recommended by BAAQMD) 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 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations). Provide clear signage for construction workers at all access points.
- Maintain and properly tune construction equipment in accordance with manufacturer's specifications. Check all equipment by a certified mechanic and record a determination of running in proper condition prior to operation.
- Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints.

Consistent with the Coleman Avenue/Autumn Street EIR and Downtown Strategy 2040 EIR conclusions, with the implementation of the above Conditions of Approval during construction, the project would not result in a significant impact from PM exposure resulting from fugitive dust emissions.

With implementation of the above Conditions of Approval, consistent with the Coleman Avenue/Autumn Street EIR and Downtown Strategy 2040 EIR, the project would not substantially increase dust and exhaust (PM_{10} and $PM_{2.5}$) emissions during construction. The project's emissions would not exceed BAAQMD's thresholds. Therefore, the project would not conflict with the BAAQMD Clean Air Plan. The previous EIRs identified a significant and unavoidable operational criteria pollutant emissions impacts resulting from the implementation of the Downtown Strategy 2040 and Coleman Avenue/Autumn Street projects. The proposed project would not increase the operational vehicular emissions and, therefore, would not contribute to the significant unavoidable

impact operational criteria pollutant emissions impacts identified in the previous EIRs. As a result, the project would result in a criteria pollutant impact that would be less than the impact identified in the Coleman Avenue/Autumn Street EIR and Downtown Strategy 2040 EIR.

Operational Criteria Pollutants

As previously described, the proposed surface lot would provide parking for attendees of events held at the nearby SAP Center. The proposed lot is intended to provide replacement parking for existing surface lots in other locations surrounding the SAP Center that would be lost with planned future redevelopment in those areas. The project would, therefore, not result in a net increase in local automobile trip generation, and consequently would not increase operational criteria pollutant emissions in the region. The project would not increase operational criteria pollutant emissions and, therefore, would not conflict with the 2017 CAP. The Coleman Avenue/Autumn Street EIR did not include an evaluation of impacts related to the CAP. The Downtown Strategy 2040 EIR concluded that although future development under the Downtown Strategy 2040 would exceed thresholds for criteria air pollutants, when viewed as a whole, the Downtown Strategy 2040 would not conflict with or obstruct implementation of the 2017 CAP. The Downtown Strategy 2040 would support CAP goals to reduce vehicle miles traveled (VMT), include TDM programs, and comply with applicable regulations that would result in energy and water efficiency. **[Same as Approved Project (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?

As previously described, the proposed surface lot would provide replacement parking for existing surface lots in other locations surrounding the SAP Center that would be lost with planned future redevelopment in those areas and is intended to support the events and functions of the San José SAP Event Center. The project would not increase events or functions at the SAP Event Center. The project would not, therefore, result in a net increase in local automobile trip generation, and consequently would not increase operational criteria pollutant emissions in the region. The estimated construction emissions would be below BAAQMD thresholds with the implementation of the Conditions of Approval to reduce dust and exhaust emissions (PM_{10} and $PM_{2.5}$). The project would not result in a cumulatively considerable net increase of any construction criteria pollutant emissions, consistent with the Coleman Avenue/Autumn Street EIR and Downtown Strategy 2040 EIR conclusions. The Coleman Avenue/Autumn Street EIR and Downtown Strategy 2040 EIR concluded that their implementation would result in exceedance of BAAQMD thresholds of operational criteria pollutants and, therefore, would result in a cumulatively considerable net increase of criteria pollutant for which the project region is non-attainment. Since the proposed project would not result in an increase of operational criteria pollutants, the project would not contribute to this impact. **[Less Impact than Approved Project (Less than Significant Impact)]**

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

The nearest sensitive receptors to the site are the single-family residences approximately 35 feet north of the project site. As discussed in the Coleman Avenue/Autumn Street EIR and Downtown

Strategy 2040 EIR, project impacts related to increased community risk can occur by introducing a new source of TACs with the potential to adversely affect existing sensitive receptors in the project vicinity (within 1,000 feet of the project site). This project would introduce new temporary sources of TACs during construction (i.e., on-site construction activity and truck hauling emissions) and would generate dust.

Project impacts to existing sensitive receptors were addressed for temporary construction activities and long-term operational conditions, as discussed below. There are also several sources of existing TACs and localized air pollutants in the vicinity of the project. The impact of the project in combination with existing sources of TACs were also assessed in terms of the cumulative risk.

Community risk impacts were addressed by predicting increased cancer risk, the increase in annual $PM_{2.5}$ concentrations and computing the Hazard Index (HI) for non-cancer health risks. The risk impacts from the project are the combination of risks from construction and operation sources. These sources include on-site construction activity, construction truck hauling, and increased traffic from the project. To evaluate the increased cancer risks from the project, a 30-year exposure period is typically used (per BAAQMD guidance), with the residential sensitive receptors being exposed to both project construction and operation emissions during this timeframe.[5]

The project's increased cancer risk is estimated by combining the project construction cancer risk and operation cancer risk contributions. Unlike the increased maximum cancer risk, the annual $PM_{2.5}$ concentration and HI values are not additive but based on the annual maximum values for the entirety of the project. The project's maximally exposed individual (MEI) is identified as the sensitive receptor that is most impacted by the project's construction and operation. Other sensitive receptors would be exposed to a lower health risk than identified for the MEI. An additional explanation of the methodology for computing community risk impacts is provided in Appendix B of this SEIR.

Community Health Risk from Project Construction

The Downtown Strategy 2040 EIR concluded that future projects would be required to complete project-specific air quality analyses to identify the potential for significant construction TAC impacts. The Downtown Strategy 2040 EIR and Coleman Avenue/Autumn Street Improvements EIR concluded that project-level analyses shall identify measures, including but not limited to the measures to reduce fugitive dust emissions described in the EIRs, to reduce construction emissions, to reduce significant impacts to less than significant levels. A community health risk assessment was completed for the proposed project to identify potential construction TAC impacts on nearby sensitive receptors. The health risk assessment identified that the maximum annual $PM_{2.5}$ concentration and the maximum cancer risk as a result of the project would occur on the first floor at the adjacent single-family residences north of the project site. Figure 3.1-2 shows the location of sensitive receptors and the MEI near the project site.

Construction equipment and associated heavy-duty truck traffic generates diesel exhaust, which is a known TAC. The primary community risk impact issues associated with construction emissions are

[5] Bay Area Air Quality Management District. *BAAQMD Air Toxics NSR Program Health Risk Assessment (HRA) Guidelines.* December 2016.

cancer risk and exposure to $PM_{2.5}$. A quantitative health risk assessment of the project construction activities was conducted to evaluate the potential health effects to nearby sensitive receptors from construction emissions of diesel particulate matter (DPM) and $PM_{2.5}$, pursuant to the BAAQMD CEQA Air Quality Guidelines using CalEEMod and the U.S. EPA AERMOD dispersion model. Details about the community health risk modeling, data inputs, and assumptions are included in Appendix B.

Table 3.1-4 summarizes maximum cancer risks, $PM_{2.5}$ concentrations, and hazard index from project construction activities at the off-site residential MEI.

Table 3.1-4: Project Construction Impact At Off-Site MEI

Source	Cancer Risk (per million)	Annual $PM_{2.5}$ ($\mu g/m^3$)	Hazard Index
Project Construction[1]	4.09 (infant)	0.12	<0.01
BAAQMD Single-Source Threshold	*10.0*	*0.3*	*1.0*
Exceed Threshold?	No	No	No

Source: Illingworth & Rodkin, Inc. *Milligan Parking Lot Construction Health Risk Assessment*. March 2023.

As shown in Table 3.1-4, the project's construction-related community health risks would not exceed BAAQMD thresholds. These emissions would be further reduced by the project's compliance with the Conditions of Approval (i.e., BAAQMD best management practices for construction dust control), as described above under checklist question a). Therefore, consistent with the conclusions of the Downtown Strategy 2040 EIR and Coleman Avenue/Autumn Street Improvements EIR, with the above Conditions of Approval, construction-related community health risk impacts would be less than significant. [**Same Impact as Approved Project (Less than Significant Impact)]**

Community Health Risk from Project Operation

The Coleman Avenue/Autumn Street Improvements EIR did not evaluate community health risks from project operations. The Downtown Strategy 2040 EIR concluded that in accordance with General Plan Policy MS-11.2, future development projects that would emit TACs would be required to prepare health risk assessments and to implement effective mitigation to reduce possible health risks to a less than significant level. The proposed parking lot use would not generate a net increase in TACs because the project does not include diesel-powered generators or other stationary TAC sources. Furthermore, the parking would be for passenger vehicles and would not generate substantial diesel-powered vehicle trips. Therefore, operation of the proposed project would not expose sensitive receptors in the vicinity of the site to substantial TAC emissions. **[Less Impact than Approved Project (No Impact)]**

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

Odors are generally considered an annoyance rather than a health hazard. During construction, the various diesel-powered equipment and vehicles on-site would create localized odors, but these odors

Source: Illingworth & Rodkin, Inc., March 2, 2023.

OFF-SITE RECEPTORS AND MAXIMALLY EXPOSED INDIVIDUAL | FIGURE 3.1-2

would be temporary and not likely to be noticeable for extended periods of time outside the site boundaries.

Land uses that have the potential to be sources of operational odors that generate complaints include, but are not limited to, wastewater treatment plants, landfills, composting operations, and food manufacturing facilities. Emissions from vehicles at the proposed parking lot would not generate substantial odors. The Downtown Strategy EIR concluded that future development would not expose sensitive receptors to odors. The Coleman Avenue/Autumn Street project did not evaluate odor impacts. **[Same Impact as Approved Project (Less than Significant Impact)]**

3.1.2.3 *Cumulative Impacts*

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

The geographic area for cumulative regional air quality impacts is the San Francisco Bay Area Air Basin. Past, present, and future development projects contribute to the region's adverse air quality impacts on a cumulative basis. By its very nature, air pollution is largely a cumulative impact. In developing thresholds of significance for air pollution, BAAQMD considered the emission levels for which a project's individual emissions would be cumulatively considerable. If a project exceeds the identified significance thresholds, its emissions would be cumulatively considerable, resulting in significant adverse air quality impacts to the region's air quality conditions.

Implementation of the 2017 CAP

The Downtown Strategy 2040 EIR and Coleman Avenue/Autumn Street Improvements EIR concluded that buildout of these would not conflict with the CAP. As described above under checklist question a), the project would be consistent with the 2017 CAP. The project, therefore, would not result in a cumulatively considerable impact to the implementation of the 2017 CAP.

Cumulative Criteria Pollutants Impacts

As discussed under checklist questions a) and b), the construction and operational emissions generated by the project would not exceed the BAAQMD thresholds for criteria air pollutant (ROG, NOx, PM_{10}, and $PM_{2.5}$) emissions. The project, therefore, would not result in a cumulatively considerable contribution to criteria pollutant emissions.

Cumulative Community Health Risk

The geographic area for cumulative TAC impacts are parcels with sensitive receptors within 1,000 feet of the project site. As a result, community health risk assessments typically look at all substantial sources of TACs that can affect sensitive receptors that are located within 1,000 feet of the project site. These sources include vehicle emissions from surface streets (i.e., roadways that exceed 10,000 vehicles per day) and existing stationary sources identified by BAAQMD. Figure 3.1-1 shows the existing, substantial TAC and $PM_{2.5}$ sources with the potential to affect the off-site MEI.

Modeling was completed to calculate the community health risk from the cumulative sources at the project MEI. The results of the analysis are shown in Table 3.1-5 below. Refer to Appendix B for details about the cumulative health risk modeling, including the models used (CT-EMFAC2021, EMFAC, and U.S. EPA AERMOD models), model inputs, and assumptions.

Table 3.1-5: Cumulative Community Risk Impacts at Off-Site MEI

Source	Cancer Risk (per million)	Annual $PM_{2.5}$ ($\mu g/m^3$)	Hazard Index
Project Construction/Operation	4.09 (infant)	0.12	<0.01
State Route 87	0.87	0.04	<0.01
Caltrain Railroad	22.63	0.04	--
Julian Street	0.95	0.08	<0.01
West Santa Clara Street	0.18	0.01	<0.01
Autobody Coating Operation (Facility ID # 11819)	--	--	<0.01
Generator (Facility ID # 24161)	0.02	<0.01	<0.01
Generator (Facility ID # 24637)	0.06	<0.01	<0.01
Destination Diridon Construction Emissions	<5.00	<0.15	<0.01
Combined Community Health Risk	33.80	<0.46	<0.57
BAAQMD Cumulative Source Threshold	*100*	*0.8*	*10.0*
Exceed Threshold?	No	No	No

Source: Illingworth & Rodkin, Inc. Illingworth & Rodkin, Inc. *Milligan Parking Lot Construction Health Risk Assessment*. March 2023.

As shown in Table 3.1-5, the cumulative cancer risks, annual $PM_{2.5}$ concentrations, and hazard index for non-cancer health risks would not exceed BAAQMD's cumulative-source thresholds.

In addition, three approved projects are located within 1,000 feet of the Milligan Parking lot site. The projects include the approved Lot E parking structure, located 55 west of the site, an approved but not yet constructed mixed use development (Destination Diridon) located at West Santa Clara Street at SR 87, approximately 900 feet south of the site, and the Platform 16 office project under construction at 440 West Julian Street, 400 feet north of the site. The cumulative projects are required to implement Conditions of Approval and mitigation measures to reduce construction TAC emissions and impacts to sensitive receptors to less than significant. The Coleman Avenue/Autumn Street EIR did not evaluate cumulative TAC impacts to sensitive receptors. The Downtown Strategy 2040 EIR, however, identified that with the implementation of dust and exhaust control measures during demolition and construction activities, TAC emissions from these activities would result in a less than significant cumulative impact to nearby sensitive receptors. With the implementation of construction equipment mitigation measures and Conditions of Approval to reduce fugitive dust emissions, the project would have a less than significant cumulatively considerable contribution

toward the cumulative TAC impact to sensitive receptors. **[Less Impact than Approved Project (Less than Significant Cumulative Impact with Mitigation Incorporated)]**

3.2 BIOLOGICAL RESOURCES

The following discussion is based in part upon a Biological Resources Report completed by H.T. Harvey in March 2023 and a Tree Survey completed by Traverso Tree Service in July 2022. These reports are included in Appendix C of this SEIR.

3.2.1 Environmental Setting

3.2.1.1 *Regulatory Framework*

Federal and State

Endangered Species Act

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

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

Migratory Bird Treaty Act

The federal Migratory Bird Treaty Act (MBTA) prohibits killing, capture, possession, or trade of migratory birds except in accordance with regulations prescribed by the Secretary of the Interior. Hunting and poaching are also prohibited. The taking and killing of birds resulting from an activity is not prohibited by the MBTA when the underlying purpose of that activity is not to take birds.[6] Nesting birds are considered special-status species and are protected by the USFWS. The CDFW also protects migratory and nesting birds under California Fish and Game Code Sections 3503, 3503.5, and 3800. The CDFW defines taking as causing abandonment and/or loss of reproductive efforts through disturbance.

United States Army Corps of Engineers (USACE), Regional Water Quality Control Board (RWQCB), CDFW, and/or the USFWS Wetland and riparian habitats are considered sensitive habitats under CEQA. They are also afforded protection under applicable federal, state, and local

[6] United States Department of the Interior. "Memorandum M-37050. The Migratory Bird Treaty Act Does Not Prohibit Incidental Take." Accessed February 28, 2022. https://www.doi.gov/sites/doi.gov/files/uploads/m-37050.pdf.

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), Santa Clara Valley Transportation Authority (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.

Condition 11. Stream and Riparian Setbacks

This condition requires new covered projects to adhere to setbacks from creeks and streams and associated riparian vegetation to minimize and avoid impacts on aquatic and riparian land cover types, covered species, and wildlife corridors). The standard required setback for new development for the reach of a Category 1 stream (e.g., Guadalupe River) is 100 feet from the top of bank if the slope of a project site is less than 30 percent, no areas 35 feet from the edge of riparian vegetation extend past the 100-foot buffer, and if the site inside of Habitat Plan-designated urban service areas. However, some exemptions or exceptions (which allow a minimum setback of 35 feet from the top of bank for developed areas and 50 feet from the top of bank for undeveloped areas under the Habitat Plan) may be applicable depending on the nature of the channel and proposed improvements within the setback area.

City Council Policy 6-34: Riparian Corridor Protection

Measures to protect riparian corridors are provided in the City's Riparian Corridor Policy Study (Policy Study), which was incorporated into the City's Envision San José 2040 General Plan; the Zoning Code (Title 20 of the San Jose Municipal Code); and the City Council-adopted Habitat Plan, specifically Condition 11. The term "riparian corridor" as defined by the City means any defined stream channel, including the area up to the bank full-flow line, as well as all characteristic streamside vegetation in contiguous adjacent uplands.

In 2016, the City released Council Policy 6-34 to provide guidance on the implementation of riparian corridor protection consistent with all City policies and requirements that provide for riparian protection. Council Policy 6-34 indicates that riparian setbacks should be measured from the outside edges of riparian habitat or the top of bank, whichever is greater, and that development of new buildings and roads generally should be set back 100 feet from the riparian corridor. The policy also specifies that new parking facilities should be set back a minimum distance of 100 feet from the riparian corridor. However, Council Policy 6-34 also indicates that a reduced setback may be considered under limited circumstances, including the existence of legal uses within the minimum setback, and utility or equipment installations or replacements that involve no significant disturbance to the riparian corridor during construction and operation and that generate only incidental human activity.

San José Tree Removal Ordinance

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

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

Envision San José 2040 General Plan

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

General Plan Policies – Biological Resources	
Riparian Corridors	
Policy ER-2.1:	Ensure that new public and private development adjacent to riparian corridors in San José are consistent with the provisions of the City's Riparian Corridor Policy Study and any adopted Santa Clara Valley Habitat Conservation Plan/Natural Communities Conservation Plan.
Policy ER-2.2:	Ensure that the 100-foot setback from riparian habitat is the standard to be achieved in all but a limited number of instances, only where no significant environmental impacts would occur.
Policy ER-2.3:	Design new development to protect adjacent riparian corridors from encroachment of lighting, exotic landscaping, noise, and toxic substances into the riparian zone.

General Plan Policies – Biological Resources	
Policy ER-2.4:	When disturbances to riparian corridors cannot be avoided, implement appropriate measures to restore and/or mitigate damage and allow for fish passage during construction.
Policy ER-2.5:	Restore riparian habitat through native plant restoration and removal of non-native/invasive plants along riparian corridors and adjacent areas.
Special Status Plants and Animals	
Policy ER-4.1	Preserve and restore habitat areas that support special-status species. Avoid development in such habitats unless no feasible alternatives exist, and mitigation is provided of equivalent value.
Policy ER-4.3	Prohibit planting of invasive non-native plant species in natural habitats that support special-status species.
Policy ER-4.4	Require that development projects incorporate mitigation measures to avoid and minimize impacts to individuals of special-status species.
Migratory Birds	
Policy ER-5.1	Avoid implementing activities that result in the loss of active native birds' nests, including both direct loss and indirect loss through abandonment, of native birds. Avoidance activities that could result in impacts to nests during the breeding season or maintenance of buffers between such activities and active nests would avoid such impacts.
Policy ER-5.2	Require that development projects incorporate measures to avoid impacts to nesting migratory birds.
Urban Natural Interface	
Policy ER-6.3	Employ low-glaring lighting in areas developed adjacent to natural areas, including riparian woodlands. Any high-intensity lighting used near natural areas will be placed as close to the ground as possible and directed downward or away from natural areas.
Policy ER-6.5	Prohibit use of invasive species, citywide, in required landscaping as part of the discretionary review of proposed development.
Policy ER-6.7	Include barriers to animal movement within new development and, when possible, within existing development, to prevent movement of animals (e.g., pets and wildlife) between developed areas and natural habitat areas where such barriers will help to protect sensitive species.
Community Forest	
Policy MS-21.3	Ensure that San José's Community Forest is comprised of species that have low water requirements and are well adapted to its Mediterranean climate. Select and plant diverse species to prevent monocultures that are vulnerable to pest invasions. Furthermore, consider the appropriate placement of tree species and their lifespan to ensure the perpetuation of the Community Forest.

General Plan Policies – Biological Resources	
Policy MS-21.4	Encourage the maintenance of mature trees, especially natives, on public and private property as an integral part of the community forest. Prior to allowing the removal of any mature tree, pursue all reasonable measures to preserve it.
Policy MS-21.5	As part of the development review process, preserve protected trees (as defined by the Municipal Code), and other significant trees. Avoid any adverse effect on the health and longevity of protected or other significant trees through appropriate design measures and construction practices. Special priority should be given to the preservation of native oaks and native sycamores. When tree preservation is not feasible, include appropriate tree replacement, both in number and spread of canopy.
Policy MS-21.6	As a condition of new development, require, where appropriate, the planting and maintenance of both street trees and trees on private property to achieve a level of tree coverage in compliance with and that implements City laws, policies, or guidelines.
Policy MS-21.9	Where urban development occurs adjacent to natural plant communities (e.g., oak woodland, riparian forest), landscape plantings shall incorporate tree species native to the area and propagated from local sources (generally from within 5-10 miles and preferably from within the same watershed).

3.2.1.2 *Existing Conditions*

The project site is mostly developed with a paved parking lot, auto repair, and warehouse buildings. A small portion of the northeast corner of the site is undeveloped and consists of grassland and trees. The site is located approximately 50 feet west of the Guadalupe River. The Guadalupe River is a naturally occurring stream that drains approximately 170 square miles of Santa Clara County and flows approximately 13 miles to the San Francisco Bay. The riparian habitat of the river in the vicinity of the project site is of moderate to low quality due to debris, disturbance, and litter associated with the urban setting. The habitat quality is further reduced due to the presence of non-native trees species. Approximately 0.83 acres of the project site falls within the 100-foot riparian setback area as defined by the City's Riparian Corridor Policy; this includes 0.17 acre of undeveloped California annual grassland habitat, 0.66 acre of existing development (buildings and pavement), and 0.01 acre of mixed riparian woodland and forest (i.e., canopy overhanging the site). As a part of the project's biological assessment, biotic habitats on the project site were identified according to the land cover classification system described in the Habitat Plan. Reconnaissance-level field surveys were completed at the site in February of 2020 and 2021. Based on the surveys, three land cover types were identified on the 2.5-acre project site. The site's land cover types are urban-suburban, California annual grassland, and mixed riparian forest and woodland. The site's land cover types and wildlife uses are described in this section. The land cover types are shown on Figure 3.2-1.

Land Cover Types and Wildlife Species

Urban-Suburban

The urban-suburban land cover type at the site supports little vegetation and consists of paved parking lots, sidewalks, existing buildings/businesses, and maintained landscaping along the boundary of the project site. Parking lots surrounded by fencing, which were used as temporary parking for the SAP Center, as well as commercial and warehouse buildings, and a single-family house with a garage are located within the asphalt areas.

The small portion of landscaped areas at the project site support shrubs and a few mature trees, such as non-native eucalyptus blue gum and native coast live oak. These areas support patches of unmaintained landscaping, including non-native English ivy, American trumpet vine, and Canary Island date palm. Cracks in the pavement support ruderal species such as fumitory, prickly lettuce, and smilo grass.

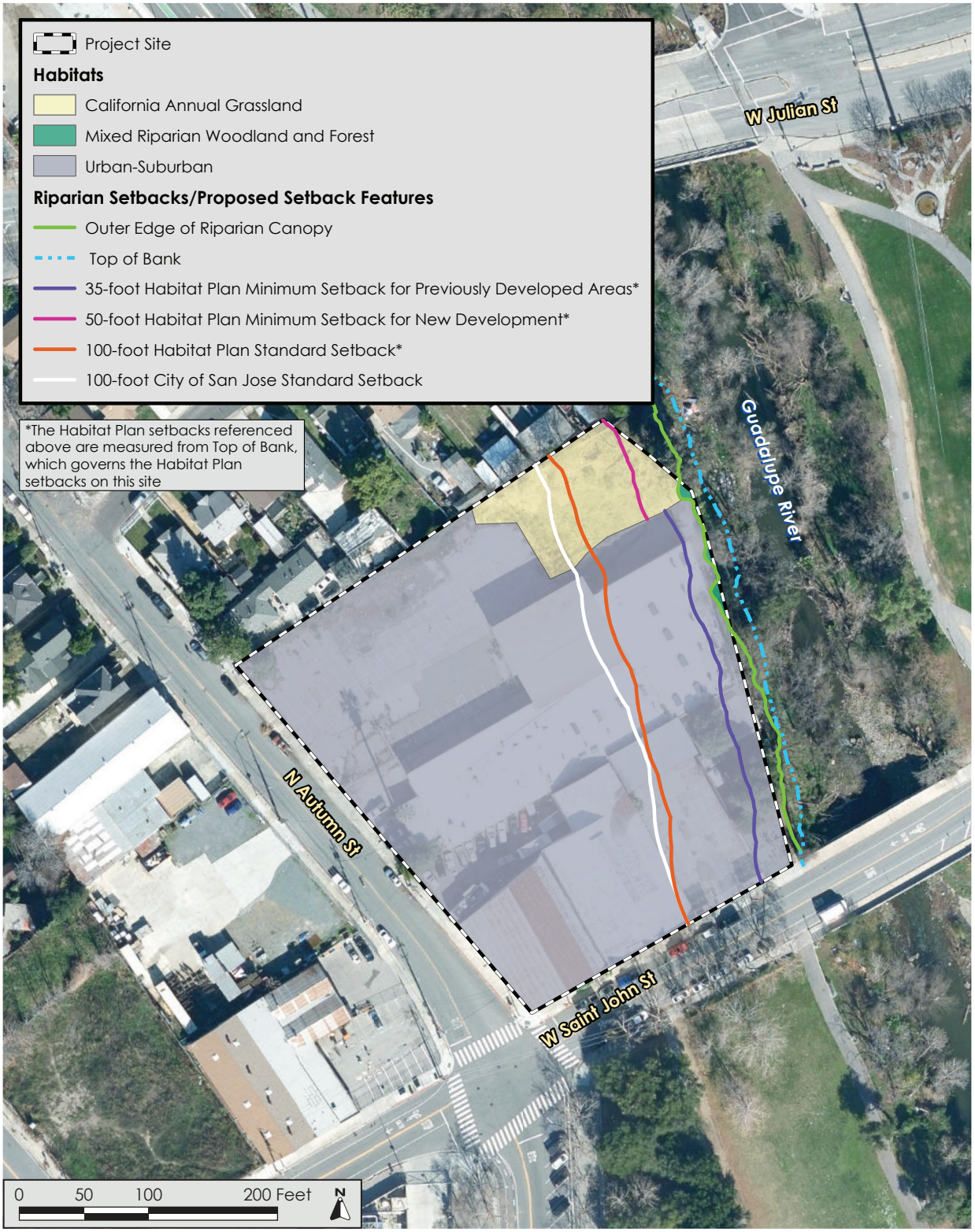
Due to the lack of vegetation, the urban-suburban portion of the site provides relatively low-quality habitat for wildlife species. The wildlife associated with urban-suburban areas are tolerant of periodic human disturbances, including introduced species such as the European starling, rock pigeon, house mouse, and Norway rat. Several common native species are also able to use this habitat, including the American crow, which was observed during the reconnaissance survey, as well as the black phoebe, northern mockingbird, house finch, California towhee, and raccoon. Few birds would nest on the site due to the sparseness of trees; species such as the native mourning dove and Anna's hummingbird may nest in these trees. In addition, the eaves of the buildings on the project site may attract other nesting and/or roosting birds such as the barn swallow and non-native European starling. Based on a focused survey, there is no evidence (e.g., old nests) of raptors having previously nested in the few trees on the project site.

No large cavities were identified that might provide suitable bat roosting habitat and no evidence of bat activity (i.e., guano or urine staining) was found during the focused survey.

California Annual Grassland

A fence surrounds a 0.23-acre of the northeast corner of the project site which contains California annual grassland habitat. This land cover type is dominated by ruderal grass species including ripgut brome and wild oats, as well as non-native forb species such as black mustard, wild radish, Crane's bill geranium and fennel. This section of the site also contains patches of soil without grassland that are likely the result of rocky, low-quality fill soil. This area of the site appears to be regularly disked.

The California annual grassland habitat provides low-quality habitat for wildlife due to frequent human disturbance (e.g., disking), the limited extent of the grassland area, and the isolation of this habitat remnant from more extensive grasslands. As a result, some of the wildlife species associated with extensive grasslands in the South Bay, such as the grasshopper sparrow, are absent from the patch of grassland on the project site. Although some animals that nest or den in the adjacent riparian habitat may occasionally forage in this grassland, the grassland is not used heavily by, or relied upon by, large numbers of riparian-associated animals. Many of the species that use the small grassland area on the project site primarily occur in adjacent urban areas and use the site's grassland for



Source: H.T. Harvey & Associates, March 2023.

LAND COVER AND RIPARIAN SETBACKS | FIGURE 3.2-1

foraging. These species include the house finch, bushtit, and lesser goldfinch, which forage on seeds in ruderal areas, and the black phoebe, barn swallow, and Mexican free-tailed bat, which forage aerially over ruderal habitats for insects.

California ground squirrels were not observed on the project site during the survey. Other rodent species that could occur in the on-site ruderal grassland habitat include the California vole, Botta's pocket gopher, and deer mouse. Diurnal raptors such as red-tailed hawks and Cooper's hawks forage for these small mammals over grasslands during the day, and at night nocturnal raptors, such as barn owls, will forage for nocturnal rodents, such as deer mice.

Mammals such as the native striped skunk and raccoon as well as the non-native Virginia opossum and feral cat utilize the grassland habitat on-site for foraging. Reptiles such as native western fence lizards and western terrestrial garter snakes are found in grassland habitats and may occur in the grassland on-site or in adjacent urban-suburban areas.

Mixed Riparian Woodland and Forest

The mixed riparian woodland and forest habitat occurs along the banks of the Guadalupe River adjacent to the project site, with a small area of riparian canopy (0.01 acre) overhanging the site. A fence line along the on-site residence and the parking lot currently utilized by the SAP Center are located at the edge of the top of bank of the Guadalupe River. The riparian edge extends beyond the top of bank and fence line for less than half of the length of the fence line (refer to Figure 3.3-1).

Dominant tree species include coast live oak and valley oak. Additional ornamental tree species (southern magnolia and southern blue gum) were observed on private property outside of the top of bank, but were contiguous with riparian trees and, therefore, included within the mixed riparian woodland and forest land cover type.

The understory of the riparian woodland habitat was dominated by Bermuda buttercup, ruderal grasses such as those observed in the California annual grassland, and Italian thistle. Himalayan blackberry was observed adjacent to the river.

Wildlife

Riparian habitats in California typically support bird communities and contribute to species diversity. The presence of year-round water and abundant invertebrate fauna provides foraging opportunities, and the diverse habitat structure provides cover and nesting opportunities. Many bird species at wetland and aquatic habitats along the Guadalupe River are expected to move through the site when flying along the Guadalupe River. The numbers of these birds moving through the site varies by time of year and by species. Many birds, such as waterfowl, move in large groups, while other species, such as migrating land birds, move individually. Local bird numbers also vary by time of year, as many birds form small to large flocks during winter and migration and occur in more widely spaced pairs during the breeding season.

The riparian habitat along the site is moderate quality for birds. The large numbers of mature trees and native trees, presence of dense understory vegetation in some areas, relatively large width of the riparian corridor (approximately 145 to 175 feet adjacent to the project site), and presence of the

Guadalupe River Park to the east and south contribute to the value of this habitat for birds. However, the large numbers of non-native trees, predominantly non-native understory, and disturbance of this habitat affect the quality of this habitat for birds. This riparian habitat is also fragmented due to the surrounding high-density urban development and the presence of bridges, road crossings, and channelization along nearby portions of the river and, therefore, lacks connectivity to higher-quality riparian habitats in the region. As a result, this reach of the Guadalupe River is considered to provide moderate-quality habitat for birds overall.

Some songbirds that migrate along the Pacific Flyway[7] and travel through the site vicinity are expected to occur at this reach of the Guadalupe River; however, this habitat is not heavily used by migrating birds. The project site is located approximately eight miles upstream from the San Francisco Bay and is isolated from San Francisco Bay habitats by dense urban development. Also, the riparian habitat along the project site is fragmented due to the surrounding high-density urban development and the presence of bridges, road crossings, and channelization along nearby portions of the river, and lacks connectivity to higher-quality riparian habitats in the region. Therefore, based on the moderate quality of the habitat and the isolation of this habitat from the edge of the San Francisco Bay and from higher-quality habitats in the region, only moderate numbers of birds migrating along the Pacific Flyway would utilize this reach of the Guadalupe River.

Reptiles such as the gopher snake, western fence lizard, and southern alligator lizard are also present in the riparian habitat along the Guadalupe River. Amphibians such as the arboreal salamander occur in the leaf litter in this habitat and the native Pacific tree frog is also known to be present. Urban-adapted mammals, such as the native raccoon and striped skunk, as well as the non-native Virginia opossum, Norway rat, black rat, feral cat, and eastern gray squirrel, occur in riparian habitat on and adjacent to the project site.

Special Status Species

Special Status Plant Species

A list of 66 plant species considered to have some potential for occurrence in the project vicinity was compiled using both California Natural Diversity Database (CNDDB) records and the California Native Plant Society (CNPS) Rare Plant Inventory. Analysis of the documented habitat requirements and occurrence records associated with these species showed that all 66 species do not have a reasonable potential to occur on the project site for at least one of the following reasons: (1) lack of suitable habitat types; (2) absence of specific microhabitat or edaphic requirements, such as serpentine soils; (3) the elevation range of the species is outside of the range on the site; (4) the site is too disturbed and urbanized to be expected to support the species, and/or (5) the species is presumed extirpated from the project vicinity. Further, the Habitat Plan does not indicate that any covered plant species potentially occur on the project site and does not require special-status plant surveys for the site. Therefore, no special-status plant species are expected to occur on the project site, and no focused rare plant surveys were needed or conducted.

[7] Pacific Flyway is a bird migration route that extends from Alaska and Canada, through California, to Mexico and South America.

Special Status Animal Species

The likelihood of occurrence of special-status animal species known to occur on the project site, or potentially occurring, in the surrounding region was identified. Most of the special-status species identified are not expected to occur on the project site because it lacks suitable habitat, is outside the known range of the species, and/or is isolated from the nearest known extant populations by development or otherwise unsuitable habitat.

The following special-status species that occur in less urbanized settings in the South Bay, or in specialized habitats in the South Bay, are absent from the project site due to a lack of suitable habitat and/or isolation of the site from populations by urbanization: the Bay checkerspot butterfly, riffle sculpin, California tiger salamander, California red-legged frog, foothill yellow-legged frog, bald eagle, golden eagle, peregrine falcon, white-tailed kite, burrowing owl, loggerhead shrike, grasshopper sparrow, Bryant's savannah sparrow, least Bell's vireo, American badger, San Joaquin kit fox, mountain lion, pallid bat, and Townsend's big-eared bat. While bald eagles may fly over the project site at times, none are expected to nest in, or make regular/heavy use of, any resources on the project site. No nests of San Francisco dusky-footed woodrats were observed on the site during the focused survey in February 2021, and this species is also determined to be absent. Refer to Appendix C, Biological Resources Report, Table 2 a more detailed description for potential occurrence of animal species on-site and why certain species are considered absent.

No aquatic habitat to support special-status fish species is present on the project site; however, the site is located immediately adjacent to the Guadalupe River, which provides habitat for the Central California Coast steelhead, Central Valley fall-run Chinook salmon, Pacific lamprey, Sacramento hitch, and Central California roach.

The tricolored blackbird and San Francisco common yellowthroat can occasionally occur on or adjacent to the project site as non-breeding foragers (i.e., they do not nest on or adjacent to the site). These species are not expected to nest, roost, or breed on or immediately adjacent to the project site due to a lack of suitable nesting, roosting, or breeding habitat.

Similarly, the monarch butterfly may occur on the project site as a nonbreeder, especially during spring and fall migration. However, no milkweeds, which provide this species' larval hostplant, were detected on the site during reconnaissance surveys and, therefore, monarchs are not expected to breed on the site. Also, this species is not known to form wintering roosts in Santa Clara County, and as a result, this species would occur only as an occasional nonbreeding visitor in low numbers.

The yellow warbler (Setophaga petechia) can potentially nest in riparian habitat along the Guadalupe River adjacent to the project site. Individuals of this species will also occasionally occur in the small areas of riparian canopy that overhang the project site as nonbreeding foragers. The western pond turtle can potentially breed or occur on or immediately adjacent to the project site.

Sensitive and Regulated Habitats

A search of sensitive habitats in the CNDDB identified there were no communities of special concern that occur within a two-mile radius of the project vicinity. Urban-suburban land uses, such as the uses on the project site, have relatively little vegetation.

The riparian corridor of the Guadalupe River overlaps with the edge of the project site. The mixed riparian forest on the project site is under the jurisdiction of the CDFW. Impacts on riparian habitats along stream and drainage corridors are typically regulated by CDFW because these habitats offer valuable resources for wildlife. Section 1602 of the Fish and Game Code establishes jurisdiction over the bed, channel, or bank of any river, stream, or lake. CDFW riparian jurisdiction ends at the outer extent of riparian tree or shrub canopy, which overlaps with the edge of the project site.

The aquatic habitat and in-channel wetlands in Guadalupe River are considered wetlands and waters of the U.S. under the Clean Water Act. These are adjacent to the project site and do not overlap with its boundaries. This riparian habitat (extending to the outer edge of the riparian canopy) is considered waters of the state under the Porter-Cologne Water Quality Control Act.

Trees

There are a total of 28 trees on-site, as summarized in Table 3.3-1 below and shown on Figure 3.3-2. Trees on-site include Northern California black walnut, valley oak, tree of heaven, California fan palm, Mexican fan palm, black locust, and jacaranda trees. Of the 28 trees on-site, 20 are ordinance sized (12.1 inches in diameter or more).

Table 3.3-1: On-site Trees

Tree Number	Tree Species	DBH (inches)
1	**Jacaranda**	**18.5**
2	**California fan palm**	**33**
3	**Southern magnolia**	**22**
4	Northern California black walnut	7
5	**Tree of heaven**	**29**
6	**Tree of heaven**	**4 x 2-inches, 5 x 2.5-inches 3 x 4 inches 10 x 3 inches 4 x 3.5 inches, 5 inches = 81.5 inches total**
7	**Boxelder**	**14, 12, 13, 15**
8	**Ash**	**18.5**
9	**Northern California black walnut**	**17**
10	**Silver dollar gum**	**30**
11	Elderberry	9
12	**Black locust**	**12, 10, 10, 9, 6**
13	Black locust	11.5
14	**Black locust**	**12.5, 12.5**
15	**Northern California black walnut**	**16**
16	**Privet**	**16**
17	**Holly oak**	**19.5**
18	Valley oak	10
19	**Black locust**	**18, 18, 11, 12**
20	Bottlebrush	5
21	**Blackwood acacia**	**24**

Table 3.3-1: On-site Trees		
Tree Number	**Tree Species**	**DBH (inches)**
22	**Sweet bay**	**7, 9, 6**
23	Elderberry	5, 6
24	**Tree of heaven**	**7, 7, 6, 5**
25	**Mexican fan palm**	**18**
26	Northern California black walnut	3.5
27	Black locust	3.5
28	**Mexican fan palm**	**12, 6**
Notes:*Tree measurements were completed by Traverso Tree Service in July 2022.DBH = Diameter at Breast Height **Bold** = Ordinance-sized trees (12.1 inches in diameter or more)		

TREE LOCATION MAP | FIGURE 3.2-2

3.2.2 Impact Discussion

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

1) 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)?
2) 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?
3) 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?
4) 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?
5) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?
6) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?

3.2.2.1 *Project Impacts*

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

Impacts to Special Status Plant Species

As stated in Section 3.2.1, none of the special status plant species listed on in CNDDB and CNPS Rare Plant inventory have the potential to occur on the site primarily due to lack of suitable habitat. The project would, therefore, have no impact on special status plant species. The Coleman Avenue/Autumn Street EIR did not evaluate impacts to special status plant species. The Downtown Strategy 2040 EIR stated that the downtown area does not provide suitable habitat for any special status plants. Therefore, the project's impact on special status species is consistent with the conclusions of the previous EIRs. **[Same Impact as Approved Project (No Impact)]**

Impacts to California Annual Grassland Habitat

The proposed project would result in permanent impacts to 0.17 acres of California annual grassland habitat on the project site. The project would remove all grassland vegetation within the impact area and result in a reduction in some of the common plant and wildlife species that occur on-site. However, the area of California annual grassland habitat which would be impacted occurs in a location in San José that has been subject to disturbance and fragmentation in the past and is located within a highly developed urban area. Therefore, these areas do not provide regionally rare or high-value habitat for native vegetation or wildlife, or special-status species. The project site's grassland habitat is of low value as foraging habitat for animals due to frequent human disturbance (e.g., mowing), the limited extent of this habitat, and this habitat patch's isolation from other grassland habitat in the region. In addition, California annual grassland is abundant and widespread regionally; the habitat on-site does not provide important plant or wildlife habitat. Consistent with the Coleman Avenue/Autumn Street EIR and Downtown Strategy 2040 EIR, the proposed project would have a less than significant impact on California annual grassland. **[Same Impact as Approved Project (Less than Significant Impact)]**

Impacts to Special Status Species Fish and Habitat

No direct impacts would occur within the bed and banks of the Guadalupe River, which runs adjacent to the project site. Indirect impacts on water quality in the river could occur as a result of project activities, as the project site is located immediately adjacent to the Guadalupe River above the top of bank. Indirect impacts on water quality from construction of the project would be avoided and reduced by implementing erosion and sediment control measures, as well as BMPs for work near the Guadalupe River (in accordance with the Conditions of Approval in Section 3.6, Hydrology and Water Quality). Additionally, the project shall comply with all conditions of the Habitat Plan, as required in the Condition of Approval listed under checklist question f) below. This would include compliance with the Habitat Plan's Condition 3, which requires implementation of design phase, construction phase, and post-construction phase measures, including programmatic BMPs,

performance standards, and control measures, to reduce increases of peak discharge of storm water and to reduce runoff of pollutants to protect water quality, including during construction.

Therefore, the project would not result in substantial adverse indirect effects on special-status fish species in the Guadalupe River. The Coleman Avenue/Autumn Street EIR did not evaluate impacts to special status fish species but did conclude there would be no loss of any habitat of importance. The Downtown Strategy 2040 EIR concluded that future development would not alter the drainage pattern that would increase the pollutant load of the Guadalupe River. Consistent with the certified EIRs, with the implementation of Conditions of Approval and MRP requirements, the project would have a less than significant impact on special status fish and their habitat. **[Same Impact as Approved Project (Less than Significant Impact)]**

Impacts on the Monarch Butterfly, Tricolored Blackbird, and San Francisco Common Yellowthroat

The monarch butterfly, tricolored blackbird, and San Francisco common yellowthroat may occur on or adjacent to the project site as nonbreeding migrants, transients, or foragers, but they are not known or expected to breed or occur in large numbers within or near the project impact area.

As stated in Section 3.2.1, Environmental Setting, the monarch butterfly and tricolored blackbird may forage at the site but are not expected to breed or nest on or adjacent to the site due to the absence of suitable habitat.

The proposed project could impact foraging habitats and/or disturb individuals of these species. Construction activities could result in a temporary direct impact through the alteration of foraging patterns (e.g., avoidance of work sites because of increased noise and activity levels during maintenance activities), however, it would not result in the loss of individuals, as individuals of these species would fly away from any construction areas or equipment before they could be injured or killed. Also, the project site does not provide important foraging habitat used regularly or by large numbers of individuals of any of these species. As a result, the project would have a less than significant impact on these species' foraging habitat and no substantive impact on regional populations of these species. Consistent with the conclusions in the Coleman Avenue/Autumn Street EIR and Downtown Strategy 2040 EIR, the proposed project would not impact the monarch butterfly, tricolored blackbird, and San Francisco common yellowthroat. **[Same Impact as Approved Project (Less than Significant Impact)]**

Impacts on the Yellow Warbler and Nesting Birds

The yellow warbler (a California species of special concern) could nest immediately adjacent to the project site in riparian trees along the Guadalupe River. Based on site observations, the extent of suitable habitats within and adjacent to the project site, and known nesting densities of these species, it is likely that no more than one pair of yellow warblers could potentially nest immediately adjacent to the project site. The project would not result in the loss of suitable nesting or foraging habitat for the yellow warbler, as no activities are proposed within the bed and banks of the Guadalupe River. However, activities that occur during the nesting season and cause a substantial increase in noise or human activity near active nests may result in the abandonment of active nests (i.e., nests with eggs

or young). Heavy ground disturbance, noise, and vibrations caused by project activities could disturb nesting and foraging individuals and cause them to move away from work areas.

The site is used by building occupants (an automobile repair shop) and for vehicle parking. Use of the riparian habitat along the river by homeless results in human disturbance within the riparian habitat. The increase in users on the site as a result of this project would not contribute substantially to human disturbance of yellow warblers that might nest on and adjacent to the site.

Because the number of nesting pairs of yellow warblers that could be disturbed is small (i.e., one pair), the project would not substantially affect the regional population of this species. Therefore, neither the loss of individual yellow warblers nor the disturbance of nesting and foraging habitat would result in a significant impact to this species.

All native bird species are protected from direct take by federal and state statutes, and the project shall comply with Habitat Plan Condition 1 either by restricting work to the non-nesting season (September 1 through January 31, inclusive) or by completing preconstruction surveys prior to project activities and maintaining appropriate buffers around active nests of protected birds.

Impact BIO-1: Construction activities associated with the proposed project could result in loss of fertile eggs of nesting raptors or other migratory birds, or nest abandonment.

Mitigation Measures: The following shall be implemented prior to and during construction to avoid abandonment of raptor and other protected migratory bird nests during construction, consistent with the Downtown Strategy 2040 EIR.

MM BIO-1.1: Nesting Raptors and Migratory Birds: The project will be required to implement the following measures:

- The City's contractor shall schedule demolition, tree removal, and construction activities to avoid the nesting season. The nesting season for most birds, including most raptors in the San Francisco Bay area, extends from February 1st through August 31st, inclusive.
- If demolition, tree removals, and construction activities 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 ornithologist will 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 ornithologist will 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, grading, or demolition permits (whichever occur first), the City's contractor 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 the identified mitigation measures, the project's impact to nesting birds and raptors would be less than significant, consistent with the Coleman Avenue/Autumn Street Improvements and Downtown Strategy 2040 EIRs. **[Same Impact as Approved Project (Less than Significant Impact with Mitigation)]**

Impacts on the Western Pond Turtle

Western pond turtles occur in the Guadalupe River and are expected to occur in the reach adjacent to the project site. This species' abundance in urban areas is low, and individuals are expected to restrict their activities primarily to the river (off-site) except when nesting. In the unlikely event that a turtle occurs on the site itself, it is possible that individuals could nest in the small area of grasslands on the project site. If that were to occur, individual turtles or their eggs that are present in the work areas may be harmed or killed due to construction, or as a result of desiccation or burying (e.g., during grading). Although pond turtles are widespread in the project region, the species is not particularly abundant, and the loss of individuals could reduce the viability of a population to the extent that it would be extirpated.

The Habitat Plan does not provide species-level avoidance measures for the western pond turtle. However, the project would comply with the general conditions of the Habitat Plan described under checklist question f) (including the payment of Habitat Plan fees), which will reduce proposed project impacts on the western pond turtle and its habitats. Applicable Habitat Plan conditions that would reduce project impacts on the western pond turtle are Conditions 3 and 11. Because the project will comply with all relevant Habitat Plan conditions, impacts on the western pond turtle would be less than significant, consistent with the conclusions of the Downtown Strategy 2040 EIR. The Coleman Avenue/Autumn Street Project EIR concluded that the project would not result in the loss of habitat of importance (including wetlands) and would have a less than significant impact on these habitats, since the habitats were not present in the project area. The project's impact to western pond turtle habitat is consistent with this conclusion. **[Same Impact as Approved Project (Less than Significant Impact)]**

Impacts on Wildlife due to Increased Lighting

Artificial lighting can indirectly impact mammals and birds by increasing the nocturnal activity of predators such as owls, hawks, and mammalian predators. The presence of artificial lighting may also influence habitat use by rodents and breeding birds, by causing their avoidance of well-lit areas, resulting in a net loss of habitat availability and quality.

Artificial lighting may also indirectly affect fish species that are present in the Guadalupe River. An increase in lighting at night can alter the nighttime activities of predators and prey. This can reduce the nocturnal drift activity by freshwater invertebrates[8] and potentially reduce the availability of prey for foraging fish species in the river. In addition, an increase in nighttime lighting can disrupt the temporal and spatial movement patterns of young (fry) fish that typically disperse and migrate at night to decrease their risk of predation. Nighttime lighting on bodies of water can adversely affect foraging activity, increase predation risk on fish, as well as significantly change the composition of fish communities that occur across a day-night period.

The project would construct a parking lot that would increase the amount of lighting within and around the project site. No lighting would be constructed as a part of the future trail. Lighting from the project would be the result of streetlamps lighting the new parking area. Based on the project's lighting plans, this lighting would spill into the adjacent Guadalupe River corridor, resulting in an increase in lighting compared to existing conditions. Areas to the northwest, southwest, and southeast are primarily developed urban habitats that do not support sensitive species that might be significantly impacted by illuminance from the project. However, the riparian and wetland habitats along the Guadalupe River to the northeast provide suitable habitat for a variety of wildlife species and are close enough to the project site to be affected by an increase in lighting.

The species occupying the sensitive habitats along the Guadalupe River have adapted to the existing artificial lighting from a variety of urban and natural light sources that are found on the site and nearby. However, due to the ecological importance of the riparian and aquatic habitats of the Guadalupe River and the fish and wildlife communities they support, substantial increases in lighting at the Guadalupe River and its associated riparian and aquatic habitats could result in a significant impact by disrupting the natural behaviors of the species using these habitats. The Downtown Strategy 2040 EIR concluded that at the time individual development projects proposed near creeks in Downtown are evaluated for project-level environmental impacts, detailed evaluation would be required to determine impacts to riparian habitat and identify any necessary mitigation.

Impact BIO-2: The project's parking lot lighting could result in a significant impact to sensitive habitat and species along the Guadalupe River due to spillover illumination affecting foraging activity, increasing predation risk on fish and changing the composition of fish communities that occur across a day-night period.

Mitigation Measures: The following mitigation measures would reduce the impacts of the project's parking lot lighting on sensitive species and habitat to less than significant.

MM BIO-2.1: All lighting shall be fully shielded to block illumination from shining upward, or outward towards the Guadalupe River to the northeast. All fixtures on the site shall have a backlight, uplight, and glare (BUG) rating of U0, and any fixtures located along the site's northeast property line shall have a BUG rating of B0, as follows:

- U0: 0 lumens (90–180 degrees).

[8] Invertebrate drift is the downstream transport of invertebrate organisms.

- B0: 110 lumens high (60–80 degrees), 220 lumens mid (30–60 degrees), and 110 lumens low (0–30 degrees)

MM BIO-2.2: Except as indicated in mitigation measure MM BIO-2.1 above, fixtures shall comply with lighting zone LZ-2, Moderate Ambient, as recommended by the International Dark-Sky Association (2011) for light commercial business districts and high-density or mixed-use residential districts. The allowed total initial luminaire lumens for the project site is 2.5 lumens per square foot of hardscape, and the BUG rating for individual fixtures shall not exceed B3 or G2, as follows:

- B3: 2,500 lumens high (60–80 degrees), 5,000 lumens mid (30–60 degrees), 2,500 lumens low (0–30 degrees)
- G2: 225 lumens (forward/back light 80–90 degrees), 5,000 lumens (forward 60–80 degrees), 1,000 lumens (back light 60–80 degrees asymmetrical fixtures), 5,000 lumens (back light 60–80 degrees quadrilateral symmetrical fixtures)

MM BIO-2.3: Exterior lighting shall be minimized (i.e., total outdoor lighting lumens shall be reduced by at least 30 percent or extinguished, consistent with recommendations from the International Dark-Sky Association [2011]) from 10:00 PM until sunrise, except as needed for safety and City code compliance.

The Coleman Avenue/Autumn Street EIR did evaluate the impacts of increased lighting on riparian and aquatic habitats of special status species. The Downtown Strategy 2040 EIR concluded that increased night lighting from new development could affect the quality of riparian habitats by changing the behavior of wildlife (e.g., causing them to avoid well-lighted areas or alter dispersal routes) and amplifying predation pressure on some species. The EIR concluded that intensification of land uses would increase the sources of artificial light and compliance with Riparian Corridor Protection and Bird-safe Design Policy development guidelines and the Habitat Plan would reduce the effects human-induced disturbances such as lighting, noise, and use of toxic substances. Consistent with the Downtown Strategy 2040 EIR, mitigation measures MM BIO-2.1 through MM BIO-2.3 would reduce lighting impacts on riparian habitat and sensitive species to less than significant. **[Same Impact as Approved Project (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?

Sensitive natural communities, as defined by CDFW, USFWS, RWQCB, and USFWS, include aquatic, wetland, and riparian habitats.

Impacts to Riparian Trees and Habitat

Implementation of the proposed project could result in temporary impacts to the adjacent mixed riparian woodland and forest habitat (i.e., trimming of riparian trees) as a result of construction of landscaping along the riparian canopy edge. The riparian trees (0.01 acre) that overhang the site may need to be trimmed for construction or have their roots impacted by construction to the point that they may need to be removed, they may die, or their health may be impaired Construction could cause tree damage or even death to adjacent trees through indirect impacts. Activities that compact soil, trench through roots, or pile soil up around the base of trees may adversely affect the health of these trees.

The project applicant shall pay Habitat Plan specialty fees for the impact to 0.01 acres of riparian trees. This would reduce the impact on riparian trees to less than significant. In addition, the proposed project would comply with the requirements of Habitat Plan Conditions 3 and 4 (refer to mitigation measure MM BIO-3.2).

If the project were, however, to damage riparian trees to the extent the trees would not survive, this would reduce the existing habitat of the riparian corridor along this reach, which would be a significant impact.

Impact BIO-3: The project could result in a significant impact to adjacent riparian trees and habitat during construction.

Mitigation Measures: The following mitigation measures would reduce the project's impact on riparian habitat to less than significant.

MM BIO-3.1: **Avoid Impacts to Riparian Trees and Habitat Prior to and During Construction.** Riparian trees and sensitive riparian habitat along the Guadalupe River to be avoided by the project will be clearly marked on plans as such. Riparian trees to remain will be protected with environmentally sensitive area (ESA) fencing installed at their driplines to provide a Tree Protection Zone (TPZ). Should any grading, staging, trenching, or other activity need to take place within a designated TPZ for a tree intended to be retained, the City's contractor shall hire an International Society of Arboriculture (ISA) Certified arborist to monitor the work, recommend any applicable measures to lessen impact on the tree, and following completion of the work, determine whether the tree has been injured to the degree that it may die from the impacts and therefore be considered for removal. During the construction phase, the project is required to stabilize soils adjacent to riparian trees, minimize ground-disturbing impacts, and avoid planting species identified by the California Invasive Plant Council (Cal-IPC) as invasive. All temporarily disturbed soils are required to be revegetated with native plants or sterile, nonnative species, and temporarily disturbed areas such as staging areas will be returned to pre-project or ecologically improved conditions within one year of the completion of construction.

MM BIO-3.2 **Avoid Impacts to Riparian Trees and Habitat During and Post Construction.** During project construction and immediately after construction (based on Habitat Conditions 3 and 4), the City's contractor shall implement the following measures to protect riparian trees and habitat:

- Removal of riparian vegetation and trees shall be limited to the minimum extent required to construct the project.
- Seed mixtures, and if needed, shrubs and trees used for revegetation of the impacted riparian habitat shall not contain invasive non-native species but will be composed of native or sterile non-native species. If sterile non-native mixtures must be used for temporary erosion control, native seed mixtures will be used in subsequent treatments to provide long-term erosion control and prevent colonization by invasive non-native species.
- The minimum amount of impermeable surface shall be used for the construction as is practicable.
- The project shall prepare and implement sediment erosion control plans to prevent erosion or other disturbance-related impacts within the riparian corridor.
- All construction within the riparian habitat shall take place during the dry season from June 15 to October 31.
- Immediately after completion of project components located in the riparian habitat, and before close of seasonal work window, stabilize all exposed soil with mulch, seeding, and/or placement of erosion control blankets.

MM BIO-3.3: **Prevent Spread of Invasive Plant Species.** Within the proposed planting areas in the 100-foot setback, no nonnative invasive species, as ranked by the California Invasive Plant Council and/or identified in Valley Water's Guidelines and Standards for Land Use Near Streams: A Manual of Tools, Standards, and Procedures to Protect Streams and Streamside Resources in Santa Clara County (Valley Water 2006) and the City of San José's Riparian Corridor, shall be planted (including planting near the future Guadalupe River Trail extension). The City's contractor shall implement following BMPs for weed control to avoid and reduce the spread of invasive plant species.

- Prior to grading or soil disturbance, infestations of non-native vegetation within areas of direct permanent or temporary disturbance will be removed and all vegetative material will be disposed of off-site.
- All ground disturbing equipment used adjacent to the riparian corridors shall be washed (including tracks, and undercarriages) at a legally operating equipment yard both before and after being used at the site.
- All applicable construction materials used on site, such as straw wattles, mulch, and fill material, shall be certified weed free.

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

  The City's Director of Planning, Building and Code Enforcement, or the Director's designee shall review and approve the above measures prior to grading or soil disturbance.

The Coleman Avenue/Autumn Street EIR concluded that the project would not result in the loss of habitat of importance. The Downtown Strategy 2040 EIR concluded that intensification of urban development in the vicinity of the Guadalupe River could result in a substantial adverse effect. The Downtown Strategy 2040 EIR stated that projects would be required to implement setback requirements in accordance with General Plan policies, Riparian Corridor Protection and Bird-safe Design, and consistency with the Habitat Plan's setback requirements, and that projects near creeks/rivers would be required to determine mitigation to riparian habitat impacts. Consistent with the Downtown Strategy 2040 EIR requirements, with the implementation of the above mitigation measures, the project would result in a less than significant impact to riparian trees and habitat. **[Same Impact as Approved Project (Less than Significant Impact with Mitigation Incorporated)]**

Impacts due to Encroachment into the Riparian Setback

Based on the Habitat Plan's 100-foot riparian setback standard, a 100-foot setback between new construction and the Guadalupe River (either the outer edge of the riparian canopy or top of bank, whichever extends further landward) on the project site would maintain suitable riparian functions.

The proposed parking area and landscape vegetation on the site (i.e., the extent of project impacts) would be set back a minimum distance of 35 feet from the top of bank along the entire length of the site. New pavement is proposed within two feet of the edge of existing riparian vegetation, and landscaping is proposed right up to the edge of existing riparian vegetation (with no setback). Encroachment into the riparian buffer along the Guadalupe River, including development or planting of landscape vegetation within the buffer, would be a significant impact because of the high ecological value of the Guadalupe River as a whole and the degradation to that value that would occur due to encroachment. Encroachment of the project within the 100-foot standard riparian

setback would result in the following effects on the adjacent riparian communities along the Guadalupe River:

- The removal of buildings within the 100-foot setback would provide a minor improvement to conditions within the setback and would reduce shading of riparian vegetation to some extent. The paved parking lot that would replace the existing buildings would not, however, provide habitat for riparian animals.

- The construction of paved parking areas would not encroach closer to the creek than baseline conditions or substantially degrade the ecological functions and values of the creek/riparian corridor. More vehicular circulation would, however, occur closer to the riparian corridor than under existing conditions.

- Construction of a parking area in areas that are currently unpaved (i.e., California annual grassland) may result in indirect adverse effects on a portion of the Guadalupe River corridor by removing habitat that could be used by riparian-associated species and introducing vehicular traffic closer to the riparian corridor than currently exists within this area.

- Riparian trees would be trimmed where they overhang the project site, resulting in a reduction in the extent of riparian habitat on the site. This impact could temporarily reduce the extent of habitat for riparian-associated species.

The removal of buildings and repaving of existing developed areas (0.66 acres) within the 100-foot setback area are not considered significant impacts since these activities would not result in additional impacts on the riparian corridor or 100-foot setback compared to existing conditions. The trimming of 0.01 acre of riparian trees would be offset by the implementation of mitigation measure MM BIO-3.1 and Conditions of Approval above, which would reduce impacts to riparian trees during construction.

Project impacts within 0.17 acres of California annual grassland habitat located within the 100-foot setback would reduce the quality of the riparian habitat and reduce bird use of the riparian habitat and this patch of grassland to some extent. Because the existing riparian habitat adjacent to the project site is of only moderate quality (as opposed to high quality found along reaches with broader riparian woodland and forest in areas with greater setbacks from existing development) and would not attract large numbers of animals, and because the use of this patch of grassland by riparian animals is limited. These impacts would not affect regional populations of any animal species that use the site, nor would the impacts result in substantial degradation of riparian animal communities in the segment of the Guadalupe River adjacent to the project site.

An exception to the Habitat Plan Condition 11 requirements would be required to allow encroachment of the project to 50 feet from top of bank for new development and 35 feet from top of bank within existing developed areas. All proposed parking lot improvements would be located at least 35 feet from top of bank, which is outside this minimum setback area for portions of the site that are currently developed. However, a portion of the new parking lot is proposed within 50 feet of top of bank where 0.17 acre of existing grassland vegetation is present (i.e., in the portion of the site

that is not yet developed), and therefore, encroaches into the Habitat Plan's 50-foot minimum setback area.

Since the existing riparian habitat immediately adjacent to the site is fragmented and of moderate quality (as opposed to high quality) and is not expected to attract a large number of birds, these impacts would not affect regional populations of bird species that use the site, nor would it result in a substantial degradation of riparian bird communities in the segment of the Guadalupe River adjacent to the site. Although the identified impacts would reduce the quality of the riparian habitat, the Biological Resources Report concluded that implementation of the project, by itself, would not result in a substantial degradation of riparian bird communities in this portion of the Guadalupe River. In addition, compensatory mitigation shall be provided by the project applicant to offset project impacts on the ecological functions and values of the riparian corridor, see MM BIO-C-4.1 through MM BIO-C-4.3. Therefore, the proposed project would have a less than significant project level impact from encroachment on riparian birds and habitat and would not result in a substantial adverse effect on any riparian habitat or other sensitive natural community.
Prior to construction of any non-exempt uses (i.e., the roadway, hardscaped planting wells, and any planting areas with nonnative vegetation) within the City's 100-foot setback (which, on the project site, is measured from the edge of the riparian canopy) and the Habitat Plan's 100-foot setback (which is measured from the top of bank), the City would request and obtain a riparian setback exception in accordance with City Council Policy 6-34 and the outlined factors of the Habitat Plan. As part of the exception review process and prior to a determination on the setback exception request, the Director of Planning, Building and Code Enforcement or Director's designee would provide the exception request and proposed decision to both the Implementing Entity and the Wildlife Agencies for review and comment.

Based on the City's Riparian Corridor Policy, the required setback for the future trail would be 10 feet from the riparian corridor if it is a proposed multi-use trail. If a multi-use trail is constructed within 10 feet of the riparian corridor, an exception to the City's policy would be required. There would be no setback requirement for a new pedestrian trail. No specific plans for the trail are available at this time. Supplemental environmental review will be required at the time details and plans for the proposed trail are available.

As stated above, the Downtown Strategy 2040 EIR concluded that with the implementation of setback requirements (e.g., setback requirements outlined in the Habitat Plan and Riparian Corridor Protection and Bird-safe Design Policy), and mitigation included in individual project biological studies near riparian areas, the Downtown Strategy 2040 would result in a less than significant impact to riparian habitats (related to riparian setbacks). The impacts of reduced riparian setbacks for specific sites within the Downtown area were not evaluated in the Coleman Avenue/Autumn Street EIR or the Downtown Strategy 2040 EIR since detailed project information was not available at the time of preparation of the EIRs. With the implementation of mitigation measure MM-BIO-1.4, and MM BIO-C-4.1 through MM BIO-C-4.3 the proposed project would have a less than significant impact on riparian habitat due to a reduced setback. **[New Less than Significant Impact with Mitigation Incorporated]**

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

During the site reconnaissance visits, it was determined that there are no wetlands that occur on the project site. Wetlands could occur within the banks of the Guadalupe River channel; however, no work is proposed below the top of the banks. All indirect impacts to waters within the Guadalupe River would be reduced to less than significant level through implementation of the required provisions in the Construction General permit and MRP (discussed in Section 3.6, Hydrology and Water Quality). Therefore, consistent with the conclusions of the Coleman Avenue/Autumn Street EIR and Downtown Strategy 2040 EIR, the project would have a less than significant impact on wetlands. **[Same Impact as Approved Project (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 Guadalupe River and the associated riparian corridor provide an important movement pathway for both aquatic and terrestrial wildlife species, connecting the associated wetlands to the San Francisco Bay. Proposed project development along the river would not result in any loss of aquatic, wetland, or riparian habitat along the Guadalupe River or in any substantial reduction in the value of the Guadalupe River corridor for wildlife movement. Therefore, aquatic and terrestrial species would continue to be able to move north to south along the Guadalupe River following project development. The project would not 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. This impact would be less than significant. The Downtown Strategy EIR stated that with the 2040 General Plan policies, existing regulations, and measures related to riparian habitat and special status species, development under the proposed Downtown Strategy 2040 would not substantially interfere with migratory wildlife corridors or with the movement of native fish or birds. Since the project would implement these same policies and regulations, the project is consistent with this conclusion. The Coleman Avenue/Autumn Street EIR did not evaluate impacts on wildlife movement. **[Same Impact as Approved Project (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?

The urban forest consists of planted landscape trees along residential and commercial streets and in landscaped areas at residences, local parks, in parking lots, and the perimeter of commercial and industrial developments. Within the City of San José, the urban forest is considered an important biological resource because most mature trees provide some nesting, cover, and foraging habitat for a variety of birds (including raptors) and mammals, as well as providing necessary habitat for beneficial insects. Although the urban forest is not the best environment for native wildlife, trees in the urban forest are often the only or the best habitat commonly or locally available within urban areas.

As mentioned previously, there are a total of 28 trees on and adjacent to the site. Under the proposed project, all 28 trees on the project site would be removed during project construction. Consistent with the General Plan, any tree removed as a result of the project would be required to be replaced in accordance with all applicable laws, policies, or guidelines, including:

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

In addition, the project would be required to implement the following Conditions of Approval consistent with the Downtown Strategy 2040 EIR.

Conditions of Approval:

The project will be required to implement the following measures:

- Tree Replacement. Trees removed for the project shall be replaced at the ratios required by the City, as stated in Table 4.4-1 below, as amended:

Table 3.2-1: City of San José Standard Tree Replacement Ratios

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

* x:x = tree replacement to tree loss ratio

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

Notes: Trees greater than or equal to 38 inches in 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.

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

Three street trees and two on-site trees would be removed with implementation of the project. All three of the trees to be removed would be replaced at a 1:1 ratio. There are no native trees on-site. The total number of replacement trees required to be planted is 138. The species of trees to be planted shall be determined in consultation with the City Arborist and the Department of Planning, Building and Code Enforcement

- **In-Lieu Mitigation.** 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, at the development permit stage:

- The size of a 15-gallon replacement tree may be increased to 24-inch box and count as two replacement trees to be planted on the project site, at the development permit stage.
- Pay Off-Site Tree Replacement Fee(s) to the City, prior to the issuance of Public Works grading permit(s), in accordance with the City Council approved Fee Resolution. The City will use the off-site tree replacement fee(s) to plant trees at alternative sites.

In accordance with City policy, the proposed project would implement tree replacement as shown in Table 3.2-1 or the in-lieu mitigation. Currently, the project proposes to plant 26, 24-inch-box trees which are equivalent to 52 replacement trees. The remaining 86 replacement trees will be address through payment of the off-site tree replacement fee.

The Coleman/Autumn Street Focused EIR and Downtown Strategy 2040 EIR concluded that compliance with the City's tree replacement policy would reduce impacts to the urban forest to a less than significant level. The project's impact to trees/urban forest is consistent with the conclusions of the previous EIRs. **[Same Impact as Approved Project (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 is considered a covered project under the Habitat Plan. All Habitat Plan-covered species and habitats that may be affected by the proposed project are discussed in this section. The project would be required to comply with all applicable Habitat Plan conditions during project implementation. As discussed above, the project would result in encroachment on the standard Habitat Plan stream setbacks, resulting in a conflict with the provisions of Condition 11 of the Habitat Plan.

As discussed, Condition 11 of the Habitat Plan (Stream and Riparian Setbacks) applies to all covered activities that may impact streams. The Habitat Plan-defined standard setback for the Guadalupe River, a Category 1 stream, is 100 feet. As mentioned previously, the proposed project would be set back 35 feet from the riparian corridor and would encroach on approximately 0.83 acres (including 0.17 acres of undeveloped California annual grassland habitat) of the 100-foot setback area. The City has requested feedback from the Wildlife Agencies for an exception from Condition 11 for the proposed project.

For all proposed stream setbacks, exceptions shall be considered based on the following factors:

- The existence of legal uses within the setback.
- The extent to which meeting the required setback would result in a demonstrable hardship (i.e., denies an owner any economically viable use of his land or adversely affects recognized real property interests) for the applicant.
- The extent to which meeting the required setback would require deviation from, exceptions to, or variances from other established policies, ordinances or standard regarding grading,

access, water supply, wastewater treatment, disposal systems, geologic hazards, zoning, or other established code standards.

- The stream setback exception does not preclude achieving the biological goals and objectives of the Habitat Plan or conflict with other applicable requirements of the Habitat Plan and local policies.

The Coleman Avenue/Autumn Street EIR did not evaluate conflicts related to the Habitat Plan (given the Habitat Plan was not adopted at the time the EIR was prepared). As previously stated, the Downtown Strategy 2040 EIR assumed that at the time of individual development, projects proposed near creeks/rivers in downtown area, a detailed evaluation would be required to determine impacts to riparian habitat and identify any necessary mitigation. Therefore, consistent with the Downtown Strategy 2040 EIR assumptions, a biological assessment was prepared for the project to assess impacts to riparian habitat. With implementation of the Condition of Approval identified below for adherence to applicable conditions in the Santa Clara Valley Habitat Plan and the Condition 11 Exception, the project would not conflict with provisions of the Habitat Plan pertaining to riparian setbacks.

Nitrogen Deposition Impacts on Serpentine Habitats

As discussed in the Downtown Strategy 2040 EIR, all development covered by the Habitat Plan is required to pay a nitrogen deposition fee as mitigation for cumulative impacts to serpentine plants in the Habitat Plan. The nitrogen deposition fees collected under the Habitat Plan for new vehicle trips would be used as mitigation to purchase and manage conservation land for the Bay Checkerspot butterfly and other sensitive species. The project would implement the following Condition of Approval.

Condition of Approval:

- **Santa Clara Valley Habitat Plan.** The project is subject to applicable Habitat Plan 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 all applicable fees 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.

The Coleman Avenue/Autumn Street EIR did not evaluate conflicts related to the Habitat Plan (given the Habitat Plan was not adopted at the time the EIR was prepared). The EIR concluded that the project would not result in the loss of any habitat of importance (e.g., wetlands). The Downtown Strategy 2040 EIR concluded that with the implementation of 2040 General Plan policies, existing regulations, and measures included in the project to protect special status species, the Downtown Strategy 2040 would not conflict with local policies or ordinances protecting biological resources or the provisions of an adopted or pending habitat conservation plan.

With the implementation of the above mitigation, standard permit condition, and applicable Habitat Plan Conditions, the project would not conflict with the requirements in the Habitat Plan. **[New Less than Significant Impact with Mitigation Incorporated]**

3.2.2.2 *Cumulative Impacts*

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

The geographic area for biological resources includes the project site and adjacent parcels (and Santa Clara County for special status species and nesting birds). There are no pending/approved projects located adjacent to the site. The nearest project is the office project under construction at 447 West Julian Street, approximately 400 feet north of the project site (across West Julian Street). The cumulative projects would be required to comply with the City's Habitat Plan and Riparian Corridor and Bird-safe Design Policy. The project, in combination with other projects in the area and other activities that impact the species that are affected by this project, could contribute to cumulative effects on special-status species.

Along the entire Guadalupe River, the encroachment of development toward the riparian corridor has resulted in a cumulative impact on riparian bird communities over time due to the degradation of the riparian habitat, increase in human activity in and along the riparian corridor, and loss/degradation of open areas adjacent to the riparian corridor that birds can use for foraging or as flight paths in and out of the riparian corridor. Given the importance of riparian habitat and riparian bird communities along the Guadalupe River to regional bird diversity and abundance (e.g., on the scale of the Santa Clara County), this cumulative impact on riparian bird communities would be significant.

Future development activities along the Guadalupe River in the City of San José may result in impacts on the same habitat types and species that would be affected by the proposed project. Whether or not individual projects, including the Milligan Parking Lot project and other pending and approved projects, make a considerable contribution to the significant cumulative impact on riparian bird communities along the Guadalupe River depends on the nature and extent of direct and indirect impacts of those projects.

The purpose of the standard setbacks provided by City of San José Council Policy 6-34 and the Habitat Plan is to preserve riparian functions and values on a site-by-site basis in order to avoid a significant cumulative impact on these important resources. While exceptions to these setbacks may be granted on some occasions, encroachment of the project within 0.17 acres of undeveloped California annual grassland habitat within the standard 100-foot riparian setback on the site would result in a considerable contribution to significant cumulative impacts on the functions and values of remaining areas of riparian habitat in San José, without the implementation of mitigation measures.

The project proposes to convert this habitat into paved parking areas within the 100-foot setback. Therefore, the contribution to cumulative impacts due to encroachment into the riparian buffer would be considerable for the removal of grassland habitat, as it represents a new type of development that would have a greater impact on the adjacent riparian corridor (due to the removal of existing undeveloped habitat, as discussed above) compared to existing conditions.

Encroachment within the 100-foot setback would represent a cumulatively considerable contribution to significant cumulative impacts on riparian bird communities along the Guadalupe River. Because most of this site is already developed with a paved parking lot and is surrounded by development, and the quality of the California annual grassland habitat on the site is very low, cumulative impacts due to encroachment into the 100-foot setback can be reduced to less than significant levels, with the implementation of mitigation measures MM BIO-C-4.1 and MM BIO-C-4.2.

Impact BIO-C-4.1: Development within the 100-foot riparian setback area (adjacent to the Guadalupe River), would result in significant cumulative impacts to riparian habitat and bird communities.

Mitigation Measures: Implementation of the following mitigation measures would reduce cumulative impacts to riparian habitats and bird communities to less than significant.

MM BIO-C-4.1: **Compensate for New Urban Development within the Setback**. To compensate for the degradation of setback functions in the 100-foot setback within existing California annual grassland (0.17 acre) due to the construction of a new parking lot and landscape areas, the City's contractor shall restore native riparian tree and shrub habitat at a 1:1 (restored area: impacted area) ratio, on an acreage basis, on-site or off-site prior to project operations. The City shall also pay Habitat Plan fees to the to the Santa Clara Valley Habitat Agency for impacts on riparian trees prior to grading, demolition, tree removal, or initiation of impacts to currently undeveloped habitat within the riparian setback.

MM BIO-C-4.2: **On-Site Mitigation**. If restoration is completed on-site, native riparian vegetation shall be planted in planting areas that are contiguous with the riparian corridor (i.e., not located in isolated planting wells) and located within the 100-foot setback. If the available planting area is smaller than the project's 0.17-acre impact area, then the City's contractor shall: (1) reduce the impact area within the California annual grassland land cover type, or (2) expand any landscape areas that are contiguous with the riparian corridor, to achieve a ratio of restored area to impacted area of 1:1.

Locally native trees and shrubs appropriate to the area as identified in Valley Water's guidance and/or the City's Policy Study shall be planted and maintained on-site to provide additional wildlife habitat adjacent to the Guadalupe River. The on-site planting areas shall include locally native understory, mid-story, and overstory vegetation to provide high-quality habitat for birds; no nonnative vegetation (including "compatible" nonnatives that may be recommended for planting along streams by local jurisdictions) shall be planted within the restoration areas. Example overstory species include coast live oak, valley oak, and example understory species include holly-leaf redberry (Rhamnus ilicifolia) and holly-leaf cherry (Prunus ilicifolia). A qualified restoration ecologist shall develop a Riparian Setback Enhancement and Monitoring Plan (RSEP), which shall contain the following

components (or as otherwise modified by regulatory agency permitting conditions):

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

On-site plantings shall be approved by the Director of Planning, Building and Code Enforcement, or the Director's designee prior to grading, demolition, tree removal, or initiation of impacts to currently undeveloped habitat within the riparian setback.

The RSEP must be approved by the City's Director of Planning, Building, and Code Enforcement prior to grading, demolition, tree removal, or initiation of impacts to currently undeveloped habitat within the riparian setback.

Monitoring of the restored habitat shall be implemented by the City and continue post-construction as indicated in the Monitoring Plan (10 years or greater).

MM BIO-C-4.3: **Off-Site Mitigation**. If adequate riparian habitat mitigation cannot be restored on-site, riparian habitat will be enhanced or restored to native habitat along the immediately adjacent riparian corridor, and/or elsewhere along the Guadalupe River and within the City of San José. If off-site mitigation is necessary and it is not possible to find a suitable mitigation site along the Guadalupe River, the mitigation shall be provided elsewhere on the Santa Clara Valley floor and within the City of San José.

Restoration/enhancement that shall be provided along the immediately adjacent riparian corridor would consist of the removal of nonnative trees, shrubs, and vines and the planting of native riparian vegetation. The off-site planting areas shall be restored/enhanced to incorporate native understory, mid-story, and overstory vegetation to provide high-quality habitat for birds; no nonnative vegetation (even including "compatible" nonnatives that may be

recommended for planting along streams by local jurisdictions) shall be planted within the restoration areas. Acreage will be credited based on the areal extent of nonnative vegetation removal and native riparian vegetation planting.

Any off-site restoration/enhancement would need to be performed according to a Riparian Habitat Mitigation and Monitoring Plan, as described for on-site mitigation.

The Coleman Avenue/Autumn Street EIR assumed development would occur outside of the riparian corridors of the Guadalupe River. The Downtown Strategy 2040 EIR stated that projects adjacent to the Guadalupe River would be required to have an open space buffer and incorporate riparian setback areas, which would result in less than significant impacts to riparian habitats. If compensatory mitigation for the project's encroachment into the riparian setback via disturbance of existing grassland habitat is provided on-site or elsewhere along the Guadalupe River, then the project's contribution to the significant cumulative impact on Guadalupe River riparian and bird communities would be reduced to a less than significant level. [**New Less than Significant Cumulative Impact with Mitigation Incorporated**]

3.3 CULTURAL RESOURCES

The following discussion is based in part upon a Historic Resource Evaluation completed by Garavaglia Architecture, Inc. for the proposed project on August 20, 2021, and a Cultural Resources Assessment completed by Basin Research Associates (in August 2007) as a part of the Coleman/Autumn Street Improvement Project Focused EIR (certified in 2008). A copy of the Historic Resource Evaluation is included in Appendix D of this SEIR. The 2007 Cultural Resources Assessment is on file with the City of San José's Department of Planning, Building and Code Enforcement.

3.3.1 Environmental Setting

3.3.1.1 *Regulatory Framework*

Federal and State

National Historic Preservation Act

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

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

- The property is at least 50 years old (properties under 50 years of age that are of exceptional importance or are contributors to a district can also be included in the NRHP);
- It retains integrity of location, design, setting, materials, workmanship, feeling, and associations; and
- It possesses at least one of the following characteristics:
    - Association with events that have made a significant contribution to the broad patterns of history;
    - Association with the lives of persons significant in the past;
    - Distinctive characteristics of a type, period, or method of construction, or represents the work of a master, or possesses high artistic values, or represents a significant, distinguishable entity whose components may lack individual distinction; or
    - Has yielded, or may yield, information important to prehistory or history.

National Register of Historic Places

The National Register of Historic Places (NRHP) is a comprehensive inventory of known historic resources throughout the United States. The NRHP is administered by the National Park Service and includes buildings, structures, sites, objects, and districts that possess historic, architectural,

engineering, archaeological, or cultural significance at the national, state, or local level. A historic resource listed in, or formally determined to be eligible for listing in, the NRHP is, by definition, included in the California Register of Historical Resources (CRHR).[9]

National Register Bulletin Number 15, *How to Apply the National Register Criteria for Evaluation*, describes the Criteria for Evaluation as being composed of two factors. First, the property must be "associated with an important historic context." The NRHP identifies four possible context types, of which at least one must be applicable at the national, state, or local level. As listed under Section 8, "Statement of Significance," of the NRHP Registration Form, these are:

A. Property is associated with events that have made a significant contribution to the broad patterns of our history.
B. Property is associated with the lives of persons significant in our past.
C. Property embodies the distinctive characteristics of a type, period, or method of construction or represents the work of a master, or possesses high artistic values, or represents a significant and distinguishable entity whose components lack individual distinction.
D. Property has yielded, or is likely to yield, information important to prehistory or history.

Second, for a property to qualify under the NRHP's Criteria for Evaluation, it must also retain "historic integrity of those features necessary to convey its significance." While a property's significance relates to its role within a specific historic context, its integrity refers to "a property's physical features and how they relate to its significance." To determine if a property retains the physical characteristics corresponding to its historic context, the NRHP has identified seven aspects of integrity: 1) location, 2) design, 3) setting, 4) materials, 5) workmanship, 6) feeling, and 7) association.

California Register of Historical Resources

The guidelines for identifying historic resources during the project review process under CEQA are set forth in Public Resources Code Section 21084.1 and CEQA Guidelines Section 15064.5(a). These provisions of CEQA create three categories of historical resources: mandatory historical resources; presumptive historical resources; and resources that may be found historical at the discretion of the lead agency. These categories are described below.

- **Mandatory Historical Resources**. A resource the State Historical Resources Commission lists on the CRHR, or the State Historical Resources Commission determines to be eligible for listing in the CRHR, is defined by CEQA to be a historical resource. Resources are formally listed or determined eligible for listing by the State Historical Resources Commission in accordance with the procedures set forth in the provisions of state law relating to listing of historical resources.[10] If a resource has been listed in the CRHR, or formally determined to be eligible for listing by the State Historical Resources Commission under these procedures, it is conclusively presumed to be a historical resource under CEQA.

[9] Refer to Public Resources Code Section 5024.1(d)(1).
[10] Set forth in Public Resources Code Section 5024.1 and 14 California Code of Regulations (CCR) Section 4850, et. seq.

- **Presumptive Historical Resources**. A resource included in a local register of historic resources as defined by state law[11] or identified as significant in a historical resource survey meeting the requirements of state law,[12] shall be presumed to be historically or culturally significant. The lead agency must treat any such resource as significant unless the preponderance of evidence demonstrates that it is not historically or culturally significant.

- **Discretionary Historical Resources.** A resource that is not determined to be a significant historical resource under the criteria described above, may, in the discretion of the lead agency, be found to be a significant historical resource for purposes of CEQA, provided its determination is supported by substantial evidence in light of the whole record. The CEQA Guidelines further provide that generally, a lead agency should consider a resource historically significant if the resource is found to meet the criteria for listing on the CRHR, including the following:

    - Criterion 1 (Events): The resource is associated with events or patterns of events that have made a significant contribution to the broad patterns of local or regional history and cultural heritage of California or the United States; or
    - Criterion 2 (Persons): The resource is associated with the lives of persons important to local, California, or national history; or
    - Criterion 3 (Architecture): The resource embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of a master, or possesses high artistic values, or
    - Criterion 4 (Information Potential): The resource has the potential to yield information important to the prehistory or history of the local area, California, or the nation.[13]

Historical resources eligible for listing in the CRHR must meet one of the criteria of significance described above *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 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

[11] Set forth in Public Resources Code Section 5020.1(k), a local register of historical resources is a list of properties officially designated or recognized as historically significant by a local government pursuant to a local ordinance or resolution.
[12] Under Public Resources Code Section 5024.1(g), a resource can be identified as significant in a historical resources survey and found to be significant by the State Office of Historic Preservation (i.e., listed in the CRHR) if three criteria are met: (1) the survey has or will be included in the State Historic Resources Inventory; (2) the survey and documentation were prepared in accordance with State Office of Historic Preservation procedures and requirements; and (3) the State Office of Historic Preservation has determined the resource has a significance rating of Category 1 to 5 on Form 523.
[13] CEQA Guidelines Section 15064.5(a)(3) and California Office of Historic Preservation Technical Assistance Series #6. Accessed May 31, 2023. http://www.ohp.parks.ca.gov/pages/1069/files/technical%20assistance%20bulletin%206%202011%20update.pdf.

the resource's period of significance." The process of determining integrity is similar for both the California and National Registers, and the same seven variables or aspects to define integrity are used to evaluate a resource's eligibility for listing. These seven characteristics include: 1) location, 2) design, 3) setting, 4) materials, 5) workmanship, 6) feeling, and 7) association.

California Native American Historical, Cultural, and Sacred Sites Act

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

Public Resources Code Sections 5097 and 5097.98

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

CEQA and Historical Resources

When a proposed project may cause a substantial adverse change in the significance of an historical resource, the California Environmental Quality Act (CEQA) requires a city or county to carefully consider the possible impacts before proceeding (Public Resources Code Section 21084.1). CEQA equates a substantial adverse change in the significance of a historical resource with a significant effect on the environment (Section 21084.1).

CEQA Guidelines section 15064.5(b) defines a "substantial adverse change" in the significance of a historical resource as "physical demolition, destruction, relocation, or alteration of the resource or its immediate surroundings such that the significance of an historical resource would be materially impaired." Further, that the significance of an historical resource is "materially impaired" when a project:

- "demolishes or materially alters in an adverse manner those physical characteristics of an historical resource that convey its historical significance and that justify its inclusion in, or eligibility for inclusion in the California Register of Historical Resources; or
- "demolishes or materially alters in an adverse manner those physical characteristics that account for its inclusion in a local register of historical resources... or its identification in an

historical resources survey..., unless the public agency reviewing the effects of the project establishes by a preponderance of evidence that the resource is not historically or culturally significant; or

- demolishes or materially alters in an adverse manner those physical characteristics of a historical resource that convey its historical significance and that justify its eligibility for inclusion in the California Register of Historical Resources as determined by a lead agency for purposes of CEQA." (Guidelines Section 15064.5(b))

For the purposes of CEQA (Guidelines Section 15064.5), the term "historical resources" shall include the following:

- A resource listed in, or determined to be eligible by the State Historical Resources Commission, for listing in, the California Register of Historical Resources (Pub. Res. Code Section 5024.1, Title 14 CCR, Section 4850 et. seq.).
- A resource included in a local register of historical resources, as defined in Section 5020.1(k) of the Public Resources Code or identified as significant in an historical resource survey meeting the requirements of Section 5024.1(g) of the Public Resources Code, shall be presumed to be historically or culturally significant. Public agencies must treat any such resource as significant unless the preponderance of evidence demonstrates that it is not historically or culturally significant.
- Any object, building, structure, site, area, place, record, or manuscript which a lead agency determines to be historically significant or significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, or cultural annals of California may be considered to be a historical resource, provided the lead agency's determination is supported by substantial evidence in light of the whole record. Generally, a resource shall be considered by the lead agency to be "historically significant" if the resource meets the criteria for listing in the California Register of Historical Resources (Public Resources Code Section 5024.1, Title 14 CCR, Section 4852) as follows:

    - Is associated with events that have made a significant contribution to the broad patterns of California's history and cultural heritage;
    - Is associated with the lives of persons important in our past;
    - Embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of an important creative individual, or possesses high artistic values; or
    - Has yielded, or may be likely to yield, information important in prehistory or history. (Guidelines Section 15064.5)

Local

Envision San José 2040 General Plan

The Envision San José 2040 General Plan includes the following policies that are specific to cultural resources and applicable to development projects in San José:

Envision San José 2040 General Plan Relevant Cultural Resources Policies

Policy	Description
ER-10.1	For proposed development sites that have been identified as archaeologically or paleontologically sensitive, require investigation during the planning process in order to determine whether potentially significant archaeological or paleontological information may be affected by the project and then require, if needed, that appropriate mitigation measures be incorporated into the project design.
ER-10.2	Recognizing that Native American human remains may be encountered at unexpected locations, impose a requirement on all development permits and tentative subdivision maps that upon discovery during construction, development activity will cease until professional archaeological examination confirms whether the burial is human. If the remains are determined to be Native American, applicable state laws shall be enforced.
ER-10.3	Ensure that City, State, and Federal historic preservation laws, regulations, and codes are enforced, including laws related to archaeological and paleontological resources, to ensure the adequate protection of historic and pre-historic resources.
LU-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.
LU-13.3	For landmark structures located within new development areas, incorporate the landmark structures within the new development as a means to create a sense of place, contribute to a vibrant economy, provide a connection to the past, and make more attractive employment, shopping, and residential areas.
LU-13.4	Require public and private development projects to conform to the adopted City Council Policy on the Preservation of Historic Landmarks.
LU-13.6	Ensure modifications to candidate or designated landmark buildings or structures conform to the Secretary of the Interior's Standards for Treatment of Historic Properties and/or appropriate State of California requirements regarding historic buildings and/or structures, including the California Historical Building Code.
LU-13.8	Ensure 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.
LU-13.15	Implement City, State, and Federal historic preservation laws, regulations, and codes to ensure the adequate protection of historic resources.
LU-14.1	Preserve the integrity and enhance the fabric of areas or neighborhoods with a cohesive historic character as a means to maintain a connection between the various structures in the area.
LU-14.2	Give high priority to the preservation of historic structures that contribute to an informal cluster or a Conservation Area; have special value in the community; are a good first for preservation within a new project; have a compelling design and/or an important designer; etc.
LU-14.4	Discourage demolition of any building or structure listed on or eligible for the Historic Resources Inventory as a Structure of Merit by pursuing the alternatives of rehabilitation, re-use on the subject site, and/or relocation of the resource.

City of San José Historic Preservation Ordinance

The City's Historic Preservation Ordinance (Chapter 13.48 of the Municipal Code) promotes the preservation of old historic or architecturally worthy structures and neighborhoods which impart a distinct aspect to the City and serve as visible reminders of the historical and cultural heritage of the City, the state, and the nation. The City contains over 200 designated City Landmarks, structures which represent a physical connection with significant persons, activities, or events from the City's past. Any historic property may be nominated for designation as a City Landmark by either the City Council or the Historic Landmarks Commission; property owners may also apply for nomination and consideration by the Historic Landmarks Commission. Factors to be considered when making a finding regarding Landmark designation of a historic structure include the following:

1. Its character, interest or value as a part of the local, regional, state or national history, heritage or culture;
2. Its location as a site of a significant historic event;
3. Its identification with a person or persons who significantly contributed to the local, regional, state or national culture and history;
4. Its exemplification of the cultural, economic, social or historic heritage of the City of San José;
5. Its portrayal of the environment of a group of people in an era of history characterized by a distinctive architectural style;
6. Its embodiment of distinguishing characteristics of an architectural type or specimen;
7. Its identification as the work of an architect or master builder whose individual work has influenced the development of the City of San José;
8. Its embodiment of elements of architectural or engineering design, detail, materials, or craftsmanship which represents a significant architectural innovation, or which is unique.

3.3.1.2 *Existing Conditions*

The following description of existing conditions is based upon a review of pertinent literature, a regional clearinghouse records search, and archaeological and architectural field surveys completed as a part of the Cultural Resources assessment for the Coleman Avenue/Autumn Street EIR.

A prehistoric and historic records search for the area within Coleman Avenue and Autumn Street proposed alignments and at least a block outside of the alignments (including the Milligan Lot site) was completed at the California Historical Resources Information System (CHRIS) Northwest Information Center (NWIC) at California State University Sonoma, Rohnert Park (File No. 06-91 dated September 20, 2006) for the Coleman Avenue/Autumn Street Improvement project. In addition, literature and archival records on file at Bancroft Library, University of California, Berkeley and other repositories were reviewed. Historical research was also completed at the Martin Luther King Jr. Library in San José, the Santa Clara County Clerk Recorder's and Surveyor's Offices, and the archives at History San José.

Prehistoric and Historic Overview of the Project Area

Prehistoric Period

The aboriginal inhabitants of the Santa Clara Valley belonged to a group known as the "Costanoan," now referred to as Ohlone, who occupied the central California coast as far east as the Diablo Range. In 1770, the Costanoan lived in approximately 50 separate and politically autonomous tribelets.

The project area is situated within the former territory of the Tamien subgroup of Costanoan Indians, which included three settlements. According to records at Mission Santa Clara, one of the settlements was probably located at the junction of Los Gatos Creek and the Guadalupe River. All the settlements were abandoned by 1795. Historic accounts of the distribution of the Tamien tribelets and villages in the 1770s-1790s, as well as the results of archaeological research in the area, suggest the Native Americans may have had a number of temporary camps within present-day downtown San José and along the Guadalupe River and other sources of freshwater.

Spanish and Mexican Period

Spanish explorers in the late 1760s and 1770s were the first Europeans to traverse the Santa Clara Valley. The first party, that of Gaspar de Portola and Father Juan Crespi, arrived in the San José-Alviso area in the fall of 1769. Favorable reports led to the establishment of both Mission Santa Clara and the Pueblo San José de Guadalupe in 1777.

The project area is within the former Rancho El Potrero de Santa Clara, or Santa Clara Mission pasture lands, which was granted to James Alexander Forbes in 1844. Forbes subsequently sold to Commodore Robert Field Stockton in 1847.

American Period

The population of the Santa Clara Valley expanded as a result of the Gold Rush (1848), followed by the construction of the railroad to San Francisco (1864), and the completion of the transcontinental railroad (1869). During the early American Period (1847 to 1876), stock raising predominated, but declined after the drought of 1863 to 1864, after which wheat-growing, dairy farms, and orchards became the primary agricultural activities in the region.

During the later American Period and into the Contemporary Period (circa 1876 to the 1940s), horticulture/fruit production became a major industry, in part due to the development of the refrigerated railroad car (circa 1880s). From 1875 onward, the need for an expanding market led to innovations in fruit preservation and shipping including drying fruit, canning fruit, and shipping fresh fruit in refrigerated cars. By 1900, the Santa Clara Valley was a world center for canned and dried fruit. The City of San José served as a primary service center, the focus of industry, County seat, financial center, and social center. Most of the institutions for higher education and citizen elite resided in San José and Santa Clara.

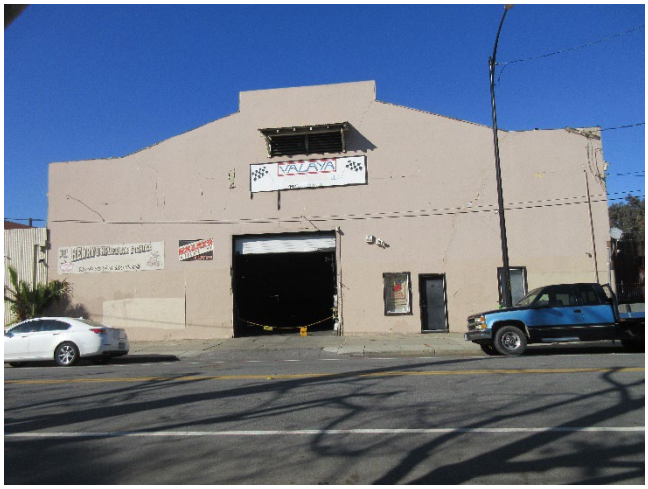
Historic Architectural Resources

In 2006, a cultural resources records search, which included the project site, was completed for the Coleman Avenue/Autumn Street Improvements project. Based on the 2006 records search of the project area (including the project site), the area between West Julian Street and West St. John Street was a part of the Stockton Ranch, purchased by Charles B. Polhemus in 1864. By the late 1860s, the project site contained residences and outbuildings. The following includes a discussion of the structures and resources on the different parcels that comprise of the project site and a discussion on their historic significance.

447 West St. John Street (APN 259-29-032))

This property contains two adjoining industrial buildings at the northeast corner of West St. John and North Autumn Street. The two buildings are on the same parcel, share the same address, and have a unified interior. The original building on the property was constructed circa 1926 for Ora J. Forman as a boxing arena which opened for business on February 22, 1926. Currently, the former Forman's arena building is used for automobile repair for Valaya Racing, LLC.

The Forman's arena building, was evaluated as a part of the of the 2007 Cultural Resources Assessment and completion of Department of Parks and Recreation (DPR) 523 forms.



447 West St. John Street Former - Forman's Arena

Although the historic integrity of the former Forman's arena at 447 West St. John Street has been somewhat compromised because of an addition to the building's west façade (warehouse constructed in 1950), the building retains many important character-defining features such as the original front facade, exterior materials, structural system and the open interior space used as the boxing arena. As a simple industrial style building of its period, it is not an exceptional example of 1920s architectural design in San José, thus it is not eligible under NRHP Criterion C or CRHR Criterion 3. The building, however, is significant under NRHP Criterion A and CRHR Criterion 1 because of its associations with local themes or cultural patterns of significance. The building is a rare surviving sports arena associated with a period of San José's social history and the "Golden Age" of boxing in the 1920s and 1930s. The building is rare in a regional context as an early sports arena built to accommodate one sporting activity, rather than being utilized as a multi-use facility. The building is also directly associated with the prominent San José boxing promoter Ora Forman, a significant local figure in San José sports history. Therefore, the Forman's arena building is significant under CRHR Criterion 2.

The 447 West St. John Street former Forman's arena is eligible for the CRHR under Criteria l and 2. It is also eligible for listing in the NRHP under Criterion A. The building is also listed on the City of San José's Historic Resources Inventory as a Candidate City Landmark.

150 North Autumn Street (APN 259-29-102) and 130 North Autumn Street (APN 259-29-033)

150 North Autumn Street and 130 North Autumn Street Former Milligan News Building

The Milligan News Building is located at 150 North Autumn Street and is an L-shaped, reinforced concrete building with a steel canopy over the entrance. A surface parking area on 130 North Autumn Street is located between the 150 North Autumn Street and the former Forman's arena/ on 447 West St. John Street. No buildings or structures are located on this parcel.

Based on the 2007 Cultural Resources Assessment completed for the Coleman Avenue/Autumn Street EIR, the Milligan News Building was constructed in 1959 to be the warehouse and office for the Milligan News Company (owned by Donald A. Milligan), a magazine distributor. An addition to the building was constructed in 1962. Although the building retains its historic integrity, it is not an exceptional example of the industrial/office building in the San José area from the late 1950s or early 1960s. It does not have significant associations with local themes or cultural patterns of significance and is not associated with any significant persons in local history.

Milligan News does not appear to be a historically significant business in a local context. For the reasons stated above, 150 North Autumn Street is not eligible for the NRHP, the CRHR, or as a Candidate City Landmark.

<u>405 West St. John Street (APNs 259-29-072)</u>

405 West St. John Commercial Property

The 405 West John Street property is located between the residential garage located at 407 West St. John Street and the Forman's arena building at 447 West St. John Street. The property contains a metal-framed, commercial loading dock building with corrugated roof, and a small surface parking lot in front of the building.

A historic evaluation of the 405 West St. John Street was completed in August 2021. The property along with 407 West St. John Street is located within 300 feet of the River Street City Landmark Historic District (west of the Guadalupe River) and both properties were originally part of a larger neighborhood (similar to the River Street City Landmark Historic District). The 405 and 407 West St. John Street properties were originally part of a cohesive

residential neighborhood between 1825 and 1925, which was one of the largest concentrations of Italian immigrants in California. Due to the commercial influences and other development (i.e., Guadalupe River Trail Park and the Diridon Station Area Plan), the historic integrity of the district, its buildings, and the surrounding neighborhood has either been weakened or lost all together.

Donald A. Milligan founded Milligan News in 1935 and purchased the properties at 405, 407, 447 West St. John Street as well as 150 North Autumn Street after 1956. On a 1915 Sanborn map, there appeared to be a house with two one-bedroom additions, a shed, and bocce ball court. By 1950, the house and bocce ball court were no longer present on the site and the shed was noted as dilapidated. By 1953, a permit was identified for a Bocce Game Club House. The clubhouse was demolished by the 1960s. The existing 405 West St. John Street commercial structure was likely constructed as an addition to the Milligan News Building at 150 North Autumn Street after 1969, with Joseph Corno as the owner. By 1979, Donald Milligan's son, Patton Milligan owned the property.

The 405 West St. John Street property is not eligible for the CRHR under Criterion 1 given the former bocce ball club house is no longer present and no specific events of singular historic importance are known to have occurred at the existing building. The commercial structure at 405 West St. John Street has no distinctive architectural features. Therefore, the properties would not be eligible to be listed on the CRHR under Criterion 3.

Although the 405 West St. John Street property was once owned by the Milligan family, who were considered locally significant, the property is not illustrative of their achievements. In addition, under Criterion 2 (individuals), when there is more than one property associated with a significant individual, the property that best represents the person's historic achievements would be considered the property that best represents his or her productive life. The Milligan property at 150 North Autumn Street would be more important to local history since this was the company's main office. However, based on a historic evaluation of the 150 North Autumn Street property completed in November 2006, Milligan News does not appear to be a historically significant business in a local context. Historic research did not identify any significant figures in local history associated with the building, therefore, the building is not significant CRHR Criterion 2.

The commercial building represents common methods of construction and would not yield important information about historic construction, methods, materials or technologies; and therefore, is not considered eligible for the California Register under Criterion 4.

The property does not meet the criteria to be listed as a Candidate City Landmark. The former bocce ball clubhouse at the 405 West St. John Street property is no longer present and the commercial loading dock building (constructed after 1969) is not considered to have local historic importance or meet the criteria for a Candidate City Landmark.

407 West St. John Street (APN 259-29-071)

The property at 407 West St. John Street property has a single-story house, a two-car garage, and a storage shed. The two-car garage building with an attached living space sits at the south edge of the property. The house located on the rear northeast quadrant of the property was constructed around 1915, as seen on the Sanborn Maps. The house has been altered over time, enclosing exterior portions of the porch and removing the roof on the east side and adding elements on the west side. The garage located at the front of the lot, near West St. John Street was permitted in 1956. There is no permit for the garden shed located to the rear of the garage structure.

407 West St. John Street Former Residence

The house is a simple Queen Anne Style cottage and sits on a raised elevation with thin horizontal wood siding. The roof is hipped with an open central gable. The open gable has decorative diamond shaped wood siding and a central wood vent with decorative trim. The roof has composite asphalt shingles. Portuguese and Italian families have occupied the parcel over the years. The Milligan family purchased the property from Joseph Corno in 1956 and ultimately sold it to the City of San José in 2018.

The garage is set on a concrete foundation with plaster walls and two overhead garage doors of painted wood. The shed is made of rough plaster and has a shed roof with blue fascia and rainwater leaders. The shed is not attached to the house, nor the garage.

The house at 407 West St. John Street was among several houses that were built for Italian and Portuguese families outside the River Street Historic Local Landmark District and on the other side of Guadalupe River. No prominent citizen or owner commissioned the building, and no specific events of singular historic importance are known to have occurred at the building.
Although the 407 West St. John Street property was once owned by the Milligan family, who were considered locally significant, the property is not illustrative of their achievements. In addition, under Criterion 2 (individuals), when there is more than one property associated with a significant individual, the property that best represents the person's historic achievements would be considered the property that best represents his or her productive life.

The architectural design of the house at 407 West St. John Street resembles a Queen Anne Style cottage, but the building has been altered significantly. The roof's overhanging eaves have been removed and a portion of the porch area has been altered. While the building retains a few features associated with its architectural style (e.g., including its hipped and gable roof and decorative shingle pattern), it does not represent sufficient distinctive characteristics of the style. Additionally, the detached garage and shed have no distinctive architectural characteristics. Therefore, the properties would not be eligible to be listed on the CRHR under Criterion 3.

The buildings represent common methods of construction and would not yield important information about historic construction, methods, materials or technologies. The structures are not considered eligible for the California Register under Criterion 4.

The 407 West St. John Street residence and associated structures does not individually reflect or exemplify cultural, economic, social, or historic heritage of San José. Rather, the building is one of many early 20th century residential structures that once associated with working person's housing. However, this connection was severed with the development around the River Street Park development. None of the working-class families that occupied the residence made significant contributions to areas of culture or history. Therefore the 407 West John Street property is not eligible under Landmark Criterion 1 through 4.

The property does not represent the environment of a group of people in an era of history through a distinct architectural style. It was originally designed in the early 1900's with limited identifying architectural character in a common style of the time. The residence has limited detailing and does not have distinct characteristics of an architectural type or specimen. No architect or master builder responsible or attributed to the design or construction of the residence. The residence does not include elements of architectural or engineering design, detail, materials, or craftsmanship that represent significant innovations or are unique. The style of the building shows limited use of architectural ornament and has been altered over time. Therefore, the 407 West St. John Street property is not meet the criteria for a Candidate City Landmark under Criterion 5-8.

Nearby Historic Properties

Residences of historic age (50 years and older) are located on Autumn Court and within 100 feet of the project site. These include 420, 436, 446, Autumn Court (constructed in 1924 and 1925). A historic evaluation of these residences was completed by Basin in 2006. These residences were not considered exceptional examples of the Bungalow Style in San José and are not eligible under California Register Criterion 3. In addition, none of the residences were eligible under the other criterion for the California Register. The 436 and 446 Autumn Court residences were found eligible to be and are currently listed on the City's Historic Inventory as a Structure of Merit. Two additional houses (constructed in 1924 and located at 456 and 466 Autumn Court) are also listed on the City's inventory as Structures of Merit [Structures of Merit are not considered historic resources under CEQA].

The nearest historic resources are residences (300 to 400 feet west of the site, constructed in the late 1800s and early 1900s) on West Julian Street and West St. John Street within the River Street City Landmark District. The site and these residences are separated by the Guadalupe River, Arena Green East Park, and the Guadalupe River trail.

Archaeological Resources

Based on the 2006 records search, Native American sites have been recorded at the project site or area. No Hispanic or American Period archaeological sites have been recorded in the project area.

There is a potential for buried prehistoric sites to occur at the project site due to its proximity to the Guadalupe River. Past flooding of the Guadalupe River may have buried prehistoric resources in the

project area. In addition, eight potential American era archaeological resources were identified on seven parcels between West Julian Street and West St. John Street. On the project site, there is a potential that American era/historic archaeological resources associated with Todd/Shead House/Forman's arena (APN 259-29-032, 447 West Saint John Street), Shead/Trembly House (APN 259-29-033, 130 North Autumn Street), J.J. Owen House and B.H. Cottle House and Barn (APN 259-29-102, 150 North Autumn Street) could be found on-site. However, it is highly probable that prior disturbance from grading, excavation, filling and other construction and development activities over the past 100 plus years may have impacted the integrity of any such deposits.

3.3.2 Impact Discussion

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

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

3.3.2.1 *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 project proposes to demolish all the existing buildings and structures on-site and construct an approximately 300-space surface parking lot. Based on the historic evaluations, only the property located at 447 West St. John Street (Forman's arena) is eligible for listing under the NRHP, CRHR, and Candidate City Landmark eligibility criteria and is considered a historical resource under CEQA.

The Coleman/Autumn EIR identified the relocation of Forman's arena as mitigation to reduce the impact to the historical resources to less than significant. The Coleman Avenue/Autumn Street EIR identified four potential sites for the relocation including the previous City Hall's "E" parking lot, the San José History Park, the San José Fire Department site, and the former FMC (Food Machinery and Chemical) Corporation site. The City Hall parking lot, Fire Department, and FMC Corporation sites are now either developed or designated for development. Given the lack of nearby city-owned available sites to relocate the Forman's arena, it is no longer practical for the project to relocate the building.
Because relocation of Forman's arena to another City-owned site as proposed under the Coleman/Autumn Project is no longer feasible, the project proposes demolition to allow for construction of the parking lot. Demolition of Forman's Arena would result in a significant impact on a historic resource.

Impact CUL-1: Implementation of the proposed project, which includes the demolition of the Forman's Arena building, would result in an adverse significant impact to the historic resource pursuant to CEQA Guidelines Section 15064.5.

Mitigation Measures: The following mitigation measures would be implemented, consistent with the City's requirements to provide documentation of the historic resource proposed for removal.

MM CUL-1.1: **Action Plan**: Prior to any grading, demolition, or building activities or any other approval that would allow disturbance of the project site, the City's contractor shall prepare and submit, for review and approval by the Director of Planning, Building and Code Enforcement or the Director's designee in coordination with the City's Historic Preservation Officer, a Historic Resources Mitigation Action Plan (Action Plan) demonstrating that the following steps, actions, and documents have been satisfied for each of the four historic structures in accordance with the Action Plan timeline. The Action Plan shall include roles and responsibilities between the City's contractor, City staff, and outside individuals, groups, firms, and consultants.

Documentation (HABS): The Forman's arena building and associated features on the project site shall be documented in accordance with the guidelines established for the Level III Historic American Building Survey (HABS) consistent with the Secretary of the Interior's Standards for Architectural and Engineering Documentation and shall consist of the following components:

A. Drawings – Prepare sketch floor plans.

B. Photographs – Digital photographic documentation of the interior, exterior, and setting of the four buildings in compliance with the National Register Photo Policy Fact Sheet.

C. Written Data – National Park Service Heritage Documentation Programs (HABS) written documentation in Outline Format.

An architectural historian and historian meeting the Secretary of the Interior's Professional Qualification Standards shall oversee the preparation of the sketch plans for a period of no less than 60 days, photographs, research and written data.

The documentation shall be submitted to the Director of Planning, Building or Code Enforcement or the Director's designee and the City's Historic Preservation Officer for review and approval. The required documentation after approval shall be filed with the San José Public Library's California Room and the Northwest Information Center at Sonoma State University, the repository for the California Historical Resources Information System. All documentation shall be submitted on archival paper and must first be reviewed and approved by the City's Historic Preservation Officer. Additional copies shall be made available to other local research institutions including History San José, and a copy with the City's Planning Division.

Three-Dimensional (3D) Laser Scans. Prior to issuance of any grading, demolition, or building permits or any other approval that would allow disturbance of the project site, the Forman's arena building and associated features at 447 West St. John Street shall be laser scanned by a qualified historic resources consultant meeting the qualifications in the Secretary of the Interior's Professional Qualification Standards The 3D laser scanning will utilize 3D Laser Scanning techniques to capture as-built survey of the existing exterior conditions of the property, to create a 3D point cloud model for digital documentation/archival purposes. A plan of the proposed procedures for the laser scanning shall be submitted as part of the required Action Plan prior to commencement. The documentation from the 3D Laser Scanning shall be reviewed and approved by the City's Historic Preservation Officer. After City approval, the documentation shall be submitted to the Director of Planning, Building and Code Enforcement or Director's designee and to History San José. Proof of receipt by History San José shall be submitted to the City following submittal.

Relocation by the Applicant and/or a Third Party: Prior to issuance of any demolition activities, the City's contractor, or an interested third party, shall be required to advertise the availability of the four structures for relocation for a period of no less than 60 days. The advertisements must include notification in a newspaper of general circulation, on a website, and notice placed on the project site. The City contractor shall provide evidence (i.e., receipts, date and time stamped photographs, etc.) to the City's Historic Preservation Officer that this condition has been met prior to the issuance of demolition permits.

If the City's contractor or third party agrees to relocate the structure, the following measures must be followed:

1. The Director of Planning, Building and Code Enforcement or Director's designee, based on consultation with the City's Historic Preservation Officer, must determine that the receiver site is feasible for the building.
2. Prior to relocation, the City's contractor or third party shall hire a historic preservation architect and a structural engineer to undertake an existing condition study that establishes the baseline condition of the building prior to relocation. The documentation shall take the form of written descriptions and visual illustrations, including those character-defining physical features of the resource that convey its historic significance and must be protected and preserved. The documentation shall be reviewed and approved by the City's Historic Preservation Officer prior to the structure being moved.
3. To protect the building during relocation, the City's contractor shall engage a building mover who has experience moving similar historic

structures. A structural engineer shall also be engaged to determine how the building needs to be reinforced/stabilized before the move.

4. Once moved, the building shall be repaired and rehabilitated, as needed, by the City's contractor or third party in conformance with the Secretary of the Interior's Standards for the Treatment of Historic Properties. In particular, the character-defining features shall be retained in a manner that preserves the integrity of the building for the long-term preservation and reuse.

Upon completion of the repairs, a qualified architectural historian shall document and confirm that work to the structure(s) were completed in conformance with the Secretary of the Interior's Standards for the Treatment of Historic Properties and character-defining features were preserved. The project applicant shall submit a memo report supplement to the Action Plan to the City's Historic Preservation Officer documenting the relocation, repair, and reuse.

Salvage: If the City's contractor does not relocate the Foreman's Arena Building within the specified time, the structure(s) shall be made available to salvage companies facilitating the reuse of historic building materials. The City shall advertise the availability of the Foreman's Arena Building for salvage for a period of no less than 30 days. The advertisement must include notification in a newspaper of general circulation, on a website, and notice placed on the project site. The City's contractor shall provide evidence of the advertisement (i.e., receipts, date and time stamped photographs, etc.) to the Director of Planning, Building or Code Enforcement or the Director's designee. The City's contractor must provide evidence to the City's Historic Preservation Officer that this condition has been met prior to demolition activities.

Commemoration and Public Interpretation: Prior to issuance of any building permits, the City shall retain a qualified historic resources consultant to initiate the development and design of a commemorative and interpretive program, exhibit, display including, but not limited to interpretive text and historic photographs, physical remnants from the site, art or sculpture, video, interactive media, and/or oral histories. The proposed concepts for commemoration and public interpretation shall be submitted to the City Historic Preservation Officer for review and approval prior to issuance of any building permits and shall be developed in coordination with the City as the project is implemented. The final product shall be reviewed and approved by the City's Historic Preservation Officer and implemented in a suitable publicly accessible location on the project site as determined by the Historic Preservation Officer, prior to the issuance of a certificate of occupancy.

There are no historical resources adjacent to the project site. The nearest historic resources are located approximately 300 to 400 feet west of the project site within the River Street City Landmark District. Given the separation of the project site from the historical resources, the project would not result in a significant impact to historic resources off-site. The Coleman Avenue/Autumn Street EIR identified this impact as less than significant with mitigation incorporated, which included the

relocation of the Forman's arena. **[New Significant Unavoidable Impact (Less Than Significant Impact with Mitigation)]**

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

Although no prehistoric archaeological sites have been identified in the project area, the cultural resources review for the Coleman Avenue/Autumn Street project area (which included the project site) found that the potential for the exposure of as yet unknown prehistoric archaeological resources is moderate to high along the Guadalupe River. There is also a high potential for American era archaeological resources to be discovered on the site. The project could result in disturbance of archaeological resources during construction activities.

Impact CUL-2: Project construction activities could result in the accidental disturbance and/or destruction of archaeological resources pursuant to CEQA Guidelines Section 15064.5.

Mitigation Measures: Consistent with the mitigation identified in the Coleman/Autumn EIR, the following mitigation measures shall be implemented by the project to reduce impacts to subsurface archaeological resources.

MM CUL-2.1: **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 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. 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-2.2: **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 foundation, boring on site, or major landscaping. Archaeological monitors have the authority to halt construction with the finding of an archaeological discovery and to authorize construction to resume. Monitoring shall continue until the monitor has determined that excavation has reached the maximum depth at which archaeological remains could be expected to occur. Monitoring is intended to ensure that appropriate cultural protective measures are effective prior to initiation of construction activities and to document and protect cultural resources from inadvertent damage.

The results of the monitoring shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee within 14 days of completion of monitoring activities. If prehistoric or historic resources are encountered during excavation and/or grading of the site, all activity within a 50-foot radius of the find shall be stopped, and the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee and the City's Historic Preservation Officer shall be notified. The on-site archaeologist and Native American representative shall 1) evaluate the find(s) to determine if they meet the definition of a historical or archaeological resource; and (2) make appropriate recommendations regarding the disposition of such finds prior to issuance of building permits. Recommendations could include reinterment of artifacts and materials, recordation, and analysis of any significant cultural materials. A report of findings documenting any data recovery shall be submitted to the Director of PBCE or the Director's designee and the City's Historic Preservation Officer and the Northwest Information Center (if applicable). Project personnel shall not collect or move away any cultural materials.

The Downtown Strategy 2040 EIR determined that future development would not result in significant impacts to archaeological resources upon implementation of measures in accordance with General Plan policies. The project site is located within the Downtown Strategy 2040 plan area. Therefore, consistent with the 2040 General Plan Policies ER-10.2 and ER-10.3, and the Downtown Strategy 2040 EIR, the Condition of Approval is also included to minimize impacts to subsurface cultural resources.

Condition of Approval:

Subsurface Cultural Resources. If prehistoric or historic resources are encountered during excavation and/or grading of the site, all activity within a 50-foot radius of the find shall be stopped, the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee and the City's Historic Preservation Officer shall be notified, and a qualified archaeologist in consultation with a Native American Tribal representative 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 examine the find. The archaeologist in consultation with the Tribal representative shall 1) evaluate the find(s) to determine if they meet the definition of a historical or archaeological resource; and (2) make appropriate recommendations regarding the disposition of such finds prior to issuance of building permits. Recommendations could include collection, recordation, and analysis of any significant cultural materials. A report of findings documenting any data recovery shall be submitted to the Director of PBCE or the Director's designee, and the City's Historic Preservation Officer and the Northwest Information Center (if applicable). Project personnel shall not collect or move any cultural materials.

With implementation of the Condition of Approval described above; the proposed project would result in a less than significant impact to subsurface archaeological resources. **[Same Impact as Approved Projects (Less than Significant Impact With Mitigation Incorporated)]**

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

It is possible that human remains could be discovered during on-site demolition, grading, or excavation activities. Consistent with the Downtown Strategy 2040 EIR, the project would be required to follow procedures according to the California Health and Safety Code and Public Resources Code upon the accidental discovery of human remains during project construction activities. The mandatory measures are described below.

Condition of Approval:

- **Human Remains**. If any human remains are found during any field investigations, grading, or other construction activities, all provisions of California Health and Safety Code Sections 7054 and 7050.5 and Public Resources Code Sections 5097.9 through 5097.99, as amended per Assembly Bill 2641, shall be followed. If human remains are discovered during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The project applicant shall immediately notify the Director of Planning, Building and Code Enforcement (PBCE) 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 conditions occurs, the landowner or his authorized representative shall work with the Coroner to reinter the Native American human remains and associated grave goods with appropriate dignity in a location not subject to further subsurface disturbance:

    - The NAHC is unable to identify 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.

Implementation of these Conditions of Approval would avoid significant impacts to human remains. Both the Coleman Avenue/Autumn Street and Downtown Strategy 2040 EIRs included these measures that reduced the impacts to human remains to less than significant. **[Same Impact as Approved Projects (Less than Significant Impact)]**

3.3.2.2 *Cumulative Impacts*

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

Historic Resources

The geographic area for historic resources is downtown San José. As stated above, the project would demolish the former Forman's arena, a CEQA historical resource, located at 447 West St. John Street, which would result in a significant impact. No feasible mitigation measures have been identified that would reduce the impact to a less than significant level.

The Coleman Avenue/Autumn Street EIR did not include an evaluation of cumulative cultural resources impacts. However, as identified in the Downtown Strategy 2040 EIR, downtown San José has the highest concentration of historic era buildings in the City. Removal of the Forman's Arena would contribute to the on-going demolition and major alteration of historic era buildings within downtown. Based on the number of historic resources that have been lost within downtown and the potential for remaining historic buildings to be replaced or otherwise adversely affected through buildout of the Downtown Strategy 2040, the proposed project would contribute to the significant unavoidable cumulative impact to historic resources. The proposed project, combined with the past, pending and future projects within the Downtown Strategy 2040 area would result in a significant and unavoidable cumulative impact to historic resources. **[Same Impact as Approved Project (Significant and Unavoidable Cumulative Impact)]**

Archaeological Resources

The geographic area for archaeological resources is the Downtown Strategy 2040 Plan Area. The cumulative projects (including the proposed project) located within the Downtown Strategy Plan Area are required to implement the measures from the Downtown Strategy 2040 EIR listed under Impact CUL-2 to reduce impacts to archaeological resources to a less than significant level. As concluded in the Downtown Strategy 2040 EIR, future development implementing these measures would not result in significant cumulative impacts to archaeological resources.[14] Because all cumulative projects would be required to mitigate for subsurface resources, the proposed project would not have a cumulative considerable contribution to a cumulative impact. **[Same Impact as Approved Project (Less than Significant Cumulative Impact with Mitigation Incorporated)]**

Human Remains

The geographic area for human remains is San José. The cumulative projects (including the proposed project) located downtown are required to implement the measure from the Downtown Strategy 2040 EIR listed under Impact CUL-3 to reduce impacts to human remains (if encountered) to a less than significant level. As concluded in the Downtown Strategy 2040 EIR, future development implementing the measures listed under Impact CUL-3, would not result in significant cumulative

[14] City of San José. *Integrated Final Environmental Impact Report for the Downtown Strategy 2040.* SCH #2003042127. December 2018. Pages 93-118.

impacts to human remains.[15] Because all cumulative projects would be required to mitigate for human remains, the proposed project would not have a cumulative considerable contribution to a cumulative impact. **[Same Impact as Approved Project (Less than Significant Cumulative Impact)]**

[15] City of San José. *Integrated Final Environmental Impact Report for the Downtown Strategy 2040.* SCH #2003042127. December 2018. Pages 93-118.

3.4 GREENHOUSE GAS EMISSIONS

3.4.1 Environmental Setting

3.4.1.1 *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.

3.4.1.2 *Regulatory Framework*

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 2040. Plan Bay Area 2040 establishes a course for reducing per-capita GHG emissions through the promotion of compact, high-density, mixed-use neighborhoods near transit, particularly within identified Priority Development Areas (PDAs).

Regional and Local

2017 Clean Air Plan

To protect the climate, the 2017 CAP, prepared 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.

CEQA GHG Thresholds and Guidelines Update

On April 20, 2022, the BAAQMD Board of Directors adopted the Justification Report: CEQA Thresholds for Evaluating the Significance of Climate Impacts from Land Use Projects and Plans. The report includes BAAQMD's thresholds of significance for use in determining whether a proposed project or plan will have a significant impact on climate change and provides substantial evidence to support these thresholds. The April 2022 GHG threshold replaces the GHG thresholds set forth in the May 2017 BAAQMD CEQA Air Quality Guidelines. BAAQMD has analyzed what will be required of new land use development projects and plans to achieve California's long-term climate goal of carbon neutrality by 2045.

The threshold of significance for land use development projects is to either A) incorporate project design elements and achieve a reduction in project-generated vehicle miles traveled (VMT) below the regional average consistent with the current version of the California Climate Change Scoping Plan or B) be consistent with a local GHG reduction strategy that meets the criteria of CEQA Guidelines Section 15183.5 (b).

Envision San José 2040 General Plan

The General Plan includes strategies, policies, and action items that are incorporated in the City's GHG Reduction Strategy to help reduce GHG emissions. Multiple policies and actions in the General Plan have GHG implications, including land use, housing, transportation, water usage, solid waste generation and recycling, and reuse of historic buildings. Climate Smart San José (formerly Green Vision), as reflected in these policies, also has a monitoring component that allows for adaptation and adjustment of City programs and initiatives related to sustainability and associated reductions in GHG emissions.

City of San José 2030 Greenhouse Gas Reduction Strategy

The City of San José has recently updated its GHG Reduction Strategy in alignment with SB 32, which established an interim statewide greenhouse gas reduction goal for 2030 to meet the long-term target of carbon neutrality by 2045 (Executive Order B-55-18). The *City of San José 2030 Greenhouse Gas Reduction Strategy* (2030 GHGRS) is intended to meet the mandates outlined in the CEQA Guidelines, as well as the BAAQMD requirements for Qualified GHG Reduction Strategies.

The 2030 GHGRS was developed under General Plan Policy IP-3.7 to monitor and update as necessary the GHG reduction strategy measures and IP-17.2 to develop and maintain a GHG reduction strategy to serve as a road map for reducing GHG emissions within San José. To that end, the 2030 GHGRS provides an update of current emissions levels based on a 2017 emissions inventory, establishes a new 2030 emissions target consistent with SB 32, and assesses the City's progress and achievement pathway toward its 2020 and 2030 GHG targets. The 2030 GHGRS is consistent with the major strategies and policies within the Envision San José 2040 General Plan and includes additional reduction measures to achieve the 2030 GHG emissions target. It also includes emissions forecasts that were prepared to align with the future buildout conditions in the Envision San José 2040 General Plan horizon year, including its future estimates of the local population, employment, and travel demand consistent with the City's Land Use and Transportation Diagram.[16]

The 2030 GHGRS includes a Development Consistency Checklist, the purpose of which is to provide a streamlined review process for proposed new development projects subject to discretionary review and that trigger environmental review under CEQA. In accordance with CEQA Guidelines Section 15183.5, analysis of GHG emissions and potential climate change impacts from new developments is a requirement, and a project's incremental contribution to cumulative GHG emissions may be determined not to be cumulatively considerable if the project complies with the requirements of the approved qualified climate action plan. The 2030 GHGRS identifies GHG emissions reduction measures to be implemented by development projects within the general strategies for energy, buildings, land use and transportation, water, and waste sources. Some

[16] *City of San José 2030 Greenhouse Gas Reduction Strategy.* August 2020.

measures are mandatory for all proposed development projects and others are voluntary. Voluntary measures could be incorporated as mitigation measures for proposed projects, at the City's discretion.

City of San José Municipal Code

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

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

3.4.1.3 *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. GHG emissions generated by existing operations at the site are primarily vehicles that travel to and from the automobile repair business on-site.

3.4.2 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?

3.4.2.1 *Project Impacts*

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

Construction

The proposed development would result in a temporary increase in GHG emissions associated with construction activities including operation of construction equipment and emissions from construction workers' personal vehicles traveling to and from the project site. 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. Neither the City of San José nor BAAQMD have established a quantitative threshold or standard for determining whether a project's construction related GHG emissions are significant. Based on CalEEMod calculations, the

project would emit a total of approximately 225 metric tons/year of CO_2e. Because construction would be temporary (approximately 10 months) and would not result in a permanent increase in emissions, the project would not interfere with the implementation of SB 32.

Operation

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. Since the project is consistent with the General Plan land use designation for the site, compliance with the mandatory measures and voluntary measures required by the City, and compliance with the 2030 GHGRS, the project would result in a less than significant GHG emissions impact (refer to Appendix E for the GHGRS Checklist).

During operations of the proposed project, the project would comply with the applicable mandatory and voluntary measures and would comply with the 2030 GHGRS, therefore, the project would result in a less than significant GHG emissions impact. The project conforms to the General Plan, would implement water conservation and urban forestry measures, and is consistent with Greenhouse Gas Reduction Strategies 5 and 7.

The Coleman Avenue/Autumn Street EIR did not evaluate impacts related to GHG emissions. The Downtown Strategy 2040 EIR concluded that projects consistent with the GHG Reduction Strategy would have less than significant impact related to GHG emissions through 2020. In addition, the Downtown Strategy 2040 EIR concluded that since implementation of the Downtown Strategy 2040 plan would result in a 2.6 MT CO_2e per service population per year needed to meet the 2030 target, implementation of the Plan would result in a less than significant GHG impact. However, since implementation of the Plan would result in an efficiency metric above the 2040 target of 1.7 MT of CO_2e per service population annually (2.21 MT of CO_2e per service population), implementation of the Plan would result in a significant GHG impact under 2040 conditions.

In November 2020, the City adopted an updated 2030 GHGRS and an Addendum to the 2011 General Plan GHGRS Reduction Strategy EIR. The 2030 GHGRS Addendum concluded that implementation of the General Plan update (which allowed 4,000 additional residential units and 10,000 new jobs in Downtown San José) would result in a less than significant GHG emissions impact under 2030 conditions. Therefore, since the proposed project is consistent with the General Plan, the project's GHG impacts would be consistent with this conclusion. **[Less Impact than Approved Project (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?

Consistency with 2030 San José Greenhouse Gas Reduction Strategy

As discussed in Section 3.4.1.2, Regulatory Framework, the project would be subject to the City's 2030 GHGRS.

The 2030 GHGRS identifies required 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. Compliance with these mandatory policies and strategies and any voluntary measures proposed by the project ensure a project's consistency with the GHGRS. The proposed project incorporates applicable mandatory measures of the GHGRS (refer to Appendix E). The proposed project is consistent with the General Plan and Land Use/Transportation Diagram (which is one of the mandatory requirements for consistency with the GHGRS) designation of Commercial Downtown. The proposed project would also be required to comply with Policy 6-32, the City's Green Building Ordinance, and the California Building Code (CBC) requirements, Building Energy Efficiency Standards (Title 24), and CALGreen. The proposed project would meet the City's Construction and Demolition Diversion Deposit Program (CDDD) which requires projects to divert at least 50 percent of total projected project waste to be refunded the deposit. The proposed project would comply with the Reach Code which aligns with Climate Smart San José goals (discussed below). In addition, the proposed project would be designed for energy efficiency and conservation per Climate Smart San José.

The proposed project would be consistent with applicable GHGRS strategy and consistency options intended to reduce GHG emissions.

Climate Smart San José

Climate Smart San José, adopted by the City, 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 project would comply with Action MS-2.11 of the General Plan which requires new development to incorporate energy conservation and efficiency through site design, architectural design, and construction techniques. The proposed parking lot would include energy-efficient lighting. The project would also include Conditions of Approval to reduce energy use during construction including requiring equipment idling times to be no more than five minutes. For these reasons, the project is consistent with the City's climate action goals as set forth in Climate Smart San José.

The proposed project would be consistent with the City's climate action goals in Climate Smart San José and would be consistent with the applicable GHGRS strategy and consistency options intended to reduce GHG emissions. Therefore, the proposed project would not conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing the emissions of GHGs. The Coleman Avenue/Autumn Street EIR did not evaluate GHG emissions. However, the project's consistency with Climate Smart San José is consistent with the Downtown Strategy 2040 EIR conclusions. **[Same Impact as Approved Project (Less than Significant Impact)]**

3.4.2.2 *Cumulative Impacts*

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

Cumulative GHG impacts is a global issue. The discussion above addresses the project's contribution to the cumulative GHG emissions impacts on a regional, statewide, and global basis. Cumulatively considerable GHG emission impacts from cumulative development in San José would be avoided by implementing measures included in the City's GHGRS and Climate Smart San José. Since the project would implement these measures, the project would not result in a cumulatively considerable contribution to a significant GHG impact.

Cumulative GHG impacts were not evaluated in the Coleman Avenue/Autumn Street EIR. The Downtown Strategy 2040 EIR identified less than significant GHG emissions impact under 2030 conditions and a significant unavoidable cumulative GHG impact under 2040 conditions. The project would be constructed before 2030, is consistent with and would have a less than cumulatively considerable contribution to a significant GHG impact. **[Less Impact than Approved Project (Less than Significant Cumulative Impact)]**

3.5 HAZARDS AND HAZARDOUS MATERIALS

The following discussion is based, in part, on the Phase I Environmental Site Assessment (Phase I ESA) completed by the City's Environmental Services Department for the project site in March 2017, Phase I ESA updates completed for 150 North Autumn Street, 407 West St. John Street, and 447 West St. John Street by Envirocom in August 2019, and Phase II ESAs completed for the 447 West St. John Street and 150 North Autumn Street properties by Envirocom in December 2019. Copies of these reports are included in Appendix F of this SEIR.

3.5.1 Environmental Setting

3.5.1.1 *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;
- 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 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.[17]

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 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.[18]

[17] United States Environmental Protection Agency. "Superfund: CERCLA Overview." Accessed March 8, 2022. https://www.epa.gov/superfund/superfund-cercla-overview.
[18] United States Environmental Protection Agency. "Summary of the Resource Conservation and Recovery Act." Accessed March 8, 2022. https://www.epa.gov/laws-regulations/summary-resource-conservation-and-recovery-act.

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 Water Resources Control Board (SWRCB).[19]

Toxic Substances Control Act

The Toxic Substances Control Act (TSCA) of 1976 provides 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 phased out use of friable asbestos products between 1973 and 1978. 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 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.

[19] California Environmental Protection Agency. "Cortese List Data Resources." Accessed May 28, 2020. https://calepa.ca.gov/sitecleanup/corteselist/.

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.[20] Municipalities throughout the Bay Area are currently modifying demolition permit processes and implementing PCB screening protocols to comply with Provision C.12.f. Currently, 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.

3.5.1.2 *Existing Conditions*

Site History and Existing Uses

The project site consists of five parcels which contain an automobile repair business, a vacant commercial building, a loading dock, a residence, and ancillary structures. The existing building located on 447 West St. John Street was constructed in 1926, occupied by Forman's arena, and then occupied by Food Machinery Corporation by 1950. The 447 West St. John Street property has been occupied by an automotive repair business (Valaya Automotive) since 2006. The existing Milligan News Company building was constructed on the 150 North Autumn Street property by 1959 and operated as a magazine distribution facility until it closed in 2014. The 130 North Autumn Street property contained a residential dwelling from at least 1948 through 1969, and since 1969 has been used for parking. The 407 West St. John Street property contains a residential structure constructed in 1915, with a garage constructed in 1956. The 405 West St. John Street was originally a bocce game clubhouse in 1953 and was converted to an office/warehouse by 1969, a towing company by 1970, and an ice cream company by 1975. Most recently, the property has been used as an asphalt paved parking lot.

Due to the age of all structures on-site, these structures have the potential to contain ACMs and lead-based paint. Given the historical presence of underground storage tanks (UST) (described under the 150 North Autumn Street Contamination section below), use of petroleum hydrocarbons and hazardous wastes , and uses at the 150 North Autumn Street (former magazine distribution center) and 447 West St. John Street (automobile repair shop) properties were considered an environmental

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

concern (based on the Phase I ESAs). No recognized environmental concerns (RECs) were identified at the 130 North Autumn Street, 405 West St. John Street, or 407 West St. John Street parcels (beyond the potential presence of ACMs and lead-based paint due to the age of the buildings on-site). Potential sources of contamination at the 150 North Autumn Street and 447 West St. John Street properties are discussed below.

On-Site Sources of Contamination

150 North Autumn Street Contamination

Based on the Phase I ESA (Appendix F), the City's Environmental Services Department, and environmental regulatory databases (e.g., EnviroStor and Leaking Underground Storage Tank (LUST) databases), two 10,000-gallon USTs and associated piping containing gasoline were removed from the 150 North Autumn Street site in 1989. During the excavation, evidence of a gasoline leak was discovered on the northwestern portion of the property. Over-excavation of the tank area occurred down to a depth of 17 feet below the ground surface (bgs) and approximately 285 cubic yards of petroleum-impacted soil was removed. The excavated soil was aerated on-site and re-used on-site for landscaping. The soil may have been stockpiled on the northeastern portion of the project site. The lack of analytical results regarding this soil stockpile would be considered a REC. Contaminated groundwater was extracted and treated, reducing contamination to levels acceptable for closure by Valley Water with no restrictions.

A network of groundwater monitoring wells and soil vapor extraction wells were installed on the property in 1990. Groundwater remediation activities occurred from 1990 to 1992 and briefly stopped before restarting again in 1993 and continuing until 1996. By 1996, the remediation system had removed seven million gallons of treated groundwater and 8,800 pounds of soil vapor extraction. The property received a case closure status from the RWQCB in January of 1997. The remaining residual TPH-gasoline and BTEX constituents detected in on-site groundwater was considered an REC. As a result, a Phase II ESA was prepared for the property in December 2019 (refer to Section 3.5.2 for a discussion of the results and Appendix F for the full Phase II ESA).

To obtain subsurface environmental data and as a part of the Phase II investigation, soil borings and soil-gas probes were advanced to collect soil, groundwater, and soil gas samples for chemical analysis. Samples were then submitted to a state-certified analytical laboratory for chemical analysis.

Environmental Screening Levels (ESLs) established by the RWQCB were used for commercial/industrial land use to determine the degree of risk to public exposure at the site. The ESLs are conservative risk-based screening levels that indicate whether additional investigation/ mitigation measures would be warranted at properties where contaminant concentrations exceed ESLs for specific land use practices. Because the land use practices provided by the RWQCB only consist of residential and commercial/industrial, the ESLs would not apply to the proposed parking lot use. However, in the absence of a site-specific risk assessment for a parking lot, the commercial/industrial land use ESLs were used as a reference threshold.

Evaluation of the samples taken indicated that the gasoline constituents in the groundwater are confined in proximity to the former UST excavation in the paved parking area, northwest of the site. Except for one sample, no gasoline constituents or volatile organic compounds (VOCs) were

detected in the groundwater samples. Gasoline constituents and VOCs such as acetone and methylene chloride were detected in the soil gas samples. However, their concentrations were below the ESLs. Although benzene concentration in two of the soil gas samples were slightly above the ESL for cancer risk, the average benzene concentration at the site was below the ESL. Public exposure risk to benzene at an open parking lot would be less than a commercial/industrial land use.

447 West St. John Street

Based on a site reconnaissance completed for the 447 West St. John Street automobile repair building/property in August 2019, evidence (i.e., stains and unnatural discoloration) of spills or releases of petroleum hydrocarbon products and hazardous material/waste were observed. Four above-ground hydraulic lifts were observed at the western end of the building. Several automobiles, extensive equipment, automobile parts, and objects occupied the entire property. Waste oil drums and a chemical steel cabinet were observed in a room located in the northwest end of the building. Due to the current uses on-site, potential impacts to soil and groundwater was considered an REC.

Based on an environmental regulatory database search for sites of potential environmental concern, the 447 West St. John Street property was listed in the Facility Index System (FINDS). The FINDS is an inventory of facilities monitored by the U.S. Environmental Protection Agency (US EPA). . Environmental database search results showed that the property had several violations including operating without a valid Hazardous Waste Generator permit, no EPA identification number, and no Hazardous Material Business Plan (HMBP). As a result, a Phase II ESA was prepared for the property (refer to Section 3.5.2 for a discussion of the results and Appendix F) in December 2019.

Borings were advanced at the property to collect soil, soil gas, and groundwater samples. The soil and groundwater samples were analyzed for VOCs. The soil gas samples were analyzed for VOCs and were also analyzed for total petroleum hydrocarbons as gasoline (TPHg).

RWQCB ESLs for commercial/ industrial land use were used to determine degree of risk to public exposure at the site. Field observations did not show impacts to soil at the site, and analytical results for the soil samples were below laboratory reporting limits. However, a large area of the site was covered with cars and objects that could have impacted shallow soil. Low concentrations of acetone, xylene, and 1,2,4-trimethylbenzene were detected in the groundwater samples. These concentrations were below the ESLs for groundwater. No acetone, methylene chloride, or PCE was detected in the groundwater or soil samples at the site, suggesting that their presence in the soil gas samples may be associated with migration of these chemicals from known and/or unknown source(s) near the site. Concentrations of benzene, methylene chloride, and tetrachloroethene (PCE) in soil gas samples were above the vapor intrusion human health risk ESLs for commercial land use.

Off-site Sources of Contamination

The project site is surrounded by residential uses to the north, commercial/industrial uses to the west, park uses to the south, and the Guadalupe River to the east. Based on a review of aerial photographs completed as a part of the Phase I ESAs, the surrounding properties have been utilized for industrial, commercial, and residential purposes since the 1930s.

A few properties with historical soil and/or groundwater contamination were identified within one-mile radius of the project in environmental regulatory databases. With the exception of three properties, case closures have been issued to all the listed properties near the project site within a one quarter mile radius, indicating that they have completed necessary investigation and cleanup work required by the oversight regulatory agencies. The three properties that have an open case are the Diridon Station located approximately 1,100 feet south of the site, the former FMC facility located approximately 700 northeast of the site, and Platform 16 located approximately 1,050 feet northwest of the site. All three properties were considered to have a potential to have or have had soil, soil gas, and groundwater contamination. However, historical groundwater flow for the general area shows the flow to be towards the northeast. None of these properties are located up-gradient of the project site. Therefore, the contaminants of concerns from these properties is not considered a significant concern for groundwater quality beneath the site.

3.5.2 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?

3.5.2.1 *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?

Operation of the proposed surface parking lot would not involve the transport, use or disposal of hazardous materials. Minimal quantities of hazardous materials (construction equipment and vehicle fuels, lubricants, etc. and paint) may be used during the demolition of existing structures on-site and construction of the parking lot. Their use, however, would be limited due to the small size of the site

and relatively short duration of the construction period and would not create a significant hazard to the public or environment. **[Same Impact as Approved Project (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?

Based on the results of the Phase II ESA for the 150 North Autumn Street property, residual contaminants associated with the existing former fuel tanks exist may expose construction workers to pollutants during grading, earthwork, trenching, etc. In addition, concentrations of benzene, methylene chloride, and PCE in soil gas samples were above the vapor intrusion human health risk ESLs for commercial land use as result of the automobile repair uses at the 447 West St. John Street property.

The Coleman Avenue/Autumn Street EIR concluded hazardous materials have historically, and continue to be used, in the project area. The EIR concluded that since contamination may be present in the project area, construction workers and/or the public could be exposed to hazardous materials during and/or following construction. The Coleman Avenue/Autumn Street EIR and Downtown Strategy 2040 EIR included mitigation that required a Phase I ESA and a subsequent Phase II ESA (if necessary) for each parcel at the time a specific development is proposed. As discussed above, Phase I and Phase II ESAs were prepared for the site.

The Downtown Strategy 2040 EIR concluded that for any site with the potential for encountering subsurface hazardous materials and/or where soil removal is required, the City or regulatory agencies may require preparation of a site-specific SMP. To address the handling of impacted soils during site development. The Downtown Strategy 2040 EIR also concluded that any site where contamination has been identified, construction shall occur in accordance with a site-specific Health and Safety Plan (or "Construction Risk Management Plan") prepared by an environmental professional.

Impact HAZ-1: Due to the site's history of use as an automobile repair shop, evidence of historic storage/use of hazardous materials identified from prior site assessments, there is a potential to encounter unknown hazardous materials which could expose construction workers to harmful levels of pollutants during grading, earthwork, and trenching.

Mitigation Measures: Consistent with the requirements in the Downtown Strategy 2040 EIR, the following mitigation measures shall be implemented to reduce the exposure of construction workers and the public to hazardous materials during the construction of the project.

MM HAZ-1.1: Prior to issuance any grading activities, a self-directed Site Management Plan (SMP) that includes a Health and Safety Plan (HASP) shall be prepared by a qualified environmental professional to guide activities during demolition, excavation, and construction due to the historic storage/use of hazardous materials on-site. The SMP is intended to provide guidelines and protocols in the event of encountering soil contamination during redevelopment to ensure

construction worker safety. Components of the SMP shall include, but shall not be limited to:

- A detailed discussion of the site background;
- Soil management protocol to manage contaminated soils if encountered on-site;
- Proper procedures as needed for demolition of existing structures, including any groundwater wells if identified to be present within the project area;
- Management of stockpiles, including sampling, disposal, and dust and runoff control measures;
- Implementation of a stormwater pollution prevention program;
- Procedures for transporting and disposing the waste material generated during removal activities;
- Procedures for stockpiling soil on-site if such stockpiling is necessary;
- Procedures to ensure that fill and cap materials are verified as clean;
- Truck routes for export of soil;
- Staging and loading procedures and record keeping requirements;
- Procedures to follow if evidence of an unknown historic release of hazardous materials (e.g., underground storage tanks, polychlorinated biphenyls [PCBs], asbestos containing materials, lead-based paints, etc.) is discovered during excavation or demolition activities;
- Details on dewatering for treatment and discharge to the sanitary sewer or for permitting from the Regional Water Quality Control Board (RWQCB) for treatment and discharge to the storm drain system.

The SMP shall be provided to the Director of Planning, Building and Code Enforcement or the Director's designee, and Environmental Services Department (ESD) Municipal Compliance Officer prior to any grading activities.

Consistent with the Downtown Strategy 2040 and Coleman Avenue/Autumn Street EIRs, implementation of the mitigation measures listed above, and conformance to the City's policies and existing regulations, would reduce the impacts of hazardous substances/materials on the public and environment to less than significant. **[Same Impact as Approved Projects (Less than Significant Impact with Mitigation Incorporated)]**

Asbestos-Containing Materials and Lead-Based Paint

The buildings on-site were constructed prior to 1980 and most likely have materials that contain ACMs and/or lead-based paint. The project proposes to demolish the existing buildings on-site which could release asbestos particles and expose construction workers and nearby residents to harmful levels of asbestos. As a result, an asbestos survey must be conducted under the National Emission Standards for Hazardous Air Pollutants (NESHAP) guidelines. The project would be required to remove all potentially friable ACMs prior to building demolition that may disturb the ACMs.

If lead-based paint is still bonded to the building materials, its removal is not required prior to demolition. It will be necessary to follow the requirements outlined by Cal-OSHA Lead in Construction Standard, Title 8, California Code of Regulation (CCR) 1532.1 during demolition activities; these requirements include employee training, employee air monitoring, and dust control. If lead based paint is peeling, flaking, or blistered, it will be removed prior to demolition. It is assumed that such paint will become separated from the building components during demolition activities and must be managed and disposed of as a separate waste stream. Any debris or soil containing lead paint or coating must be disposed of at landfills that are permitted to accept such waste.

The project is required to conform to the following regulatory programs and to implement the following measures (which are also included as Conditions of Approval) to reduce impacts due to the presence of ACMs and/or lead-based paint:

Conditions of Approval: Consistent with federal, state, and local policies and regulations, the following conditions are included to reduce impacts from asbestos and lead-based paint to a less than significant level:

- In conformance with State and local laws, a visual inspection/pre-demolition survey, and possible sampling shall be conducted prior to the demolition of on-site buildings to determine the presence of asbestos-containing materials and/or lead-based paint.

- During demolition activities, all building materials containing lead-based paint shall be removed in accordance with Cal/OSHA Lead in Construction Standard, Title 8, California Code Regulations 1532.1, including employee training, employee air monitoring, and dust control. Any debris or soil containing lead-based paint or coatings would be disposed of at landfills that meet acceptance criteria for the waste being disposed.

- All potentially friable ACMs shall be removed in accordance with NESHAP guidelines prior to building demolition. All demolition activities will be undertaken in accordance with Cal/OSHA standards contained in Title 8 of CCR, Section 1529, to protect workers from asbestos exposure.

- A registered asbestos abatement contractor shall be retained to remove and dispose of ACMs identified in the asbestos survey performed for the site in accordance with the standards stated above.

- Materials containing more than one percent asbestos are also subject to BAAQMD regulations. Removal of materials containing more than one percent asbestos shall be completed in accordance with BAAQMD requirements and notifications.

The Downtown Strategy 2040 EIR and Coleman Avenue/Autumn Street EIR include similar measures to reduce the risk of release of ACMs and lead-based paint during demolition. The above Conditions of Approval are the most recent measures to reduce exposure to and release of ACMs and lead-based paint during demolition. The project's conformance with regulatory requirements (listed in the Conditions of Approval above) would result in a less than significant impact from the release

ACMs and lead-based paint during demolition. **[Same Impact as Approved Project (Less Than Significant Impact)]**

Polychlorinated Biphenyls

The impacts of the release of PCBs during demolition was not evaluated in the Coleman Avenue/Autumn Street EIR or Downtown Strategy 2040 EIR since regulations related to PCBs and demolition were not established at the time the EIRs were prepared. The project proposes to demolish the on-site buildings, which may include materials that contain PCBs. During demolition. PCBs in building materials could be released and thereby exposed to stormwater runoff from the project site during rain events. To address this risk, the City will complete a PCB Screening Assessment Form, required for all demolition.[21] The form is designed to ascertain whether or not the building targeted for demolition is subject to the PCB Screening Assessment. If on-site buildings do contain PCBs that exceed threshold limits, the City must follow applicable federal and state laws, which may include reporting to such agencies as the EPA, RWQCB, and DTSC, which may require additional sampling and abatement of PCBs. Provision C.12.g. of Municipal Regional Permit 3.0 (Adopted July 1, 2022) includes expanded requirements for applicable structures with any building material testing at 50 ppm or greater, effective July 1, 2023 including (1). Notify City, Regional Water Board, and U.S. EPA at least seven working days prior to the start of demolition. Notify City of actual date(s) of demolition, (2)Project site must be inspected prior to demolition to ensure effective construction pollutant controls and BMPs are used to prevent discharge into the storm sewer system. The City may impose additional site controls as determined during the inspection or approval process. (3) Submit hazardous waste manifest for the disposal of PCBs materials to the City within one week of it becoming available. Identification of PCBs using the Screening Assessment Form and conformance with relevant regulatory requirements will result in a less than significant impact as related to PCBs. **[New 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 Coleman Avenue/Autumn Street EIR did not evaluate the impacts of hazardous materials to schools as there are no schools located within one quarter mile of the project site. The Downtown Strategy 2040 EIR concluded that redevelopment within the Downtown boundaries could locate facilities that emit hazardous emissions or handle hazardous materials, substances, or waste within one-quarter mile of existing schools. The Downtown Strategy 2040 EIR concluded that the Downtown Strategy 2040 does not propose the development of new facilities that emit hazardous emissions or handle hazardous or acutely hazardous materials, substances or waste within one-quarter mile of an existing or proposed school. The closest school to the project site is St. Leo the Great School located at 1051 West San Fernando Street, approximately 0.7 mile west of the site. Given the distance of the project site from the nearest school, the project would not emit hazardous emissions or handle hazardous materials that would affect any schools. This would result in no impact. **[Same as Approved Project (No Impact)]**

[21] City of San José Department of Planning, Building and Code Enforcement. Draft Bulletin #254. February 6, 2019.

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?

The Coleman Avenue/Autumn Street EIR included a list of known contamination incidents and sites of potential concern. The project site was listed as a closed LUST case but was not on a hazardous materials listing pursuant to Government Code Section 65962.5. The Downtown Strategy 2040 EIR did not list the location of the specific sites on a hazardous materials listing pursuant to Government Code Section 65962 in the downtown area. As discussed above, remediation of groundwater and soil vapor on the project site was completed and the site obtained a low threat case closure from the SCVWD in January 1997. The project site is not currently on any list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would not create a significant hazard to the public or the environment. **[Same as Approved Project (No Impact)]**

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 project site is located approximately 1.4 miles south of Norman Y. Mineta San José International Airport. The Coleman Avenue/Autumn Street EIR did not evaluate airport related hazards. The Downtown Strategy 2040 EIR concluded that individual mid- or high-rise buildings in the Downtown area, depending on specific proposed heights and locations (relative to the airport), would be subject to required FAA regulatory review (and FAR Part 77 requirements) and modified, if necessary, prior to City approval. No buildings or structures are proposed at the site and, therefore, the project is not subject to FAA regulatory review.

The Downtown Strategy 2040 EIR concluded that the Downtown area is within the Norman Y. Mineta San José International Airport's Comprehensive Land Use Plan area. The Downtown Strategy 2040 EIR also concluded that future development within the airport influence area (AIA) would be subject to land use compatibility policies in the CLUP due to safety hazards at sites within the AIA. Only the Park/San Carlos subarea (in the Downtown Strategy 2040 Plan area) is (partially) located within the AIA. The project site is not located within AIA and, therefore, the project would not result in airport safety hazards. The Downtown Strategy 2040 EIR concluded that no noise-sensitive residential uses are proposed within the 65 dB community noise equivalent level (CNEL) noise contour shown in the CLUP.

The project site is outside of the 65 dBA CNEL contour line. For these reasons, the project would not result in a safety hazard or excessive noise for people residing or working in the project area. **[Less Impact than Approved Project (No Impact)]**

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

The Coleman Avenue/Autumn Street EIR does not evaluate the effects of the project on an emergency response or evacuation plan. The Downtown Strategy 2040 EIR concluded that the

Downtown Strategy 2040 would not interfere with the City's Emergency Operations Plan. The project proposes to construct a surface parking lot to serve events at the nearby San José SAP Center. The proposed parking lot has been designed to allow safe vehicle ingress to and egress from the site and includes security lighting for safe usage of the site. The frequency of events requiring the use of the lot is unknown at this time, but events would not be expected to occur on a daily or nightly basis. The site is not located on a major evacuation route; therefore, the project would not impair or interfere with any adopted emergency response or evacuation plans. **[Same Impact as Approved Project (No 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 Coleman Avenue/Autumn Street EIR did not evaluate impacts due to exposure of people or structures to wildfire. The Downtown Strategy 2040 EIR concluded that given the Downtown area's urban setting, the implementation of the Downtown Strategy 2040 Plan would not expose people or structures to a significant risk involving wildland fires. The proposed project is located in Downtown San José, in an area which has not been designated as a very high fire hazard severity zone on CalFire maps.[22] Consistent with the conclusions of the Downtown Strategy 2040 EIR, because the project site is not located in or near state responsibility areas or lands classified as very high fire hazard severity zones, the project would not result in wildfire impacts **[Same as Approved Project (No Impact)]**

3.5.2.2 *Cumulative Impacts*

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

The geographic area for cumulative hazards and hazardous materials impacts is the project site and adjacent parcels. There is one adjacent approved project (Lot E Parking Structure), that will be located approximately 55 feet west of the site. Residual soil contaminants associated with the former underground fuel tanks at 150 North Autumn Street exist at the site. However, with the incorporation of mitigation such as the SMP and HASP, the project's contamination would not release and combine impacts, related to soil or groundwater contamination, with other projects.

Further, redevelopment of both sites would require demolition of existing buildings that may contain lead-based paint and/or ACMs. Demolition of these structures could expose construction workers, neighboring properties, and the environment to hazardous levels of lead and/or ACMs. Both projects would implement regulatory measures (Conditions of Approval) that would require a pre-demolition survey and sampling to determine the presence of ACMs and lead-based paint and protocols for the removal and disposal of these materials.

[22] California Department of Forestry and Fire Protection. Fire Hazard Severity Zone Viewer Accessed March 8, 2022. https://egis.fire.ca.gov/FHSZ/.

With the implementation of the above-referenced mitigation measures and standard conditions for both projects, the cumulative projects would not result in significant cumulative hazardous materials impacts to the pubic or environment.

Based on the conclusions in the Downtown Strategy 2040 EIR, the roadway network in the downtown area would be designed to accommodate emergency vehicles. For these reasons, the proposed project would not combine with other projects to cumulatively interfere with an adopted emergency response plan.

Since the proposed project would not construct any structures or result in aircraft safety hazard. The proposed project would not combine with other projects regarding this impact. For these reasons, the cumulative projects would not result in significant cumulative hazards and hazardous materials impacts. **[Same as Approved Project (Less than Significant Impact with Mitigation Incorporated)]**

3.6 HYDROLOGY AND WATER QUALITY

3.6.1 Environmental Setting

3.6.1.1 *Regulatory Framework*

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 EPA and the 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.

Federal and State

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) and Storm Water Pollution Prevention Plan (SWPPP) must be prepared by a qualified professional prior to commencement of construction. The Construction General Permit includes requirements for training, inspections, record keeping, and, for projects of certain risk levels, monitoring. The general purpose of the requirements is to minimize the discharge of pollutants and to protect beneficial uses and receiving waters from the adverse effects of construction-related storm water discharges.

Dam Safety

Since August 14, 1929, the State of California has regulated dams to prevent failure, safeguard life, and protect property. The California Water Code entrusts dam safety regulatory power to California d Department of Water Resources, Division of Safety of Dams (DSOD). The DSOD provide oversight to the design, construction, and maintenance of over 1,200 jurisdictional sized dams in California.[23]

As part of its comprehensive dam safety program, Valley Water routinely monitors and studies the condition of each of its 10 dams. Valley Water also has its own Emergency Operations Center and a

[23] California Department of Water Resources, Division of Safety of Dams. Accessed March 8, 2022. https://water.ca.gov/programs/all-programs/division-of-safety-of-dams

response team that inspects dams after significant earthquakes. These regulatory inspection programs reduce the potential for dam failure.

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 2015 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. Under Provision C.3 of the MRP, new and redevelopment projects that create or replace 10,000 square feet or more of impervious surface area are required to implement site design, source control, and Low Impact Development (LID)-based stormwater treatment controls to treat post-construction stormwater runoff. LID-based treatment controls are intended to maintain or restore the site's natural hydrologic functions, maximizing opportunities for infiltration and evapotranspiration, and using stormwater as a resource (e.g., rainwater harvesting for non-potable uses). The MRP also requires that stormwater treatment measures are properly installed, operated, and maintained.

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.[24] Programs must include focused implementation of PCB control measures, such as source control, treatment control, and pollution prevention strategies. Municipalities throughout the Bay Area are updating their demolition permit processes to incorporate the management of PCBs in demolition building materials to ensure PCBs are not discharged to storm drains during demolition. As of July 1, 2019, buildings constructed between 1955 and 1978 that are proposed for demolition must be screened for the presence of PCBs prior to the issuance of a demolition permit.

[24] San Francisco Bay Regional Water Quality Control Board. *Municipal Regional Stormwater Permit, Provision C.12.* November 19, 2015.

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

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

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

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

Green Stormwater Infrastructure Plan

The City of San José has developed a Green Stormwater Infrastructure Plan (GSI Plan) to lay out the approach, strategies, targets, and tasks needed to transition traditional "gray" infrastructure to include green stormwater infrastructure over the long term and to implement and institutionalize the concepts of GSI into standard municipal engineering, construction, and maintenance practices. The GSI Plan is intended to serve as an implementation guide for reducing the adverse water quality impacts of urbanization and urban runoff on receiving waters over the long term, and a reporting tool to provide reasonable assurance that specific pollutant reductions from discharges to local creeks and San Francisco Bay will be met. The GSI Plan is required by the City's MRP for the discharge of stormwater runoff from the City's storm drain system.

Envision San José 2040 General Plan

The General Plan includes policies for the purpose of avoiding or mitigating impacts resulting from planned development projects in the City. The proposed project would be subject to applicable policies of the City's General Plan, including the following:

Envision San José 2040 Relevant Hydrology and Water Quality Policies

Policy	Description
Policy IN-3.1	Achieve minimum level of services: • For sanitary sewers, achieve a minimum level of service "D" or better as described in the Sanitary Sewer Level of Service Policy and determined based on the guidelines provided in the Sewer Capacity Impact Analysis (SCIA) Guidelines. • For storm drainage, to minimize flooding on public streets and to minimize the potential for property damage from stormwater, implement a 10-year return storm design standard throughout the City, and in compliance with all local, State and Federal Regulatory requirements.
Policy IN-3.7	Design new projects to minimize potential damage due to stormwaters and flooding to the site and other properties.
Policy IN-3.9	Require developers to prepare drainage plans for proposed developments that define needed drainage improvements per City standards.
Policy 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).
Policy MS-3.4	Promote the use of green roofs (i.e., roofs with vegetated cover), landscape-based treatment measures, pervious materials for hardscape, and other stormwater management practices to reduce water pollution.
Policy MS-3.5	Minimize area dedicated to surface parking to reduce rainwater that comes into contact with pollutants.
Policy MS-20.2	Avoid locating new development or authorizing activities with the potential to negatively impact groundwater quality in areas that have been identified as having a high degree of aquifer vulnerability by the Santa Clara Valley Water District or other authoritative public agency.
Policy MS-20.3	Protect groundwater as a water supply source through flood protection measures and the use of stormwater infiltration practices that protect groundwater quality. In the event percolation facilities are modified for infrastructure projects, replacement percolation capacity will be provided.
Policy ER-8.1	Manage stormwater runoff in compliance with the City's Post-Construction Urban Runoff (6-29) and Hydromodification Management (8-14) Policies.

Policy ER-8.3	Ensure that private development in San José includes adequate measures to treat stormwater runoff.
Policy ER-9.5	Protect groundwater recharge areas, particularly creeks and riparian corridors.
Action ER-8.10	Participate in the Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP) and take other necessary actions to formulate and meet regional water quality standards which are implemented through the National Pollution Discharge Elimination System (NPDES) permits and other measures.
Policy EC-4.1	Design and build all new or remodeled habitable structures in accordance with the most recent California Building Code and municipal code requirements as amended and adopted by the City of San José, including provisions for expansive soil, and grading and stormwater controls.
Policy EC-5.7	Allow new urban development only when mitigation measures are incorporated into the project design to ensure that new urban runoff does not increase flood risks elsewhere.
Policy 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.

3.6.1.2 *Existing Conditions*

The project site is located in a developed urban environment in the northwestern portion of downtown San José. The project site lies adjacent to the Guadalupe River, one of two main waterways that drain the Santa Clara Valley in a northerly direction and run through the downtown area, ultimately discharging to San Francisco Bay. Coyote Creek is the other main waterway and is located approximately 1.6 miles to the east.

Hydrology and Drainage

The approximately 2.5-acre project site is located along the western bank of the Guadalupe River. The Guadalupe River watershed drains approximately 171 square miles, beginning on the Santa Clara Valley floor at the confluence of Alamitos Creek and Guadalupe Creek and flowing until its discharge point at the Lower South San Francisco Bay. The project site is comprised mostly of impervious surfaces, with stormwater draining from the site into the City's storm drainage system via inlets in West St. John Street and North Autumn Street, to the Guadalupe River, and eventually to the South San Francisco Bay. The project site consists of approximately 102,370 square feet of impervious surfaces.

Flooding and Other Hazards

Most of the project site is designated as a Flood Zone D (areas in which flood hazards are undetermined, but possible). Flood Zone D is not a Special Flood Hazard Area; therefore, no requirements are placed on new development in this area by the City of San José or the County of Santa Clara as it relates to flood insurance and/or flood protection. [25] A small portion of the site, located on the eastern edge within the 35-foot Guadalupe River riparian setback area, is designated Zone A, which is defined as a Special Flood Hazard Area subject to inundation in the event of the

[25] Federal Emergency Management Agency. *Flood Insurance Rate Map, Community Panel No. 06085C0234H*. Effective Date: May 18, 2009.

one percent annual chance flood (100-year flood). No base flood elevations have been determined for properties designated Zone A.

The project site is located within the Anderson Dam Failure Inundation Area as identified on the Valley Water Anderson Dam Inundation Maps.[26] The site would be subject to inundation, ranging from two to five feet in depth, resulting from potential failure of Anderson Dam.

Due to the project site's inland location and distance from large bodies of water (i.e., the San Francisco Bay), it is not subject to seiche or tsunami hazards, or sea level rise. The site is located on flat terrain and would not be subject to potential mudslides.

3.6.2 Impact Discussion

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

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?

3.6.2.1 *Project Impacts*

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

[26] Valley Water. Local Dams and Reservoirs. Anderson Dam and Reservoir. Inundation Map of Hypothetical Fair Weather Failure of Anderson Dam. Sheet 19. Inundation Map of Hypothetical Inflow Design Flood Failure of Anderson Dam. Sheet 24. Accessed May 31, 2023. https://www.valleywater.org/your-water/local-dams-and-reservoirs.

Construction-Related Water Quality Impacts

As stated in the Downtown Strategy 2040 and Coleman Avenue/Autumn Street EIRs, construction activities, such as grading and excavation, have the potential to result in temporary impacts to surface water quality in local waterways. When disturbance to the soil occurs, sediments may be dislodged and discharged to the storm drainage system, carried by surface runoff flows across the site. The proposed project would result in the disturbance of approximately 2.5 acres of land, which exceeds the one-acre threshold for required compliance with the Construction General Permit. The project would require the filing of an NOI and preparation of a SWPPP, as required by the Construction General Permit. In addition, Conditions of Approval for construction activities will be included in the project to reduce the potential for water quality impacts during construction.

Conditions of Approval: Consistent with the measures in the Downtown Strategy 2040 EIR and in the Coleman Avenue/Autumn Street EIR, and City requirements, best management practices to prevent stormwater pollution and reduce potential sedimentation shall be implemented during project construction, including but not limited to the following:

- Burlap bags filled with drain rock shall be installed around storm drains to route sediment and other debris away from the drains.
- Earthmoving or other dust-producing activities shall be suspended during periods of high winds.
- All exposed or disturbed soil surfaces shall be watered at least twice daily to control dust, as necessary.
- Stockpiles of soil or other materials that can be blown by the wind shall be watered or covered.
- All trucks hauling soil, sand, and other loose materials shall be required to cover all trucks or 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 knock mud from truck tires prior to entering City streets. A tire wash system may also be employed at the request of 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.

Consistent with the conclusions of the Coleman Avenue/Autumn Street and Downtown Strategy 2040 EIRs, construction of the proposed project, with implementation of the above conditions, would not result in significant construction-related water quality impacts. **[Same Impact as Approved Project (Less Than Significant Impact)]**

Post-Construction Water Quality Impacts

The Coleman Avenue/Autumn Street EIR concluded that operations of the project (and interim parking uses) would incrementally contribute to the volume of pollutants already entering nearby streams via existing storm drains. The Downtown Strategy 2040 EIR concluded that contaminants generated in the Downtown Strategy 2040 area could degrade the water quality of Los Gatos Creek, Guadalupe River, and the San Francisco Bay.

The proposed project would result in the replacement of approximately 95,000 square feet of impervious surfaces, including the existing building roofs, parking lot and driveway areas and add approximately 7,000 square feet of new pervious surfaces. The Downtown Strategy EIR included measures new or redevelopment projects that create, add, or replace 10,000 square feet or more of impervious surface area control post-development stormwater runoff through site design, source control, and LID treatment control BMPs (under the City's MRP requirements). Because the proposed project would replace more than 10,000 square feet of impervious surface area, it would be subject to Provision C.3 of the MRP. This requires that the project incorporate site design, source control and runoff treatment controls to reduce the rates, volumes and pollutant loads of runoff from the project (consistent with the Downtown Strategy EIR). The following Conditions of Approval reflect this requirement:

Conditions of Approval: Consistent with the General Plan and Downtown Strategy 2040 EIRs, the project will be required to implement the following measures:

- The proposed project must comply with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of Best Management Practices (BMPs) that include site design measures, source controls, and stormwater treatment controls to minimize stormwater pollutant discharges. Post-construction treatment control measures shall meet the numeric sizing design criteria specified in City Policy 6-29;
- The project's Stormwater Control Plan and numeric sizing calculations will be in conformance with City Policy 6-29;
- Final inspection and maintenance information on the post-construction treatment control measures must be submitted prior to issuance of Public Works Clearance.

The project design includes permeable pavements adjacent to the proposed parking stalls to provide the on-site runoff treatment in conformance with the LID requirements of Provision C.3.

The Coleman Avenue/Autumn Street EIR did not include measures to reduce water quality impacts during operations of the project (and interim parking uses). Consistent with the conclusions of the Downtown Strategy 2040 EIR, by implementing the Conditions of Approval for post-construction and complying with the requirements of the MRP, the proposed project would have a less than significant impact on post-construction water quality. **[Same Impact as Approved Project (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 proposed project is located within the Santa Clara Subbasin, one of two groundwater basins located within the City of San José Urban Growth Boundaries. As stated in the Downtown Strategy 2040 EIR, there are no designated groundwater infiltration sites within the Downtown area, and planned build-out within the scope of the 2040 General Plan does not include areas within any of Valley Water's major groundwater recharge systems. The Coleman Avenue/Autumn Street EIR did not evaluate impacts to groundwater supplies. However, the Downtown 2040 EIR concluded that future development within the Downtown Strategy 2040 area would not contribute to depletion of groundwater supplies or reduce the amount or quality of water available for public water supplies. Consistent with the conclusions of the Downtown Strategy 2040 EIR, the project would not substantially decrease groundwater supplies or interfere with groundwater recharge. **[Same Impact as Approved Project (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?

The Downtown Strategy 2040 EIR concluded that the Downtown Strategy 2040 area is highly urbanized and existing surfaces are largely impervious, making future development unlikely to alter the existing drainage pattern such that substantial flooding or erosion would occur in the receiving water bodies. The Coleman Avenue/Autumn Street EIR concluded that limited landscaped areas that would be paved for the project (including interim parking uses) would result in a negligible increase in the volume of stormwater runoff. The drainage pattern of the project site would not be substantially altered by the proposed demolition and construction, as the site is largely impervious in its current condition. The project does not propose significant amounts of grading of the site and would maintain the existing drainage pattern. Post-construction runoff would be collected and treated on-site and conveyed to the City's storm drain lines in the surrounding streets. The project is located on relatively flat terrain, thus, would not result in a significant increase in erosion.

The proposed parking lot would be located within the FEMA designated Zone D, which is not designated as a Specific Flood Hazard Area. The future trail could be constructed within Zone A, a Special Flood Hazard Area. Supplemental environmental review, including a hydrology and water quality analysis, would be required for construction of the future trail. The project does not propose to construct any buildings or structures on the site that could block or redirect flood flows, nor does it propose any alteration of the course of a stream or a river, actions which could potentially increase the risk of flooding on- or off-site. In addition, compliance with the MRP and associated City policies would reduce the overall rate and volume of runoff entering the storm drain system from the project site, reducing the potential impact on the storm drainage system.

For these reasons, consistent with the conclusions of the Coleman Avenue/Autumn Street and Downtown Strategy 2040 EIRs, impacts resulting from drainage pattern alteration, increased risk of flooding, and/or an exceedance of the capacity of the existing storm drain system would be less than significant. [**Same Impact as Approved Project (Less than Significant Impact)]**

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

As discussed above, the proposed project would be located in Flood Zone D, which indicates an undetermined flood risk. Although the site is located within the Anderson Dam Failure Inundation Area, the proposed parking lot would not contain any stored hazardous materials or other concentrated pollutants that could be released in an inundation event. As discussed in the Downtown Strategy 2040 EIR, the potential for dam failure is reduced by several regulatory inspection programs reduced by local hazard mitigation planning managed by Valley Water.

The project site is not located adjacent to any large bodies of water (i.e., the San Francisco Bay), nor is the project located within a designated tsunami inundation zone. The Downtown Strategy 2040 EIR and the Coleman Avenue/Autumn Street EIRs did not evaluate the risk of release of pollutants due to project inundation flood hazard, tsunami, or seiche zones. However, since the project would not store hazardous pollutants and is not in a flood hazard, tsunami zone or seiche zone, the project would not result in the release of pollutants in these designated areas. [**New 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 Downtown Strategy 2040 and the Coleman Avenue/Autumn Street EIRs did not evaluate consistency with a groundwater management plan. However, Valley Water prepared a Groundwater Management Plan (GMP) for the Santa Clara and Llagas subbasins in 2021, describing its comprehensive groundwater management framework including objectives and strategies, programs and activities to support those objectives, and outcome measures to gauge performance. The GMP is the guiding document for how Valley Water will ensure groundwater basins within its jurisdiction are managed sustainably. The Santa Clara subbasin has not been identified as a groundwater basin in a state of overdraft.

The project site is not located within, or adjacent to, a Valley Water groundwater recharge pond or facility.[27] Implementation of the proposed project would not interfere with any actions set forth by Valley Water in its GMP regarding groundwater recharge, transport of groundwater, and/or groundwater quality. Therefore, the proposed project would not preclude the implementation of the GMP. [**No Impact]**

[27] Valley Water. *2021 Groundwater Management Plan for the Santa Clara and Llagas Subbasins.* November 2021.

3.6.2.2 *Cumulative Impacts*

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

The geographic area for cumulative hydrology and water quality impacts is the Guadalupe River watershed. Cumulative developments near the project site would be subject to similar hydrological and urban runoff conditions. All cumulative projects occurring within San José would be required to implement the same project conditions related to construction water quality as the proposed project (including preparation of a SWPPP if disturbance if greater than one acre). In addition, all cumulative projects would be required to meet applicable MRP, City Council Policy 6-29 requirements on a project-specific basis. For these reasons, the cumulative projects, including the proposed project, would not result in significant cumulative hydrology or water quality impacts. This conclusion is consistent with the Downtown Strategy 2040 EIR conclusions. The Coleman Avenue/Autumn Street EIR did not evaluate cumulative hydrology and water quality impacts. [**Same Impact as Approved Projects (Less than Significant Impact)]**

3.7 TRANSPORTATION

The following discussion is based, in part, on a Local Transportation Analysis prepared for the project by Hexagon Transportation Consultants, Inc. (Hexagon). A copy of the report dated December 17, 2021, is included in Appendix G of this SEIR.

3.7.1 Environmental Setting

3.7.1.1 *Regulatory Framework*

State

Regional Transportation Plan

The Metropolitan Transportation Commission (MTC) is the transportation planning, coordinating, and financing agency for the nine-county San Francisco Bay Area, including Santa Clara County. MTC is charged with regularly updating the Regional Transportation Plan, a comprehensive blueprint for the development of mass transit, highway, airport, seaport, railroad, bicycle, and pedestrian facilities in the region. MTC and 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 greenhouse gas 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, an employment (e.g., office or research and development) or residential project's transportation impact would be less than significant if the project VMT is 15 percent or more below the existing average regional VMT per employee or the existing average citywide VMT per capita, respectively. For industrial projects (e.g., warehouse, manufacturing, distribution), the impact would be less than significant if the project VMT is equal to or less than the existing average regional VMT per employee. The threshold for a retail project is whether it generates net new regional VMT, as new retail typically redistributes existing trips and miles traveled as opposed to inducing new travel. Screening criteria have been established to determine which projects require a detailed VMT analysis. If a project meets the relevant screening criteria, it is considered to have a less than significant VMT impact.

If a project's VMT does not meet the established thresholds, mitigation measures would be required, where feasible. The policy also requires preparation of a Local Transportation Analysis to analyze non-CEQA transportation issues, including local transportation operations, intersection level of service, site access and circulation, and neighborhood transportation issues such as pedestrian and bicycle access and recommend transportation improvements. The VMT policy does not negate Area Development policies and Transportation Development policies approved prior to adoption of Policy 5-1; however, it does negate the City's Protected Intersection policy as defined in Policy 5-3.

Envision San José 2040 General Plan

The following General Plan policies relate to the transportation impacts of the proposed project.

Envision San José 2040 Relevant Transportation Policies

Policies	Description
TR-1.6	Require that public street improvements provide safe access for motorists and pedestrians along development frontages per current City design standards.
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-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.

3.7.1.2 *Existing Conditions*

Existing Roadway Network

Regional access to the project site is provided via SR 87. Local access to the project site is provided via Julian Street, The Alameda, Stockton Avenue, Montgomery Street, Autumn Street, Autumn Parkway, and St. John Street. These facilities are described below.

SR 87 is a six to eight lane freeway that extends from US 101 to SR 85 in San José. SR 87 provides access to the project site via an interchange at Julian Street.

Julian Street is a two to four lane roadway that runs in an east-west direction. Julian Street extends eastward to SR 87, where it transitions into St. James Street, and westward to The Alameda. Bike lanes are provided on Julian Street between The Alameda and Stockton Avenue. Julian Street provides access to the project site via Autumn Street.

The Alameda/Santa Clara Street is a four-lane roadway that runs in a generally east/west direction in San José from its interchange with Interstate 880 in the west to Stockton Avenue in the east, where it transitions into Santa Clara Street. The Alameda/Santa Clara Street provides access to the project site via Barack Obama Boulevard.

Stockton Avenue is a two-lane roadway that runs in a north-south direction. Stockton Avenue extends northward, where it transitions to Emory Street and southward to The Alameda, where it transitions to White Street. Stockton Avenue provides access to the project site via Julian Street.

North Montgomery Street is a two-lane roadway that runs in a north-south direction. Montgomery Street extends northward to its end at Cinnabar Street, and southward, where it transitions to St. John Street. Montgomery Street provides access to the project site via Julian Street.

Barack Obama Boulevard (previously N. Autumn Street) is a north-south roadway that extends from West St. John Street in the north to Interstate 280 in the south. There are two lanes of traffic between Santa Clara Street and W. St. John Street and four lanes south of Santa Clara Street. Barack Obama Boulevard provides access to the project site via North Autumn Street and West St. John Street.

North Autumn Street is a two-lane street between West St. John Street and north of Julian Street North Autumn Street provides access to the project site via a full-access driveway.

Autumn Parkway is a four-lane roadway that runs in a north-south direction. Autumn Parkway extends from Coleman Avenue to the north, to Julian Street to the south. Autumn Parkway provides access to the project site via Julian Street.

St. John Street is a two-lane roadway that runs in an east-west direction. St. John Street extends eastward to 18th Street and westward to Montgomery Street, where it transitions to Montgomery Street. Bike sharrows are provided on St. John Street. St. John Street provides access to the project site via a full access driveway.

Existing Pedestrian Facilities

Sidewalks are present along the streets in the vicinity of the project site, including Julian Street, The Alameda, Stockton Avenue Montgomery Street, Autumn Street, Autumn Parkway. Marked crosswalks with pedestrian signal heads and push buttons are located at all signalized intersections. The existing network of sidewalks and crosswalks has good connectivity and provides pedestrians with safe routes from the project site to the SAP Center.

Existing Bicycle Facilities

There are several bicycle facilities in the vicinity of the project site (refer to Figure 3.7-1). Bicycle facilities are divided into the following four classes of relative significance:

- **Class I Bikeway (Bike Path).** Class I bikeways are bike paths that are physically separated from motor vehicles and offer two-way bicycle travel on a separate path.

    - The Guadalupe River Trail is located in the project area and is a continuous multi-purpose pathway for pedestrians and bicycles that is separated from motor vehicles. It begins at Camden Avenue in the south and continues to Alviso in the north. A connection to the Guadalupe River Trail system is located along St. John Street east of Autumn Street

- **Class II Bikeway (Bike Lane).** Class II bikeways are striped bike lanes on roadways that are marked by signage and pavement markings. Within the vicinity of the project site, striped bike lanes exist on the following roadway segments:

    - Santa Clara Street, between The Alameda and Almaden Boulevard
    - Autumn Street, between Santa Clara Street and San Carlos Street
    - Stockton Avenue, between Emory Street and Santa Clara Street
    - Autumn Parkway, between Coleman Avenue and Julian Street

- **Class III Bikeway (Bike Route).** Class III bikeways are bike routes on roadways that share the road with bicycles and motor vehicles and are marked with shared roadway bicycle markings (sharrows). Within the vicinity of the project site, bike routes are present on the following roadway segments:

    - St. John Street, between Montgomery Street and Almaden Boulevard
    - Montgomery Street, between Julian Street and St John Street

- **Class IV Bikeway (Separated Bikeway**). Class IV bikeways are separated bikeways on roadways that are protected bikeways with a physical barrier between bicycles and motor vehicles. Within the vicinity of the project site, bike routes are present on the following roadway segments:

    - Autumn Street, between St John Street and Santa Clara Street
    - Cahill Street, between Santa Clara Street and San Fernando Street

Source: Hexagon Transportation Consultants, Inc., March 2022.

EXISTING BICYCLE FACILITIES | FIGURE 3.7-1

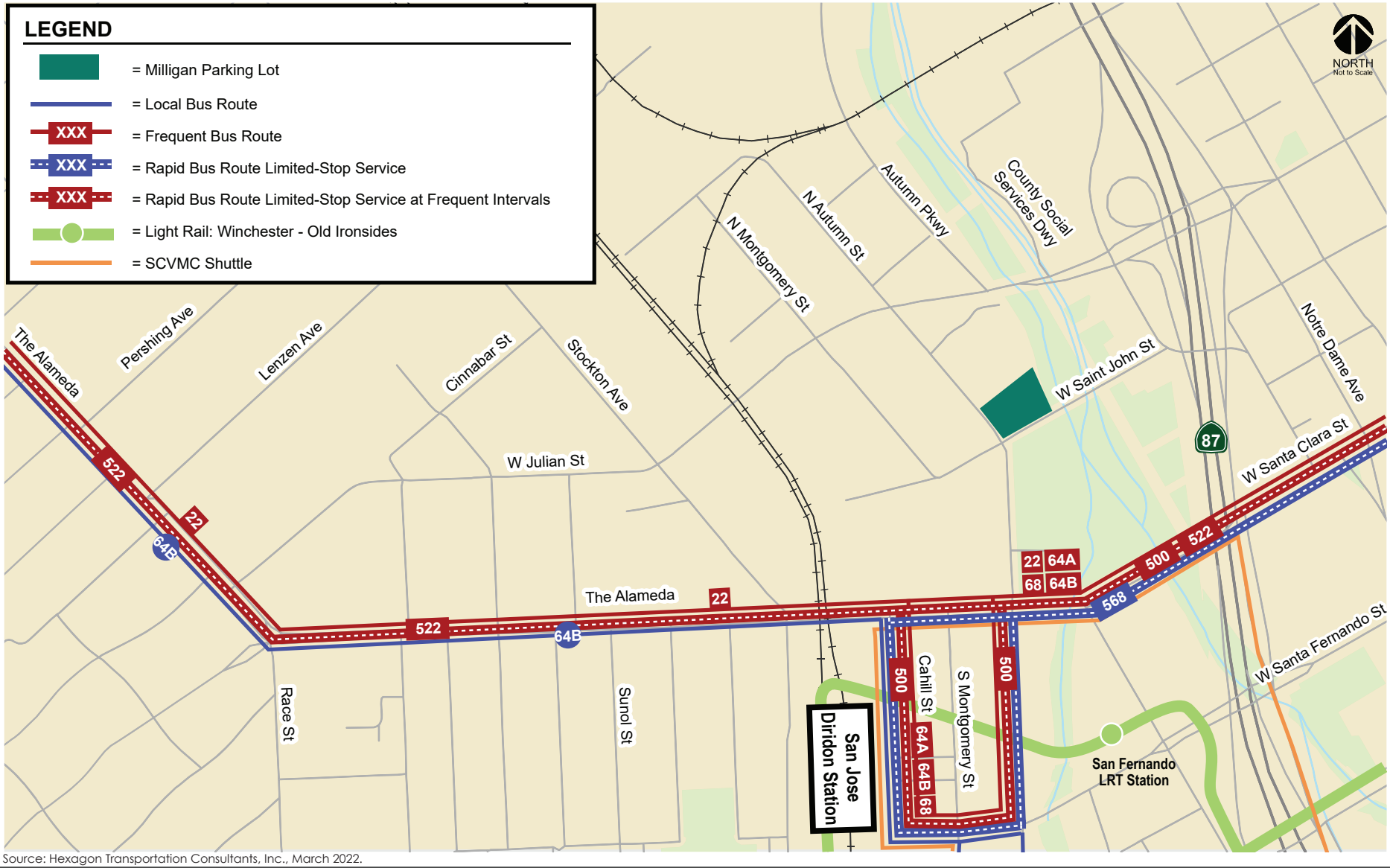
Existing Transit Facilities

Existing transit services in the project area are provided by VTA and shown in Table 3.7-1 and on Figure 3.7-2. The project site is primarily served by seven VTA bus routes and light rail. The San José Diridon Station is located approximately one-quarter mile south of the project site and provides connections to Caltrain, Amtrak, Altamont Corridor Express (ACE), Santa Cruz Metro, and Monterey- Salinas Transit.

Table 3.7-1: Existing VTA Services

Bus Route	Route Description	Closest Stop and Distance to Project Site *	Weekday Hours of Operation	Headway[1]
22	Palo Alto Transit Center – Eastridge	Montgomery Street and Santa Clara Street, 850 feet	4:45 am - 3:00 am	30 min
64A	McKee and White - Ohlone - Chynoweth Station	Montgomery Street and Santa Clara Street, 850 feet	5:30 am – 11:30 am	30 min
64B	McKee and White - Almaden Expressway & Camden	Montgomery Street and Santa Clara Street, 850 feet	6:00 am - 9:05 pm	30 min
68	San José Diridon Station – Gilroy Transit Center	San José Diridon Station, 0.25 mile	4:45 am - 11:35 pm	15 min
500	San José Diridon Station -Berryessa BART	San José Diridon Station, 0.25 mile	4:35 am - 11:40 pm	15 min
522	Palo Alto Transit Center - Eastridge.	Montgomery Street and Santa Clara Street, 850 feet	5:20 am - 11:15 pm	15 min
568	Gilroy Transit Center to San José Diridon	San José Diridon Station, 0.25 miles	5:25 am - 7:40 pm	30 min
Green Line	Old Ironsides - Winchester	San José Diridon Station, 0.25 mile	5:45 am - 12:35 am	20 min
SCVMC Shuttle	San Jose Diridon Station to Santa Clara Valley Medical Center	San José Diridon Station, 0.25 mile	6:45 am - 8:35 am; 2:40 pm - 5:40 pm	20 – 30 min

Notes:
1. Approximate weekday operation hours and headways during peak commute periods in the project area, as of October 2021.



Source: Hexagon Transportation Consultants, Inc., March 2022.

EXISTING TRANSIT FACILITIES | FIGURE 3.7-2

3.7.2 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?

3.7.2.1 *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, Bicycle and Transit Facilities

The project provides adequate pedestrian circulation by providing sidewalks along its frontage and an accessible path between the parking lot and the San José SAP Event Center. The existing network of sidewalks in the area surrounding the site has good connectivity to existing bus, light rail and commuter train facilities.

Sidewalks are located along the West St. John Street and North Autumn Street frontages which provide adequate pedestrian circulation and an accessible path between the parking lot and the San José SAP Event Center. The project would serve as a parking lot to the existing San José SAP Event Center and would not result in an increase in transit ridership or use of bicycle facilities. The project would not require removal of a bus stop, sidewalk, or bicycle facility. For these reasons, the project would not conflict with a program or policy related to existing or planned transit, bicycle or pedestrian facilities. The Coleman Avenue/Autumn Street EIR did not evaluate these impacts as it was not included in the CEQA Guidelines checklist at the time. The Downtown Strategy 2040 EIR stated that the Downtown Strategy 2040 supports goals, policies, and programs adopted by the City and VTA for encouraging alternative transportation modes and increasing the safety and performance of transit, bicycle, and pedestrian facilities. The Downtown Strategy 2040 EIR concluded that the Downtown Strategy 2040 would not conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities. The project's impact (less than significant) is consistent with these conclusions. **[Same Impact as Approved Project (Less than Significant Impact)]**

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

The transportation impacts of the project were evaluated following the standards and methodologies established in the City of San Jose's Transportation Analysis Handbook. Based on the City of San Jose's Transportation Analysis Policy (Policy 5-1) and Transportation Analysis Handbook, the evaluation includes a CEQA transportation analysis and a local transportation analysis (LTA). Since July 1, 2020, VMT has been considered an impact under CEQA. The Coleman Avenue/Autumn Street EIR did not evaluate VMT since this policy had not been established at the time of EIR preparation. The Downtown Strategy 2040 EIR identified a less than significant impact on VMT.

Project-Level Vehicle Miles Traveled (VMT) Analysis

The proposed project is a surface parking lot. Construction of new developments in the Diridon Station Area would remove several parking lots south of the SAP Center. Since the project would replace parking that already exists today, there would be no added trips to the area. The Diridon Station Area development would remove several parking lots of the SAP Center. The parking facilities that would be replaced include the following:

- 150 S. Montgomery Street
- 34 S. Autumn Street
- 510 W. San Fernando Street
- 65 North Almaden Boulevard
- 80 S. Montgomery
- Delmas East
- Delmas West
- Delmas Management Lot
- Borschs
- Cahill 1
- Cahill 2
- Cahill 3
- Cahill 4
- CSC Security
- NW San Fernando/Autumn (Palmero)
- Montgomery/San Fernando (Patty's)
- Lot D
- Lot A, B, and C

Refer to Figure 2.2-1 for the map of the above parking facilities proposed to be replaced by planned development. Since the project would not add new trips, the project would result in a less than significant VMT impact. **[Same as Approved Project (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 project would have a full-access driveway on Autumn Street and a full-access driveway on St. John Street. In the parking lot, there would be a drive aisle that leads to the parking spaces. According to the City of San José Department of Transportation (DOT) Geometric Design Guidelines, the typical width for a driveway must not be less than 12 feet wide for ingress and egress and the typical width for a two-way driveway is 20 feet. Based on the proposed site plan, the full-access driveways on St. John Street and Autumn Street would be at least 26 feet wide, which would meet the City requirement.

Since the project conforms with the San José DOT Geometric Design Guidelines as described, the project would not substantially increase hazards due to a geometric design feature. The Downtown Strategy 2040 EIR stated that future development would not substantially increase hazards due to

design features or incompatible uses. The Coleman Avenue/Autumn Street EIR did not evaluate this impact. However, this impact is consistent with the Downtown Strategy 2040 EIR conclusions **[Same Impact as Approved Project (Less than Significant Impact)]**

d) Would the project result in inadequate emergency access?

Similar to the conclusions for checklist question c), the project would provide two 26-foot-wide full access driveways which would provide adequate emergency access. The project is consistent with the San José DOT Geometric Design Guidelines and not result in inadequate emergency access. The Coleman Avenue/Autumn Street EIR did not evaluate this impact. However, the Downtown Strategy 2040 EIR stated that with the implementation of General Plan policies, the Downtown Strategy 2040 would not result in inadequate emergency access. The proposed project is consistent with this conclusion. **[Same Impact as Approved Project (Less than Significant Impact)]**

3.7.2.2 *Cumulative Impacts*

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

The geographic area for cumulative transportation impacts is the City of San José. The project would not add new trips to the City or project area. The project would replace existing parking and serve existing San José SAP Event Center uses. Therefore, the project would not contribute to a significant cumulative VMT impact within the City or Santa Clara County. The project would not contribute to a cumulative impact for bicycle or transit facilities. Cumulative projects would be consistent with the General Plan Policies and would not result in a significant cumulative impact to pedestrian, transit, or bicycle facilities. Cumulative projects would comply with the City's DOT Geometric Design Guidelines and, therefore, would not result in inadequate emergency access or hazards due to geometric design. **[Less Impact than Approved Project (Less than Significant Cumulative Impact)]**

3.7.3 Non-CEQA Effects

While the evaluation of project CEQA impacts on the transportation system is based on vehicle miles traveled (VMT), in accordance with City of San José Transportation Policy (Policy 5-1), the following discussion is included for informational purposes because Policy 5-1 requires preparation of an LTA to analyze non-CEQA transportation issues, including local transportation operations.

Trip Generation

As discussed in detail in Appendix G, the project would not add any new trips to the project area because it would replace existing parking.

Driveway Operations

Driveway Operations Before Events

The driveway along Autumn Street would be busiest an hour before game time. Vehicles entering the site would use the Autumn Street driveway since it provides access from SR 87 via Julian Street. The St. John Street driveway would not be used. It is estimated that vehicles would enter the site at an average rate of approximately three vehicles per minute. During the game time peak hour, the inbound vehicles turning left from southbound Autumn Street may need to pause momentarily if there is an on-coming vehicle on northbound Autumn Street. The delays and queues resulting from the inbound left turns would be minimal given the low traffic volumes on this segment of Autumn Street. If the West St. John Street driveway is used, this would reduce the volume entering the other driveways.

Driveway Operations After Events

At the end of an event at the SAP Center, attendees would exit the SAP Center at the same time and seek to exit the parking lots. The Milligan lot would have 300 parking spaces and vehicles could exit to either Autumn or St. John Streets. When combined with vehicles at Lot E, the amount of traffic that could exit toward Julian Street is a maximum of 1,500 (1,200 plus 300) vehicles, which is beyond the hourly capacity of the intersections along Julian Street. The capacity of the intersections along Julian Street can be assumed to be about 1,500 vehicles per hour with police control. Police would help direct the traffic flow out of the parking areas in order to maintain a steady flow of traffic out of the area. In order to account for any ambient traffic on Julian Street after events, it is assumed that 1,000 vehicles per hour of the San José SAP Event Center traffic could be accommodated at each intersection. It is also assumed that ambient traffic on Julian Street is no more than 500 vehicles per hour after events (10:00 PM).

The following Conditions of Approval shall be implemented by the City to improve the proposed parking lot driveway operations:

Conditions of Approval

- A portion of traffic from the Milligan lot shall be required to exit to West St. John Street toward the east) 165 vehicles. The remainder of traffic from the Milligan Lot shall be required to exit to Autumn Street and required to turn right on Julian Street (160 vehicles).
- A portion of the Lot E garage traffic shall be assigned to Montgomery Street and required to turn left at Julian Street (400 vehicles). The remainder of traffic from the Lot E garage shall be assigned to Autumn Street and required to turn right on Julian Street (800 vehicles).
- Develop a Transportation Management Plan (TMP) in coordination with the City of San Jose Department of Transportation and the San Jose Police Department for implementation during events.

With a driveway for Lot E along St. John Street, 400 out of the 800 remaining vehicles would utilize West St. John Street first, then turn left onto Autumn Street to join the Autumn Street driveway traffic. With the implementation of the above Conditions of Approval, the project would be consistent with Council Policy 5-1.

3.8 TRIBAL CULTURAL RESOURCES

3.8.1 Environmental Setting

3.8.1.1 *Regulatory Framework*

State

Assembly Bill 52

Assembly Bill 52 (AB 52), the Native American Historic Resource Protection Act, sets forth a proactive approach intended to reduce the potential for delay and conflicts between Native American and development interests. Projects subject to AB 52 are those that file a notice of preparation for an EIR or notice of intent to adopt a negative or mitigated negative declaration on or after July 1, 2016. A tribal cultural resource (TCR) can be a site, feature, place, object, or cultural landscape with value to a California Native American tribe that is either included also or eligible for inclusion in the California Register of Historic Resources or included in a local register of historical resources that is also eligible for listing on the CRHR. A Native American Tribe or the lead agency, supported by substantial evidence, may choose at its discretion to treat a resource as a TCR.

AB 52 includes a broad definition of what may be considered to be a tribal cultural resource and includes a list of recommended mitigation measures for potential impacts. 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, 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.

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

The City of San José sets forth the following policies pertaining to tribal cultural resources in its General Plan.

Envision San José 2040 Tribal Cultural Resources Policies

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

3.8.1.2 *Existing Conditions*

The project site is adjacent to the Guadalupe River, approximately 35 feet east of the site. A majority of identified Native American sites in San José have been buried under alluvium or recent layers, indicative of the correlation between Native American site locations and waterways throughout the City. Two tribes known to have traditional lands and cultural places within the City of San José requested notification of projects in the City of San José, the Indian Canyon Mutsun Band of Costanoan and Tamien Nation. On September 16, 2021, the City submitted via mail and email a notification letter and the NOP to the tribal representatives, in accordance with AB 52. Staff did not receive any requests for tribal consultation.

3.8.2 **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.

3.8.2.1 *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)?

There are no tribal cultural resources at the project site that have been listed or are eligible for listing in local or state inventories of historical resources.[28] Project construction activities have the potential to disturb as-yet-undiscovered tribal cultural resources, which could be eligible for listing in the California Register. While it is possible that tribal cultural resources are unearthed during demolition, grading, and excavation at the project site, the Condition of Approval and mitigation measures MM CUL-1.1, MM CUL-2.1, and MM CUL-2.2 (based on input from Tamien Nation) included in the project would minimize impacts to subsurface cultural resources (refer to Section 3.3 Cultural Resources under checklist b) which includes the mitigation measures and Condition of Approval that would reduce impacts to subsurface cultural resources to less than significant). [**Less Than Significant Impact with Mitigation Incorporated (Same as Approved Project)**]

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?

AB 52 requires lead agencies to conduct formal consultations with California Native American tribes during the CEQA process to identify tribal cultural resources that may be subject to significant impacts by a project. 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. The Ohlone Tribe submitted a request in July of 2018 for notification of projects requiring a Negative Declaration, a Mitigated Negative Declaration, or an Environmental Impact Report that would involve ground-disturbing activities within the City of San José. All tribes previously identified by NAHC as culturally affiliated with San José were notified of the project during the release of the Notice of Preparation. No requests for tribal consultation were received.

[28] Basin Research Associates, Cultural Resources Assessment: Coleman/Autumn Street Project EIR, City of San José, Santa Clara County, California. August 2007 (Revised).

The mitigation measures described in Section 3.3 Cultural Resources would ensure tribal cultural resources are not significantly impacted if they were to be accidentally uncovered during construction or pre-construction subsurface exploration of the site. Therefore, the impact would be less than significant. [**Less Than Significant Impact with Mitigation Incorporated (Same as Approved Project)**]

3.8.2.2 *Cumulative Impacts*

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

The geographic area for cumulative tribal cultural resources impacts is the project site and adjacent parcels. Cumulative projects would comply with all applicable regulations, including AB 52 and mitigation measures MM CUL-1.1, MM CUL-2.1 and MM CUL-2.2 under Impact TCR-1 (if applicable) to protect unrecorded TCRs. For these reasons, cumulative projects (the proposed project), would not result in a significant cumulative tribal cultural resources impact.

SECTION 4.0 GROWTH-INDUCING IMPACTS

Would the project foster or stimulate significant economic or population growth in the surrounding environment?

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[d]). This section of the Draft SEIR 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 change the land uses on the subject site from parking, warehouse, automobile service repair shop and residential to a surface parking lot intended to serve events at the nearby San José SAP Event Center. As the project does not involve the creation of housing or jobs and is ancillary to an existing use, it would have no growth-inducing impacts.

SECTION 5.0 SIGNIFICANT AND IRREVERSIBLE ENVIRONMENTAL CHANGES

This section was prepared pursuant to CEQA Guidelines Section 15126.2(c), which requires a discussion of the significant irreversible changes that would result from the implementation of a proposed project. Significant irreversible changes include the use of nonrenewable resources, the commitment of future generations to similar use, irreversible damage resulting from environmental accidents associated with the project, and irretrievable commitments of resources. Applicable environmental changes are described in more detail below.

5.1 IRREVERSIBLE USE OF NONRENEWABLE RESOURCES

The project would require the use and consumption of nonrenewable resources during the demolition and construction phases. Renewable resources could include wood products used for the project's fencing. Unlike renewable resources, nonrenewable resources cannot be regenerated over time. Nonrenewable resources include fossil fuels and metals.

Energy would be consumed during the demolition and construction phases of the project. The construction phase would require the use of nonrenewable paving materials such as asphalt and concrete. Nonrenewable resources and energy would also be consumed during preparation of the site. The operational phases would consume energy for multiple purposes including lighting, and potential EV vehicle charging (the parking lot will be EV ready). Energy, in the form of fossil fuels, will be used to fuel vehicles traveling to and from the proposed parking lot.

The proposed 2.5-acre parking lot project would not result in a substantial increase in demand for nonrenewable resources. Regardless, the project would still be subject to the standard California Code of Regulations Title 24 Part 6 and CALGreen energy efficiency requirements.

5.2 COMMITMENT OF FUTURE GENERATIONS TO SIMILAR USE

The proposed redevelopment of the 2.5-acre site to a surface parking lot would not preclude the site's future use for future redevelopment, subject to conformance with General Plan, Municipal Code, and City policy conformance. The project would not commit a substantial amount of resources to prepare the site and operate the proposed parking lot use.

5.3 IRREVERSIBLE DAMAGE RESULTING FROM ENVIRONMENTAL ACCIDENTS ASSOCIATED WITH THE PROJECT

The project does not propose any new or uniquely hazardous uses, and its operation would not be expected to cause environmental accidents that would impact other areas. As discussed in Section 3.5 Hazards and Hazardous Materials, the site contains individual parcels that have been confirmed or may contain soil contamination that may expose construction workers, future occupants, and the surrounding environment to contaminated soils and soil vapor intrusion. The project includes the development and implementation of a Site Management Plan to mitigate potential risks to construction workers, future occupants, and the environment from potential exposure to hazardous

substances. There are no known significant unmitigable on-site or off-site sources of contamination that would substantially affect the proposed uses in the project area.

Based on the discussion above, the proposed project would not result in irreversible damage that may result from environmental accidents.

SECTION 6.0 SIGNIFICANT AND UNAVOIDABLE IMPACTS

A significant unavoidable impact is an impact that cannot be mitigated to a less than significant level if the project is implemented as proposed. The proposed project would result in the loss of a historic resource pursuant to CEQA Guidelines Section 15064.5 (Forman's Arena), which would constitute a significant and unavoidable impact. The impact is identified as follows:

- **Impact CUL-1:** Implementation of the proposed project, which includes the demolition of the Forman's Arena building, would result in an adverse significant impact to the historic resource pursuant to CEQA Guidelines Section 15064.5. **[New Significant Unavoidable Impact (Less Than Significant Impact with Mitigation)]**

SECTION 7.0 ALTERNATIVES

CEQA requires that an EIR identify alternatives to a project as it is proposed. The CEQA Guidelines specify that the EIR should identify alternatives that "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." The purpose of this section is to determine whether there are alternatives of design, scope, or location that would substantially lessen the significant impacts, even if those alternatives "impede to some degree the attainment of the project objectives" or are more expensive (Section 15126.6).

In order to comply with the purposes of CEQA, it is important to identify alternatives that reduce the significant impacts anticipated to occur if the project is implemented, but to try to meet as many of the project's objectives as possible. The CEQA Guidelines emphasize a commonsense approach – the alternatives should be reasonable, "foster informed decision making and public participation," and focus on avoiding or substantially lessening the significant impacts of the project. The range of alternatives selected for analysis is governed by the "rule of reason," limiting the analysis to those alternatives necessary to permit a reasoned choice.

The three critical factors to consider in selecting and evaluating alternatives are, therefore: 1) the significant impacts from the proposed project that could be reduced or avoided by an alternative, 2) the project objectives, and 3) the feasibility of the alternatives available. Each of these factors is discussed below.

7.1 SIGNIFICANT IMPACTS OF THE PROJECT

As mentioned above, the CEQA Guidelines advise that the alternatives analysis in an EIR should be limited to alternatives that would avoid or substantially lessen any of the significant effects of the project and would achieve most of the project objectives. As described in Section 6.0 Significant and Unavoidable Impacts, the proposed parking lot would result in the following significant and unavoidable cultural resource impact:

- The proposed project would result in the loss of a historic resource pursuant to CEQA Guidelines Section 15064.5 (Forman's Arena), which would constitute a significant and unavoidable impact.

7.2 PROJECT OBJECTIVES

While CEQA does not require that alternatives must be capable of meeting all of the project objectives, their ability to meet most of the objectives is considered relevant to their consideration. As identified in Section 2.3, the applicant's objectives for the project are as follows:

- Maximize surface parking spaces available to provide off-street parking within one third mile of the San José SAP Center
- Facilitate the retention of professional sports teams in San José (Envision San José 2040 General Plan Policy IE-5.5) specifically through ensuring San José SAP Center has the required parking to meet sports fan needs as identified in the Arena Management Agreement
- Design parking lot to minimize conflicts between vehicles entering or exiting the site and area circulation, including bicyclists, pedestrians, or transit

- Reduce the amount of impervious surface as a part of redevelopment of the site (Envision San José 2040 General Plan Policy EC-5.11)
- Develop the parking in a manner that allows easy conversion of the parking lot to a future use such as the Autumn Street widening, partial realignment, and extension

7.3 FEASIBILITY OF ALTERNATIVES

CEQA, the CEQA Guidelines, and case law on the subject have found that feasibility can be based on a wide range of factors. The CEQA Guidelines advise that such factors *can* 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])."

7.4 SELECTION OF ALTERNATIVES

An EIR is required to include a "No Project" alternative that "compares the impacts of approving the proposed project with the impacts of not approving the proposed project."[29]

There is no rule requiring an EIR to explore off-site project alternatives in every case. As stated in 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." (Section 15126.6[a]). 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.) Thus, the CEQA Guidelines 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 Sections 21001, subd. (g), 21002.1, subd. (a), 21061.)

7.4.1 Alternatives Considered but Rejected

7.4.1.1 *Relocation of Forman's Arena Alternative*

The project would demolish all existing structures, including the Forman's arena (a historical resource) located at 447 West St. John Street, and construct a surface parking lot. Demolition of the historic building would result in a significant and unavoidable impact on a historic resource.

One alternative considered was to relocate the 447 West St. John Street Forman's arena to an alternative location consistent with the Coleman Avenue/Autumn Street Improvement EIR. Based on the conclusions from the Coleman Avenue/Autumn Street Improvement EIR, including the previous Final EIR's mitigation measure MM CR-3.1, relocation of the historic structure would require dismantling of the building, moving of the pieces, and reassembly at the new site. The reassembly would include seismic strengthening and other upgrades, with work to be in accordance with the Secretary of the Interior's Standards and Guidelines for Rehabilitating Historic Buildings. Based on an engineer's assessment discussed in the Coleman Avenue/Autumn Street EIR, once the historic building is relocated, the building may need structural repair due to dry rot and damage from earlier

[29] CEQA Guidelines Section 15126.6(e)(1)

fires in the building. Key assumptions are that structural/seismic reinforcement work would need to be completed and the relocated/stabilized building would need to be weather-tight and secure. If the Forman's Arena building is moved, the building would retain its historic importance and integrity, and its structure's eligibility for listing on the California Register. The relocation of the historic building with mitigation would reduce the significant and unavoidable impact to less than significant.

The San José History Park, the previous City Hall "E" parking lot, the site of the San José Fire Department Training Center, the former FMC site, and the Guadalupe Gardens (behind the Master Metal Products building on 495 Emory Street) were areas of the City identified that could potentially accommodate the historic building. However, based on information provided by the City, the above-mentioned sites can no longer accommodate the historic building since they are either developed or designated for development. Since there are no available sites identified to accommodate the Forman's arena building, this alternative is rejected from further consideration.

7.4.1.2 *Location Alternative*

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:

- Approximately 2.5-acres in size;
- Located within one-third mile of the SAP Center
- Located near freeways and/or major roadways;
- Served by available infrastructure;
- Available for development;

In consideration of an alternative location in an SEIR, the CEQA Guidelines advise that the key question is "whether any of the significant effects of the project would be avoided or substantially lessened by putting the project in another location."[30]

A parking lot of any size within downtown San José would have similar impacts associated with project construction. Also, the City does not have within their control an alternative site given most of the sites within one-third mile of the San José SAP Event Center are owned by private developers (refer to Figure 2.2-1). There are three sites within one-third mile of the SAP Event Center that are owned by the City which are not feasible for the project location for the following reasons:

- 456 Autumn Court
    - The site is being held for the Autumn Street realignment
- 240 North Montgomery Street, 260 North Montgomery Street and 255 North Autumn Street
    - Deeded from Google, LLC as part of community benefits to be used as affordable housing
- 406 Autumn Court Autumn Court
    - The site is being held for the relocation of Autumn Street

Therefore, for the above reasons, this alternative is rejected from further consideration.

[30] CEQA Guidelines Section 15126.6 (f)(2)(A)

7.4.1.3 *Multi-level Parking Structure with Retail*

A two- to three-story parking structure with 300 parking spaces, open space, and retail space to increase pedestrian activity was considered. The project site was evaluated as a part of the Coleman Avenue/Autumn Street EIR Improvement project. The site was considered as a possible interim use for surface parking. The site is not designated for a parking structure and retail. Additionally, the intent of the project is to provide a temporary surface parking lot during the construction activities occurring for the other projects in the vicinity. Once those construction projects are complete the futured developments would include parking for the San José SAP Event Center and the project's surface parking would no longer be needed, as identified in the project objectives. A surface parking lot is easier to redevelop into a future use than a structure. Therefore, this alternative is rejected from further consideration.

7.4.2 Analyzed Alternatives

7.4.2.1 *No Project – No Development Alternative*

The CEQA Guidelines specifically require consideration of the No Project Alternative. The purpose of including a No Project Alternative is to allow decision makers to compare the impacts of approving the project with the impacts of not approving the project.

The CEQA Guidelines specifically advise that the No Project Alternative is "what would be reasonably expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services." The Guidelines emphasize that an EIR should take a practical approach, and not "…create and analyze a set of artificial assumptions that would be required to preserve the existing physical environment (Section 15126.6[e][3][B])."

The project site is currently developed with several warehouse buildings, an auto service business, a residence, several accessory structures, and 118 surface parking spaces. The automobile repair service business/ Forman's Arena Building (447 W. St. John Street) has been identified as a Candidate City Landmark on the San José Historic Resources Inventory as well as having eligibility for the CRHR and NRHP. The northwestern portion of the site contains a paved surface parking lot. The No Project Alternative assumes that the project site would remain as it currently exists.

Comparison of Environmental Impacts

The No Project Alternative would avoid all of the project's environmental impacts including impacts related to the Forman's arena (cultural), air quality during construction, riparian habitat (biological resources), and hazardous materials since the site would remain as is and no construction activities would occur.

Relationship to Project Objectives

The No Project Alternative would retain the existing 118 surface parking spaces on-site. However, this alternative would not meet the project objective to maximize surface parking lot spaces available to provide off-street parking within one third mile of the San José SAP Center as the parking on-site

would remain the same. Additionally, this alternative would not facilitate the retention of the professional sports teams in San José because the existing 118 parking spaces would not meet the Arena Management Agreement required parking needs and the project would not reduce the amount of impervious surface since the site would remain the same. Since the site would remain as is, the existing design would remain and the alternative project could not be designed to minimize existing circulation conflicts. Maintaining the existing site would neither support the project objective to maximize surface parking lot spaces available nor limit the future redevelopment of the site.

Conclusion

Because the No Project Alternative would not result in any development on the site, this Alternative would avoid all of the environmental impacts of the project. This Alternative would also only partially meet the project objectives with regards to providing parking. This Alternative would not meet the project objectives to reduce impervious surface or improve the site's circulation design.

7.4.2.2 *Forman's Arena Building Retention Alternative*

As discussed above, the project proposes to demolish all structures (including the historic Forman's arena building, a historic resource under CEQA) to construct the proposed 300-space parking lot. The Forman's Arena Building Retention Alternative would demolish all structures with the exception of the Forman's arena building at 447 West St. John Street. This alternative would also propose a surface parking lot but would retain the Forman's Arena and allow parking in the Forman's Arena building This re-design would require the relocation of the ADA stalls and would eliminate some of the spaces available for surface parking; it is estimated approximately 175 surface parking spaces could be provided and up to 25 interior parking spaces could be provided for a total of 200 parking spaces. . It is anticipated that the driveway locations would remain the same as the proposed project. Any structural repairs needed for the Forman's Arena would be completed for the building consistent with the Secretary of the Interior Standards.

Comparison of Environmental Impacts

The Forman's Arena Building Retention Alternative would reduce the significant and unavoidable impact to the historic Forman's arena building to less than significant. Development within the 100-foot riparian setback area would be required for this alternative, including development of undeveloped 0.17 acres of grassland area on the site, within the required 50-foot setback area, similar to the proposed project. The impacts to biological resources and mitigation required would be similar for this alternative and the proposed project. The demolition of one less building (the Forman's arena building) and slight reduction in paving for the parking lot would not substantially reduce the construction schedule or emissions. Therefore, construction air quality impacts would be similar. This alternative would have the same footprint as the proposed project; therefore, impacts to archaeological resources, tribal cultural resources, and hazards and hazardous materials impacts would also be similar to the project.

Relationship to Project Objectives

This alternative would meet the objective to provide surface parking for the SAP Center, as the site is currently utilized for surface parking. However, this Alternative would only provide up to 200 parking spaces compared to the proposed parking lot that would provide 300 spaces.

Conclusion

The Forman's Arena Building Retention Alternative would reduce the significant and unavoidable impact to the Forman's arena building to less than significant. The alternative would meet the objective to construct surface parking to serve the SAP Center.

7.4.3 Environmentally Superior Alternative

The CEQA Guidelines state that an EIR shall identify an environmentally superior alternative. Based on the above discussion, the environmentally superior alternative to the proposed project is the No Project- No Development Alternative because all of the project's significant environmental impacts would be avoided. However, Section 15126(e)(2) states that "if the environmentally superior alternative is the No Project Alternative, the EIR shall also identify an environmentally superior alternative among the other alternatives. In addition to the No Project – No Development Alternative, the Forman's Arena Building Retention Alternative would avoid the significant and avoidable impact to the historic building.

Table 7.4-1: Summary of Project and Project Alternative Impacts

Impacts	Proposed Project	No Project – No Development Alternative	Forman's Arena Building Retention Alternative
Air Quality	SM	**NI**	SM
Biological Resources (on-site pond)	SM	**NI**	SM
Cultural Resources	SU	**NI**	LTS
Greenhouse Gas Emissions	LTS	**NI**	LTS
Hazards and Hazardous Materials	SM	**NI**	SM
Hydrology and Water Use	LTS	**NI**	LTS
Transportation	LTS	**NI**	LTS
Tribal Cultural Resources	SM	**NI**	SM
Meets City's Objectives?	Yes	No	Yes

Notes: SU = Significant unavoidable impact; SM = Significant impact but can be mitigated to a less than significant level; LTS = Less than significant impact; and NI = No impact.

Bold text indicates being environmentally superior to the proposed 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:

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City of San José Environmental Services Department. *Phase I Environmental Site Assessment Francia Property: 525 West Saint John and 140 Montgomery Street; Milligan Property: 130 & 150 N. Autumn Street and 405, 407, &447 West St. John Street, San Jose, California.* March 16, 2017.

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SECTION 9.0 LEAD AGENCY AND CONSULTANTS

9.1 LEAD AGENCY

City of San José
Department of Planning, Building and Code Enforcement
Planning Division
Chris Burton, Director of Planning, Building, and Code Enforcement
David Keyon, Principal Planner
Cassandra van der Zweep, Supervising Environmental Planner

9.2 CONSULTANTS

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Amber Sharpe, Project Manager
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Garavaglia Architecture, Inc.
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Hexagon Transportation Consultants, Inc.
Traffic Consultants

H. T. Harvey & Associates
Biological Resource Consultants

Illingworth & Rodkin
Air Quality Consultants