

Draft Environmental Impact Report

Seely Avenue Mixed-Use Project

State Clearinghouse No. 2022020565

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EXECUTIVE SUMMARY

ES 1 Introduction

The City of San José (the City), as the Lead Agency, has prepared this Draft Environmental Impact Report (EIR) for the Seely Avenue Mixed-Use Project (project), for the Hanover Company (project applicant), in compliance with the California Environmental Quality Act (CEQA) and the CEQA Guidelines. As the CEQA Lead Agency for this project, the City is required to consider the information in this EIR along with any other available information in deciding whether to approve the project. As outlined in the CEQA Guidelines Section 15121 (a), the EIR is an informational document that analyzes the environmental impacts of a project as well as identifies mitigation measures and project alternatives to a project that could reduce or avoid adverse environmental impacts. The basic requirements for an EIR include discussions of the environmental setting, significant environmental impacts including growth-inducing impacts and cumulative impacts, mitigation measures, and alternatives. An EIR does not recommend either approval or denial of a project.

ES 2 Summary of the Project

The project site is located at 0 Seely Avenue, within the City limits of San José in Santa Clara County, California. The project site comprises Assessor's Parcel Numbers (APN) 097-15-033, 097-15-034, and a portion of 097-66-004 for a total area of 22 acres. The project site is surrounded by commercial/office uses and Epic Way to the north, the Coyote Creek Trail to the east, Montague Expressway to the south, and Seely Avenue to the west. The project site is partially developed with two residences, utility poles, a fruit stand, agricultural land and supporting structures, all of which would be demolished as part of the project. The project site is surrounded primarily by multi-family residential and commercial office uses to the north and west, commercial offices to the south/southeast, and the Coyote Creek Levee, Coyote Creek, and associated Coyote Creek Trail and open space to the east. Major nearby roadways include Montague Expressway, River Oaks Parkway, McCarthy Boulevard, and Interstate 880.

The project would include development of 1,472 residential units, 18,965 square feet of general neighborhood retail space, and a 2.5-acre public park. The residential development would consist of a mix of three-story townhomes and six- to seven-story apartment buildings, which would include affordable apartments. The project would also include the construction of a domestic water well and on-site water pipes to serve the local municipal water system. Other offsite improvements would include widening of Seely Avenue to accommodate multi-directional traffic, installation of a Class II bike lane and sidewalks, and intersection improvements at Seely Avenue and Montague Expressway to accommodate project-generated traffic.¹ The project would include 1,967 parking spaces for the residential and retail components. Parking for both the residential and retail components would be provided in a mix of three surface parking lots as well as multi-level parking in the residential buildings.

¹ California Streets and Highways Code Section 890.4 defines a Class II Bikeway as a bike lane that provides a restricted right-of-way designated for the exclusive or semi-exclusive use of bicycles with through travel by motor vehicles or pedestrians prohibited, but with vehicle parking and crossflows by pedestrians and motorists permitted.

ES 3 Project Objectives

Pursuant to CEQA Guidelines Section 15124, the EIR must identify the objectives sought by the project. The objectives of the project are as follows:

1. Develop a mixed-use project consistent with the goals and vision of the Envision San José 2040 General Plan (2040 General Plan) on an underutilized site that will provide both market rate and affordable housing, with commercial and retail uses nearby.
2. Promote key policies envisioned in the 2040 General Plan for the North San José Growth Area including increasing housing opportunities and providing new high-density residential development exceeding the City’s minimum density requirements of 75 dwelling units per acre (du/ac), in close proximity to employment centers.
3. Locate higher density housing with easy access to transportation corridors (e.g., Montague Expressway), bus corridor stops, commercial services, and employment opportunities that reduces vehicle miles traveled (VMT).
4. Offer a mix of unit types, sizes, and levels of affordability to accommodate a range of potential residents. Provide a diverse range of high-quality rental and for-sale housing that will satisfy a variety of household needs in North San José.
5. Deliver affordable housing consistent with the goals set forth in the City’s recently amended Inclusionary Housing Ordinance.
6. Assist the City to satisfy its Regional Housing Needs Allocation for both market rate and below market rate housing units.
7. Provide housing and active commercial and open spaces in a vibrant mixed-use neighborhood with the amenities and services necessary to support a diverse, thriving community of residents and workers.
8. Allocate space for a new public park along a public street that would be visible and centrally accessible to the public within convenient walking distance.
9. Create a well-connected neighborhood with on-site services and community amenities.
10. Develop commercial retail spaces on the project site that would attract diverse tenants, adapt to future needs, integrate local small businesses, stimulate local economic activity, serve the neighborhood, and complement adjacent public spaces.
11. Intensify the surrounding neighborhood and community through quality design, materials, and landscaping.

ES 4 Summary of Significant Impacts and Mitigation Measures

Table ES-1 includes a summary of the potential 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, Project Description** and **Section 3, Environmental Setting, Impacts, and Mitigation** of this EIR. As shown in **Table ES-1**, the following impacts would be less than significant with mitigation:

0 Seely Avenue Mixed-Use Project

- Impact AQ-1: Emissions from project operations would result in 54.82 pounds/day of Reactive Organic Gases (ROG), which exceeds the Bay Area Air Quality Management District (BAAQMD) threshold of 54 pounds/day.
- Impact BIO-1: Project construction, including the removal of vegetation, shrubs/trees, and structures, that would occur during the migratory bird nesting season could result in a significant impact to nesting bird species.
- Impact BIO-2: Project construction, including the removal of trees and building demolition could negatively impact roosting bat habitat if done during the maternity roosting season (May 1 to September 15).
- Impact CR-2: The project may impact Native American and historic-era archaeological deposits during excavation and construction activities.
- Impact HAZ-1: The project would result in a potentially significant impact from the removal of the existing heating oil underground/above-ground storage tanks.
- Impact HAZ-2: The project could result in a potentially significant impact from the potential for harmful vapors (benzene, vinyl chloride, and TCE) volatilizing from contaminated soil and migrating into structures, leading to possible adverse health impacts to residents.
- Impact HAZ-3: Due to its agricultural history, soils on the project site contain elevated levels of lead and arsenic that exceed the applicable regulatory environmental screening levels (ESLs) within certain areas of the project site. If the identified soil impacts are not mitigated, construction of the project could result in exposure of construction workers, adjacent properties, and future site occupants to pesticide contamination.
- Impact NSE-1: Construction of the project could last longer than 12 months and would require work on Saturday between 8:00 am and 5:00 pm, which would result in a potentially significant, temporary construction noise impact.
- Impact TR-1: The residential component of the project would generate vehicle miles traveled (VMT) of 11.19 per capita, which would exceed the City's relevant residential VMT threshold of 10.12 VMT per capita.

The following impact would be significant and unavoidable:

- Impact CR-1: The project includes the demolition of structures and site features that are collectively and individually eligible for listing under the California Register of Historical Resources (CRHR) and the San José Historic Resources Inventory as a Candidate City Landmark.

Table ES-1 Summary of Impacts and Mitigation Measures

Impact	Mitigation Measure	Level of Significance after Mitigation
Air Quality		
Impact AQ-1: Emissions from project operations would result in 54.82	MM AQ-1: Prior to the issuance of any grading, building or demolition permits, the project applicant shall develop and implement	Less Than Significant Impact

Impact	Mitigation Measure	Level of Significance after Mitigation
<p>pounds/day of ROG, which exceeds the BAAQMD threshold of 54 pounds/day.</p>	<p>a construction monitoring and operations plan that demonstrates use of super-compliant volatile organic compound or “VOC” (i.e., reactive organic gases [ROG]) coatings, that are below current Bay Area Air Quality Management District (BAAQMD) requirements (i.e., Regulation 8, Rule 3: Architectural Coatings), for at least 90 percent of all residential and nonresidential interior paints and 80 percent of exterior paints. This includes all architectural coatings applied during both construction and reapplications throughout the project’s operational lifetime. At least 90 percent and 80 percent of coatings applied for interior and exterior, respectively, must meet a “super-compliant” VOC standard of less than 10 grams of VOC per liter of paint.</p> <p>For reapplication of coatings during the project’s operational lifetime, the Declaration of Covenants, Conditions, and Restrictions shall contain a stipulation for low VOC coatings to be used. Examples of “super-compliant” coatings are contained in the BAAQMD’s website. The plan shall be reviewed and approved by the Director of Planning, Building and Code Enforcement or the Director’s designee prior to the issuance of any demolition, grading, or building permits (whichever occurs first). With implementation of MM AQ-1, the project’s operation ROG emissions of architectural coatings would be reduced by 9 percent to 49.22 pounds/day and would no longer approach exceedance of the single-source threshold.</p>	<p>with Mitigation Incorporated</p>
<p>Biological Resources</p>		
<p>Impact BIO-1: Project construction, including the removal of vegetation, shrubs/trees, and structures, that would occur during the migratory bird nesting season could result in a significant impact to nesting bird species.</p>	<p>MM BIO-1: Avoidance: Prior to the issuance of any tree removal, grading, building or demolition permits (whichever comes first), the project applicant shall schedule all 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 1 through August 31 (inclusive). Construction activities include any site disturbance such as, but not limited</p>	<p>Less Than Significant Impact with Mitigation Incorporated</p>

Impact	Mitigation Measure	Level of Significance after Mitigation
	<p>to, tree trimming or removal, demolition, grading, and trenching.</p> <p>Nesting Bird Surveys: If construction activities cannot be scheduled to occur between September 1 and January 31, pre-construction surveys for nesting birds and raptors shall be completed by a qualified ornithologist or biologist to ensure that no nests shall be disturbed during project implementation. The survey shall be completed no more than 14 days prior to the initiation of construction activities during the early part of the breeding season (February 1 through April 30 inclusive), and no more than 30 days prior to the initiation these activities during the late part of the breeding season (May 1 through August 31 inclusive). During this survey, the qualified ornithologist/biologist shall inspect all suitable nesting habitat on the project site and within the zone of influence (the area immediately surrounding the Project site that supports suitable nesting habitat that could be impacted by the project due to visual or auditory disturbance associated with the removal of vegetation and construction activities scheduled to occur during the nesting season).</p> <p>Buffer Zone: If an active nest is found, the qualified ornithologist/biologist shall determine an appropriately sized species-specific buffer around the nest in which no work will be allowed until the young have successfully fledged. In general, buffer sizes of 200 feet for raptors and 50 feet for other birds should suffice to prevent disturbance to birds nesting in the urban environment, but these buffer sizes may be increased or decreased, as appropriate, depending on the bird species and the level of disturbance anticipated near the nest. The construction contractor shall establish a construction free buffer zone around the nest as determined by the qualified ornithologist/biologist to ensure that migratory bird and raptor nests shall not be disturbed during project construction. This buffer shall remain in place until such a time as the young have been determined (by a</p>	

Impact	Mitigation Measure	Level of Significance after Mitigation
	<p>qualified ornithologist/biologist) to have fledged. Any birds that begin nesting amid construction activities shall be assumed to be habituated.</p> <p>Reporting: Prior to the initiation of any tree removal, or approval of any grading or demolition permits (whichever occurs first), the qualified ornithologist/biologist shall submit a report indicating the results of the survey and any designated buffer zones to the satisfaction of the Director of the Planning, Building, and Code Enforcement or the Director’s designee.</p>	
<p>Impact BIO-2: Project construction, including the removal of trees and building demolition could negatively impact roosting bat habitat if done during the maternity roosting season (May 1 to September 15).</p>	<p>MM BIO-2:</p> <ul style="list-style-type: none"> • Avoidance: Prior to the issuance of any tree removal, grading, building or demolition permits (whichever comes first), the project applicant shall schedule all construction activities to avoid the bat reproductive season (generally considered May 1 through September 15, inclusive). Construction activities include any site disturbance such as, but not limited to, tree trimming or removal, demolition, grading, and trenching. • If construction activities cannot be scheduled to occur between September 16 and April 30, a qualified bat specialist or wildlife biologist shall conduct site surveys to characterize bat utilization of roosting habitat on and immediately adjacent to the project site and potential bat species present prior to construction. <p>Based on the results of these initial surveys, one or more of the following shall occur:</p> <ul style="list-style-type: none"> • No Detection: If it is determined that bats are not present on or adjacent to the project site, no additional mitigation is required. If no bats are found roosting, bat exclusion devices will be installed to prevent bats from taking up occupancy of the vacant 	<p>Less Than Significant Impact with Mitigation Incorporated</p>

Impact	Mitigation Measure	Level of Significance after Mitigation
	<p>structures prior to the onset of construction.</p> <ul style="list-style-type: none"> Buffer Zone: If it is determined that bats are utilizing the project site or adjacent trees and may be impacted by the project, pre-construction surveys shall be conducted within 50 feet of construction limits no more than 30 days prior to the start of construction. If, according to the bat specialist/wildlife biologist, no bats or bat signs are observed in the course of the pre-construction surveys, the qualified bat specialist /wildlife biologist shall determine if disturbance will jeopardize the roost (i.e., maternity, foraging, day, or night). Roosting: If a single bat and/or only adult bats are roosting, removal of trees or structures may proceed after the bats have been safely excluded from the roost. Exclusion techniques shall be determined by the qualified bat specialist /wildlife biologist and would depend on roost type. If an active maternity roost is detected, avoidance is preferred. Work in the vicinity of the roost (buffer to be determined by qualified bat specialist or wildlife biologist) shall be postponed until the qualified bat specialist /wildlife biologist monitoring the roost determines that the young have fledged and are no longer dependent on the roost. The monitor shall ensure that all bats have left the area of disturbance prior to initiation of pruning and/or removal of trees that would disturb the roost. If a roost of bats is found in any of the existing structures, the bats shall be safely evicted under the direction of a qualified biologist. Eviction of bats will occur at night to decrease the likelihood of predation (compared to eviction during the day). Eviction will occur outside of the 	

Impact	Mitigation Measure	Level of Significance after Mitigation
	<p>maternity season but will not occur during long periods of inclement or cold weather (as determined by the qualified biologist) when prey are not available or bats are in torpor. Eviction activities will be performed under the supervision of a qualified biologist.</p> <ul style="list-style-type: none"> • Reporting: Prior to the issuance of any grading, building or demolition permits (whichever comes first), the qualified bat specialist/wildlife biologist shall submit a report indicating the results of the survey and any designated buffer zones to the satisfaction of the Director of the Planning, Building, and Code Enforcement or the Director's designee for the regionally known bat species with suitable on-site roosting habitat. 	
Cultural Resources		
<p>Impact CR-1: The project includes the demolition of structures and site features that may be collectively or individually eligible for listing in the California Register of Historical Resources (CRHR) and the San José Historic Resources Inventory as a Candidate City Landmark and Candidate City Landmark District.</p>	<p>MM CR-1.1: Action Plan: Prior to issuance of any demolition permits or any other approval that would allow disturbance of the project site, the Permittee 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 all required steps, actions, and documents identified within this EIR have been satisfied in accordance with the Action Plan. The Action Plan shall outline the roles and responsibilities of the Permittee, City staff, and outside individuals, groups, firms, and consultants and timelines in carrying out required mitigation measures MM CR-1.2 to MM CR-1.6.</p> <p>MM CR-1.2: Historic American Building Survey (HABS) Outline Format: Prior to the issuance of a demolition permit or any other approval that would allow ground disturbance on the project site, all contributing buildings, structures, and landscape features to the</p>	<p>Significant and Unavoidable Impact</p>

Impact	Mitigation Measure	Level of Significance after Mitigation
	<p>eligible historic district and individually significant buildings on the property shall be documented in accordance with the guidelines established for the Historic American Buildings Survey (HABS) and shall consist of the following components:</p> <ul style="list-style-type: none"> • Drawings – prepare sketch floor plans. • Photographs – Digital photographic documentation of the interior, exterior and setting of the buildings in compliance with the National Register Photo Policy Factsheet. Photos must have a permanency rating of approximately 75 years. • Written data – HABS outline Format written documentation. <p>The Permittee shall retain a qualified historic resources consultant or equivalent professional meeting the Secretary of the Interior’s Professional Qualification Standards to preparation of the drawings, photographs and written data. The City of San José’s Historic Preservation Officer shall review and approve the documentation. After City review and approval, the Permittee shall submit the final documentation to the Director of Planning, Building and Code Enforcement or Director’s designee of the City, file the documentation with History San José and the California Room of the Martin Luther King Library, and submit proof of receipt by these entities to the City.</p> <p>MM CR-1.3: Three-Dimensional (3D) Laser Scanning. Prior to issuance of any grading, demolition, or building permits or any other approval that would allow disturbance of the project site, all individually significant and contributing buildings and structures to the eligible historic district shall be 3D laser scanned. The Permittee shall retain a qualified historic resources consultant or equivalent professional meeting the qualifications in the Secretary of the Interior’s Professional</p>	

Impact	Mitigation Measure	Level of Significance after Mitigation
	<p>Qualification Standards to perform 3D laser scanning. The laser scanning shall document the existing conditions of the property, utilizing 3D Laser Scanning techniques to capture the significant buildings and create a 3D point cloud model for digital archival purposes. A plan of the proposed procedures for the laser scanning shall be submitted as part of the required Action Plan (MM CR-1.1) prior to commencement. The documentation from the 3D Laser Scanning shall be reviewed and approved by the City’s Historic Preservation Officer. After City review and approval, the Permittee shall be submit the documentation to the Director of Planning, Building and Code Enforcement or Director’s designee of the City, file the documentation with History San José and the California Room of the Martin Luther King Library, and submit proof of receipt by these entities to the City.</p> <p>MM CR-1.4: Relocation and Salvage. Prior to issuance of any demolition permits or any other approval that would allow ground disturbance on the project site, the Permittee shall separately advertise the availability of all individually significant and contributing buildings, structures and site features to the eligible historic district for relocation and then salvage by a third party.</p> <p>Relocation. The Permittee shall advertise the availability of the buildings for relocation for a period of no less than 60 days. The advertisements must include a newspaper of general circulation, a website, and notice visible from the public right-of-way on the project site. The Permittee must submit evidence (i.e., receipts, date and time stamped photographs, etc.) to the Director of Planning, Building and Code Enforcement or the Director’s designee that this condition has been met. If a third party agrees to relocate any of the buildings, the following measures must be followed:</p> <ol style="list-style-type: none"> 1. The City’s Director of Planning, Building and Code Enforcement or the Director’s designee, based on consultation with the City’s Historic 	

Impact	Mitigation Measure	Level of Significance after Mitigation
	<p>Preservation Officer, must determine that the receiver site is suitable for the buildings.</p> <p>2. Prior to relocation, the third party shall hire a qualified historic preservation architect and a qualified structural engineer to undertake an existing conditions study. The purpose of the study shall be to establish the baseline condition of the building/s prior to relocation. The documentation shall outline how to protect and preserve the buildings and their character-defining features from damage during the relocation process. The documentation shall be reviewed and approved by the City’s Historic Preservation Officer prior to relocation.</p> <p>3. To protect the building during relocation, the third party shall engage a building mover who has experience moving historic structures. A qualified structural engineer shall also be engaged to determine if the building/s needs to be reinforced/stabilized before the move.</p> <p>4. Once relocated, the building/s shall be repaired and restored, as needed, by the 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 restored in a manner that preserves their historic integrity for long-term preservation. Upon completion of the work, a qualified historic resources consultant or equivalent professional meeting the qualifications in the Secretary of the Interior’s Professional Qualification Standards shall prepare a written report outlining how the work was conducted in conformance with the Secretary of the Interior’s Standards for the Treatment of Historic Properties and the Permittee shall submit the report to the City’s Historic Preservation Officer.</p> <p>Salvage. If at the end of the 60-day period minimum relocation advertisement period no third party relocates the significant buildings, the historic building materials shall be made available for salvage and reuse. The Permittee shall advertise the availability of the buildings for salvage for a period of no less than 30 days.</p>	

Impact	Mitigation Measure	Level of Significance after Mitigation
	<p>The advertisements must include a newspaper of general circulation, a website, and notice visible from the public right-of-way on the project site. The Permittee shall submit evidence (i.e., receipts, date and time stamped photographs, etc.) to the City’s Director of Planning, Building and Code Enforcement or the Director’s designee that this condition has been met.</p> <p>MM CR-1.5: Commemoration and Public Interpretation Concepts. Prior to issuance of any building permits, the Permittee shall retain a qualified historic resources consultant or equivalent professional meeting the qualifications in the Secretary of the Interior’s Professional Qualification Standards to initiate the design development of a commemorative and interpretive program, exhibit, and/or display including, but not limited to interpretive text and historic photographs, art or sculpture, video, interactive media, and/or documentation of oral histories, that is integral to the project. The preliminary design concepts for commemoration and public interpretation shall be submitted to the City Historic Preservation Officer for review and approval.</p> <p>MM CR-1.6: Commemoration and Public Interpretation Implementation. The specific design and details of the commemorative and interpretive program shall be fully developed in close coordination with the City as the project is implemented. The final design shall be reviewed and approved by the City’s Historic Preservation Officer prior to production. The commemoration and public interpretation program shall be completed and made accessible to the public. If the approved program includes a physical installation, it shall be placed in a suitable publicly accessible location on the project site as determined by the City and subject to the following timing:</p> <ol style="list-style-type: none"> 1) For commemoration and interpretation elements constructed within, on, or adjacent to an apartment building, prior to issuance 	

Impact	Mitigation Measure	Level of Significance after Mitigation
	<p>of a certificate of occupancy for that building.</p> <p>2) For commemoration and interpretation elements constructed by the Permittee within the City park, prior to City acceptance of the public park.</p>	
<p>Impact CR-2: The project may impact Native American and historic-era archaeological deposits during excavation and construction activities.</p>	<p>MM CR-2.1: Retention of a Qualified Archaeologist. Prior to issuance of any grading, building or demolition permits, the project applicant shall retain a qualified archaeologist meeting the Secretary of the Interior’s Professional Qualifications Standards for Archeology (codified in 36 Code of Federal Regulations [CFR] Part 61; 48 Federal Register [FR] 44738-44739) to oversee and ensure that all mitigation related to archaeological resources is carried out.</p> <p>MM CR-2.2: Tribal Cultural Resources Awareness Training Prior to issuance of any demolition or grading permits, whichever occurs first, the project applicant shall be required to submit evidence that conduct a Cultural Awareness Training has been provided to for construction personnel prior to ground disturbances. The training shall be facilitated by a qualified project 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.</p> <p>MM CR-2.3: Native American Monitoring. A qualified Native American Monitor, registered with the Native American Heritage Commission (NAHC) 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, in</p>	<p>Less Than Significant Impact with Mitigation Incorporated</p>

Impact	Mitigation Measure	Level of Significance after Mitigation
	<p>collaboration with a qualified Archeologist shall also be present during applicable earthmoving activities such as, but not limited to, trenching, initial or full grading, boring on-site, or major landscaping.</p> <p>MM CR-2.4: Final Disposition of Cultural Materials. For any archaeological materials recovered from the project site during construction, the following shall apply:</p> <ul style="list-style-type: none"> • Disposition of Native American archaeological materials shall be determined through consultation 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, the Director of Planning, Building and Code Enforcement or the Director's designee, and the qualified archaeologist. Disposition of human remains and associated grave goods shall be determined through consultation between the Most Likely Descendant and the landowner. • Disposition of significant historic-era archaeological materials shall include the following options, in order of preference. Final disposition of these materials shall take into account input from descendant communities. <ul style="list-style-type: none"> ▪ Curation at a repository accredited by the American Association of Museums that meets the standards outlined in 36 Code of Federal Regulations (CFR) 79.9. ▪ Curation at a non-accredited repository as long as it meets the minimum standards set forth by 36 CFR 79.9. 	

Impact	Mitigation Measure	Level of Significance after Mitigation
	<ul style="list-style-type: none"> ▪ Donation of the collection to a public, non-profit institution with a research interest in the materials. ▪ Donation to a local school or historical society in the area for educational purposes. 	
Hazards and Hazardous Materials		
<p>Impact HAZ-1: The project would result in a potentially significant impact from the removal of the existing heating oil underground/above-ground storage tanks.</p>	<p>MM HAZ-1.1: Prior to the issuance of any grading, demolition, or building permits (whichever occurs first), the project applicant shall obtain proper permits from the Santa Clara County Department of Environmental Health (SCCDEH) and San José Fire Department prior to removal of the underground storage tank (UST) and aboveground storage tank (ASTs). Collect and analyze sampling beneath the tanks after the removals under the direction of the SCCDEH and provide confirmation of the UST removal to the City’s Planning, Building and Code Enforcement. If the SCCDEH has determined the storage tanks have leaked, the project applicant shall perform all subsequent investigation and remediation as required under SCCDEH oversight to meet regulatory requirements and ensure the project site is safe for the development.</p> <p>MM HAZ-1.2: Due to the site’s history and the presence of miscellaneous drums, aboveground storage tanks (ASTs), and debris, the project applicant shall prepare a Soil Management Plan (SMP) to minimize health risks to construction workers and future residences and site occupants. The Site Management Plan (SMP) shall be prepared prior to issuance of any grading demolition or building permits (whichever occurs first) to establish appropriate management practices for handling impacted soil and/or groundwater, if encountered, and shall include the following at a minimum:</p> <ul style="list-style-type: none"> • A detailed discussion of the project site background; 	<p>Less Than Significant Impact with Mitigation Incorporated</p>

Impact	Mitigation Measure	Level of Significance after Mitigation
	<ul style="list-style-type: none"> • Management of stockpiles, including sampling, disposal, and dust and runoff control including implementation of a stormwater pollution prevention program; • Procedures to follow, including regulatory notification, if evidence of an unknown historic release of hazardous materials is discovered during excavation or demolition; and • A health and safety plan (HSP) for each contractor working at the project site, in an area below grade, that addresses the safety and health hazards of each site operation phase, including the requirements and procedures for employee protection. The HSP shall outline proper soil handling procedures and health and safety requirements to minimize work and public exposure to hazardous materials during construction. 	
<p>Impact HAZ-2: The project could result in a potentially significant impact from the potential for harmful vapors (benzene, vinyl chloride, and TCE) volatilizing from contaminated soil and migrating into structures, leading to possible adverse health impacts to residents.</p>	<p>MM HAZ-2: In connection with the construction of each building on the project site (i.e., Building A, Building B, Building C, Townhomes, and Affordable Apartment Building), the project applicant shall, in accordance with the SMP discussed in MM HAZ-1.2, obtain regulatory oversight with Santa Clara County Department of Environmental Health (SCCDEH) and determine if potential vapor intrusion risks exist from the identified VOCs and then, as necessary, evaluate and/or mitigate any such potential vapor intrusion risks through the installation of vapor mitigation measures. The project applicant shall comply with all applicable reporting, testing, mitigation, and/or operation & maintenance protocols documented in the SMP and Vapor Intrusion Mitigation System Pre-Occupancy Verification Monitoring Report (if required) and any other reports required by the SCCDEH. Prior to occupancy, the applicant shall submit to the City evidence of SCCDEH’s written approval of</p>	<p>Less than Significant Impact with Mitigation Incorporated</p>

Impact	Mitigation Measure	Level of Significance after Mitigation
	the SMP and the Vapor Intrusion Mitigation System Pre-Occupancy Verification Completion and Monitoring Report and other reports (if required).	
<p>Impact HAZ-3: Due to its agricultural history, soils on the project site contain elevated levels of lead and arsenic that exceed the applicable regulatory ESLs. If the identified soil impacts are not mitigated, construction of the project could result in exposure of construction workers, adjacent properties, and future site occupants to pesticide contamination.</p>	<p>MM HAZ-3: Prior to issuance of any demolition and/or grading permits, the project applicant shall enter the Santa Clara County Department of Environmental Health’s (SCCDEH) Site Cleanup Program, or the Department of Toxic Substances Control (DTSC) to obtain regulatory oversight of the mitigation of contaminated soil to ensure the project site is safe for construction workers and the public after development. A Removal Action Plan, Soil Management Plan (SMP) or other similarly titled report describing the remediation must be prepared and implemented to document the removal and/or capping of contaminated soil. All work and reports produced shall be performed under the applicable regulatory oversight and approval.</p> <p>Evidence of regulatory oversight, and approved plan(s) shall be submitted to the Director of Planning, Building and Code Enforcement or the Director’s designee and the Environmental Compliance Officer of the City for approval prior to the issuance of any grading permits.</p>	<p>Less Than Significant Impact with Mitigation Incorporated</p>
Noise and Vibration		
<p>Impact NSE-1: Construction of the project could last longer than 12 months and would require work on Saturday between 8:00 am and 5:00 pm, which would result in a potentially significant, temporary construction noise impact.</p>	<p>MM NSE-1: Construction Noise Logistics Plan. Prior to the issuance of any grading or building demolition permits, the project applicant shall submit and implement a construction noise logistics plan that specifies hours of construction, noise and vibration minimization measures, posting and notification of construction schedules, equipment to be used, and designation of a noise disturbance coordinator. The noise disturbance coordinator shall respond to neighborhood complaints and shall be in place prior to the start of construction and implemented during construction to reduce noise impacts on neighboring residents and other uses. The noise logistic plan shall be submitted to the</p>	<p>Less Than Significant Impact with Mitigation Incorporated</p>

Impact	Mitigation Measure	Level of Significance after Mitigation
	<p>Director of Planning, Building and Code Enforcement or Director’s designee prior to the issuance of any grading or demolition permits. As a part of the construction noise logistics plan, construction activities for the project shall include, at a minimum, the following best management practices:</p> <ul style="list-style-type: none"> • Prohibit pile driving. • Construction activities shall be limited to the hours between 7:00 AM and 7:00 PM, Monday through Friday, unless permission is granted with a development permit or other planning approval. No construction activities are permitted on the weekends at sites within 500 feet of a residence (San José Municipal Code Section 20.100.450). Construction outside of these hours may be approved through a development permit based on a site-specific “construction noise mitigation plan” and a finding by the Director of PBCE that the construction noise mitigation plan is adequate to prevent noise disturbance of affected residential uses. • Construct solid plywood fences or similar along the northwest boundary of the site adjacent to residences to shield adjacent residential land uses from ground-level construction equipment and activities. The temporary 8-foot noise barrier shall be solid over the face and at the base of the barrier in order to provide a 5 dBA noise reduction. • Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment. • Unnecessary idling of internal combustion engines shall be strictly prohibited. 	

Impact	Mitigation Measure	Level of Significance after Mitigation
	<ul style="list-style-type: none"> • Locate stationary noise-generating equipment such as air compressors or portable power generators as far as possible from sensitive receptors. Construct temporary noise barriers to screen stationary noise-generating equipment when located near adjoining sensitive land uses. • Utilize “quiet” air compressors and other stationary noise sources where technology exists. • Control noise from construction workers’ radios to a point where they are not audible at existing residences bordering the project site. • Notify all adjacent business, residences, and other noise-sensitive land uses of the construction schedule, in writing, and provide a written schedule of “noisy” construction activities to the adjacent land uses and nearby residences. • Designate a "disturbance coordinator" who shall be responsible for responding to any complaints about construction noise. The disturbance coordinator shall determine the cause of the noise complaint (e.g., bad muffler, etc.) and require that reasonable measures be implemented to correct the problem. Conspicuously post a telephone number for the disturbance coordinator at the construction site and include it in the notice sent to neighbors regarding the construction schedule. 	
Transportation		
<p>Impact TR-1: The residential component of the project would generate VMT of 11.19 per capita, which would exceed the City’s relevant</p>	<p>MM TR-1.1: Prior to the issuance of any demolition, grading and/or building permits, the project applicant shall prepare project construction plans that illustrate the design of the project site enhancements, and shall</p>	<p>Less Than Significant Impact with Mitigation Incorporated</p>

Impact	Mitigation Measure	Level of Significance after Mitigation
<p>residential VMT threshold of 10.12 VMT per capita.</p>	<p>coordinate with the City Parks, Recreation, & Neighborhood Services, Department of Transportation, and the Department of Public Works to incorporate the following:</p> <ul style="list-style-type: none"> <p>• Bike Access Improvements: Construct a Class II bike lane along the opposite side of Seely Ave (southbound direction) and Class IV bike lanes on the frontage along Montague Expressway. Coordination with the City would be needed to implement these non-frontage bicycle network improvements.</p> <p>• Pedestrian Network Improvements: Construct a new crosswalk on Seely Avenue and Americans with Disabilities Act (ADA) compliant curb ramps (off-site pedestrian improvements). The project shall provide a trail connection between Building B and the townhomes. Clear pedestrian paths between the trail connections and the proposed on-site public park shall be provided. Implementation of these improvements would require coordination with the City of San José Department of Parks, Recreation & Neighborhood Services (SJPRNS) to provide a connection between the public park and the Coyote Creek trail. An on-site public access easement would also be required.</p> <p>• Car Sharing Program: Provide either subsidies or promotions for a car sharing program (e.g., Zipcar, Car2Go, GetAround, etc.) for residents of the apartments upon request. Dedicated car share vehicle parking would also be provided at a preferential on-site location within each apartment building. All residents of the apartments (both market rate and affordable apartments) with a valid driver’s license would be eligible to</p> 	

Impact	Mitigation Measure	Level of Significance after Mitigation
	<p>participate in the car sharing program.</p> <ul style="list-style-type: none"> • Traffic Calming Measures: The project would construct new bicycle facilities on both sides of Seely Avenue. As a result of these improvements, the existing travel lane widths along Seely Avenue would be narrowed. Narrowing travel lane widths results in reduced vehicle speeds. Providing traffic calming and safety measures such as narrowing travel lane widths and adding signalized pedestrian crossings creates a safer environment and promotes walking and biking as alternatives to driving. • Unbundled Parking: Provide 100 percent unbundled parking for the designated apartment spaces. Unbundled parking is separating the cost of parking from residential leases and allowing tenants to choose whether to lease a parking space. With this approach those tenants without a vehicle would not be required to pay for parking that they do not want or need. • Voluntary Travel Behavior Change Program: Provide a program that targets individual attitudes and behaviors or apartment residents towards travel and provides information and tools for residents to analyze and alter their travel behavior. Voluntary Travel Behavior Change programs include mass communication campaigns and travel feedback programs, such as travel diaries or feedback on calories burned from alternative modes of travel. This strategy encourages the use of shared ride modes, transit, walking, and biking, thereby reducing drive-alone vehicle trips and VMT. All residents/households would be 	

Impact	Mitigation Measure	Level of Significance after Mitigation
	<p>provided with the information/tools necessary to fully participate in the Voluntary Travel Behavior Change program.</p> <ul style="list-style-type: none"> • On-Site Transportation Demand Management (TDM) Administration and Services: Designate a transportation coordinator who focuses on transportation issues and is responsible for implementing the TDM measures. The transportation coordinator would be a point of contact for residents should TDM-related questions arise and would be responsible for ensuring that residents are aware of all the transportation options available to them. The transportation coordinator would provide the following services and functions: <ul style="list-style-type: none"> ○ Provide new tenants with information brochures at the time of move-in. The welcome brochures should include information about public transit services, transit passes, bicycle maps, and other rideshare/carpool options. ○ Assist with carpool matching. The transportation coordinator should help match residents interested in carpooling. ○ Be knowledgeable enough to answer residents' TDM program related questions. • Information Board/Online Kiosk: Provide an online kiosk with information regarding non-auto transportation alternatives. The online kiosk shall update key transportation information included in the welcome brochures. Transportation news and commuter 	

Impact	Mitigation Measure	Level of Significance after Mitigation
	<p>alerts should be posted online. The website shall be operational as soon as the new buildings are ready for leasing.</p> <ul style="list-style-type: none"> Traffic Calming Measures: The project applicant shall be required to implement additional traffic calming measures following occupancy of the project if City staff determines that the increase in traffic volume could create safety-related issues along the northern segment of Seely Avenue near the residential neighborhoods north of the project site. If issues are identified following occupancy of the project, City staff will require a focused traffic operations study of Seely Avenue to determine the appropriate traffic calming measures that should be implemented by the project. Additional traffic calming measures could include (but are not limited to) roadway striping, curb markings, enhanced crosswalks, signage, bulb-outs, chicanes, chokers, medians, and road bumps. Should the project ultimately be required to implement traffic calming measures, the cost of such improvements shall not exceed \$450,000. <p>MM TR-1.2: Prior to the issuance of any building or occupancy permits for the apartment complex, the project applicant shall provide a draft Transportation Demand Management (TDM) plan prior to issuance of Planning Permit for review and approval. Prior to clearance for building occupancy, a final TDM Plan shall be submitted to the City for approval. After the project is constructed and occupied, the project applicant shall identify a transportation coordinator. The transportation coordinator would be responsible for implementing the ongoing TDM program. The TDM Plan would need to be re-evaluated annually for the life of the project. It is recommended that the designated transportation coordinator consult with City</p>	

Impact	Mitigation Measure	Level of Significance after Mitigation
	staff to ensure the monitoring and reporting meets the City’s expectations. The TDM Coordinator shall be responsible for submitting the monitoring reports to the Director of Department of Public Works or Director’s designee and Director of City Planning, Building and Code Enforcement Department or the Director’s designee for the life of the project.	

ES 5 Summary of Project Alternatives

CEQA requires that an EIR identify alternatives to the project as proposed. The CEQA Guidelines Section 15126.6 states that an EIR must identify alternatives that would feasibly attain most of the objectives of the project, but avoid or substantially lessen significant environmental effects, or further reduce impacts that are considered less than significant with the incorporation of mitigation. A summary of project alternatives is provided below. A full analysis of the project alternatives is provided in **Section 8, Alternatives** of this EIR.

Alternative 1: No Project – No Development Alternative

The CEQA Guidelines [Section 15126(d)4] require that an EIR specifically discuss a “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. Alternative 1 assumes that the project would not be constructed and that no alternative development would occur on the project site. As a result, Alternative 1 would avoid all of the environmental impacts from the project. However, this Alternative would not meet any of the project objectives, which include provision of planned housing (including affordable apartments), retail space, and a park in the City. Alternative 1 would also not provide a new well that would serve water to other users outside of the project. This alternative would not meet any of the project objectives described in Section ES 3.

Alternative 2: No Project – Redevelopment Alternative

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 is not approved, based on current plans and consistent with available infrastructure and community services [Section 15126.6(e)(2)].” 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)].” To that end, Alternative 2 assumes that if the project were not approved, the unoccupied and underutilized project site would be redeveloped with an alternative development consistent with what is allowed under the City’s General Plan and Municipal Code.

For the purpose of this analysis, Alternative 2 is assumed to be consistent with the underlying Industrial Park 2040 General Plan Land Use Designation and zoning, and that no rezoning would be required. Industrial uses supported by the Industrial Park zoning district include manufacturing, assembly, and

retail warehousing. These uses are commonly associated with one- and two-story buildings with large footprints, as well as driveways and loading areas designed accommodate the maneuvering of large loading trucks. Because of these requirements, an industrial use would be relatively inflexible to feasibly work around existing structures and features on the project site. Therefore, under this scenario, it is conservatively assumed that the developer would take advantage of the allowable floor area ratio (FAR) and height restrictions, resulting in a 50-foot-high building (or buildings) that takes up roughly the same footprint as the project (approximately 17 acres of the 22-acre site). This alternative assumes that a similar public park and well would be required by the City. For the purpose of this analysis, it is also assumed that such construction would require the demolition or relocation of the existing historic resources associated with the potential historic district.

Alternative 2 would not meet any of the project objectives but would provide a new project consistent with the 2040 General Plan and underlying zoning. Given that the footprint and amount of construction would be similar to the project, impacts related to ROG emissions, cancer risk, migratory birds, roosting bats, hazardous materials, construction noise, and VMT would be similar to the project.

Alternative 3: Historic Resource Avoidance Alternative

The project site contains 19 built environment resources. Of the 19 built environment resources, 7 were determined to contribute to the potential historic district associated with the events of Japanese farming and farming in Santa Clara Valley: ca. 1920 cottage, two separate ca. 1930 pump houses, ca. 1920 “Sakauye house”, ca. 1910 barn, ca. 1930 shed, and ca. 1930 barn/wagon house. The landscape including fruit trees, planted rows of vegetables, and dirt roads were also determined to be contributing elements. The remaining 12 structures on the project site do not contribute to the historic significance of the property.

Alternative 3 would leave the seven contributing structures intact and limit development to the area surrounding the eligible historic resources. Alternative 3 would also retain the existing orchard, which contributes to the eligibility of the historic district. Retained structures would be restored and preserved consistent with the Secretary of the Interior’s Standards for the Treatment of Historic Properties as part of a 3.37-acre historic district with historic interpretive areas. The historic building exteriors would be structurally stabilized and maintained for interpretive use as part of the project. The planned public park would be reduced to a 0.55-acre area located in the Sakauye farm location that would contain neither historic buildings nor orchard trees. Figure 8-1 of the EIR depicts the Conceptual Site Plan for Alternative 3. Construction of the project components surrounding the historic district would not affect the eligibility of the district. Therefore, the significant impact to historic resources would be avoided.

Alternative 3 would not fully meet the project objectives because it would reduce the size of the proposed residential project by approximately 27 percent (401 units), including a 35 percent reduction in affordable apartments (63 units). The retail space would be reduced by 5,359 square feet. While a reduction in housing can be considered as part of an Alternatives analysis, CEQA Guidelines Section 15041(c) states that “for projects that include housing development, a Lead or Responsible Agency shall not mitigate for significant environmental effects by reducing the number of units, unless no feasible alternative exists that would provide comparable reductions in effects.”

Alternative 4: On-Site Relocation of Historical Resources Alternative

To minimize the impact of removing built historic resources from the project site, Alternative 4 would relocate the seven historic resources deemed eligible for listing in the CRHR to the 2.5-acre site planned

for a park under the project. To maintain historic eligibility, all structures would retain their existing orientation and would be spaced in a way that emulates the current layout of the site. This spacing would make the dog park, active open space, and small-scale sport court uses planned as part of the project by SJPRNS infeasible. Under the On-Site Relocation Alternative, the historical interpretive use proposed as part of the project would become the primary use of the park. All other aspects of the project, including removal of the existing orchard, would remain the same.

Alternative 4 would reduce impacts associated with demolition of the historic structures to a less-than-significant level. While the new historical park would technically meet objective 8, the amenities that SJPRNS has requested for the new park would not be provided. Because all other aspects of the project would remain the same, Alternative 4 would meet all of the other project objectives, but would not reduce the significance of the air quality, biological resources, hazards and hazardous materials, noise and vibration, or transportation impacts identified in this EIR. The same mitigation measures identified in this EIR for the project would be required for Alternative 4, and would reduce impacts to a less than significant level.

Alternative 5: On-Site Relocation of Individual Historical Resources Alternative (Sakauye House Only)

As discussed in **Section 3.4, Cultural Resources**, the Sakauye house (EDS 6) is individually eligible for listing on the CRHR under Criterion 3 for its association with Spanish Colonial Revival architecture. This resource is also eligible for listing in the San José Historic Resource Inventory as a Candidate City Landmark under Criterion 3 due to its association with Eiichi Sakauye and Criterion 6 due to its embodiment of the Spanish Colonial Revival architectural style. Under Alternative 5, this resource would be relocated to the northern portion of the project site. As a result, Alternative 5 would provide 4 fewer townhomes than the project. All other aspects of the project would remain the same. The Sakauye house would be preserved and restored consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties. The house would be used for historic interpretive uses only; the building would not be leased or sold for residential use.

Alternative 5 would reduce the severity of Impact CR-1 and would eliminate the impact to the Sakauye house specifically. However, because the other 6 structures that contribute to the eligibility of the potential historic district would still be removed, Impact CR-1 would remain significant and unavoidable. Although Alternative 5 would provide 4 fewer dwelling units than the project, it would still have a density of approximately 81 du/acre and would therefore satisfy project objective 2 by meeting the minimum density requirements for the North San José TERO. Because all other aspects of the project would remain the same under Alternative 5, all other project objectives would be met and all other impacts would remain the same.

1 INTRODUCTION

1.1 Purpose of the Environmental Impact Report

The City of San José (the City), as the lead agency, has prepared this EIR for the Seely Avenue Mixed-Use Project (project) in compliance with the California Environmental Quality Act (CEQA) and the CEQA Guidelines Sections 15060-15064 and Section 15081. The decision to prepare an EIR is based on substantial evidence and in light of the whole of the record before the lead agency.

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

1.2 EIR Process

1.2.1 Notice of Preparation and Scoping

In accordance with Sections 15063 and 15082 of the CEQA Guidelines, the City prepared a Notice of Preparation (NOP) for the EIR. The NOP was initially circulated to local, state, and federal agencies on February 23, 2022. The standard 30-day comment period would have concluded on March 25, 2022; however, due to a request for extension received from an interested party, this deadline was extended to April 5, 2022. The NOP provided a general description of the project and identified possible environmental impacts that could result from implementation of the project. Appendix A of this EIR includes the NOP and comments received on the NOP. **Table 1-1** below lists the NOP comments received by the City, and summarizes the main concerns raised in each letter. The section in which the topics are analyzed and described relevant to the comment is provided in parentheses. The City also held a public scoping meeting on March 7, 2022, to discuss the project and solicit public input as to the scope and contents of this EIR.

Table 1-1 Summary of Scoping Comments

Date	Commenter	Summary of Comments
2/25/2022	Michael Bertram – River Oaks Neighborhood Association	<ul style="list-style-type: none"> • Commenter raises concerns that existing roadway network cannot handle traffic generated by the project, as well as potential issues posed by vehicles using residential streets as short cuts and impacts to safety for children attending local schools. (See Section 3.17, Transportation). • Commenter expresses concern regarding Coyote Creek Riparian Corridor from the proposed building increased shade, nighttime lighting, and noise. (Section 3.1, Aesthetics and Section 3.13, Noise and Vibration).

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Date	Commenter	Summary of Comments
		<ul style="list-style-type: none"> • Commenter expresses concern with size of proposed park not being sufficient to meet the needs of community. (Section 3.16, Recreation). • Commenter expresses general concern with subsurface parking and its impacts to groundwater. (Section 3.10, Hydrology).
2/24/2022	Native American Heritage Commission	<ul style="list-style-type: none"> • Commenter notes receiving NOP and notes that the project would be subject to Senate Bill (SB) 18 and Assembly Bill (AB) 52 requirements for tribal consultation. Commenter also states requirements of AB 52 and SB 18 consultations. (Section 3.18, Tribal Cultural Resources) • Commenter provides recommendations for cultural resources assessments prepared for the project. (Section 3.5, Cultural Resources)
3/17/2022	California Department of Fish and Wildlife	<ul style="list-style-type: none"> • Commenter requested an extension for the deadline of comments on the NOP.
3/18/2022	Ying-Ying Chang	<ul style="list-style-type: none"> • Commenter expresses concern regarding the proposed height of the development, increase in traffic associated with the development, the size of the proposed park, the impact of sub-surface parking on groundwater, and potential for flooding. (Section 3.1 Aesthetics, Section 3.17, Transportation, Section 3.16 Recreation, and Section 3.10 Hydrology and Water Quality) • Commenter also expressed concern about potential for fires along Coyote Creek and increased unhooded populations in the project area. (Section 3.20, Wildfire and Section 3.14, Population and Housing)
3/22/2022	San José Municipal Water	<ul style="list-style-type: none"> • Commenter requests revision of the NOP’s description of this EIR’s evaluation of provision of utilities to the project.
3/25/2022	Carpenters Local Union 405	<ul style="list-style-type: none"> • Commenter requests that the EIR include analysis of construction and economic impacts related to local employment preferences and apprenticeship programs for construction workers. While economic impacts are not a CEQA topic and are therefore not addressed in this EIR, the applicant has met separately with the Carpenters Local Union 405 regarding this topic.
3/25/2022	Sierra Club Loma Prieta Chapter and Santa Clara Valley Audubon Society	<ul style="list-style-type: none"> • Commenter requests that the EIR analyze project’s distance from the riparian vegetation edge and the top of the bank of Coyote Creek, including discussion of consistency with the 2040 General Plan, the San José Riparian Corridor Policy Study, and Council Policy 6-34

Date	Commenter	Summary of Comments
		<p>Riparian Corridor Protection and Bird Safe Design. (Section 3.10, Hydrology and Water Quality)</p> <ul style="list-style-type: none"> • Commenter requests analysis and potential mitigation for bird collisions with glass, discussion of site lighting, loss of trees, impacts to nesting birds, burrowing owls, increased traffic and air pollution, the proposed installation of a new domestic water well, hazards from previous agriculture use of the project site, and loss of agricultural land. (Section 3.4, Biological Resources, Section 3.3, Air Quality, Section 3.2, Agricultural and Forestry Resources) • Commenter also requests that alternatives analysis for parkland along the Coyote Creek levee to ensure 100-foot setbacks for riparian banks. (Section 3.4, Biological Resources)
3/25/2022	Preservation Action Council of San José	<ul style="list-style-type: none"> • Commenter requests a comprehensive historic report for all structures, individually and comprehensively. Commenter requests consideration of the existing structures for listing on the NRHP, CRHR, and/or as a City Landmark due to the history of agricultural use on the project site. (Section 3.5, Cultural Resources) • Commenter requests that project alternatives consider retention of existing structures. Commenter requests that, in the event, that all structures are removed, that mitigation be incorporated to pay tribute to the historic agricultural use of the project site. (Section 3.2, Agricultural and Forestry Resources)
3/25/2022	Valley Transportation Authority	<ul style="list-style-type: none"> • Commenter requests that project description be updated to include new signal at Seely Avenue and Montague Expressway. (Section 3.17, Transportation) • Commenter recommends pedestrian improvements such as installation of a sidewalk/trail from the cul-de-sac at the south end of the project site connecting to Montague Expressway and widening of the existing sidewalk on the north side of Montague Expressway. (Section 3.17, Transportation) • Commenter requests bicycle accommodations, including creation of a trailhead on the northside of Montague Expressway, the project’s contribution to building a new bicycle bridge over Coyote Creek, and improvements to bicycle access to Coyote Creek. (Section 3.17, Transportation) • Commenter recommends adjustment of the project site layout to align the roadways and eliminate offset

Date	Commenter	Summary of Comments
		<p>intersections, as well as reduction of curb radii. (Section 3.17, Transportation)</p> <ul style="list-style-type: none"> • Commenter supports overall site density and requests additional information on the proposed share of affordable housing. (Section 2.3, Proposed Development) • Commenter notes the potential retirement of the North San José Area Development Policy and the need to evaluate projects individually for CEQA and the City’s LTA. (Section 3.17, Transportation) • Commenter notes that the project is likely to require VMT analysis and suggests that VMT offsets focus on transit, pedestrian and bicycle improvements. (Section 3.17, Transportation)
3/25/2022	County of Santa Clara	<ul style="list-style-type: none"> • Commenter expresses concern over Level of Service (LOS) and recommends preparation of a Local Transportation Analysis (LTA). (Section 3.17, Transportation) • Commenter requests that VMT Analysis demonstrate how existing or planned transit would serve the project site. (Section 3.17, Transportation) • Commenter notes previous comments objecting to signalization of Seely Avenue and Montague Expressway. (Section 3.17, Transportation) • Commenter requests that the EIR prepare cumulative conditions analysis covering long-term build scenario inclusive of planned improvements on local roadways. (Section 3.17, Transportation) • Commenter notes that planned signalization of Seely Avenue required Board of Supervisors action. (Section 3.17, Transportation) • Commenter requests that EIR consider greater regional impacts to proposed signalization at Seely Avenue and Montague Expressway. (Section 3.17, Transportation) • Commenter requests revised plans showing how proposed signal would align with Kruse Drive, and that the TIA address this and also include a study of all signalized intersections on Montague Expressway from U.S. 101 to I-680 as study intersections, as well as vehicle queuing on Interstate 880 (I-880) ramps. (Section 3.17, Transportation)

Date	Commenter	Summary of Comments
		<ul style="list-style-type: none"> • Commenter requests that trip generation estimates include recreational uses at proposed park. (Section 3.17, Transportation) • Commenter states that any significant unavoidable traffic impacts would be mitigated via contributions to improvements of Montague Expressway. (Section 3.17, Transportation) • Commenter requests that new sidewalks be consistent and free of gaps and that the project provide plans showing improvements to existing Coyote Creek Trailhead. (Section 3.17, Transportation) • Commenter notes that maintenance of non-standard improvements would be subject to a maintenance indemnification agreement between the encroachment permit applicant and the County. (Section 3.17, Transportation)
4/4/2022	California Department of Fish and Wildlife	<ul style="list-style-type: none"> • Commenter identifies their role as a trustee agency and responsible agency for the project. Commenter requests that the EIR evaluate impacts to burrowing owl and golden eagle and provides some potential mitigation measures for each species. (Section 3.4, Biological Resources) • Commenter notes tree removal, impacts to nesting birds, and proximity to riparian areas and provides potential mitigation measures to address issues. (Section 3.4, Biological Resources) • Commenter identifies height of proposed buildings could result in avian collisions and provides potential mitigation measures. (Section 3.3, Biological Resources) • Commenter notes potential for domestic well to interfere with Coyote Creek and suggests hydrology analysis and Lake and Streambed Alteration Program (LSAA) would be required. (Section 3.9, Hydrology and Water Quality) • Commenter requests any identification of special-status be reported and logged in a database for future projects. (Section 3.4, Biological Resources) • Commenter notes that the project would be required to pay filing fees due to impacts on fish and/or wildlife. (Section 3.4, Biological Resources)
4/5/2022	Jean Marlowe – River Oaks Neighborhood Association	<ul style="list-style-type: none"> • Commenter expresses concern for the overall size and density of the development compared to the existing

Date	Commenter	Summary of Comments
		<p>neighborhood. (Section 2.3, Proposed Development; Section 2.4, Project Objectives)</p> <ul style="list-style-type: none"> • Commenter notes potential for noise/vibration issues during construction and off-site hauling. (Section 3.13, Noise and Vibration) • Commenter notes issues with existing and proposed roadway network. (Section 3.17, Transportation) • Commenter notes existing dust/air quality issues and expresses concern that additional vehicle trips will further exacerbate this issue. (Section 3.3, Air Quality) • Commenter additionally expresses concern with height of the proposed apartment buildings, number and location of affordable apartments presented, proximity to the riparian corridor, fire access issues and previous fires at Coyote Creek, and the size of the proposed park. (Section 3.4, Biological Resources; Section 3.20, Wildfire)

1.2.2 Draft EIR Public Review and Comment Period

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

City of San José, Department of Planning, Building and Code Enforcement
 Attn: Bethelhem Telahun, Environmental Project Manager
 200 East Santa Clara Street, 3rd Floor Tower
 San José CA 95113-1905
 Email: bethelhem.telahun@sanjoseca.gov

1.3 Final EIR/Responses to Comments

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

- Revisions to the EIR text, as necessary;
- List of individuals and agencies commenting on the EIR;
- Responses to comments received on the EIR, in accordance with CEQA Guidelines (Section 15088); and
- Copies of letters and correspondence received on the 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 will file a Notice of Determination (NOD) with the State Clearinghouse, which will be available for public inspection and posted within 24 hours of receipt at the County Clerk's Office 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)).

2 PROJECT DESCRIPTION

2.1 Project Location and Existing Setting

The project site is located on Seely Avenue, within the limits of San José in Santa Clara County, California (refer to **Figure 2-1**). The project site comprises Assessor's Parcel Numbers (APN) 097-15-033 and 097-15-034 and a portion of 097-66-004 for a total area of 22 acres, as shown in **Figure 2-2**. The project site is occupied by two residential structures, barns and other storage structures, a fruit stand, vacant land, agricultural land (orchards, fruits, and vegetables), and miscellaneous dumped debris (multiple tanks, farming equipment, tires, pipes, and other debris), all of which would be demolished as part of the project. The project site is surrounded primarily by multi-family residential and commercial office uses to the north and commercial uses to the west, commercial offices and Montague Expressway to the south/southeast, and the Coyote Creek Levee, Coyote Creek, and associated Coyote Creek Trail and open space to the east (refer to **Figure 2-3**). Existing commercial and office buildings are generally one to two stories, set back from the roadway by surface parking lots and partially obscured from view by street trees. Additionally, four-story multi-family residential buildings are located to the north along Epic Way. Existing light and glare from the surrounding development on the project site is not prominent because of intervening vegetation around the perimeter of the project site.

The Coyote Creek Levee is maintained by the Santa Clara Valley Water District (SCVWD) and protects the surrounding area, including the project site from flooding risks associated with Coyote Creek. Major nearby roadways include Montague Expressway, River Oaks Parkway, McCarthy Boulevard, and Interstate 880 (I-880).

2.2 General Plan and Zoning

2.2.1 Envision San José 2040 General Plan

The project site is designated as Industrial Park under the Envision San José 2040 General Plan (2040 General Plan). The Industrial Park designation is intended for a wide variety of industrial users such as research and development, manufacturing, assembly, testing and offices, with a FAR of up to 10.0 and 2 to 15 stories. The Transit Employment Residential Overlay (TERO) designation overlay identifies sites within the North San José Employment Center that may be appropriate for residential development. This overlay supports residential development as an alternate use at a minimum average density of 75 units per acre, with a FAR of 2.0 to 12.0 and 5 to 25 stories. Sites with this overlay may also be developed with uses consistent with the underlying designation. The TERO permits either residential development with commercial uses on the first two floors or entirely residential projects without a vertical mixed-use component. The 2040 General Plan-designated land uses are shown in **Figure 2-6**.

2.2.2 Zoning

The project site is in the IP Industrial Park Zoning District. The IP zoning district is intended for a wide variety of industrial users such as research and development, manufacturing, assembly, testing, and offices. Hanover Company (the project applicant) is seeking a rezone from IP to an IP(PD) Planned Development Zoning District. As part of the proposed IP(PD) rezoning, the for-sale townhome component of the project would conform to the City's "Mixed-Use Neighborhood (MUN)" development standards, and the multifamily apartment portion of the project would conform to "Urban Residential (UR)" development standards. Specific exceptions to the MUN and UR development standards are being

0 Seely Avenue Mixed-Use Project

proposed as part of the project's Planned Development Zoning and Planned Development Permit applications. In the MUN portion of the project, proposed development standard exceptions include increased building height, reduced front setback, and reduced private open space requirements.

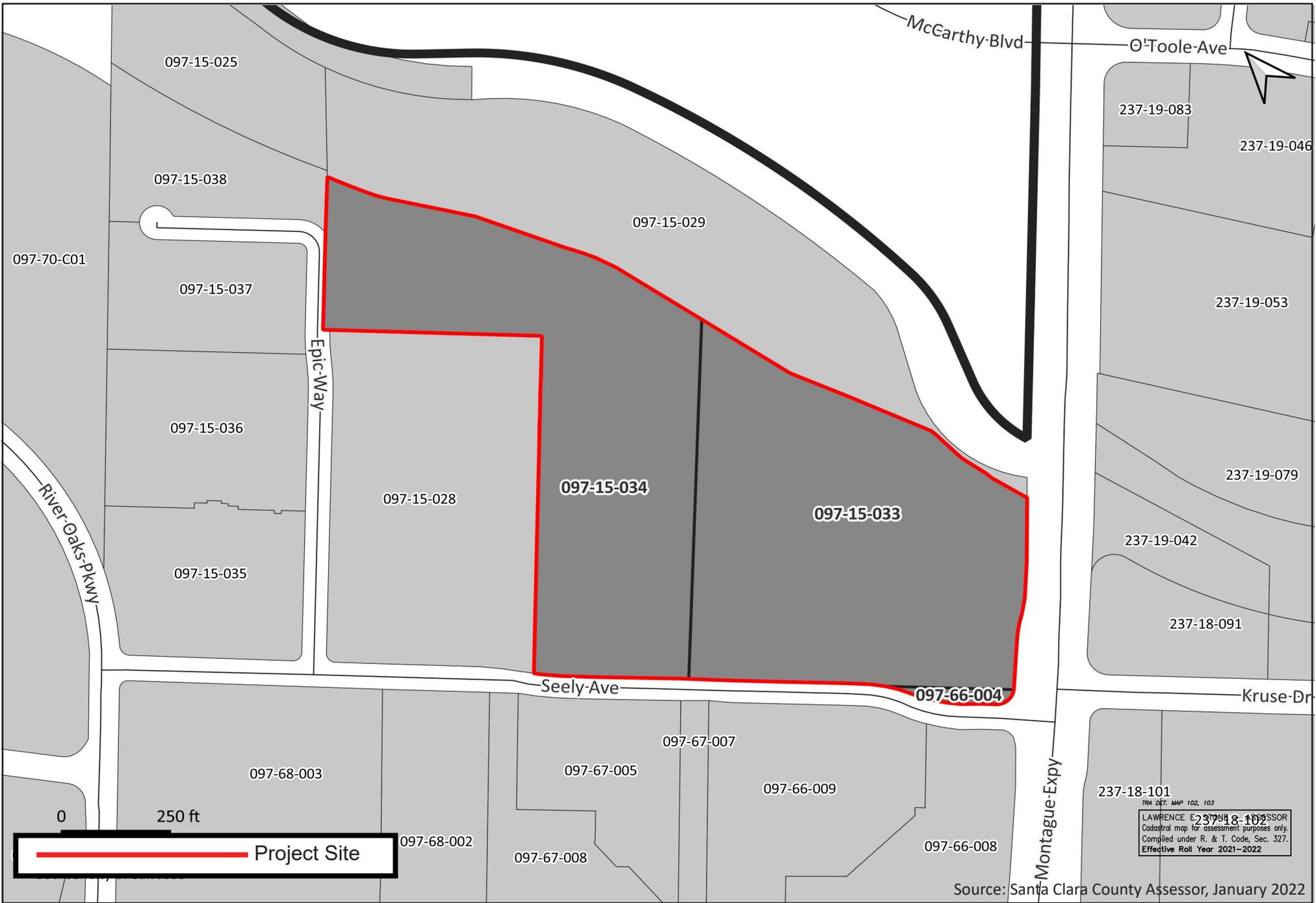
In the UR portion of the project, proposed development standard exceptions include increased setbacks, reduced commercial and residential parking ratios. The surrounding 2040 Zoning land uses are shown in **Figure 2-5**.



Regional Location Map

0 Seely Avenue Mixed-Use Project
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Figure
2-1



APN Map

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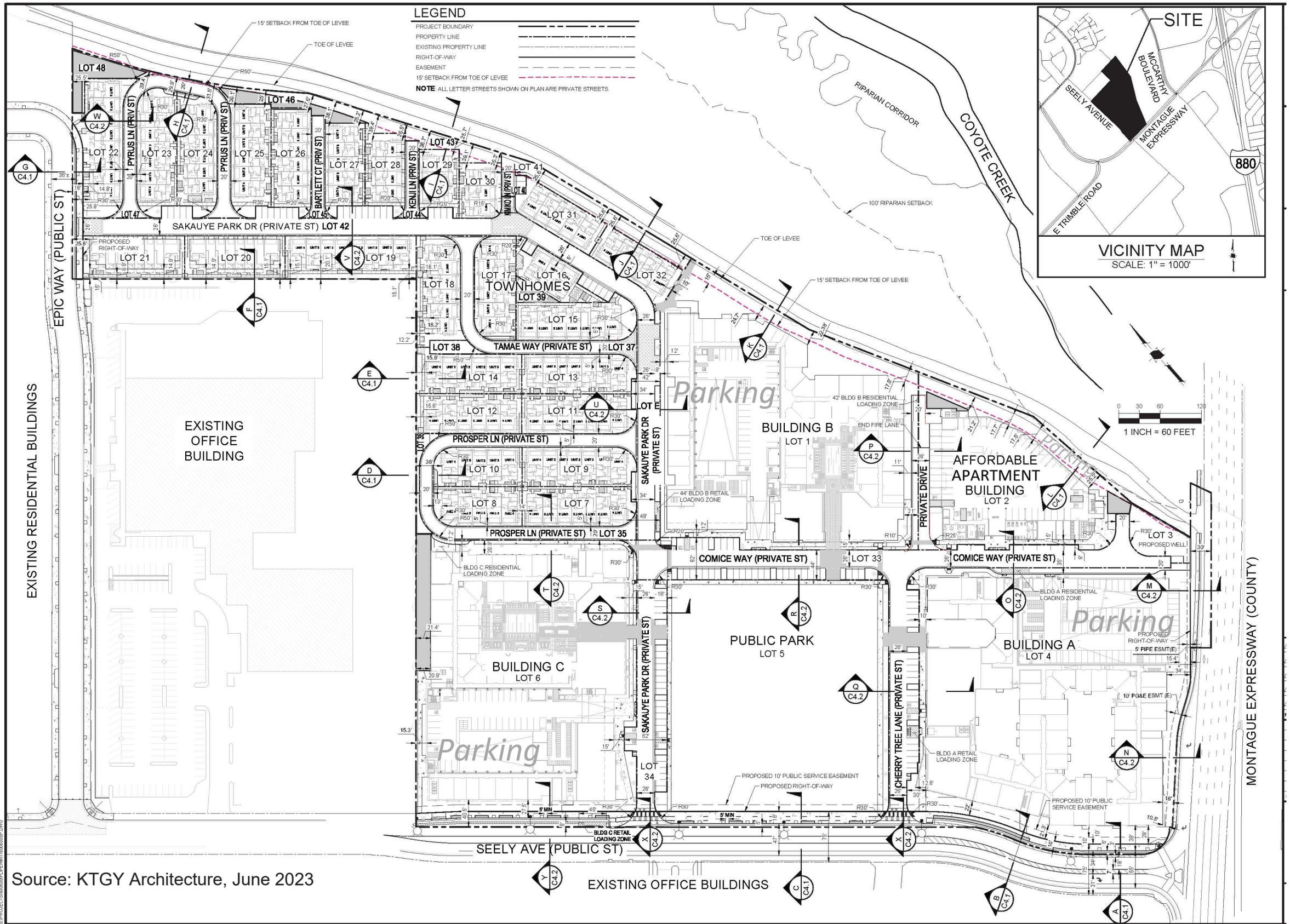
Figure
2-2



Vicinity Map

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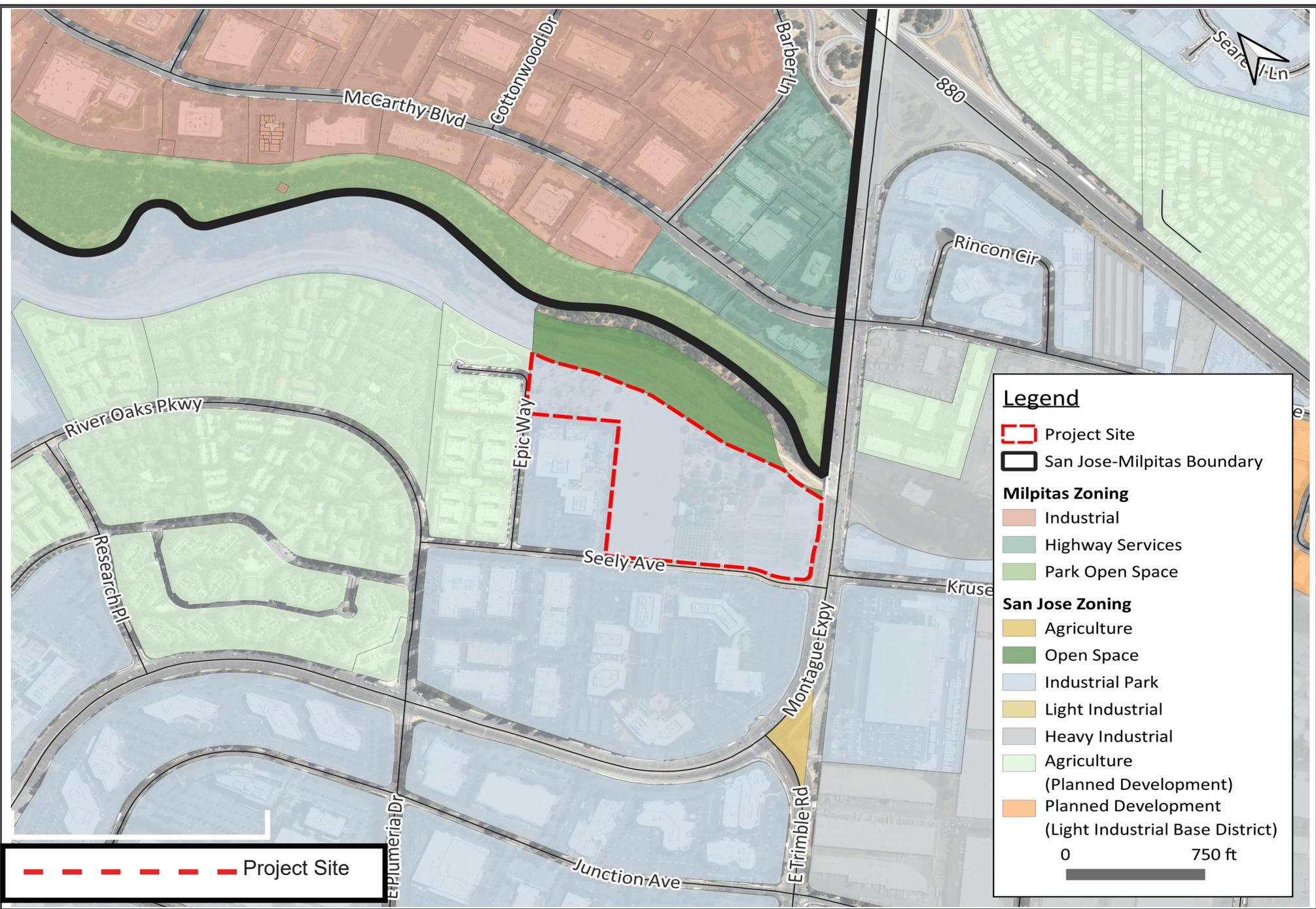
Figure
2-3



Conceptual Site Plan

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Figure
2-4

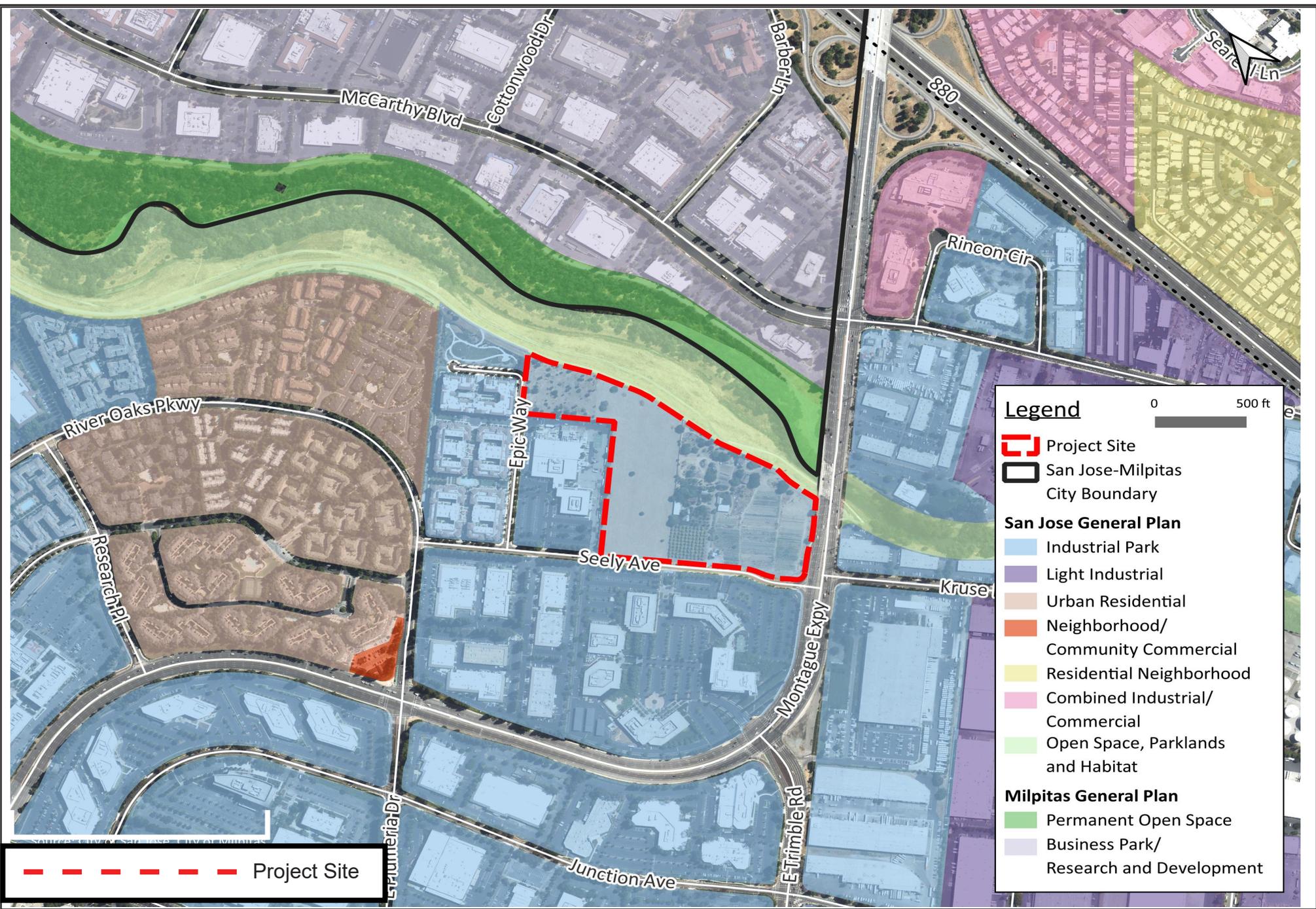


Zoning Map

Source: City of San Jose 2023

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Figure
2-5



General Plan Map

Source: City of San Jose, 2023

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Figure
2-6

2.3 Proposed Development

The project application is for a Planned Development Zoning, Vesting Tentative Map, and Planned Development Permit. The development would include demolition of two existing residences, a fruit stand, and agricultural land to construct 1,472 residential units, approximately 18,965 gross square-foot of ground-floor retail space and a 2.51-acre public park on an approximately 22-acre site within the limits of San José in Santa Clara County as shown in **Figure 2-1**. The project would also include dedication of a 0.11 acre parcel (Lot 3, as shown in **Figure 2-4**), located in the northeastern corner of the project site to San José Municipal Water (SJMW). SJMW would be responsible for the construction, ownership, and maintenance of the new municipal well (see **Figure 2-3** for existing conditions).

The proposed buildings would be restricted by a 15-foot setback from the toe of the Coyote Creek Levee as shown in **Figure 2-4**. This setback from the levee is required by Valley Water and the U.S. Army Corps of Engineers as specified in an October 13, 2022 memorandum from Valley Water to the City, and is separate from the 100-foot setback required by the City’s Riparian Corridor Protection and Bird-Safe Design Policy discussed further in **Section 3.4, Biological Resources**.² The 15-foot setback would be free from vegetation, utilities, and structures to allow for adequate protection of the levee and repairs and monitoring when required. **Table 2-1** provides the lot areas for each planned component of construction. **Table 2-2** provides maximum building heights ranging from 30 feet to 85 feet. The project would not exceed the maximum building height of 270 feet for this area, which is established by the TERO. Refer to **Figure 2-7** through **Figure 2-11** for and elevations for all buildings proposed.

Table 2-1 Project Components

Development Type	Dwelling Units (du)	Commercial Area (gross square feet) ¹	Total Lot Area (square-foot) ¹
Townhomes	154	-	329,844
Building A Market-Rate Apartments / Ground Floor Retail	397	6,427	152,096
Building B Market-Rate Apartments / Ground Floor Retail	372	5,578	126,318
Building C Market-Rate Apartments / Ground Floor Retail	371	6,960	127,323
Affordable Apartment Building	178	-	53,825
Public Park	-	-	109,549
Public Street Right-of-Way	-	-	36,187
Private Streets	-	-	56,964
Well Site (Lot 3)	-	-	4,576
Total ¹	1,472	18,965	996,682

Source: Hanover 2023; Note¹: Lot areas may not equate due to rounding.

² Valley Water, 2022. Personal Communication. October 13, 2022.

Table 2-2 Building Heights

Building	Building Height¹
Building A	69 feet
Building B	79 feet
Building C	79 feet
Affordable Apartment Building	82 feet
Townhomes	30 feet

¹ Height measured from ground to roof
Source: Hanover 2022

2.3.1 Residential Development

The three (3) market rate residential rental project components – Buildings A, B and C – are proposed as six stories, seven stories, and seven stories, respectively. The parking for Buildings A, B and C would be at or above grade in garages adjacent to the residential buildings; no underground parking is proposed. Parking structures would be located on the east side of Building A, the north side of Building B, and the west side of Building C. The six-story, 178-unit affordable apartment building would have one level of at grade parking on the north side of the building. The 154 for-sale townhomes would be three stories in height. Each townhome unit would have an attached two-car garage configured as either side-by-side or tandem parking. The market rate and affordable apartment buildings would be a combination of studio, one-bedroom, two-bedroom, and three-bedroom units. The townhomes would include three- and four-bedroom units. The proposed breakdown of units for market-rate apartments, affordable apartments, and for-sale townhomes is provided in **Table 2-3** below.

Table 2-3 Proposed Residential Components

Residential Development	Unit Type	No. Units
Building A	Studio	30
	1 Bedroom	238
	2 Bedroom	112
	3 Bedroom	17
Building B	Studio	44
	1 Bedroom	207
	2 Bedroom	101
	3 Bedroom	20
Building C	Studio	35
	1 Bedroom	214
	2 Bedroom	105

Residential Development	Unit Type	No. Units
	3 Bedroom	17
Affordable Apartment Building	Studio	50
	1 Bedroom	78
	2 Bedroom	50
Townhomes (for sale)	3 Bedroom, 3 Bathroom	17
	3 Bedroom, 3.5 Bathroom	40
	4 Bedroom, 3.5 Bathroom	97
Total		1,472

Source: Hanover 2023

Proposed common open space for Buildings B and C would consist of at-grade courtyards with a pool area and other outdoor amenities, as well as a roof deck for each building. Building A would feature two at-grade courtyards, one of which would have a pool. The affordable apartment building would also have two courtyards on top of the podium structure. Common open space for the townhomes would be at ground level wrapping around the building footprints.

The market-rate and affordable apartments would also include areas for lobbies and/or leasing offices, amenities, and common area open space. Building A would have 10,122 square feet of space for leasing and amenities and 21,577 square feet of common area open space, consisting of two courtyards; Building B would have 10,548 square feet of space for leasing and amenities and 9,548 square feet of common area open space, consisting of a courtyard and a roof deck; Building C would have 9,874 square feet of space for leasing and amenities and 13,752 square feet of common area open space. The affordable apartment building would have 6,565 square feet of common area open space, consisting of 1,500 square feet of amenities and two courtyards. The townhome development would feature 21,714 square feet of common open space and 29,440 square feet of private open space (patios). The multifamily buildings are considered exempt from the Common Open Space requirements per the exceptions listed in section 20.55.102(D) of the City’s Municipal Code.

2.3.2 Commercial Development

Buildings A, B, and C would have a combined total of up to 18,965 gross square feet of ground floor retail space that would face inward towards the centrally located public park, as well as dedicated surface and/or structured garage parking spaces for patrons. Building A would include up to 6,427 gross square feet of retail space, Building B would include up to 5,578 gross square feet of retail space, and Building C would include up to 6,960 gross square feet of retail space.

2.3.3 Public Park

The project would include construction of a 2.51-acre park to serve the project and the surrounding community. The exact features, amenities, and landscaping of the public park will be determined based on the feedback of the San José Parks, Recreation and Neighborhood Services (SJPRNS) Department and community members, but at a minimum would include a dog park, active open space, and a historical

interpretive area dedicated to the history of the project site. The park may include small-scale sports courts (i.e., bocce ball, volleyball, or pickle ball) but would not include sports fields or courts suitable for tournaments or team sports.

2.3.4 Well

The project would include dedication of a 0.11-acre parcel to SJMW for the construction, ownership, and maintenance of a municipal well. The well would be used to meet the project's water demand and future planned growth in the SJMW's service area that is not met by SJMW contract water. The proposed well would pump groundwater supply directly into the distribution system. The well would have a pumping capacity of approximately 2,000 gallons per minute (gpm), equivalent to 1,452-acre feet per year (AFY). The 18-inch diameter vertical well would have maximum borehole depths of up to 800 feet and would comprise standard well components including the well casing, sanitary seal, filter pack, and well screen. A maximum 300 horsepower submersible pump would be located inside the well casing. The well would tie directly to the potable water distribution system transmission mains (i.e., water main) in Montague Expressway and Epic Way; no other offsite improvements would be required to facilitate these connections. Above ground features would not exceed one story in height (i.e., 15 feet), and would include above ground piping, control valves, and a well pump and discharge assembly. Above ground facilities would be installed within the maximum 10,000 square foot (100 feet by 100 feet) footprint for the well site. This footprint would include a motor control center, above ground piping and control valves, emergency backup generator, transformer appurtenances, storm drainage utilities, and control and communication equipment. The well head would sit on a maximum 81-square foot (9 feet by 9 feet) concrete pad. The motor control center for the well would have an approximately 130-square foot (26 feet by 5 feet) footprint. An emergency standby diesel generator would serve the proposed well in the event of power outage. The generator would be set in a 200-square foot (20 feet by 10 feet) covered enclosure along with a 500-gallon fuel sub tank. SJMW will either:

1. Use a generator that is 300 kw or less; or
2. Add controls to the generator such that it meets U.S. EPA Tier 4 standards for particulate matter emissions or equip the generator with a CARB-certified Level 3 diesel particulate filter that achieves 85 percent reduction in particulates.

The distribution pipelines would consist of 18-inch diameter ductile iron pipe and appurtenances installed with a 48-inch cover from the finish grade to the top of the pipe that would connect to the distribution mains in Epic Way and Montague Expressway.

2.3.4.1 Testing and Start-up

Upon completion of well construction and prior to finalizing connections to water distribution systems, the newly installed distribution pipelines would be flushed and disinfected. After disinfection, flushing would take place and de-chlorinated water would be discharged into an existing storm drain inlet on Montague Expressway in accordance with regulatory storm discharge requirements. Final development, testing, and clean artesian flow would be directed to the storm drain inlet nearest to the well locations in accordance with regulatory storm discharge requirements.

2.3.5 Building Design

Each of the apartment buildings would incorporate modern architecture and a variety of exterior materials including metal panel, plank siding, brick, cementitious panel, and stucco, with stone tile and storefront windows on the ground floors. Each of the apartment buildings would feature a unique architectural style, and massing articulation to break up the building shape. The ground floor retail and residential building lobbies in each of the market rate buildings would have high ceilings and frontage toward the public park. Solar panels would be installed on all buildings, as required by CALGreen and the 2022 California Building Code.³

2.3.5.1 Lighting

Exterior lighting is proposed for the development for security and safe access. All outdoor exterior lighting, including lighting for the new park, would conform to City Council Policy 4-3: Outdoor Lighting on Private Developments and the Zoning Ordinance lighting requirements under Municipal Code Sections 20.40.530 and 20.40.540. No high intensity lights are proposed for evening sports activities.

2.3.5.2 Other Utilities

The project includes the provision of services and utilities to serve the project, including water, storm drainage, wastewater, and solid waste. The project would connect to existing utility lines located along Epic Way, Seely Avenue, and Montague Expressway; no off-site improvements would be required to provide utility connections to the project. A stormwater control plan is proposed that would direct runoff to stormwater treatment systems prior to flowing into the City's storm drainage system. This would consist of directing runoff to landscaped areas including biotreatment planters (specifically, flow-through planters that would allow runoff to soak through and filter into an underdrain system). The project would include a connection to an existing recycled water line either on the northeast side of the project site or within Epic Way for landscape irrigation, including irrigation associated with the public park.

2.3.5.3 Other Public Improvements

The project includes installation of 7.5- to 10-foot-wide sidewalks along Seely Avenue and Epic Way frontages, including street dedications, as needed, and would include placing the existing overhead Pacific Gas & Electric (PG&E) lines partially underground within the public right-of-way on the Seely Avenue and Montague Expressway frontages. Two driveways on Seely Avenue and one driveway on Epic Way would be constructed. The proposed vehicle driveways would be constructed to meet the *San José Citywide Design Standards and Guidelines* or otherwise approved by City staff. Development of the project would include installation of a Class II and Class IV bike lane along a portion of Seely Avenue and a new striped median along the entire segment of Seely Avenue to separate northbound and southbound vehicular traffic. Nine new private streets would be constructed to provide internal circulation within the project site, as well as new sidewalk, curb, gutter, and landscaping throughout the project site.

³ 2022 California Residential Code, Title 24, Part 2.5. Available: https://codes.iccsafe.org/content/CARC2022P1/chapter-3-building-planning#CARC2022P1_Pt03_Ch03_SecR324.

2.3.5.4 Landscaping

A landscape plan has been prepared for the project as shown in **Figure 2-14**. Landscaping is proposed for the courtyards of the market rate and affordable apartment buildings. In addition, street tree plantings are proposed for the new internal roadways, as well as along Seely Avenue, Montague Expressway, and Epic Way. A 4-foot high wood and wire mesh fence would be installed along the property line on the east side, and a 7-foot high wood fence would be installed along the property line on the north side. The project site contains 584 trees of various species that would be removed as part of the project (refer to **Section 3.4, Biological Resources** for additional detail). There would be a total amount of 803 replacement trees to be planted.

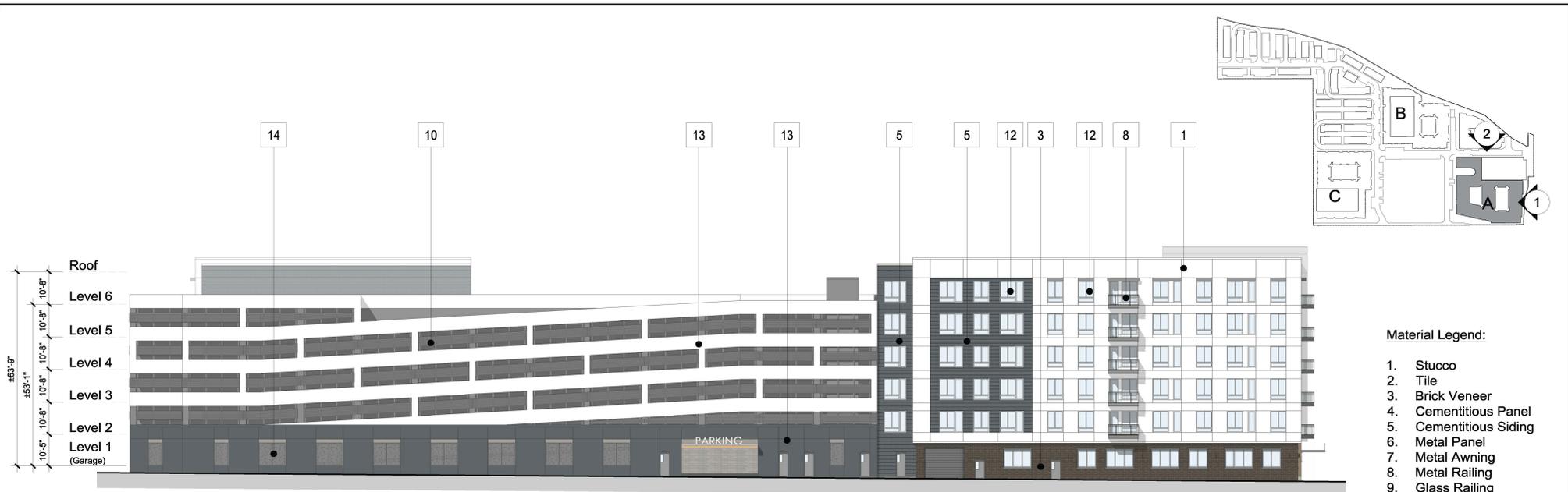


2. Building A - South Elevation



1. Building A - West Elevation
Source: KTG Architecture, June 2023

Elevations - Building A - West & South



2. Building A - North Elevation



1. Building A - East Elevation

Source: KTG Architecture, June 2023

Elevations - Building A - North & East



- Material Legend:**
1. Stucco
 2. Brick Veneer
 3. Tile
 4. Cementitious Panel
 5. Cementitious Siding
 6. Metal Panel
 7. Metal Awning
 8. Metal Railing
 9. Glass Railing
 10. Decorative Metal Screen
 11. Storefront
 12. Vinyl Window

2. Building B - East Elevation



1. Building B - South Elevation

Source: KTG Architecture, June 2023

Elevations - Building B - East & South



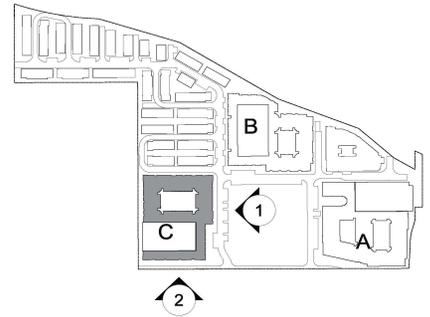
2. Building B - West Elevation



1. Building B - North Elevation

Source: KTG Architecture, June 2023

Elevations - Building B - West & North



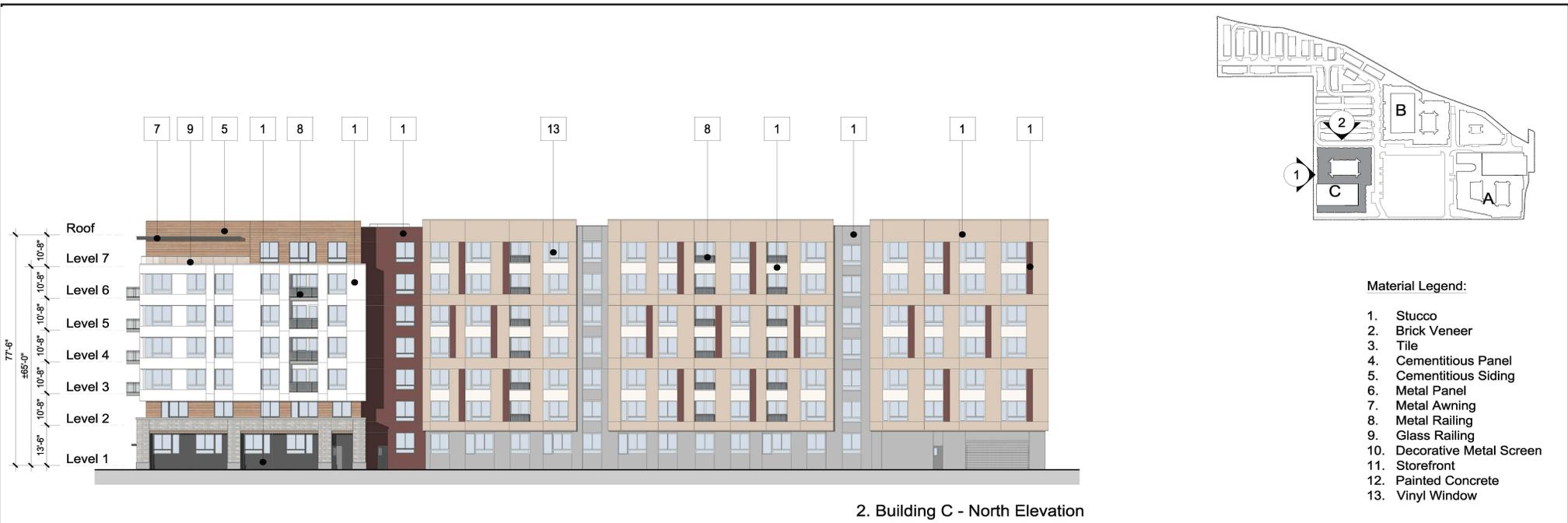
2. Building C - South Elevation



1. Building C - East Elevation

Source: KTG Architecture, June 2023

Elevations - Building C - East & South



Source: KTG Architecture, June 2023

Elevations - Building C - West & North

0 Seely Avenue Mixed-Use Project
Draft Environmental Impact Report

Figure

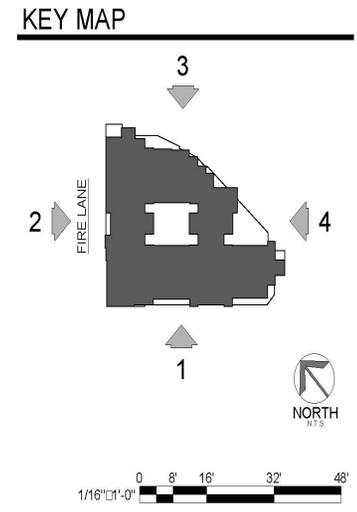
2-9b



NORTHWEST ELEVATION 2



SOUTHWEST ELEVATION 1

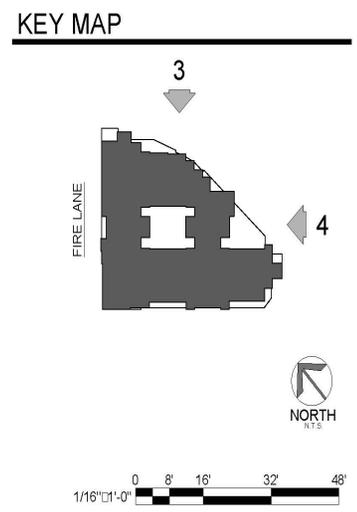


Source: KTG Architecture, June 2023

Elevations - Affordable Apartment Building - Southwest & Northwest

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Figure
2-10a



Source: KTG Architecture, June 2023

Elevations - Affordable Apartment Building - Southeast & Northeast

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Draft Environmental Impact Report

Figure
2-10b

- EXTERIOR MATERIALS
1. COMPOSITION SHINGLE ROOFING
 2. STUCCO (LACE FINISH)
 3. FIBER CEMENT SIDING
 4. STEEL & WOOD RAILING & SCREEN WALLS
 5. INSULATED VINYL WINDOWS
 6. FIBERGLASS FRONT DOOR
 7. SECTIONAL ROLL-UP GARAGE DOOR
 8. EXTERIOR LIGHT FIXTURE



UNIT 4 UNIT 3R UNIT 2 UNIT 2 UNIT 3 UNIT 4R
FRONT ELEVATION



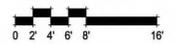
UNIT 4R
RIGHT ELEVATION



UNIT 4R UNIT 3 UNIT 2 UNIT 2 UNIT 3R UNIT 4
REAR ELEVATION



UNIT 4
LEFT ELEVATION

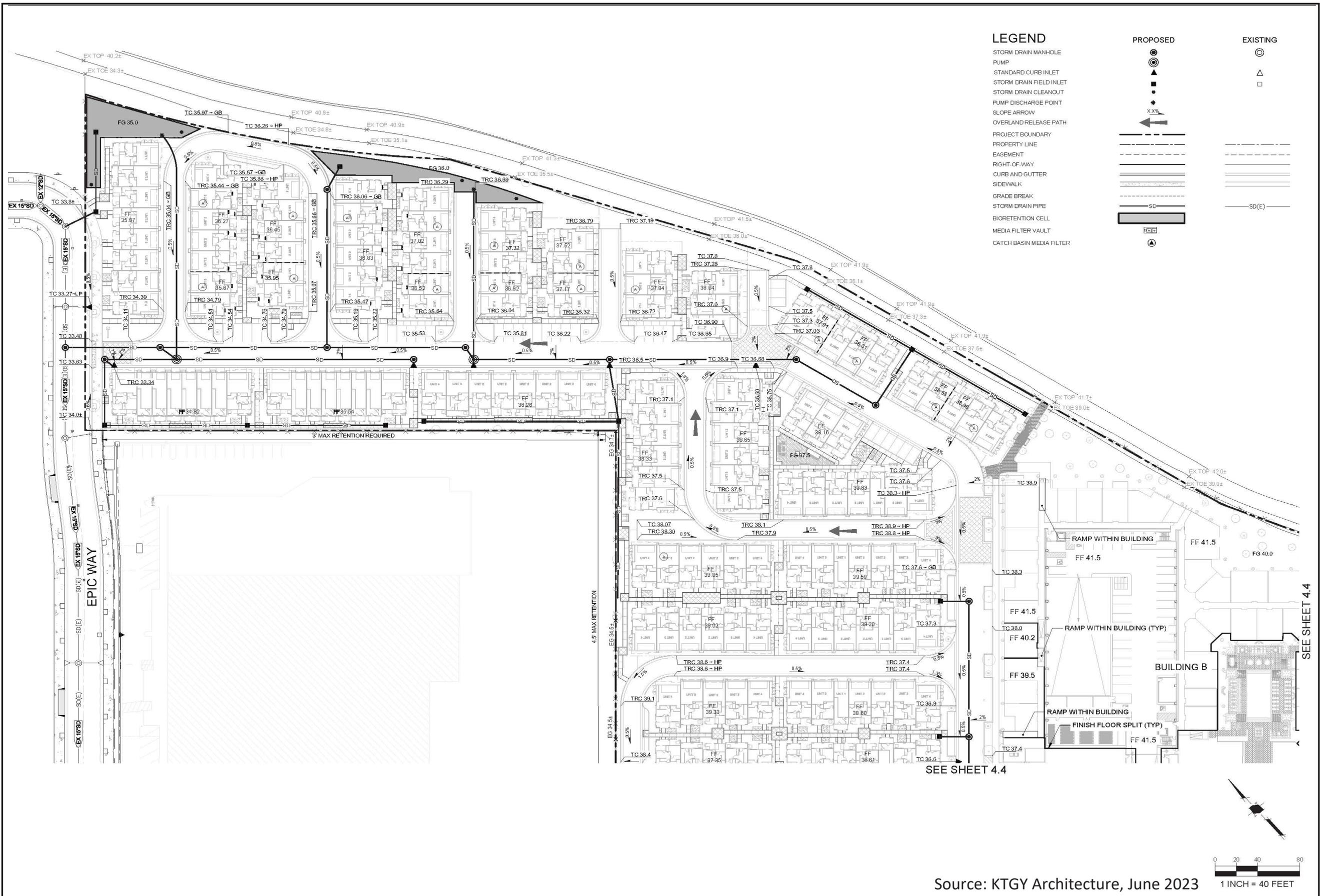


Source: KTGy Architecture, January 2022

Elevations - Townhomes

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Figure
2-11



Grading and Drainage Plan-North

Source: KTG Architecture, June 2023

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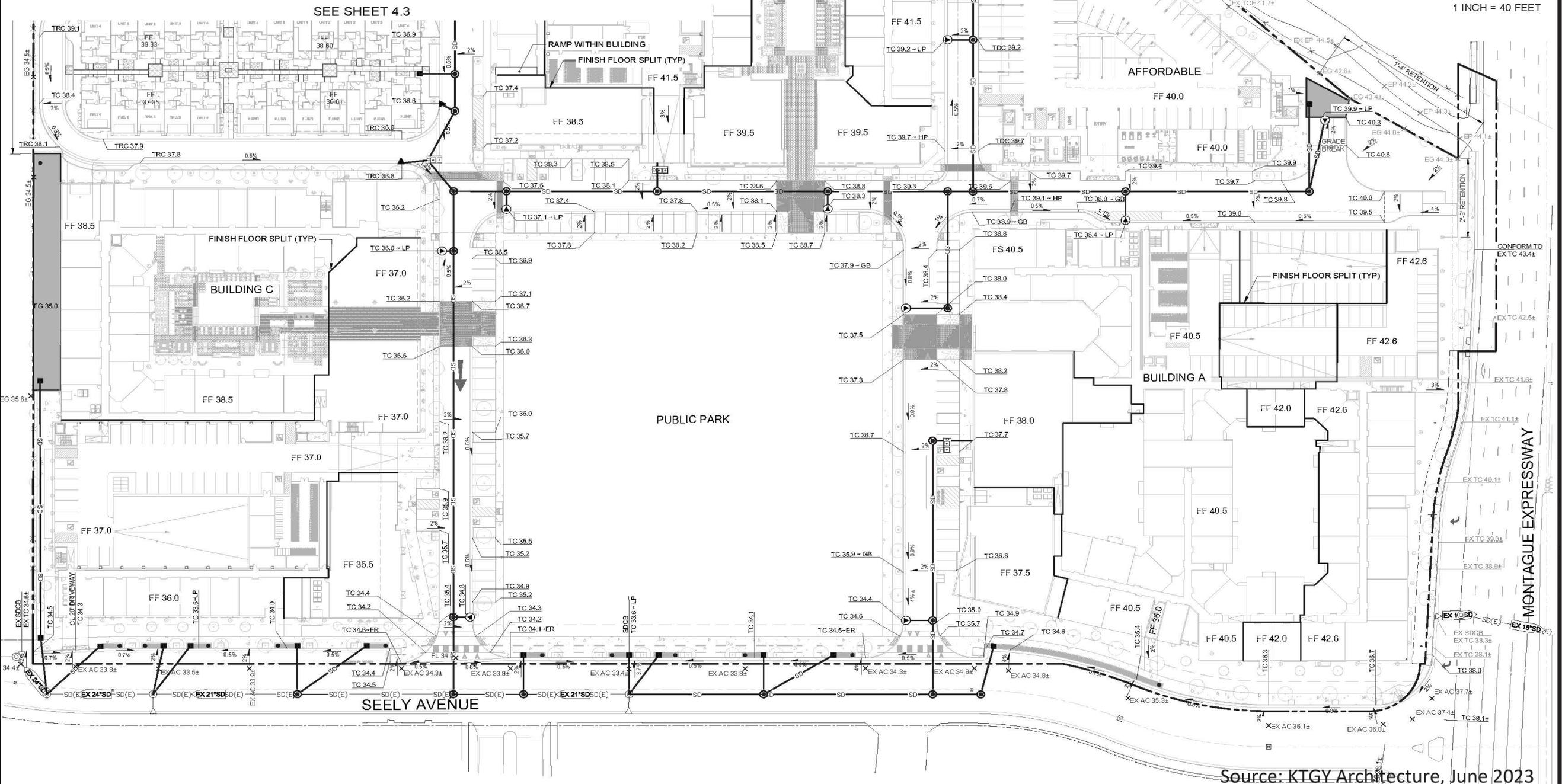
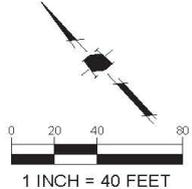
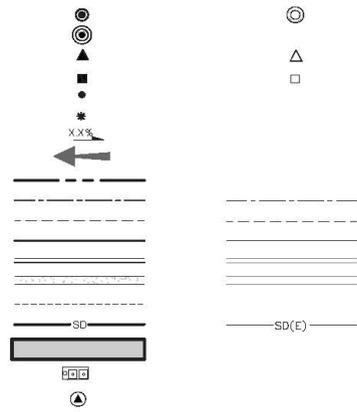
Figure
2-12a

LEGEND

- STORM DRAIN MANHOLE
- PUMP
- STANDARD CURB INLET
- STORM DRAIN FIELD INLET
- STORM DRAIN CLEANOUT
- PUMP DISCHARGE POINT
- SLOPE ARROW
- OVERLAND RELEASE PATH
- PROJECT BOUNDARY
- PROPERTY LINE
- EASEMENT
- RIGHT-OF-WAY
- CURB AND GUTTER
- SIDEWALK
- GRADE BREAK
- STORM DRAIN PIPE
- BIORETENTION CELL
- MEDIA FILTER VAULT
- CATCH BASIN MEDIA FILTER

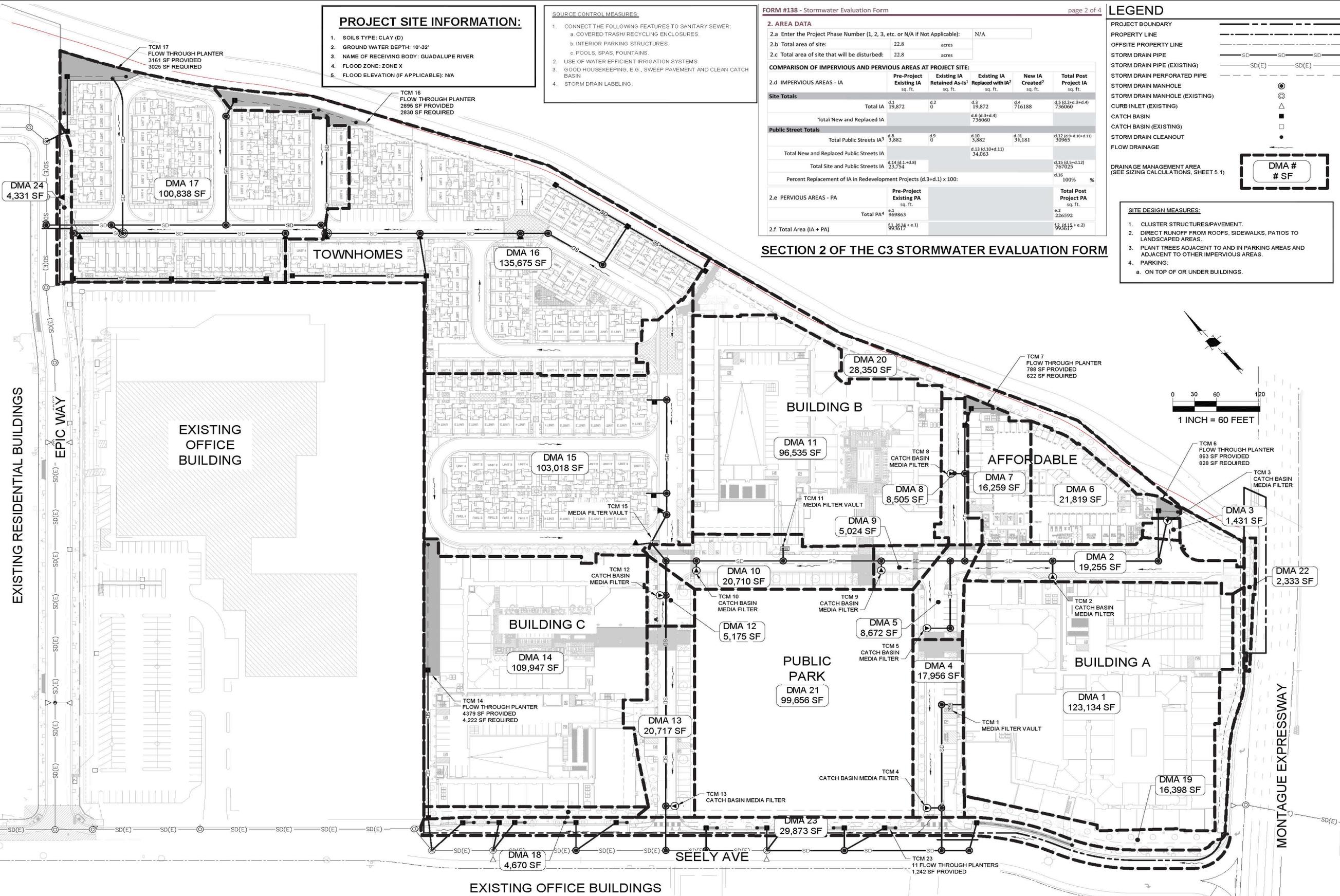
PROPOSED

EXISTING



Source: KTG Architecture, June 2023

Grading and Drainage Plan-South



Source: KTG Architecture, August 2023

Stormwater Control Plan

0 Seely Avenue Mixed-Use Project
 Draft Environmental Impact Report

Figure 2-13



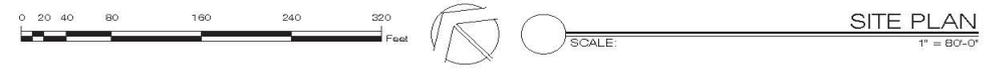
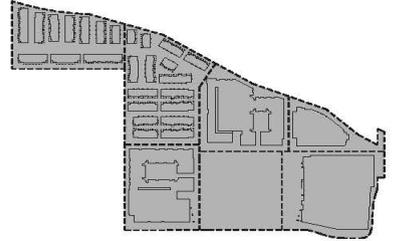
PLANTING PALETTE - TREES

BOTANICAL NAME	COMMON NAME	SIZE	QUANTITY
SEELY AVENUE / EPIC WAY STREET TREE	QUERCUS SUBER	CORK OAK	36" BOX 21
MONTAGUE EXPRESSWAY STREET TREE	QUERCUS AGRIFOLIA	COAST LIVE OAK	36" BOX 14
PRIVATE ROAD STREET TREE	QUERCUS SUBER	CORK OAK	36" BOX 81
TREES			
ACER MIYABII MORTON'	STATE STREET MAPLE	24" BOX	0
ACER PALMATUM SANGO-KAKU'	CORAL BARK MAPLE	24" BOX	26
ACER URURUM NEW WORLD'	NEW WORLD MAPLE	24" BOX	0
AFROCARPUS GRAECOLOR	REIN PINN	24" BOX	25
ARJUNTUS MARINA'	STRAWBERRY TREE	24" BOX	0
BAMBUSA MULTIFLORA ALPHONSE KARR'	ALPHONSE KARR BAMBOO	24" BOX	0
BETULA NIGRA	RIVER BIRCH	24" BOX	0
BRICOTRYA DEPLEVA	BRICOTRYA DEPLEVA	24" BOX	0
CELA PARVIFOLIA	AUSTRALIAN WILLOW	24" BOX	26
CHIKO BLOBA MULTUM GOLD'	MADEIRA TREE	24" BOX	0
JUNIPERUS CHINENSIS TORULOSA'	HOLLYWOOD JUNIPER	24" BOX	0
LASERSTROMIA SIBIRICA	OSAGE MYRTLE	24" BOX	0
MAACRIA AMURENSIS MAACHRICENT'	MAACRIA	24" BOX	0
OLEA EUROPAEA SHIAN HILL'	SHIAN HILL OLIVE	24" BOX	0
PHOENIX DACTYLIFERA	MEDICINAL DATE PALM	16" B.T.H.	34
PODOCARPUS ELONGATUS YCEE BLUE'	YCEE BLUE PODOCARPUS	28" BOX	0
PODOCARPUS HENKELI	LONG LEAF YELLOWWOOD	15 GALLON	201
QUERCUS ROBUR FRASCATO	ENGLISH OAK	24" BOX	0
ROBINA DAHOENSIS PURPLE BLUE'	IDAHO LOCUST	24" BOX	0
TILIA TORMENTOSA	STERLING SILVER LINDEN	24" BOX	0
ULMUS FRONZTEI	FRONTIER ELM	24" BOX	0
ZELKOVA SERRATA CITY SPRITE'	CITY SPRITE ZELKOVA	24" BOX	0
TOTAL			450

PLANTING PALETTE - SHRUBS & GROUNDCOVER

BOTANICAL NAME	COMMON NAME	SIZE	SPACING
SHRUBS			
AECIDIUM ARBOREUM EWARTKOP'	AEONUM	5 GAL	24" O.C.
AGAVE ATTENUATA	AGAVE	24" O.C.	
AGAVEUS DENSIORIS 'SPRENGER'	SPRINGER AGAVE	5 GAL	24" O.C.
ARJUNTUS UNDO 'COMPACTA'	DWARF STRAWBERRY TREE	5 GAL	24" O.C.
ARCHOSTAPHYLOS EDWARDSII	LITTLE SUR MANZANITA	1 GAL	24" O.C.
CALUSTEMON LITTLE JOE'	BOTTLE BRUSH	5 GAL	24" O.C.
CISTUS DORIS 'HEBERSON'	DORIS HEBERSON ROCKROSE	5 GAL	24" O.C.
CAMELLIA SASAKI 'JEAN MAY'	SASAKIA CAMELLIA	5 GAL	24" O.C.
DETHEE VEGETA	FORTNIGHT LILY	5 GAL	24" O.C.
ESCALLONIA FRASCHI'	FRASCH ESCALLONIA	5 GAL	24" O.C.
ESCALLONIA RUBRA 'TERRI'	DWARF ESCALLONIA	5 GAL	24" O.C.
HELIOTROPIS LITTLE JOE'	HELIOTROPIS LITTLE JOE	1 GAL	12" O.C.
HEMEROCALLIS BITSY'	EVERGREEN DAY LILY	1 GAL	24" O.C.
HEMEROCALLIS BLAKEI 'ED STELLA'	EVERGREEN DAY LILY	1 GAL	24" O.C.
LOREPETALUM CHINENSIS RAZZLEBERRY'	CHINESE PRINCE FLOWER	5 GAL	42" O.C.
LOSTRUM CALIFORNICA 'TEXANUM'	FRUIT OF THE LOST	15 GAL	50" O.C.
MYRICA CALIFORNICA	PACIFIC WAX MYRTLE	5 GAL	60" O.C.
NAIDIA DIMORPHICA 'COMPACTA'	HEAVENLY BAMBOO	5 GAL	24" O.C.
NAUSELLA TENNESSEE	MEADOW REATHER GRASS	5 GAL	24" O.C.
POLYSTICHUM MUNITUM	SWORD FERN	5 GAL	24" O.C.
PHORMIUM SHERAZ'	NEW ZEALAND FLAX	5 GAL	24" O.C.
PHORMIUM JACK SPART'	NEW ZEALAND FLAX	1 GAL	18" O.C.
PHORMIUM TOM THUMB'	NEW ZEALAND FLAX	1 GAL	24" O.C.
PHORMIUM 'SPRIGOT QUEEN'	NEW ZEALAND FLAX	1 GAL	48" O.C.
PHORMIUM SUBER	NEW ZEALAND FLAX	5 GAL	60" O.C.
PHORMIUM 'YELLOW WAVE'	NEW ZEALAND FLAX	5 GAL	72" O.C.
PHORMIUM 'LITTLE JOE'	NEW ZEALAND FLAX	5 GAL	84" O.C.
PRUNUS LAURO-CERASUS ZABELIANA'	ZABEL LAUREL	5 GAL	84" O.C.
PRUNUS LAURO-CERASUS CHANNING'	TOBIIRA	5 GAL	60" O.C.
RITTOFORIUM TOBIIRA VARIEGATA'	TOBIIRA	5 GAL	60" O.C.
RAPHIOLEPS CLARA	CLARA INDIAN HAWTHORNE	5 GAL	60" O.C.
RAPHIOLEPS MAJESTIC BEAUTY'	INDIAN HAWTHORNE	15 GAL	84" O.C.
RHAMNUS CALIFORNICA 'SEA VIEW'	COFFEEBERRY	5 GAL	24" O.C.
ROSA KNOCKOUT MEDIA LAND'	FLOR CANPET ROSE	5 GAL	24" O.C.
ROSA KNOCKOUT PARK	KNOCKOUT ROSE	5 GAL	24" O.C.
SALVIA LEUCANTHA SANTA BARBARA'	DWARF SANTA BARBARA SALVIA	5 GAL	24" O.C.
SOLYIA HETEROPHYLLA	BLUBBELL CHEEFLY	15 GAL	24" O.C.
TRELOCHIA LITTLE JOE'	TRAILBLAZER	5 GAL	24" O.C.
VERBENA LINDENBERGIA	LINDENBERGIA	5 GAL	60" O.C.
VERBENA LINDENBERGIA	LINDENBERGIA	5 GAL	60" O.C.
XYLODIA CONGESTUM COMPACTA	COMPACT SHINY XYLODIA	5 GAL	24" O.C.
GROUNDCOVER			
SEASOAL COLOR	COLOR PLANTING	4" POT	9" O.C.
ARCTOSTAPHYLOS LIVA-URSI POINT REYES'	POINT REYES BEARBERRY	1 GAL	18" O.C.
AGAPANTHUS THURBERRELLI	DWARF AGAPANTHUS	1 GAL	18" O.C.
CAREX PHYLLOSPHILA 'SPARKLER'	SPARKLER PALM SEDGE	1 GAL	18" O.C.
CAREX OSMUNDENSIS EVEREST'	BERKLEY SEDGE	1 GAL	18" O.C.
CENANTHUS GRUBBI HORSE TAILIS	YANKEE POINT CENANTHUS	1 GAL	18" O.C.
COPROSMA KIRKI VARIEGATA'	COPROSMA	1 GAL	18" O.C.
COTONEASTER DAMMERI 'LOW FAT'	BEARBERRY COTONEASTER	1 GAL	18" O.C.
FESTUCA GLAUCA 'ELIJAH BLUE'	ELIJAH BLUE FESCUE	1 GAL	24" O.C.
LANTANA MONTEVIDEENSIS	LANTANA	1 GAL	24" O.C.
LIRIOPE 'SILVERLY SUNPROOF'	LILY TUFT	1 GAL	24" O.C.
LOTUS MAJALIS 'NIP'	TRIALGLOTUS	1 GAL	24" O.C.
MYOPORIUM PARVIFOLIUM	CREeping BOOBIALLA	1 GAL	18" O.C.
OPHIPODON HIRSHSSENS	BLACK HONDO GRASS	5 GAL	24" O.C.
PELARGONIUM PELTATUM 'SUMMER SHOWERS'	IVY GERANIUM	1 GAL	30" O.C.
ROSMARINUS IRENE	ROSEMARY	5 GAL	24" O.C.
SEDUM DASYPHYLLUM MAJOR'	TRAILING SEDUM	4" POT	6" O.C.
SEDUM DRAGON'S BLOOD	DRAGON'S BLOOD	4" POT	6" O.C.
SENECIO MAHARAJASAE	SENECIO	4" POT	12" O.C.
VERBENA HOMESTEAD PURPLE'	VERBENA	4" POT	12" O.C.
LAWN			
FESTUCA SPP.	FESCUE	500	N/A
BIO-RETENTION			
CAREX PANSA'	DUNE SEDGE	1 GAL	18" O.C.
CERISE OCCIDENTALIS MULTI'	WESTERN REDBUD	15 GAL	AS SHOWN
CHONDRORHIZAL TECTORIUM	SHRUB CARE RUSH	1 GAL	24" O.C.
DETHEE IRIDIODES	FORTNIGHT LILY	1 GAL	24" O.C.
GAURA LINDENBERGIA	WHITE GAURA	1 GAL	12" O.C.
JUNCUS PATENS CALIF.	GREY RUSH	1 GAL	24" O.C.
LIPSA KODIOLICA	KODIOLICA	1 GAL	12" O.C.
MULLEBERGIA GIGENS	DEER GRASS	1 GAL	48" O.C.
PERISTEMMA HETEROPHYLLUS 'BLUE SPRINGS'	FOOT HILL BEARDTONGUE	1 GAL	24" O.C.
STIPA PULTRIA	PURPLE NEEDLEGRASS	1 GAL	24" O.C.

- GENERAL NOTES**
- ALL MECHANICAL EQUIPMENT SHALL BE SCREENED.
 - INCLUDE 3 INCHES OF COMPOSTED, NON-FLOATABLE MULCH IN AREAS BETWEEN STORMWATER TREATMENT PLANTINGS
 - STREET TREES SHOWN IN THE PUBLIC RIGHT OF WAY ARE FOR INFORMATION ONLY. THE PLANNING PERMIT DOES NOT AUTHORIZE THE INSTALLATION OR REMOVAL OF TREES IN THE PUBLIC RIGHT OF WAY. ACTUAL STREET TREE LOCATIONS WILL BE DETERMINED BY PUBLIC WORKS AT THE IMPLEMENTATION STAGE ON THE PUBLIC IMPROVEMENT PLAN. THE INSTALLATION OR REMOVAL OF THE STREET TREES REQUIRES A PERMIT FROM THE DEPARTMENT OF TRANSPORTATION. THE CITY ARBORIST WILL SPECIFY THE TREES.
 - PLANT PALETTE IS SUBJECT TO CHANGE, WITH ADDITIONS AND REMOVALS ANTICIPATED IN RESPONSE TO CHANGING URBAN AND ENVIRONMENTAL CONDITIONS, PLANT PESTS AND/OR DISEASE AND NURSERY AVAILABILITY.



Landscape Plan

2.3.5.5 Vehicle Access and Parking

Vehicular access to the project site would be provided via two driveways on Seely Avenue and one driveway on Epic Way. Seely Avenue is bookended by River Oaks Parkway to the northwest and Montague Expressway to the southeast. As such, vehicles approaching the project site would access Seely Avenue either from Montague Expressway or River Oaks Parkway. Site access via Seely Avenue from Montague Expressway would be limited to a right-turn-in and right-turn-out configuration, similar to existing conditions. The project would include 1,885 parking spaces for the residential component and 82 for the retail component for a total of 1,967 spaces (see **Figure 2-4** for the locations of planned parking lots and structures). The market-rate apartment buildings would each have a dedicated, multi-level parking structure with driveway access from the proposed internal streets. The affordable apartment building would have a one level, at grade parking structure. The for-sale townhome development would include private, attached two-car garages for each unit.

The project would create nine new private streets within the project site to provide vehicular circulation, and six new alleys for townhome access and parking. Buildings A, B, and C would all provide long-term bike parking at a ratio of 0.5 per unit, which is double the City's required 0.25 bike parking ratio standard, and each of these buildings would provide at least 56 motorcycle parking spaces per building as part of the PD Zoning. The townhomes would provide long-term bicycle parking at a ratio of 2 spaces per unit. The affordable apartment building would provide long-term bicycle parking at a ratio of 0.26 spaces per unit. Buildings A, B and C would also provide a total of 18 short-term bicycle parking spaces for the retail components.

2.3.6 Construction

The construction schedule for the project assumes a start date of June 2024 to begin demolition and mass grading of the entire project site, including the park site. Construction is anticipated to finish in 2028 with completion of Building C. This represents the most aggressive feasible construction schedule as of the writing of this EIR.⁴

Construction is proposed between the hours of 7:00 AM to 7:00 PM Monday through Friday, and Saturday 8:00 AM to 5:00 PM. As shown below in **Table 2-4**, the project is expected to be constructed in six phases, beginning with construction of the infrastructure, including the undergrounding of existing above-grade power lines on Montague Expressway and Seely Avenue within the project site in Summer 2024. For the purposes of this analysis, it is assumed that the park and well would also be constructed during this first phase; actual timing would be dependent on SJPRNS and SJMW, respectively. The Phase 2 construction duration for the townhomes would be approximately 16 months. Phase 3 would occur with the construction of Building A lasting approximately 24 months. Phase 4 with the construction of the affordable apartment building would be approximately 18 months. Phase 5 with Building B would take approximately 24 months to complete. Phase 6 construction of Building C would take

⁴ Specific analyses such as Air Quality and Noise analyze an earlier version of the construction schedule where construction was anticipated to begin in January 2024 and the order of construction phasing was different. This earlier start date represents a conservative "worst-case" scenario for those analyses both in terms of timing and phasing. The earlier start date would result in a more conservative analysis scenario because impacts from construction would generally decrease the later construction starts as technology improves and additional regulations go into effect. Phasing was determined to be more conservative due to the proximity of initial phases to sensitive receptors.

0 Seely Avenue Mixed-Use Project

approximately 24 months to complete.⁵ No pile driving is proposed during construction. Construction equipment expected to be used includes:

- Air Compressors
- Aerial Lifts
- Bore/Drill Rigs
- Cement and Mortar Mixers
- Concrete/Industrial Saws
- Cranes
- Crawler tractors
- Excavators
- Forklifts
- Graders
- Pavers
- Paver equipment
- Rollers
- Tractor/Loader/Backhoes Excavators
- Welders

Table 2-4 Project Phasing

Phase	Units	Construction Start	Construction End	Occupancy Start
1: Infrastructure + Well ¹	N/A	June 2024	February 2025	N/A
2: Townhomes	154	September 2024	January 2026	January 2026
3: Building A	399	October 2024	October 2026	October 2026
4: Affordable Apartment Building	178	April 2025	October 2026	October 2026
5: Building B	372	October 2025	October 2027	October 2027
6: Building C	371	October 2026	October 2028	October 2028

Source: Hanover, 2023

Note: This schedule represents the most aggressive feasible construction schedule as of the writing of this EIR. Specific analyses such as air quality and noise analyze an earlier version of the construction schedule where construction was anticipated to begin in January 2024 and phasing was different. This earlier start date represents a conservative “worst-case” scenario for those analyses both in terms of timing and phasing. The earlier start date would result in a more conservative analysis scenario because impacts from construction would generally decrease the later construction starts as technology improves and additional regulations go into effect. Phasing was determined to be more conservative due to the proximity of initial phases to sensitive receptors.

1. The construction timeline for the new well is uncertain as it would be constructed by SJMC, and may ultimately take longer to construct. However, the 8-month timeline shown here represents a worst-case scenario because a shorter, more intense construction period would have greater construction period impacts.

⁵ Note that the construction schedule for the market rate apartment buildings (Building A, B, and C) can occur in any order, as constructability and market conditions (e.g., cost of construction materials) can delay construction or change construction sequence.

2.3.6.1 Well

Proposed construction of the new well would occur during the first phase of construction. During site preparation, trucks would deliver construction equipment and miscellaneous materials to the project area and field offices would be set up. Approximately 40 cubic yards of soils would be generated from excavation and trenching of the well site, and 230 cubic yards of soil would be generated from drilling of the well.

Well construction would consist of drilling the well borehole, installation of the well casing and annular gravel pack material, and hydraulic testing of the well. Continuous activity would be required during selected phases of construction to: (a) prevent the borehole from collapsing, which could occur if the borehole were left unsupported before the well casings were installed, and; (b) monitor the well during pump testing and well development.

The borehole would be drilled using a truck-mounted reverse-circulation mud-rotary drilling rig. A drilling fluid would be used to cool the drill head and transport the cuttings up from the bottom of the borehole during drilling operations. Drilling fluids and initial development water (dirty water that cannot be placed into the storm drain) would be disposed of into the sanitary sewer. Before discharging to the sanitary sewer, fluids would go through a series of two filter tanks to allow solids to settle out.⁶

Following drilling, the well casing and well screens would be installed. A gravel envelope would be placed around the well screen to prevent sediment from entering the water during pumping operations. The well casing would be grouted from the surface to near the top of the uppermost well screen. In addition, a conductor casing would be installed to provide a sanitary seal in accordance with the State Water Resources Control Board (SWRCB) Drinking Water Program and Valley Water Well Construction requirements.

There will be waste management on-site where soil cuttings would be temporarily stored in a 20-yard bin located adjacent to the rig system and subsequently hauled by truck to a Class II or Class III landfill⁷, depending on the chemical composition of the soil. No excavated material will be re-used for backfill. During construction, the contractor will be responsible to find the location of acceptable landfills to haul off either hazardous or non-hazardous soil cuttings from the sites.⁸

⁷ Non-hazardous waste generated during Project construction could be off-hauled to either Kirby Canyon Landfill or Newby Island Landfill (both Class III, non-hazardous waste facilities). Hazardous waste generated during Project construction could be off-hauled to Kettleman Hills Hazardous Waste Facility (a Class I - hazardous and nonhazardous and Class II – hazardous waste facility).

⁷ Non-hazardous waste generated during Project construction could be off-hauled to either Kirby Canyon Landfill or Newby Island Landfill (both Class III, non-hazardous waste facilities). Hazardous waste generated during Project construction could be off-hauled to Kettleman Hills Hazardous Waste Facility (a Class I - hazardous and nonhazardous and Class II – hazardous waste facility).

⁸ If the excavated soil from construction is considered non-hazardous material, then it would be taken to the Newby Island C&D Recycling Facility as stated in the current agreement between City of San José and International Disposal Corporation.

Pipelines Associated with the Well

Construction of the pipelines would include: site preparation; clearing and grading; construction of appurtenant facilities; trenching/installing pipelines, and pressure testing and startup.

Site preparation for and installation of the pipelines would be completed during Phase 1. Construction of the pipelines would involve excavating trenches for the pipelines, placing the pipelines, backfilling the trenches, and restoring the asphalt surface. All pipelines would be constructed using open trench (i.e., cut and cover) techniques. Open trench construction involves excavating a trench, removing the soil, installing the pipeline, backfilling the trench, and installing asphalt over the backfilled trench. The approximate maximum depth of trench for the proposed pipeline will be based from City Standard Details⁹ as well as the diameter of the pipe. The pipeline would have a minimum cover of 48-inches from finish grade to the top of the pipe and the maximum excavation for pipeline six feet below ground surface (bgs). The width of pipeline trenches would vary based upon pipeline diameter. Approximately 12-feet on either side of the pipeline trenches would be required for equipment use and pipeline storage during construction. Approximately 2,055-cubic yards of spoils would be generated from construction of the conveyance piping system at the well site. Pipelines would be installed at a rate of approximately 100-feet per day. Isolation or gate valves would be installed at intersections and/or every 300 to 500-feet, and at the tie-ins or point of connection to the existing main.

During pressure testing and disinfection no large equipment or materials would be needed.

2.3.6.2 Grading

Development of the project is estimated to result in 30,796 cubic yards of cut and 24,412 cubic yards of fill, with less than 10,000 cubic yards of soil export during site preparation and grading. The Grading and Drainage Plan can be viewed in **Figure 2-12**. The Stormwater Control Plan can be viewed in **Figure 2-13**. The Landscape Plan can be viewed in **Figure 2-14**.

2.4 Project Objectives

Pursuant to CEQA Guidelines Section 15124, the EIR must identify the objectives sought by the project. The objectives of the project are as follows:

1. Develop a mixed-use project consistent with the goals and vision of the Envision San José 2040 General Plan (2040 General Plan) on an underutilized site that will provide both market rate and affordable housing, with commercial and retail uses nearby.
2. Promote key policies envisioned in the 2040 General Plan for the North San José Growth Area including increasing housing opportunities and providing new high-density residential development exceeding the City's minimum density requirements of 75 dwelling units per acre (du/ac), in close proximity to employment centers.

⁹ <https://www.sanjoseca.gov/home/showpublisheddocument?id=36466>

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3. Locate higher density housing with easy access to transportation corridors (e.g., Montague Expressway), bus corridor stops, commercial services, and employment opportunities that reduces vehicle miles traveled (VMT).
4. Offer a mix of unit types, sizes, and levels of affordability to accommodate a range of potential residents. Provide a diverse range of high-quality rental and for-sale housing that will satisfy a variety of household needs in North San José.
5. Deliver affordable housing consistent with the goals set forth in the City's recently amended Inclusionary Housing Ordinance.
6. Assist the City to satisfy its Regional Housing Needs Allocation for both market rate and below market rate housing units.
7. Provide housing and active commercial and open spaces in a vibrant mixed-use neighborhood with the amenities and services necessary to support a diverse, thriving community of residents and workers.
8. Allocate space for a new public park along a public street that would be visible and centrally accessible to the public within convenient walking distance.
9. Create a well-connected neighborhood with on-site services and community amenities.
10. Develop commercial retail spaces on the project site that would attract diverse tenants, adapt to future needs, integrate local small businesses, stimulate local economic activity, serve the neighborhood, and complement adjacent public spaces.
11. Intensify the surrounding neighborhood and community through quality design, materials, and landscaping.

2.5 Project-Related Approvals, Permits, and Clearances

The City is the Lead Agency with responsibility for approving the project. Valley Water is a responsible agency with the responsibility for approving the encroachment permit for work near the Coyote Creek levee. This EIR will be relied upon for, but not limited to, the following project-specific discretionary approvals necessary to implement the project as proposed:

- Planned Development Zoning – City of San José
- Planned Development Permit – City of San José
- Vesting Tentative Subdivision Map – City of San José
- Public Works Clearances (Grading Permit, Public Improvement Permit, Construction Agreement) – City of San José
- Final Subdivision Map – City of San José
- Parcel Map – City of San José
- Building and Demolition Permits – City of San José
- Parkland Agreement – City of San José

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- Affordable Housing Agreement – City of San José
- Site Management Plan - SCCDEH
- Encroachment Permit - Army Corps of Engineers, Santa Clara Valley Water Agency
- Removal Action Plan - DTSC

3 ENVIRONMENTAL SETTING, IMPACTS, AND MITIGATION

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

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

The discussion for each environmental area of analysis includes the following:

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

Impact Discussion – This subsection includes the adopted CEQA thresholds by the City to assess impacts.

Project Impacts – This subsection describes the project’s impact to the baseline conditions on and around the project site. 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).

3.1 Aesthetics

This section describes the impacts on aesthetics and visual quality that would result from implementation of the project. The analysis is based on a site visit, existing conditions photography, and visual simulations prepared by KTG Architecture in April 2022.

During the public scoping process, concerns were expressed about visual impacts of the project. Specifically, the commenters expressed concerns about the height of the proposed apartment buildings creating shade and shadow impacts and the introduction of new sources of nighttime lighting.

3.1.1 Environmental Setting

3.1.1.1 Regulatory Framework

State

State Scenic Highways Program

The State Scenic Highways Program is managed by the California Department of Transportation (Caltrans) and is designed to protect and enhance the natural scenic beauty of California highways and adjacent corridors through special conservation treatment. The nearest state-designated scenic highway is State Route (SR) 680, located approximately 4 miles north of the project site in Fremont.

Senate Bill 743

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

- The project is a residential, mixed-use residential, or employment center project; and
- The project is located on an infill site within a transit priority area. SB 743 also states that aesthetic impacts do not include impacts on historical or cultural resources. Further, it clarifies that local governments retain their ability to regulate a project's transportation, aesthetics, and parking impacts outside of the CEQA process.

Local

Outdoor Lighting Policy (City Council Policy 4-3)

The City's Outdoor Lighting Policy (City Council Policy 4-3) and City's Interim Lighting Policy Broad Spectrum Lighting for Private Development promote energy efficient outdoor lighting on private development to provide adequate light for nighttime activities while benefiting the continued enjoyment of the night sky and continuing operation of the Lick Observatory by reducing light pollution and sky glow.

2040 General Plan

The 2040 General Plan includes several policies that are relevant to an evaluation of the visual quality of the project site. Policies and objectives applicable to the project are identified below in **Table 3-1**.

Table 3-1 Envision San José 2040 Relevant Visual Resources Policies

Policy CD-1.1:	Require the highest standards of architectural and site design, and apply strong design controls for all development projects, both public and private, for the enhancement and development of community character and for the proper transition between areas with different types of land uses.
Policy CD-1.8	Create an attractive street presence with pedestrian-scaled building and landscape elements that provide an engaging, safe, and diverse walking environment. Encourage compact, urban design, including use of smaller building footprints, to promote pedestrian activity through the City.
Policy CD-1.12	Use building design to reflect both the unique character of a specific site and the context of surrounding development and to support pedestrian movement throughout the building site by providing convenient means of entry from public streets and transit facilities where applicable, and by designing ground level building frontages to create an attractive pedestrian environment along building frontages. Unless it is appropriate to the site and context, franchise-style architecture is strongly discouraged.
Policy CD-1.13	Use design review to encourage creative, high-quality, innovative, and distinctive architecture that helps to create unique, vibrant places that are both desirable urban places to live, work, and play and that lead to competitive advantages over other regions.
Policy CD-1.17	Minimize the footprint and visibility of parking areas. Where parking areas are necessary, provide aesthetically pleasing and visually interesting parking garages with clearly identified pedestrian entrances and walkways. Encourage designs that encapsulate parking facilities behind active building space or screen parked vehicles from view from the public realm. Ensure that garage lighting does not impact adjacent uses, and to the extent feasible, avoid impacts of headlights on adjacent land uses.
Policy CD-1.23	Further the Community Forest Goals and Policies in this Plan by requiring new development to plant and maintain trees at appropriate locations on private property and along public street frontages. Use trees to help soften the appearance of the built environment, help provide transitions between land uses, and shade pedestrian and bicycle areas.
Policy CD-1.26	Apply the Historic Preservation Goals and Policies of this Plan to proposals that modify historic resources or include development near historic resources.
Policy CD-4.9	For development subject to design review, ensure the design of new or remodeled structures is consistent or complementary with the surrounding neighborhood fabric (including but not limited to prevalent building scale, building materials, and orientation of structures to the street).
Policy CD-8.1	Ensure new development is consistent with specific height limits established within the City’s Zoning Ordinance and applied through the zoning designation for properties throughout the City. Land use designations in the Land Use/ Transportation Diagram provide an indication of the typical number of stories expected for new development,

	however specific height limitations for buildings and structures in San José are not identified in the Envision General Plan.
Policy CD-10.3	Require that development visible from freeways (including U.S.101, I-880, I-680, I-280, SR17, SR85, SR237, and SR87) be designed to preserve and enhance attractive natural and man-made vistas.

Source: City of San José, 2022.

City’s Scenic Corridors Diagram

The 2040 General Plan defines scenic vistas in the City as views of and from the Santa Clara Valley, surrounding hillsides, and urban skyline. Scenic urban corridors, such as segments of major highways that provide gateways into the City, can also be defined as scenic resources by the City. The designation of a scenic route applies to routes affording especially aesthetically pleasing views. The project site is not located along any scenic corridors per the City’s Scenic Corridors Diagram¹⁰. According to the Scenic Corridor Diagram, the nearest scenic gateway is Montague Expressway, which is adjacent to the southeast portion of the project site. The Montague Expressway scenic gateway, starts at Coyote Creek near the eastern corner of the project site, crosses I-880 and ends near old Oakland Road.

3.1.1.2 Existing Conditions

Project Site

The project site is within an urbanized area of San José. The project site is partially developed with two residences, a fruit stand, agricultural land, and supporting structures. **Figure 3-1** identifies the locations from which existing conditions photos were taken, while **Figure 3-2** and **Figure 3-3** show the existing conditions as seen from the perimeter of the project site. As shown in **Figure 3-2**, views of the project site from Seely Avenue to the southeast, northwest, and north, are dominated by trees, grass, and existing electrical utility lines. Given the topography, no views of distant mountain ranges or other scenic resources are available from these locations. As shown in **Figure 3-3**, View 4, a portion of the Diablo Range is faintly visible looking north toward the project site from Montague Expressway. In addition, a portion of the Santa Cruz Mountains are visible from the project site, looking southwest from Montague Expressway. Views toward the project site from Coyote Creek Trail looking south are obstructed by existing structures and vegetation. Existing sources of glare on the project site are minimal, as the existing structures (two residences, a farmstand, and supporting structures) lack large windows or other reflective surfaces. There are no substantial sources of outdoor light on the project site.

Surrounding Land Uses

The project site is generally surrounded to the northwest, west, and southwest by commercial and office buildings, to the north and east by Coyote Creek Trail, and to the south by Montague Expressway. Existing commercial and office buildings are generally one to two stories, set back from the roadway by surface parking lots and partially obscured from view by street trees. Additionally, four-story multi-

¹⁰ City of San José. 2016. *Envision San José 2040 General Plan. Scenic Corridors Diagram*. Available: <https://www.sanjoseca.gov/your-government/departments-offices/planning-building-code-enforcement/planning-division/citywide-planning/envision-san-jos-2040-general-plan>. Accessed January 2023.

family residential buildings are located to the north and northwest along Epic Way. Existing light and glare from the surrounding development on the project site is not prominent because of intervening vegetation around the perimeter of the project site.

3.1.2 Impacts and Mitigation

3.1.2.1 Thresholds of Significance

For the purposes of this analysis and in accordance with CEQA Guidelines, a project impact to aesthetics would be considered significant if the project would:

- a) Have a substantial effect on a scenic vista;
- b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway;
- c) In non-urbanized areas, substantially degrade the existing visual character or quality of public views of the project site and its surroundings. (Public views are those that are experienced from publicly accessible vantage point.), or, if the project is in an urbanized area, conflict with applicable zoning and other regulations governing scenic quality; or
- d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area.

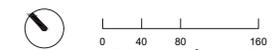
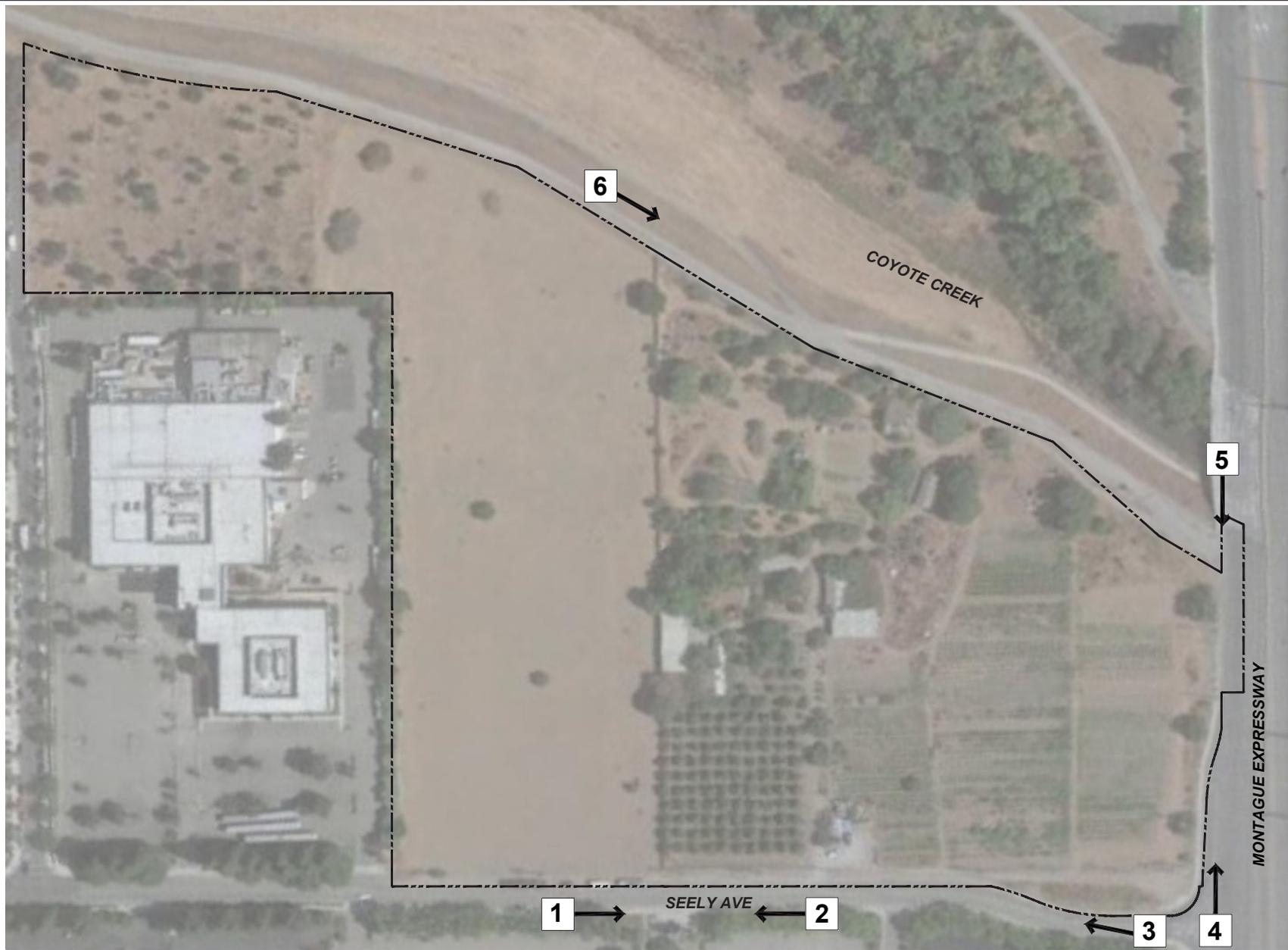
3.1.2.2 Project Impacts

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

Based on the 2040 General Plan, views of hillside areas, including the foothills of the Diablo Range, the Silver Creek Hills, the Santa Teresa Hills, and foothills of the Santa Cruz Mountains are scenic features in the San José area. The project site is in an urbanized location in north San José. The existing surrounding uses consist primarily of commercial and office uses, with some multi-family residential uses located to the north along Epic Way.

Figure 3-1 identifies the locations from which existing conditions photos were taken. As shown in **Figure 3-2**, views of the project site from Seely Avenue to the southeast (View 1), northwest (View 2), and north (View 3), are dominated by trees, grass, and existing electrical utility lines. Given the topography, no views of distant mountain ranges or other scenic resources are available from these locations. As shown in **Figure 3-3** (View 4), a portion of the Diablo Range is faintly visible looking north toward the project site from Montague Expressway.

In addition, a portion of the Santa Cruz Mountains are visible from the project site, looking southwest from Montague Expressway (see View 5). Views toward the project site from Coyote Creek Trail looking south are obstructed by existing structures and vegetation (View 6).



Source: KTG Architecture, January 2022

Viewpoints Map

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Figure
3-1



View 1: Looking Southeast from Seely Avenue.



View 2: Looking Northwest from Seely Avenue.



View 3: Looking North from Seely Avenue.

Source: KTG Architecture, January 2022

Site Photos

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Figure
3-2



View 4: Looking Northeast from Montague Expressway.



View 5: Looking Southwest from Montague Expressway.



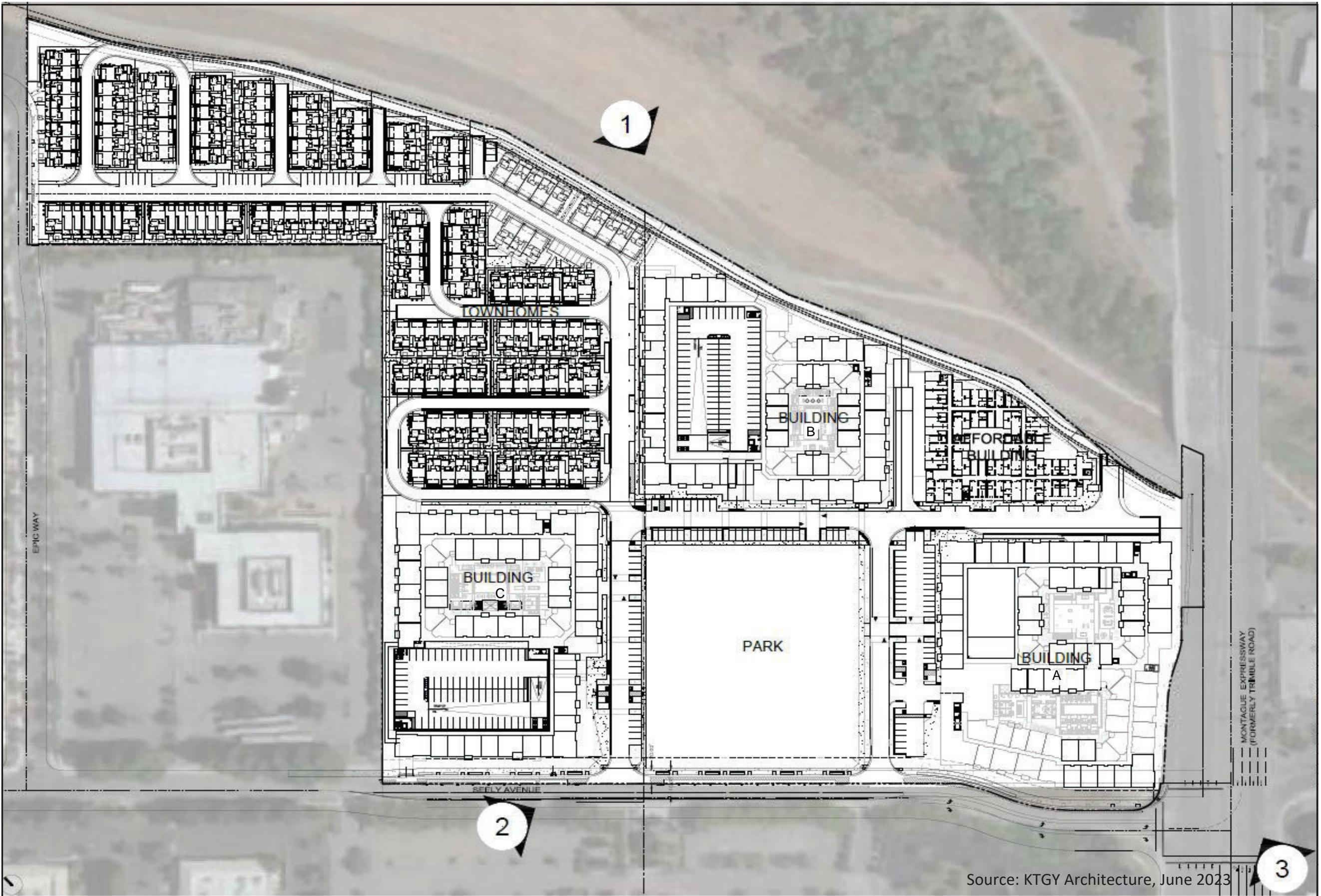
View 6: Looking South from Coyote Creek Trail.

Source: KTG Architecture, January 2022

Site Photos

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Figure
3-3



Visual Simulations - Viewpoints Map

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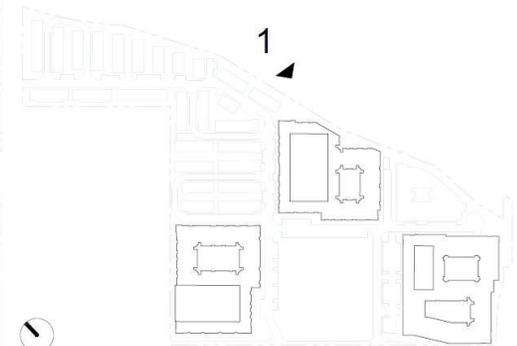
Figure
3-4a



A) VIEW 1 - EXISTING VIEW FROM COYOTE CREEK TRAIL



B) VIEW 1 - VIEW OF PROPOSED BUILDING FROM COYOTE CREEK TRAIL



KEY MAP (N.T.S.)

Source: KTG Architecture, April 2022

Visual Simulations - Viewpoint 1

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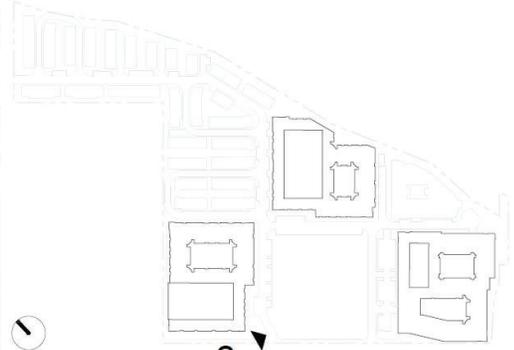
Figure
3-4b



A) VIEW 2 - EXISTING VIEW FROM SEELY AVE



B) VIEW 2 - VIEW OF PROPOSED BUILDING FROM SEELY AVE



KEY MAP (N.T.S.) 2

Source: KTG Architecture, April 2022

Visual Simulations - Viewpoint 2

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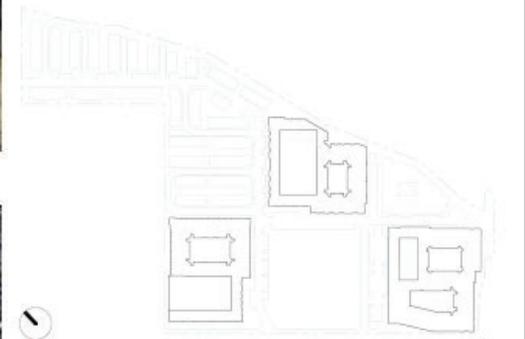
Figure
3-4c



A) VIEW 3 - EXISTING VIEW FROM MONTAGUE EXPY



B) VIEW 3 - VIEW OF PROPOSED BUILDING FROM MONTAGUE EXPY



KEY MAP (N.T.S.)

3

Source: KTG Architecture, April 2022

Visual Simulations - Viewpoint 3

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Figure
3-4d

Figure 3-4a identifies the locations from which simulated views were developed, while **Figure 3-4b**, **Figure 3-4c**, and **Figure 3-4d** show the existing conditions and simulated views from Coyote Creek Trail, Seely Avenue, and Montague Expressway, respectively. Publicly accessible views of the Diablo Range and the Santa Cruz Mountains from adjacent buildings to the northwest, west, southwest, and south would be partially obstructed by the project, as shown in **Figure 3-4b** through **Figure 3-4d**. However, these views are already partially obscured by existing vegetation, development, and significant distance from the project site. Therefore, the project would have a less-than significant impact on a scenic vista. **Less Than Significant Impact.**

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

The project site is not located along a state scenic highway. The project is located approximately 200-feet from the terminus of the Montague Scenic Gateway (i.e., Montague Expressway). However, long-range views from the nearby portion of the Montague Scenic Corridor toward the project site are obscured by existing vegetation. No scenic resources, such as rock outcroppings are located on or near the project site. While the project would result in the removal of eligible historic buildings (see **Section 3.5, Cultural Resources**), as well as the removal of 584 trees, the project site is not located along a scenic route as designated by the City and is not visible from any state-designated scenic highways. The 584 trees to be removed by the project would be replaced by 803 trees in accordance with the City's Tree Removal Policy (see **Section 3.4, Biological Resources**). In addition, street tree plantings are proposed for the new internal roadways, as well as along Seely Avenue, Montague Expressway, and Epic Way. Therefore, this impact would be less than significant. **Less than Significant.**

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

The project site is partially developed with low density structures and is located within an urbanized area in North San José. Development of the project would alter the existing visual character of the project site and its immediate surroundings by introducing six to seven-story, apartment buildings that would be higher than the existing and surrounding development. The general architectural design of the proposed buildings would be modern (i.e., metal panels, plank siding, brick, cementitious panel, and stucco with stone tile and storefront windows). The maximum building height would be approximately 85 feet. As documented in **Section 2.2, General Plan and Zoning**, the project is consistent with the 2040 General Plan Designation and the TERO overlay applied to the project site. If the project applicant's requested rezoning from IP to IP(PD) is approved, the project would not conflict with local zoning. The project would be required to conform to the *San José Citywide Design Standards and Guidelines* and undergo design review during the development review process to ensure the scale and mass are compatible with surrounding development and other publicly accessible vantage points. Design review would also ensure consistency with 2040 General Plan polices CD-1.1, CD-1.23, CD-4.9, and CD-8.1, which call for appropriate building design, tree planting, complimenting the fabric of the existing neighborhood, and building height limitations.

Given that the project is in an urbanized area and would be consistent with applicable zoning and other regulations governing scenic quality, this impact would be less than significant. **Less Than Significant Impact.**

Informational Shade and Shadow Discussion

The City does not have any policies for determining the significance of a shade and shadow impact outside of Downtown. Because the project is not located within Downtown, consistency with policies governing shade and shadow impacts are not included above and nor does it inform the CEQA finding. However, an analysis of shade and shadow impacts is included here for informational purposes only.

A solar/shade simulation was prepared for the project by KTG Architects (April 2022). This simulation is presented in **Figure 3-5**.¹¹ Building A would increase the amount of shade at adjacent properties to the north and northeast during the Fall and Winter months when shadows are longest. The project would also increase shade on the adjacent portions of Coyote Creek during the winter months (September 21 to March 21) (please refer to **Section 3.4, Biological Resources**). The project would result in partial shading of neighboring properties during the fall and winter months and would only occur during certain hours of the day. The project would not increase the amount of shade on Coyote Creek during the rest of the year.

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

Existing sources of glare on the project site are minimal, as the existing structures (two residences, a farmstand, and supporting structures) lack large windows or other reflective surfaces. There are no substantial sources of outdoor light on the project site. Existing light and glare from the surrounding development on the project site is not prominent because of intervening vegetation around the perimeter of the project site.

While the project would introduce new sources of light and glare in the form of outdoor lighting and reflective surfaces, all outdoor lighting would conform to the Council Policy 4-3 Outdoor Lighting on Private Development and be shielded to direct light downwards to ensure that lighting does not spill over onto nearby residential properties. Consistent with Municipal Code Section 20.40.540, all lighting facilities adjacent to residential properties are required to be arranged and shielded so that light is reflected away from nearby residential uses. The proposed park would not create substantial glare from outdoor lighting emanating off reflective surfaces since the lighting would not be of high-intensity caliber and would not be oriented towards surrounding development. In addition, the project will not introduce materials into the design that would create substantial glare. Given that the project would be consistent with all relevant City policies regarding light and glare, this impact would be less than significant. **Less Than Significant Impact.**

¹¹ The shade and shadow analysis was prepared based on an earlier version of the project that had a higher maximum building height (85 feet) than currently proposed for Building A (75 feet) or for Buildings B and C (80 feet). The shade and shadow analysis therefore represents a conservative analysis scenario.



June 21 9:00 a.m.



June 21 12:00 p.m.



June 21 3:00 p.m.



September 21 9:00 a.m.



September 21 12:00 p.m.



September 21 3:00 p.m.



December 21 9:00 a.m.



December 21 12:00 p.m.



December 21 3:00 p.m.

Source: KTG Architecture, April 2022

Shade Simulations

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Figure
3-5

3.2 Agricultural and Forestry Resources

This section analyzes the potential for the project to impact agricultural and forestry resources. During the public scoping process, one commenter requested that the EIR consider potential impacts resulting from the loss of agricultural land.

3.2.1 Environmental Setting

3.2.1.1 Regulatory Framework

State

California Land Conservation Act

The Williamson Act, officially designated as the California Land Conservation Act of 1965, enables local governments to enter into contracts with private landowners, for the purpose of restricting specific parcels of land to agricultural or related open space uses. In return, landowners receive lower property tax assessments that are based on farming and open space as opposed to full market value. Regulations and rules regarding implementation of Williamson Act contracts are established by local participating cities and counties, as guided by the Williamson Act.

Land Evaluation and Site Assessment

The California Agricultural Land Evaluation and Site Assessment (LESA) was developed by the California Department of Conservation to provide a standardized point-based approach for the rating of relative importance of agricultural land. The LESA model ensures that an optional methodology is available for lead agencies to determine if a project will result in potentially significant effects on the environment as a result of agricultural land conversion. The LESA model is based on specific measurable features, including project size, soil quality, surrounding agricultural and/or protected resource lands, and water resource availability, which are weighted, rated and combined to provide a numeric score. The score serves as the basis for making a determination of potential significance for a project.

Farmland Mapping and Monitoring Program

The California Department of Conservation prepares and maintains farmland map data for Counties throughout the state, including for Santa Clara County, through the Farmland Mapping and Monitoring Program (FMMP). The FMMP produces statistical data and maps for the purpose of analyzing potential impacts on agricultural resources. The FMMP is designed to regulate the conversion of agricultural land to permanent non-agricultural uses. The FMMP contains a rating system based on soil quality and irrigation status, with the best quality land being designated as “Prime Farmland”. Maps are updated every two years using computer mapping, aerial photography, public review, and field reconnaissance. The FMMP for Santa Clara County has data from 1984 to the present day, including historical land use conversion, PDF maps, and GIS data.

Local

2040 General Plan

Policies in the 2040 General Plan have been adopted for the purpose of avoiding or mitigating agricultural impacts from development projects. The following policies in **Table 3-2** are applicable to the project.

Table 3-2 Envision San José 2040 Relevant Agricultural Resources Policies

<p>Policy LU-12.3</p>	<p>Protect and preserve the remaining farmlands within San José’s sphere of influence that are not planned for urbanization in the timeframe of the Envision General Plan through the following means:</p> <p>Limit residential uses in agricultural areas to those which are incidental to agriculture.</p> <p>Restrict and discourage subdivision of agricultural lands. Encourage contractual protection for agricultural lands, such as Williamson Act contracts, agricultural conservation easements, and transfers of development rights.</p> <p>Prohibit land uses within or adjacent to agricultural lands that would compromise the viability of these lands for agricultural uses.</p> <p>Strictly maintain the Urban Growth Boundary in accordance with other goals and policies in this Plan.</p>
<p>Policy LU-12.4</p>	<p>Preserve agricultural lands and prime soils in non-urban areas in order to retain the aquifer recharge capacity of these lands.</p>

Source: City of San José, 2022.

3.2.1.2 Existing Conditions

CEQA requires the evaluation of agricultural and forest/timber resources where they are present. This project site is utilized for light agricultural land uses consisting of orchard trees and a fruit stand. The project site does not contain any forest/timber resources.

In California, agricultural land is given consideration under CEQA. According to Public Resources Code (PRC) §21060.1, “agricultural land” is identified as Prime Farmland, Farmland of Statewide Importance, or Unique Farmland, as defined by the U.S. Department of Agriculture land inventory and monitoring criteria, as modified for California. CEQA also requires consideration of impacts on lands that are under Williamson Act contracts. The project area is identified as “Farmland of Local Importance” on the 2016 Santa Clara County Important Farmland Map (California Department of Conservation, 2018) and is not identified as Prime farmland, Farmland of Statewide Importance, or Unique Farmland. Farmland of Local Importance is defined as land that is important to the local agricultural economy as determined by the relevant county’s board of supervisors and a local advisory committee.

The project site does not contain any forest land as defined in PRC Section 12220(g), timberland as defined by PRC Section 4526, or property zoned for Timberland Production as defined by Government Code Section 51104(g).

3.2.2 Impact and Mitigation

3.2.2.1 *Thresholds of Significance*

For the purposes of this analysis and in accordance with CEQA Guidelines, a project impact to agricultural and forestry resources would be considered significant if the project would:

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

3.2.2.2 *Project Impacts*

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

The FMMP classifies the project site as Farmland of Local Importance. Farmland of Local Importance is characterized either as small orchards and vineyards within foothill areas, or as land cultivated as dry cropland for grains and hay. Farmlands of Local Importance typically consist of undeveloped lands that do not currently meet the criteria for Prime Farmlands, farmlands of Statewide Importance, or Unique Farmlands, but have been previously mapped as such. The project would result in the permanent removal of this Farmland of Local Importance. However, the project site does not contain any land designated as Prime Farmland, Unique Farmland, or Farmland of Statewide Importance, and would not result in the removal of any farmland with these designations. As a result, there would be no impact to such lands. **No Impact.**

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

While the project is proposed on a property that is currently utilized for agriculture in the form of orchards and a fruit stand, the project site is zoned IP – Industrial Park and is not zoned for agricultural use. In addition, the project site does not contain lands under Williamson Act contract; therefore, no conflicts with existing zoning for agricultural uses or a Williamson Act contract would occur. **No Impact.**

- c) Would the project conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code Section 12220(g)), timberland (as defined by Public Resources Code Section 4526), or timberland zoned Timberland Production (as defined by Government Code Section 51104(g))?**

The project would not impact forest resources since the project site does not contain any forest land as defined in PRC Section 12220(g), timberland as defined by PRC Section 4526, or property zoned for Timberland Production as defined by Government Code Section 51104(g). **No Impact.**

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

See **c)** above. No other changes to the environment would occur from the project that would result in the loss of forest land or conversion of forest land to non-forest uses. Therefore, no impact would occur. **No Impact.**

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

The project would not involve changes in the existing environment which, due to their location or nature, could result in conversion of farmland or forest land, since none are present on the project site or surrounding areas. Therefore, no impact would occur. **No Impact.**

3.3 Air Quality

This section is based on an air quality assessment prepared for the project by Illingworth & Rodkin, Inc., dated May 25, 2023 (Appendix B). The air quality assessment assumes a construction schedule that begins in January 2024, rather than the June 2024 start date shown in Table 2-4. While no longer feasible, the schedule analyzed in the air quality assessment provides a conservative “worst-case” scenario for analysis because impacts from construction would generally decrease the later construction starts as technology improves and additional regulations go into effect.

During the public scoping process, two commenters expressed concerns about air quality impacts related to increased vehicle trips. Impacts related to mobile source (i.e., motor vehicle) emissions are addressed in **Section 3.3.2.3 Project Impacts**.

3.3.1 Environmental Setting

3.3.1.1 Regulatory Framework

Federal

Federal Clean Air Act and United States Environmental Protection Agency

The Federal Clean Air Act (FCAA) authorized the establishment of federal air quality standards and set deadlines for their attainment. The FCAA identifies specific emission reduction goals, requires both a demonstration of reasonable further progress and attainment, and incorporates more stringent sanctions for failure to meet interim milestones. The U.S. EPA is the federal agency charged with administering FCAA and other air quality-related legislation. The FCAA of 1970, as amended, establishes air quality standards for several pollutants.

The United States Environmental Protection Agency (U.S. EPA) administers the National Ambient Air Quality Standards (NAAQS) under the FCAA. The U.S. EPA sets the NAAQS and determines if areas meet those standards. Violations of ambient air quality standards are based on air pollutant monitoring data and judged for each air pollutant. Areas that do not violate ambient air quality standards are considered to have attained the standard. The U.S. EPA has classified the region as a nonattainment area for the 8-hour O₃ standard and the 24-hour PM_{2.5} standard. The Bay Area has met the CO standards for over a decade and is classified as an attainment area by the U.S. EPA. The U.S. EPA has deemed the region as attainment/unclassified for all other air pollutants, which include PM₁₀. At the State level, the Bay Area is considered nonattainment for ozone, PM₁₀ and PM_{2.5}.

State

California Clean Air Act

The California Clean Air Act (CAA) allows California to seek a waiver of the federal preemption that prohibits states and local jurisdictions from enacting emission standards and other emission-related requirements for new motor vehicles and engines (CAA section 209(a)). The California Air Resources Board (CARB) serves as the representative of California in filing waiver requests with U.S. EPA. After California files a written request for a waiver, U.S. EPA will publish a notice for a public hearing and submission of comments in the *Federal Register*. After consideration of comments received, the

Administrator of the U.S. EPA will issue a written determination on California's request, which is also published in the *Federal Register*.

Regional and Local

Bay Area Air Quality Management District

The Bay Area Air Quality Management District (BAAQMD) seeks to attain and maintain air quality conditions in the San Francisco Bay Area Air Basin through a comprehensive program of planning, regulation, enforcement, technical innovation, and education. The clean air strategy includes the preparation of plans for the attainment of ambient air quality standards, adoption and enforcement of rules and regulations, and issuance of permits for stationary sources. BAAQMD also inspects stationary sources and responds to citizen complaints, monitors ambient air quality and meteorological conditions, and implements programs and regulations required by law.

BAAQMD is primarily responsible for assuring that the federal and state ambient air quality standards for criteria pollutants are attained and maintained in the Bay Area. BAAQMD's May 2017 CEQA Air Quality Guidelines update the 2010 CEQA Air Quality Guidelines, addressing the California Supreme Court's 2015 opinion in the *California Building Industry Association vs. Bay Area Air Quality Management District* court case.

In an effort to attain and maintain federal and state ambient air quality standards, BAAQMD establishes thresholds of significance for construction and operational period emissions for criteria pollutants and their precursors, which are summarized in **Table 3-6** in the impact discussion below.

2017 Bay Area Clean Air Plan

BAAQMD, along with other regional agencies such as the Association of Bay Area Governments (ABAG) and the Metropolitan Transportation Commission (MTC), develops plans to reduce air pollutant emissions. The most recent clean air plan is the *Bay Area 2017 Clean Air Plan: Spare the Air, Cool the Climate* (2017 CAP), which was adopted by BAAQMD in April 2017. This is an update to the 2010 CAP, and centers on protecting public health and climate. The 2017 CAP identifies a broad range of control measures. These control measures include specific actions to reduce emissions of air and climate pollutants from the full range of emission sources and is based on the following four key priorities:

- Reduce emissions of criteria air pollutants and toxic air contaminants (TACs) from all key sources.
- Reduce emissions of "super-GHGs" such as methane, black carbon, and fluorinated gases.
- Decrease demand for fossil fuels (gasoline, diesel, and natural gas).
- Decarbonize our energy system.

BAAQMD CARE Program

The Community Air Risk Evaluation (CARE) program was initiated in 2004 to evaluate and reduce health risks associated with exposure to outdoor TACs in the Bay Area. The program examines TAC emissions from point sources, area sources and on-road and off-road mobile sources with an emphasis on diesel exhaust, which is a major contributor to airborne health risk in California. The CARE program is an on-going program that encourages community involvement and input. The technical analysis portion of the

CARE program is being implemented in three phases that includes an assessment of the sources of TAC emissions, modeling and measurement programs to estimate concentrations of TAC, and an assessment of exposures and health risks. Throughout the program, information derived from the technical analyses will be used to focus emission reduction measures in areas with high TAC exposures and high density of sensitive populations. Risk reduction activities associated with the CARE program are focused on the most at-risk communities in the Bay Area. BAAQMD has identified six communities as impacted: Concord, Richmond/San Pablo, Western Alameda County, San José, Redwood City/East Palo Alto, and Eastern San Francisco.

Planning Healthy Places

BAAQMD developed a guidebook, Planning Healthy Places¹², that provides air quality and public health information intended to assist local governments in addressing potential air quality issues related to exposure of sensitive receptors to exposure of emissions from local sources of air pollutants. The guidance provides tools and recommends best practices that can be implemented to reduce exposure. The information is provided as recommendations to develop policies and implementing measures in city or county General Plans, neighborhood or specific plans, land use development ordinances, or into projects.

BAAQMD California Environmental Quality Act Air Quality Guidelines

The BAAQMD CEQA Air Quality Guidelines¹³ were prepared to assist in the evaluation of air quality impacts of projects and plans proposed within the Bay Area. The guidelines provide recommended procedures for evaluating potential air impacts during the environmental review process consistent with CEQA requirements including thresholds of significance, mitigation measures, and background air quality information. They also include assessment methodologies for air toxics, odors, and greenhouse gas (GHG) emissions. In April 2022, the BAAQMD's Board of Directors adopted a new set of CEQA thresholds of significance and updated their CEQA guidelines accordingly. The Guidelines do not replace the State CEQA Statute and Guidelines; rather, they are designed to provide BAAQMD-recommended procedures for evaluating potential air quality and climate impacts during the environmental review process that are consistent with CEQA requirements. The 2022 Guidelines supersede BAAQMD's previous 2017 CEQA Air Quality Guidelines.

BAAQMD Rules and Regulations

Projects with combustion equipment or other processes that directly emit air pollutants, precursor air pollutants or TACs are subject to BAAQMD permitting rules and regulations that typically require obtaining permits to operate. Common sources requiring permits that may be constructed in the plan area include diesel engines used to power emergency generators and gasoline fueling dispensaries.

¹² BAAQMD, Planning Healthy Places, 2016.

¹³ BAAQMD, BAAQMD CEQA Guidelines, revised May 2017.

Odors

Odor impacts are subjective in nature and are generally regarded as an annoyance rather than a health hazard. The ability to detect and react to odors varies considerably among people. A strong or unfamiliar odor is more easily detected and are more likely to cause complaints. BAAQMD responds to odor complaints from the public and considers a source to have a substantial number of odor complaints if the complaint history includes five or more confirmed complaints per year averaged over a 3-year period. Facilities that are regulated by CalRecycle (e.g., landfill, composting, etc.) are required to have Odor Impact Minimization Plans in place. Some odor source examples from BAAQMD include landfills, composting facilities, wastewater treatment plants, asphalt batch plants, chemical manufacturing, food processing facilities, and coffee roasters. A review of the project area did not find any of these land uses, but indicated auto body shops were nearby; however, odors from these are controlled by BAAQMD and should not produce significant odors.

Toxic Air Contaminants

A group of toxic substances found in ambient air referred to as Hazardous Air Pollutants (HAPs) under the CAA and TACs under the California Clean Air Act. These contaminants tend to be localized and are found in relatively low concentrations in ambient air. However, they can result in adverse chronic health effects if exposure to low concentrations occurs for long periods. They are regulated at the local, state, and federal level.

HAPs are the air contaminants identified by U.S. EPA as known or suspected to cause cancer, serious illness, birth defects, or death. Many of these contaminants originate from human activities, such as fuel combustion and solvent use. Mobile source air toxics (MSATs) are a subset of the 188 HAPs. Of the 21 HAPs identified by U.S. EPA as MSATs, a list of six priority HAPs were identified that include: diesel exhaust, benzene, formaldehyde, acetaldehyde, acrolein, and 1,3-butadiene. The Federal Highway Administration (FHWA)¹⁴ reports that VMT in the U.S. is expected to increase by 22 percent over the period 2019 to 2049, emissions of MSATs are anticipated to decrease substantially as a result of efforts to control mobile source emissions (by 57 percent to 67 percent depending on the contaminant).

California developed a program under the Toxic Air Contaminant Identification and Control Act (Assembly Bill [AB] 1807, Tanner 1983), also known as the Tanner Toxics Act, to identify, characterize and control TACs. Subsequently, AB 2728 (Tanner, 1992) incorporated all 188 HAPs into the AB 1807 process. TACs include all HAPs plus other contaminants identified by CARB. These are a broad class of compounds known to cause morbidity or mortality (cancer risk). TACs are found in ambient air, especially in urban areas, and are caused by industry, agriculture, fuel combustion, and commercial operations (e.g., dry cleaners). TACs are typically found in low concentrations, even near their source (e.g., diesel particulate matter [DPM] near a freeway). Because chronic exposure can result in adverse health effects, TACs are regulated at the regional, state, and federal level.

¹⁴ FHWA. 2022. *2022 FHWA Forecasts of Vehicle Miles Traveled (VMT)*. Available: https://www.fhwa.dot.gov/policyinformation/tables/vmt/vmt_forecast_sum.cfm#:~:text=FHWA's%20Spring%202022%20long%2Dterm,over%20the%20next%2030%20years. Accessed January 2023.

The Air Toxics "Hot Spots" Information and Assessment Act (AB 2588, 1987, Connelly), described by CARB (2016e),¹⁵ was enacted in 1987, and requires stationary sources to report the types and quantities of certain substances routinely released into the air. The goals of the Air Toxics "Hot Spots" Act are to collect emission data, to identify facilities having localized impacts, to ascertain health risks, to notify nearby residents of significant risks, and to reduce those significant risks to acceptable levels.

Particulate matter from diesel exhaust is the predominant TAC in urban air and is estimated to represent about 70 percent of the cancer risk from TACs, based on the statewide average reported by CARB (2012). According to CARB, diesel exhaust is a complex mixture of gases, vapors, and fine particles. This complexity makes the evaluation of health effects of diesel exhaust a complex scientific issue. Some chemicals in diesel exhaust, such as benzene and formaldehyde, have been previously identified as TACs by CARB, and are listed as carcinogens either under State Proposition 65 or under the Federal Hazardous Air Pollutants programs.

CARB reports that recent air pollution studies have shown an association that diesel exhaust and other cancer-causing TACs emitted from vehicles are responsible for much of the overall cancer risk from TACs in California.¹⁶ Particulate matter emitted from diesel-fueled engines DPM was found to comprise much of that risk. In 1998, CARB formally identified DPM as a TAC.¹⁷ DPM is of particular concern since it can be distributed over large regions, thus leading to widespread public exposure. The particles emitted by diesel engines are coated with chemicals, many of which have been identified by U.S. EPA as HAPs, and by CARB as TACs. The vast majority of diesel exhaust particles (over 90 percent) consist of PM_{2.5}, which are the particles that can be inhaled deep into the lung (CARB 2012). Like other particles of this size, a portion will eventually become trapped within the lung possibly leading to adverse health effects. While the gaseous portion of diesel exhaust also contains TACs, CARB's 1998 action was specific to DPM, which accounts for much of the cancer-causing potential from diesel exhaust. California adopted a comprehensive diesel risk reduction program to reduce DPM emissions 85 percent by 2020¹⁸. The EPA and CARB adopted low sulfur diesel fuel standards in 2006 that reduce DPM substantially.

Smoke from residential wood combustion can be a source of TACs. Wood smoke is typically emitted during winter when dispersion conditions are poor. Localized high TAC concentrations can result when cold stagnant air traps smoke near the ground and, with no wind the pollution can persist for many hours, especially in sheltered valleys during winter. Wood smoke also contains a significant amount of PM₁₀ and PM_{2.5}. Wood smoke is an irritant and is implicated in worsening asthma and other chronic lung problems.

CARB has adopted and implemented a number of regulations for stationary and mobile sources to reduce emissions of DPM. Several of these regulatory programs affect medium and heavy-duty diesel trucks that represent the bulk of DPM emissions from California highways. These regulations include the solid waste collection vehicle rule, in-use public and utility fleets, and the heavy-duty diesel truck and bus regulations. In 2008, CARB approved a new regulation to reduce emissions of DPM and nitrogen

¹⁵ California Air Resources Board (CARB), AB 2588 Air Toxics "Hot Spots" Program.

¹⁶ CARB, Overview: Diesel Exhaust & Health, 2012.

¹⁷ CARB, Risk Reduction Plan to Reduce Particulate Matter Emissions from Diesel-Fueled Engines and Vehicles, 2000.

¹⁸ *Ibid*

oxides from existing on-road heavy-duty diesel fueled vehicles.¹⁹ The regulation requires affected vehicles to meet specific performance requirements between 2014 and 2023, with all affected diesel vehicles required to have 2010 model-year engines or equivalent by 2023. These requirements are phased in over the compliance period and depend on the model year of the vehicle. In 2011, CARB amended the Airborne Toxic Control Measures for Stationary Diesel Engines Regulation to reduce DPM and criteria pollutant emissions and implemented regulations and monitoring for generator diesel engines greater than 50 horsepower.²⁰ In 2014, CARB adopted the nation's first regulation aimed at cleaning up off-road construction equipment to reduce emissions of DPM and ensure fleets gradually turnover the oldest and dirtiest equipment to newer, cleaner models.²¹

2040 General Plan

Policies in the 2040 General Plan have been adopted for the purpose of avoiding or mitigating air quality impacts from development projects. The following policies shown in **Table 3-3** are applicable to the project.

Table 3-3 Envision San José 2040 Relevant Air Quality Policies

Policy MS-10.1	Assess projected air emissions from new development in conformance with the BAAQMD CEQA Guidelines and relative to state and federal standards. Identify and implement air emissions reduction measures.
Policy MS-10.2	Consider the cumulative air quality impacts from proposed developments for proposed land use designation changes and new development, consistent with the region’s Clean Air Plan and State law.
Policy MS-11.1	Require completion of air quality modeling for sensitive land uses such as new residential developments that are located near sources of pollution such as freeways and industrial uses. Require new residential development projects and projects categorized as sensitive receptors to incorporate effective mitigation into project designs or be located an adequate distance from sources of toxic air contaminants (TACs) to avoid significant risks to health and safety.
Policy MS-11.2	For projects that emit toxic air contaminants, require project proponents to prepare health risk assessments in accordance with BAAQMD-recommended procedures as part of environmental review and employ effective mitigation to reduce possible health risks to a less-than-significant level. Alternatively, require new projects (such as, but not limited to, industrial, manufacturing, and processing facilities) that are sources of TACs to be located an adequate distance from residential areas and other sensitive receptors.
Policy MS-11.4	Encourage the installation of appropriate air filtration at existing schools, residences, and other sensitive receptor uses adversely affected by pollution sources.
Policy MS-11.5	Encourage the use of pollution absorbing trees and vegetation in buffer areas between substantial sources of TACs and sensitive land uses.

¹⁹ CARB, Construction & Earthmoving Equipment, 2014.

²⁰ CARB, Stationary Diesel ATCM Program, 2011.

²¹ CARB, Truck and Bus Regulation, 2008.

<p>Policy MS-13.1</p>	<p>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.</p>
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Source: City of San José, 2022

3.3.1.2 Existing Conditions

Air Pollutants and Contaminants

Air pollution is governed by multiple federal and state standards to regulate and mitigate health impacts. At the federal level, there are six criteria pollutants for which NAAQS have been established: carbon monoxide (CO), lead (Pb), nitrogen dioxide (NO₂), ozone (O₃), suspended particulate matter (PM: PM_{2.5} and PM₁₀), and sulfur dioxide (SO₂). California sets standards similar to the NAAQS as California Ambient Air Quality Standards (CAAQS). Health effects of the primary criteria pollutants (i.e., the NAAQS) and their potential sources are described below and summarized in **Table 3-4**. California includes some pollutants and contaminants in these standards that are specific to certain industries and not associated with this project. These include hydrogen sulfide and vinyl chloride.

Ozone

Ozone is a secondary air pollutant produced in the atmosphere through a complex series of photochemical reactions involving reactive organic gases (ROG) and oxides of nitrogen (NO_x). The main sources of ROG and NO_x, often referred to as ozone precursors, are combustion processes (including combustion in motor vehicle engines) and the evaporation of solvents, paints, and fuels. In the Bay Area, automobiles are the single largest source of ozone precursors. Ozone is referred to as a regional air pollutant because its precursors are transported and diffused by wind concurrently with ozone production through the photochemical reaction process. Ozone causes eye irritation, airway constriction, shortness of breath, and can aggravate existing respiratory diseases such as asthma, bronchitis, and emphysema.

Carbon Monoxide

CO is an odorless, colorless gas usually formed as the result of the incomplete combustion of fuels. The single largest source of CO is motor vehicles. While CO transport is limited, it disperses with distance from the source under normal meteorological conditions. However, under certain extreme meteorological conditions, CO concentrations near congested roadways or intersections may reach unhealthy levels that adversely affect local sensitive receptors (e.g., residents, schoolchildren, the elderly, hospital patients, etc.). Typically, high CO concentrations are associated with roadways or intersections operating at unacceptable levels of service (LOS) or with extremely high traffic volumes. Exposure to high concentrations of CO reduces the oxygen-carrying capacity of the blood and can cause headaches, nausea, dizziness, fatigue, impair central nervous system function, and induce angina (chest pain) in persons with serious heart disease. Very high levels of CO can be fatal.

Nitrogen Dioxide

Nitrogen Dioxide is a reddish-brown gas that is a byproduct of combustion processes. Automobiles and industrial operations are the main sources of NO₂. Aside from its contribution to ozone formation, NO₂ also contribute to other pollution problems, including a high concentration of fine particulate matter, poor visibility, and acid deposition. NO₂ may be visible as a coloring component on high pollution days, especially in conjunction with high ozone levels. NO₂ decreases lung function and may reduce resistance to infection. On January 22, 2010 the U.S. Environmental Protection Agency (EPA) strengthened the health-based NAAQS for NO₂.

Sulfur Dioxide

Sulfur dioxide (SO₂) is a colorless, irritating gas formed primarily from incomplete combustion of fuels containing sulfur. Industrial facilities also contribute to gaseous SO₂ levels in the region. SO₂ irritates the respiratory tract, can injure lung tissue when combined with fine particulate matter, and reduces visibility and the level of sunlight.

Particulate Matter

Particulate matter is the term used for a mixture of solid particles and liquid droplets found in the air. Coarse particles are those that are larger than 2.5 microns but smaller than 10 microns (PM₁₀). PM_{2.5} refers to fine suspended particulate matter with an aerodynamic diameter of 2.5 microns or less that is not readily filtered out by the lungs. Nitrates, sulfates, dust, and combustion particulates are major components of PM₁₀ and PM_{2.5}. These small particles can be directly emitted into the atmosphere as by-products of fuel combustion, through abrasion, such as tire or brake lining wear, or through fugitive dust (wind or mechanical erosion of soil). They can also be formed in the atmosphere through chemical reactions. Particulates may transport carcinogens and other toxic compounds that adhere to the particle surfaces and can enter the human body through the lungs.

Lead

Lead (Pb) is a metal found naturally in the environment as well as in manufactured products. The major sources of Pb emissions have historically been mobile and industrial sources. As a result of the phase-out of leaded gasoline, metal processing is currently the primary source of Pb emissions. The highest levels of Pb in air are generally found near Pb smelters. Other stationary sources are waste incinerators, utilities, and lead-acid battery manufactures.

Twenty years ago, mobile sources were the main contributor to ambient Pb concentrations in the air. In the early 1970s, the U.S. EPA established national regulations to gradually reduce the Pb content in gasoline. In 1975, unleaded gasoline was introduced for motor vehicles equipped with catalytic converters. The EPA banned the use of leaded gasoline in highway vehicles in December 1995. As a result of the EPA's regulatory efforts to remove Pb from gasoline, emissions of Pb from the transportation sector and levels of Pb in the air decreased dramatically.

Air Pollutants of Concern in the Bay Area

High ozone levels are caused by the cumulative emissions of ROG and NO_x. These precursor pollutants react under certain meteorological conditions to form high ozone levels. Controlling the emissions of these precursor pollutants is the focus of the Bay Area's attempts to reduce ozone levels. The highest

ozone levels in the Bay Area occur in the eastern and southern inland valleys that are downwind of air pollutant sources. High ozone levels aggravate respiratory and cardiovascular diseases, reduce lung function, and increase coughing and chest discomfort.

Particulate matter is another problematic air pollutant of the Bay Area. Particulate matter is assessed and measured in terms of respirable particulate matter (PM₁₀) and fine particulate matter (PM_{2.5}). Elevated concentrations of PM₁₀ and PM_{2.5} are the result of both region-wide (or cumulative) emissions and localized emissions. High particulate matter levels aggravate respiratory and cardiovascular diseases, reduce lung function, increase mortality (e.g., lung cancer), and result in reduced lung function growth in children.

Toxic Air Contaminants

In addition to the criteria pollutants discussed above, TACs are another group of pollutants of concern. TACs are injurious in small quantities and are regulated by the EPA and CARB). Some examples of TACs include benzene, butadiene, formaldehyde, and hydrogen sulfide. The identification, regulation, and monitoring of TACs is relatively recent compared to that for criteria pollutants.

High volume freeways, stationary diesel engines, and facilities attracting heavy and constant diesel vehicle traffic (distribution centers, truck stops) were identified as posing the highest risk to adjacent receptors. Other facilities associated with increased risk include warehouse distribution centers, large retail or industrial facilities, high volume transit centers, or schools with a high volume of bus traffic. Community health risk assessments typically look at all substantial sources of TACs located within 1,000 feet of project sites and at new TAC sources that would be introduced by the project. These sources include railroads, highways, busy surface streets, and stationary sources identified by BAAQMD. A review of the project area indicates that traffic on Montague Expressway, River Oaks Parkway, and McCarthy Boulevard have an average daily traffic (ADT) of over 10,000 vehicles. All other roadways within the area are assumed to have an ADT that is less than 10,000 vehicles. Eight stationary sources were identified within the 1,000-foot influence area using the BAAQMD’s stationary source stationary source website map.

Diesel exhaust is the predominant TAC in urban air and is estimated to represent about three-quarters of the cancer risk from TACs (based on the Bay Area average). According to the CARB, diesel exhaust is a complex mixture of gases, vapors, and fine particles. This complexity makes the evaluation of health effects of diesel exhaust a complex scientific issue. Some of the chemicals in diesel exhaust, such as benzene and formaldehyde, have been previously identified as TACs by the CARB, and are listed as carcinogens either under the state’s Proposition 65 or under the Federal Hazardous Air Pollutants programs. Because chronic exposure can result in adverse health effects, TACs are regulated at the regional, state, and federal level.

Table 3-4 Health Effects of Air Pollutants

Pollutants	Sources	Primary Effects
Carbon Monoxide (CO)	<ul style="list-style-type: none"> • Incomplete combustion of fuels and other carbon-containing substances, such as motor exhaust. 	<ul style="list-style-type: none"> • Reduced tolerance for exercise. • Impairment of mental function.

Pollutants	Sources	Primary Effects
	<ul style="list-style-type: none"> Natural events, such as decomposition of organic matter. 	<ul style="list-style-type: none"> Impairment of fetal development. Death at high levels of exposure. Aggravation of some heart diseases (angina).
Nitrogen Dioxide (NO ₂)	<ul style="list-style-type: none"> Motor vehicle exhaust. High temperature stationary combustion. Atmospheric reactions. 	<ul style="list-style-type: none"> Aggravation of respiratory illness. Reduced visibility. Reduced plant growth. Formation of acid rain.
Ozone (O ₃)	<ul style="list-style-type: none"> Atmospheric reaction of organic gases with nitrogen oxides in sunlight. 	<ul style="list-style-type: none"> Aggravation of respiratory and cardiovascular diseases. Irritation of eyes. Impairment of cardiopulmonary function. Plant leaf injury.
Lead (Pb)	<ul style="list-style-type: none"> Contaminated soil. 	<ul style="list-style-type: none"> Impairment of blood functions and nerve construction. Behavioral and hearing problems in children.
Suspended Particulate Matter (PM _{2.5} and PM ₁₀)	<ul style="list-style-type: none"> Stationary combustion of solid fuels. Construction activities. Industrial processes. Atmospheric chemical reactions. 	<ul style="list-style-type: none"> Reduced lung function. Aggravation of the effects of gaseous pollutants. Aggravation of respiratory and cardiorespiratory diseases. Increased cough and chest discomfort. Soiling. Reduced visibility.
Sulfur Dioxide (SO ₂)	<ul style="list-style-type: none"> Combustion of sulfur-containing fossil fuels. 	<ul style="list-style-type: none"> Aggravation of respiratory diseases (asthma, emphysema). Reduced lung function.

Pollutants	Sources	Primary Effects
	<ul style="list-style-type: none"> • Smelting of sulfur-bearing metal ores. • Industrial processes. 	<ul style="list-style-type: none"> • Irritation of eyes. • Reduced visibility. • Plant injury. • Deterioration of metals, textiles, leather, finishes, coatings, etc.
Toxic Air Contaminants	<ul style="list-style-type: none"> • Cars and trucks, especially diesels. • Industrial sources such as chrome platers. • Neighborhood businesses such as dry cleaners and service stations. • Building materials and product. 	<ul style="list-style-type: none"> • Cancer. • Chronic eye, lung, or skin irritation. • Neurological and reproductive disorders.

Source: CARB, 2009.

3.3.1.3 Air Quality Setting

The project is located in Santa Clara County, which is part of the San Francisco Bay Area Air Basin that includes the counties of San Francisco, Santa Clara, San Mateo, Marin, Napa, Contra Costa, and Alameda, along with the southeast portion of Sonoma County and the southwest portion of Solano County.

This project is within the jurisdiction of BAAQMD. Air quality conditions in the San Francisco Bay Area have improved significantly since BAAQMD was created in 1955. Ambient concentrations of air pollutants, and the number of days during which the region exceeds air quality standards, have fallen dramatically. Exceedances of air quality standards occur primarily during meteorological conditions conducive to high pollution levels, such as cold, windless winter nights or hot, sunny summer afternoons.

Local Climate and Air Quality

Air quality is a function of both local climate and local sources of air pollution. Air quality is the balance of the natural dispersal capacity of the atmosphere and emissions of air pollutants from human uses of the environment. Climate and topography are major influences on air quality.

Climate and Meteorology

During the summer, mostly clear skies result in warm daytime temperatures and cool nights in the Santa Clara Valley. Winter temperatures are mild, except for very cool but generally frost-less mornings. Further inland, where the moderating effect of the San Francisco Bay is not as strong, temperature extremes are greater. Wind patterns are influenced by local terrain, with a northwesterly sea breeze

typically developing during the daytime. Winds are usually stronger in the spring and summer. Rainfall amounts are modest, ranging from 13-inches in the lowlands to 20-inches in the hills.

Air Pollution Potential

Ozone and fine particle pollution, or PM_{2.5}, are the major regional air pollutants of concern in the San Francisco Bay Area. Ozone is primarily a problem in the summer, and fine particle pollution in the winter. Most of Santa Clara County is well south of the cooler waters of the San Francisco Bay and far from the cooler marine air which usually reaches across San Mateo County in summer. Ozone frequently forms on hot summer days when the prevailing seasonal northerly winds carry ozone precursors southward across the county, causing health standards to be exceeded. Santa Clara County experiences many exceedances of the PM_{2.5} standard each winter. This is due to the high population density, wood smoke, industrial and freeway traffic, and poor wintertime air circulation caused by extensive hills to the east and west that block wind flow into the region. Recently, wildfires have caused many days per year of unhealthy air during summer and fall due to high particle pollution (e.g., PM_{2.5} and PM₁₀ levels that exceed standards).

Attainment Status Designations. The CARB is required to designate areas of the state as attainment, nonattainment, or unclassified for all state standards. An “attainment” designation for an area signifies that pollutant concentrations did not violate the standard for that pollutant in that area. A “nonattainment” designation indicates that a pollutant concentration violated the standard at least once, excluding those occasions when a violation was caused by an exceptional event, as defined in the criteria. An “unclassified” designation signifies that data does not support either an attainment or nonattainment status. The California Clean Air Act divides districts into moderate, serious, and severe air pollution categories, with increasingly stringent control requirements mandated for each category.

Table 3-5 shows the state and federal standards for criteria pollutants and provides a summary of the attainment status for the San Francisco Bay Area with respect to national and state ambient air quality standards.

Table 3-5 NAAQS, CAAQS, and San Francisco Bay Area Attainment Status

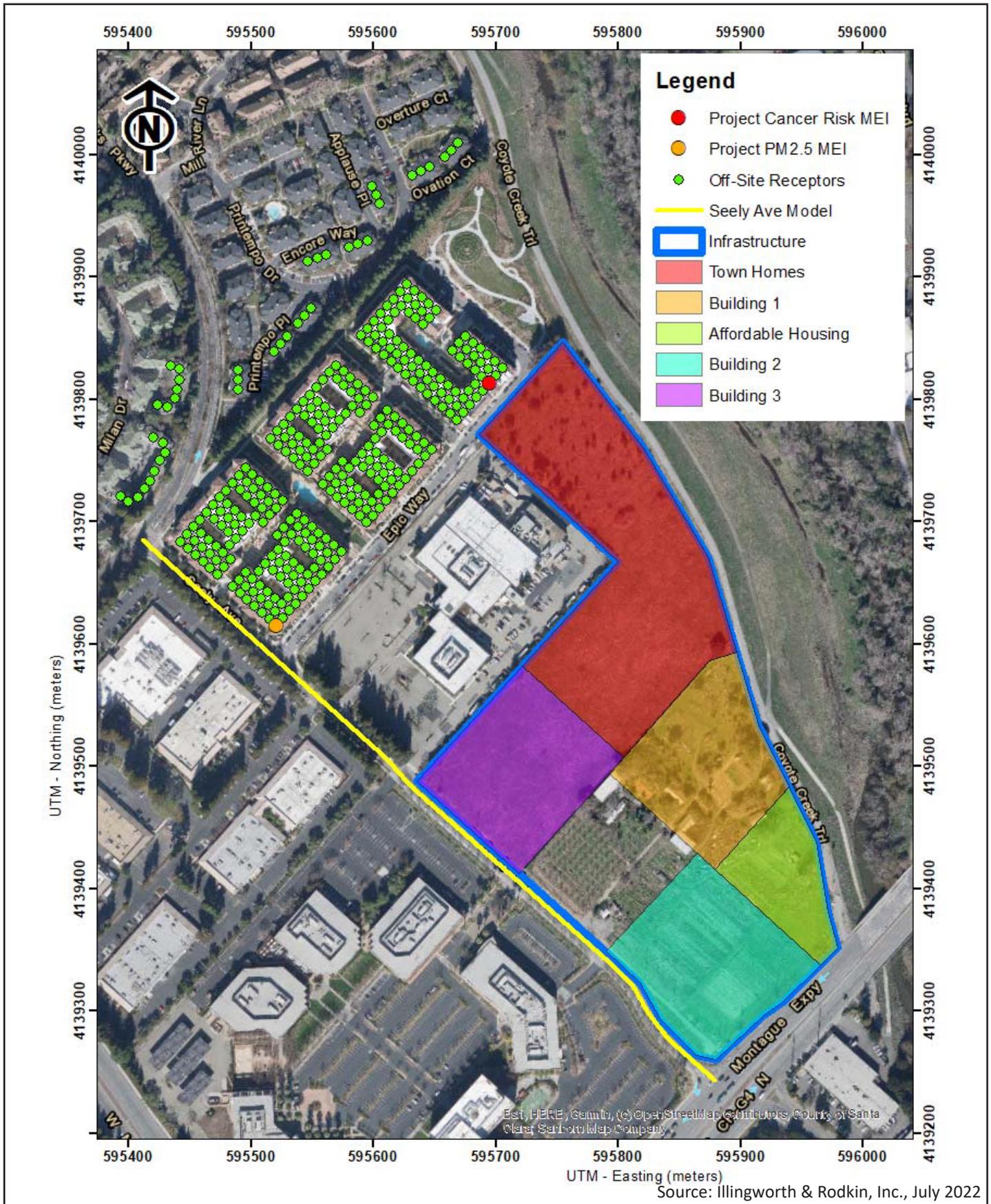
Pollutant	Averaging Time	California Standards		National Standards	
		Concentration	Attainment Status	Concentration	Attainment Status
Carbon Monoxide (CO)	8-Hour	9 ppm (10 mg/m ³)	Attainment	9 ppm (10 mg/m ³)	Attainment
	1-Hour	20 ppm (23 mg/m ³)	Attainment	35 ppm (40 mg/m ³)	Attainment
Nitrogen Dioxide (NO ₂)	Annual Mean	0.030 ppm (57 mg/m ³)	Attainment	0.053 ppm (100 µg/m ³)	Attainment
	1-Hour	0.18 ppm	Attainment	0.100 ppm	Unclassified

Pollutant	Averaging Time	California Standards		National Standards	
		Concentration	Attainment Status	Concentration	Attainment Status
		(338 µg/m ³)			
Ozone (O ₃)	8-Hour	0.07 ppm (137 µg/m ³)	Non-attainment	0.070 ppm	Non-attainment
	1-Hour	0.09 ppm (180 µg/m ³)	Non-attainment	Not Applicable	Not Applicable
Suspended Particulate Matter (PM ₁₀)	Annual Mean	20 µg/m ³	Non-attainment	Not Applicable	Not Applicable
	24-Hour	50 µg/m ³	Non-attainment	150 µg/m ³	Unclassified
Suspended Particulate Matter (PM _{2.5})	Annual Mean	12 µg/m ³	Non-attainment	12 µg/m ³	Attainment
	24-Hour	Not Applicable	Not Applicable	35 µg/m ³	Non-attainment
Sulfur Dioxide (SO ₂)	Annual Mean	Not Applicable	Not Applicable	80 µg/m ³ (0.03 ppm)	Attainment
	24-Hour	0.04 ppm (105 µg/m ³)	Attainment	365 µg/m ³ (0.14 ppm)	Attainment
	1-Hour	0.25 ppm (655 µg/m ³)	Attainment	0.075 ppm (196 µg/m ³)	Attainment

Notes: Lead (Pb) is not listed in the above table because it has been in attainment since the 1980s. ppm = parts per million, mg/m³ = milligrams per cubic meter, µg/m³ = micrograms per cubic meter
 Source: BAAQMD, January 2017.

Sensitive Receptors

BAAQMD defines sensitive receptors as facilities where sensitive population groups are located, including residences, schools, childcare centers, convalescent homes, and medical facilities. Land uses such as schools and hospitals are considered more sensitive than the general public to poor air quality because of increased susceptibility to respiratory distress within the populations associated with these uses. For cancer risk assessments, children are the most sensitive receptors since they are more susceptible to cancer-causing TACs. Residential locations are assumed to include infants and small children. The closest sensitive receptor to the project site is a multi-family residential complex located approximately 50-feet northwest of the northernmost point of the project site, just across Epic Way. For a map of all nearby sensitive receptors and Maximally Exposed Individual (MEI), refer to **Figure 3-6**.



Location of Nearby Sensitive Receptors and Maximally Exposed Individual

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Figure 3-6

3.3.2 Impacts and Mitigation

3.3.2.1 BAAQMD Thresholds

The City uses the thresholds of significance established by BAAQMD to assess air quality impacts of the project. The BAAQMD CEQA Guidelines include screening levels and thresholds for evaluating air quality impacts in the Bay Area. The applicable thresholds are presented below in **Table 3-6**.

Table 3-6 BAAQMD Air Quality Significance Thresholds

Pollutant	Construction Thresholds	Operational Thresholds	
	Average Daily Emissions (lbs./day)	Average Daily Emissions (lbs./day)	Annual Average Emissions (tons/year)
Criteria Air Pollutants			
ROG, NO _x	54	54	10
PM _{2.5}	54 (exhaust)	54	10
PM ₁₀	82 (exhaust)	82	15
CO	Not Applicable	9.0 ppm (8-hour average) or 20.0 ppm (1-hour average)	
Fugitive Dust (PM _{2.5} , PM ₁₀)	Construction Dust Ordinance or other Best Management Practices	None	
Health Risks and Hazards for Sources within 1,000 Feet of Project			
Excess Cancer Risk	10 per one million	10 per one million	
Chronic or Acute Hazard Index	1.0	1.0	
Incremental annual average PM _{2.5}	0.3 µg/m ³	0.3 µg/m ³	
Health Risks and Hazards for Sensitive Receptors (Cumulative from All Sources within 1,000-Foot Zone of Influence) and Cumulative Thresholds for New Sources			
Excess Cancer Risk	100 per 1 million		
Chronic Hazard Index	10.0		
Annual Average PM _{2.5}	0.8 µg/m ³		

Notes: ROG = reactive organic gases, Nox = nitrogen oxides, PM10 = course particulate matter or particulates with an aerodynamic diameter of 10 micrometers (µm) or less, and PM2.5 = fine particulate matter or particulates with an aerodynamic diameter of 2.5µm or less; GHG = greenhouse gas; ppm = parts per million; µg/m3 = micrograms per cubic meter

Source: Bay Area Air Quality Management District, 2022

3.3.2.2 Thresholds of Significance

For the purposes of this analysis and in accordance with CEQA Guidelines, a project impact to air quality would be significant if the project would:

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

3.3.2.3 Project Impacts

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

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. Using the BAAQMD’s methodology, a determination of consistency with the 2017 CAP would demonstrate that a project: 1) supports the primary goals of the air quality plan; 2) includes applicable control measures from the air quality plan, and 3) does not disrupt or impede implementation of air quality plan control measures. The consistency of the project with the applicable control measures is presented in **Table 3-7**. As summarized in the “Project Consistency” column of **Table 3-7**, the project proposes control measures to improve air quality in compliance with the 2017 CAP. The project would not conflict with the latest Clean Air planning efforts since 1) the project would be considered urban infill, 2) the project would be located near employment centers, 3) the project would be located near transit with regional connections. Therefore, the project would have a less than significant impact on clean air planning efforts. **Less Than Significant Impact.**

Table 3-7 2017 CAP Applicable Control Measures

Control Measures	Description	Project Consistency
Transportation Measures		
Bicycle and Pedestrian Access and Facilities	Encourage planning for bicycle and pedestrian facilities in local plans, e.g., general and specific plans, fund bike lanes, routes, paths and bicycle parking facilities.	The project would Include long-term and short-term bicycle parking and a Class II and Class IV bike lane consistent with City’s Zoning Ordinance standards. The project would include construction of sidewalks for pedestrian circulation. Additionally, the project would include construction of new sidewalks along Seely Avenue and Epic Way frontages for pedestrian access. The project also includes a TDM program to reduce parking and provide additional incentives to residents to use alternative forms of transportation.

Control Measures	Description	Project Consistency
		Therefore, the project is consistent with this measure.
<i>Energy Control Measures</i>		
Decrease Electricity Demand	Work with local governments to adopt additional energy efficiency policies and programs. Support local government energy efficiency program via best practices, model ordinances, and technical support. Work with partners to develop messaging to decrease electricity demand during peak times.	The project would be required to comply with Building Energy Efficiency Standards (Municipal Code Title 24), which would help reduce energy consumption. The project would also be required to comply with the City’s Green Building Policy (Council Policy 8-13), which would increase building efficiency over standard construction. The project would also automatically enroll SJCE customers into the San José Clean Energy (SJCE) GreenSource program. SJCE customers can also optionally enroll in the TotalGreen program. Furthermore, consistent with the 2022 California Building Standards Code, the project would include installation of rooftop solar panels. Therefore, the project is consistent with this control measure.
<i>Building Control Measures</i>		
Green Buildings	Collaborate with partners such as KyotoUSA to identify energy-related improvements and opportunities for on-site renewable energy systems in school districts; investigate funding strategies to implement upgrades. Identify barriers to effective local implementation of the CALGreen (Title 24) statewide building energy code; develop solutions to improve implementation/enforcement. Work with ABAG’s BayREN program to make additional funding available for energy-related projects in the buildings sector. Engage with additional partners to target reducing emissions from specific types of buildings.	The project would be required to comply with CALGreen and the City’s Green Building Policy (Council Policy 8-13), and the most recent 2022 California Building Standards Code (CBC) which would increase building efficiency over standard construction. Therefore, the project is consistent with this control measure.
Urban Heat Island Mitigation	Develop and urge adoption of a model ordinance for “cool parking” that promotes the use of cool surface treatments for new parking facilities.	The project would locate residential vehicle parking for the market-rate apartments in parking garages and would provide individual vehicle garages for the for-sale townhomes. The affordable apartment building

Control Measures	Description	Project Consistency
		would include parking inside the building on the first floor. Limited surface parking is provided as part of the project. In addition, the project would provide new landscaping, including planting of shrubs, groundcover, and replacement trees to outdoor areas. These features would minimize surface parking and reduce the project’s heat island effect. The project, therefore, is consistent with this measure.
Water Control Measures		
Support Water Conservation	Develop a list of best practices that reduce water consumption and increase on-site water recycling in new and existing buildings; incorporate into local planning guidance.	The project would be required to adhere to State and local polices to conserve water, including, but not limited to, AB 1668: Water Conservation and Drought Planning, AB 2731: Landscape Water Use Efficiency, implementation of a stormwater control plan, and adherence to the City’s levelled water shortage restrictions on potable water use. Therefore, the project is consistent with this control measure.
Natural and Working Lands Measures		
Support Water Conservation	Develop or identify an existing model municipal tree planting ordinance and encourage local governments to adopt such an ordinance. Include tree planting recommendations, the Air District’s technical guidance, best management practices (BMPs) for local plans, and CEQA review.	Consistent with the City’s tree replacement requirements, the project would plant 803 trees and include other landscaping features such as planting of various shrubs and groundcover in outdoor areas. Therefore, the project is consistent with this control measure.

Source: BAAQMD, 2017
 SJCE = San José Clean Energy

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

The Bay Area is considered a non-attainment area for ground-level ozone and PM_{2.5} under both the FCAA and the California Clean Air Act. The area is also considered non-attainment for PM₁₀ under the California Clean Air Act, but not the FCAA. The area has attained both State and federal ambient air quality standards for carbon monoxide. As part of an effort to attain and maintain ambient air quality standards for ozone and PM₁₀, the BAAQMD has established thresholds of significance for these air

pollutants and their precursors. These thresholds are for ozone precursor pollutants (ROG and NO_x), PM₁₀, and PM_{2.5}, and apply to both construction period and operational period impacts.

Construction Emissions

Construction of the project would produce traffic in the form of worker trips and truck traffic. The California Emissions Estimator Model (CalEEMod) Version 2020.4.0 was used to estimate emissions from on-site construction activity, construction vehicle trips, and evaporative emissions. The project land use types and size, and anticipated construction schedule were input to CalEEMod. The CARB eMission FACTors 2021 (EMFAC 2021) model was used to predict emissions from construction traffic, which includes worker travel, vendor trucks, and haul trucks.

Average daily emissions were annualized for each year of construction by dividing the annual construction emissions by the number of active workdays during that year. As discussed in Section 2.3.6, Construction, this Air Quality analysis uses an earlier version of the construction schedule where construction was anticipated to begin in January 2024 and the order of construction phasing was different. This earlier start date represents a conservative “worst-case” scenario for those analyses both in terms of timing and phasing. The earlier start date would result in a more conservative analysis scenario because impacts from construction would generally decrease the later construction starts as technology improves and additional regulations go into effect. Phasing was determined to be more conservative due to the proximity of initial phases to sensitive receptors.

Table 3-8 shows the annualized average daily construction emissions of ROG, NO_x, PM₁₀ exhaust, and PM_{2.5} exhaust during construction of the project. As indicated in **Table 3-8**, predicted annualized project construction emissions would not exceed the BAAQMD significance thresholds during any year of construction. Construction emissions, therefore, represent a less than significant impact. **Less than Significant Impact.**

Table 3-8 Construction Period Emissions

Source	ROG	NO _x	PM ₁₀ Exhaust	PM _{2.5} Exhaust
Construction Emissions Per Year (Tons)				
2024 (Infrastructure, Building A, Townhomes, Affordable Apartment Building, and Building B)	0.39	2.84	0.14	0.10
2025 (Building A, Townhomes, Affordable Apartment Building, and Building B)	4.50	3.56	0.20	0.14
2026 (Townhomes, Building A, and Building C)	5.54	2.26	0.13	0.09
2027 (Townhomes and Building C)	3.32	1.14	0.06	0.05
Average Daily Construction Emissions Per Year (pounds/day)				

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Source	ROG	NOx	PM ₁₀ Exhaust	PM _{2.5} Exhaust
2024 (275 construction workdays)	2.83	20.65	1.04	0.76
2025 (365 construction workdays)	24.68	19.49	1.07	0.79
2026 (365 construction workdays)	30.37	12.37	0.72	0.50
2027 (246 construction workdays)	26.93	9.24	0.52	0.39
<i>BAAQMD Thresholds (pounds per day)</i>	<i>54 pounds/day</i>	<i>54 pounds/day</i>	<i>82 pounds/day</i>	<i>54 pounds/day</i>
<i>Exceeds Threshold?</i>	<i>No</i>	<i>No</i>	<i>No</i>	<i>No</i>

Source: Illingworth & Rodkin, 2022

Notes: The Air Quality analysis is based on a more conservative construction scenario where construction begins January 2024 rather than June 2024. While this timeline is no longer feasible, this scenario provides a more conservative “worst-case scenario” for the purposes of the Air Quality Analysis.

In addition, construction activities, particularly during site preparation and grading, would temporarily generate fugitive dust in the form of PM₁₀ and PM_{2.5}. Sources of fugitive dust would include disturbed soils at the construction site and trucks carrying uncovered loads of soils. Unless properly controlled, vehicles leaving the project site would deposit mud on local streets, which could be an additional source of airborne dust after it dries. The BAAQMD CEQA Air Quality Guidelines consider these impacts to be less than significant if BMPs are implemented to reduce these emissions. These would be required as standard conditions of project of approval, as presented below, to be implemented during all phases of construction to control dust and exhaust at the project site.

Standard Permit Conditions

The following permit conditions will be implemented:

- 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 vehicles speeds on unpaved roads shall be limited to 15 miles per hour.

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- 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 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.

With implementation of the standard permit conditions identified above, the construction emissions from the project represent a less than significant impact. **Less than Significant Impact.**

Operational Emissions

Operational air emissions from the project would be generated primarily from vehicles driven by future residents, employees, customers, and vendors. Evaporative emissions from architectural coatings and maintenance products (classified as consumer products) are typical emissions from these types of uses. CalEEMod Version 2020.4.0 was used to estimate emissions from operation of the project assuming full build-out.

All project land uses were combined and input to CalEEMod for the operational period modeling in the year 2028, as shown in **Table 3-9** below.

Table 3-9 Operational Land Uses Entered into CalEEMod

Project Land Uses	Size	Units	Square Feet	Acreage
Apartments Mid Rise	1,321	Dwelling Units	1,368,958,	22.2
Condo/Townhouse	154	Dwelling Unit	301,313	
Regional Shopping Center	20.20	1,000-sf	20,197	
City Park	2.50	Acres	108,900	
Enclosed Parking with Elevator	1,772	Parking Spaces	576,518	
Enclosed Parking Structure	348	Parking Spaces	70,222	

Source: Illingworth & Rodkin, 2022

Annual emissions were computed using CalEEMod and daily emissions were calculated assuming 365 days of operation per year. As shown in **Table 3-10**, before mitigation, operational emissions would exceed the BAAQMD significance thresholds for ROG during operation of the project. Emissions of other

air pollutants would be below the thresholds. ROG emissions caused by operation of the project would be mostly attributable to area sources (almost 70 percent), with mobile sources (i.e., traffic) making up the remaining 30 percent. Most of the area source ROG emissions are from the use of consumer products (e.g., solvents, cleaners, sanitizers, personal products, etc.) that are based on population and building square footage. Additionally, the reapplication of architectural coatings (e.g., painting) to buildings would be attributable to about 10 percent of the total ROG emissions. Implementation of **MM AQ-1** below would reduce the ROG emissions below the BAAQMD thresholds, resulting in a less than significant impact of the project. **Less than Significant After Mitigation.**

Table 3-10 Operational Period Emissions

Scenario	ROG	NOx	PM ₁₀	PM _{2.5}
Unmitigated 2028 Annual Operational Emissions (tons/year)	10.00	2.11	4.25	1.13
Mitigated 2028 Annual Operational Emissions (tons/year)	8.98	2.11	4.25	1.13
BAAQMD Thresholds (tons /year)	10 tons	10 tons	15 tons	10 tons
Exceed Threshold?				
Unmitigated	No	No	No	No
Mitigated	No	No	No	No
Unmitigated 2028 Daily Operational Emissions – (lbs/day) ¹	54.82	11.59	23.31	6.21
Mitigated 2028 Daily Operational Emissions – (lbs/day) ¹	49.22	11.59	23.31	6.21
BAAQMD Thresholds (pounds (lbs)/day)	54 lbs/day	54 lbs/day	82 lbs/day	54 lbs/day
Exceed Threshold?				
Unmitigated	Yes	No	No	No
Mitigated	No	No	No	No

Source: Illingworth & Rodkin, 2023

Notes: ¹Assumes 365-day operation.

Impact AQ-1: Emissions from project operations would result in 54.82 pounds/day of ROG, which exceeds the BAAQMD threshold of 54 pounds/day.

Mitigation Measures

MM AQ-1 Super-compliant VOC Coatings. Prior to the issuance of any grading, building or demolition permits, the project applicant shall develop and implement a construction

monitoring and operations plan that demonstrates use of super-compliant volatile organic compound or VOC (i.e., Reactive Organic Gases [ROG]) coatings, that are below current Bay Area Air Quality Management District (BAAQMD) requirements (i.e., Regulation 8, Rule 3: Architectural Coatings), for at least 90 percent of all residential and nonresidential interior paints and 80 percent of exterior paints. This includes all architectural coatings applied during both construction and reapplications throughout the project's operational lifetime. At least 90 percent and 80 percent of coatings applied for interior and exterior, respectively, must meet a "super-compliant" VOC standard of less than 10 grams of VOC per liter of paint. For reapplication of coatings during the project's operational lifetime, the Declaration of Covenants, Conditions, and Restrictions shall contain a stipulation for low VOC coatings to be used. Examples of "super-compliant" coatings are contained in the BAAQMD's website. The plan shall be reviewed and approved by the Director of Planning, Building and Code Enforcement or the Director's designee prior to the issuance of any demolition, grading, or building permits (whichever occurs first). With implementation of MM AQ-1, the project's operation ROG emissions of architectural coatings would be reduced by 9 percent to 49.22 pounds/day and would no longer approach exceedance of the single-source threshold.

Implementation of **MM AQ-1** would reduce ROG emissions of architectural coatings by 9 percent and the impacts from project operations would be less than significant with mitigation.

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

Project impacts related to increased community risk can occur either by introducing a new source of TACs with the potential to adversely affect existing sensitive receptors in the project vicinity or by significantly exacerbating existing cumulative TAC impacts. The project would introduce new sources of TACs during construction (i.e., on-site construction and truck hauling emissions) and operation (i.e., stationary and mobile sources).

Project construction activities would generate dust and equipment exhaust that would affect nearby sensitive receptors. The only stationary source included in the project is one diesel generator associated with the new well. The primary source of operational emissions would be from mobile sources consisting of mostly light-duty vehicles, which would produce TAC and air pollutant emissions.

Health Risk Impacts Associated with Project Construction and Operation

Health risk impacts are addressed by predicting increased lifetime cancer risk, the increase in annual PM_{2.5} concentrations, and computing the hazard index for non-cancer health risks. These sources include on-site construction activity and construction truck hauling from the project. To evaluate the increased cancer risks from the project, a 30-year exposure period was used, per BAAQMD guidance,²² with the sensitive receptors being exposed to project construction emissions during this timeframe.

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 was

²² BAAQMD, BAAQMD Air Toxics NSR Program Health Risk Assessment Guidelines, 2016.

used, per BAAQMD guidance,²³ with the sensitive receptors being exposed to both project construction and operation emissions during this timeframe.

The project increased cancer risk is computed by summing the project construction cancer risk and operation cancer risk contributions. Unlike the increased maximum cancer risk, the annual PM_{2.5} concentration and hazard index values are not additive but based on the annual maximum values for the entirety of the project. The project's MEI is identified as the sensitive receptor that is most impacted by the project's construction and operation.

Health Risks from Project Construction

Construction equipment and associated heavy-duty truck traffic generate diesel exhaust, which is a known TAC. These exhaust air pollutant emissions would not be considered to contribute substantially to existing or projected air quality violations. Construction exhaust emissions may still pose health risks for sensitive receptors such as surrounding residents. The primary health risk associated with construction emissions are cancer risk and exposure to PM_{2.5}. Diesel exhaust poses both a potential health risk and nuisance impact to nearby receptors. A health risk assessment of the project construction activities was conducted that evaluated potential health effects to nearby sensitive receptors from construction emissions of DPM and PM_{2.5}.²⁴ This assessment included dispersion modeling to predict the offsite and on-site concentrations resulting from project construction, so that increased cancer risks and non-cancer health effects could be evaluated.

The maximum increased cancer risks were calculated using the modeled TAC concentrations combined with the OEHHA guidance for age-sensitivity factors and exposure parameters as recommended by BAAQMD. Non-cancer health hazards and maximum PM_{2.5} concentrations were also calculated and identified. Age-sensitivity factors reflect the greater sensitivity of infants and small children to cancer causing TACs. Third trimester, infant, child, and adult exposures were assumed to occur at all residences during the entire construction period.

The maximum modeled annual PM_{2.5} concentration was calculated based on combined exhaust and fugitive concentrations. The maximum computed hazard index values were based on the ratio of the maximum DPM concentration modeled and the chronic inhalation DPM reference exposure level of 5 µg/m³.

The maximum modeled annual DPM and PM_{2.5} concentrations were identified at nearby sensitive receptors to find the MEI from construction activities. Results of this assessment indicated that the construction MEI for both cancer risk and PM_{2.5} occurred at the same location and was located on the first floor (1.5 meters) of an apartment building on Epic Way northwest of the project sites. The location of the MEI and nearby sensitive receptors are shown in **Figure 3-6**. **Table 3-11** lists the health risks from construction at the location of the construction MEI.

Health Risks from Project Operation – Stationary Sources and Traffic

Operation of the project would have long-term emissions from mobile sources (i.e., traffic) and stationary sources (i.e., the diesel generator associated with the well). While these emissions would not

²³ BAAQMD, 2016. *BAAQMD Air Toxics NSR Program Health Risk Assessment Guidelines*. December 2016.

²⁴ DPM is identified by California as a toxic air contaminant due to the potential to cause cancer.

be as intensive at or near the project site as construction activity, they would contribute to long-term effects to sensitive receptors.

Operational cancer risk impact is computed by adding the construction cancer risk for an infant/child to the increased cancer risk for the project operational conditions for the project traffic at the MEI over a 30-year period. The project cancer risk MEI is identified as the sensitive receptor that is most impacted by the project's construction and operation. The project annual PM_{2.5} concentration impact is computed as the total combined PM_{2.5} concentrations from construction and operation. The project PM_{2.5} concentration MEI is identified as the sensitive receptor that is most impacted by the project's construction and operation.

For this project, the sensitive receptors identified in **Figure 3-6** as the construction MEI is the project cancer risk MEI. At this location, the MEI would be exposed to emissions from 4 years of construction and 26 years of project operation, including project traffic. The project annual PM_{2.5} concentration was located at a different receptor than the construction MEI due to the larger annual PM_{2.5} concentration from project traffic along Seely Avenue. The project PM_{2.5} concentration MEI would be located on the first floor (1.5 meters) of another apartment building at the corner of Seely Avenue and Epic Way, northwest of the project site. The cancer risks from construction and operation of the project were added together. Unlike the increased maximum cancer risk, the annual PM_{2.5} concentration and hazard index impacts are not additive but based on maximum annual values for any year over the entirety of the project.

Project risk impacts for offsite receptors are shown in **Table 3-11**. The unmitigated maximum cancer risks, annual PM_{2.5} concentration, and hazard index from construction and operation activities at the residential project MEI locations would not exceed the single-source significance thresholds. The project's cancer risk impact would be 9.69, which is just below the BAAQMD threshold of 10 in one million. Since the cancer risk impact is marginally below the BAAQMD threshold, the applicant has volunteered to include a Condition of Approval for the project to ensure that thresholds are not exceeded in any event. With the implementation of this Condition of Approval, the project's cancer risk for off-site sensitive receptors would be reduced by approximately 84 percent from 9.69 to 1.57 chances per million. These levels of cancer risk would be well below the BAAQMD threshold of 10 chances per million. Therefore, this impact would be less than significant, and no mitigation is required.

Condition of Approval

Prior to the issuance of any demolition, grading, or building permits, the project applicant shall prepare a construction operations plan with equipment verified by a qualified air quality specialist that demonstrates off-road equipment used on-site to construct the project would achieve a fleet-wide average of a 60 percent reduction or more in diesel particulate matter (DPM) exhaust emissions. Specifically, this plan shall include, but is not limited to, the measures identified below:

- All construction equipment larger than 25 horsepower used at the project site for more than two continuous days or 20 hours total shall meet United States Environmental Protection Agency (U.S. EPA) Tier 4 emission standards for particulate matter (PM₁₀ and PM_{2.5}). If use of Tier 4 equipment is not available, alternatively use equipment that meets U.S. EPA emission standards for Tier 3 engines and include particulate matter emissions control equivalent to California Air Resources Board (CARB) Level 3 verifiable diesel emission control devices that altogether achieve a 60 percent reduction in

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

- Alternatively, the project applicant may develop another construction operations plan demonstrating that the construction equipment used on-site would achieve a reduction in construction DPM emissions by 60 percent or greater. Elements of the plan could include a combination of some of the following measures:
 - Use Tier 4 or alternatively fueled equipment,
 - Use of electrical or non-diesel fueled equipment.
 - Install electric power lines during early construction phases to avoid use of diesel generators and compressors,
 - Use of electrically-powered equipment,
 - Forklifts and aerial lifts used for exterior and interior building construction shall be electric or propane/natural gas powered,
 - Change construction build-out plans to lengthen phases, and
 - Implement different building techniques that result in less diesel equipment usage.
- The construction operations plan shall be reviewed and approved by the Director of Planning, Building and Code Enforcement or the Director’s designee prior to the issuance of any demolition, grading, or building permits.

Table 3-11 Construction and Operation Risk Impacts – Off-Site Receptors

Source	Cancer Risk** (per million)	Annual PM _{2.5} ** (µg/m ³)	Hazard Index
<i>Residential Sensitive Receptor</i>			

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Project Construction (Years 0-4)	Unmitigated	9.58 (infant)	0.04	<0.01
	Mitigated*	1.46 (infant)	<0.01	<0.01
Project Traffic, (Years 5-30)		0.03 (child)	0.14	<0.01
Project Generator, (Years 5-30)		0.08 (child)	<0.01	<0.01
Total/Maximum Project Impact (Years 0-30)	Unmitigated	9.69 (infant)	0.14	<0.01
	Mitigated*	1.57 (infant)	0.14	<0.01
BAAQMD Single-Source Threshold		10	0.3	1.0
Exceed Threshold?	Unmitigated	No	No	No
	Mitigated*	No	No	No

Source: Illingworth & Rodkin, 2022

Notes: * Construction equipment with Tier 4 interim engines and BMPs as Mitigation Measure (MM AQ-2).

** Maximum cancer risk and maximum PM_{2.5} concentration occur at different receptors.

Cumulative Health Risks of all TAC Sources at the Off-Site Project MEI

Health risk assessments typically look at all substantial sources of TACs that can affect sensitive receptors that are located within 1,000 feet of a project site (i.e., influence area). These sources include rail lines, freeways or highways, busy surface streets, and stationary sources identified by BAAQMD.

A review of the project area based on provided traffic information indicated that traffic on Montague Expressway, River Oaks Parkway, and McCarthy Boulevard would exceed 10,000 vehicles per day. Other nearby streets would have less than 10,000 vehicles per day. A small section of McCarthy Boulevard is just within the influence area, but given that it is on the boundary with the majority of the roadway not within the influence area, McCarthy Boulevard was not included in the cumulative assessment. A review of BAAQMD’s stationary source map website identified eight stationary sources with the potential to affect the project MEI. Community risk impacts from these sources upon the MEI are reported in **Table 3-12**.

Table 3-12 reports both the project and cumulative health risk impacts at the sensitive receptors most affected by project construction and operation (i.e., the project MEIs). The project would not have an exceedance with respect to health risk caused by project construction and operation activities, since the unmitigated maximum cancer risk, annual PM_{2.5} concentration, and hazard index do not exceed the BAAQMD single-source thresholds. The project’s cancer risk impact is just below the threshold. With the implementation of mitigation and standard permit conditions, the project’s cancer risk would be further lowered to a level well below the single-source threshold. In addition, implementation of identified mitigation and standard permit conditions would be required to reduce the project’s risk impacts to the

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future on-site project receptors. The combined cancer risk, annual PM_{2.5} concentration, and hazard index would not exceed the cumulative thresholds. **Less than Significant Impact.**

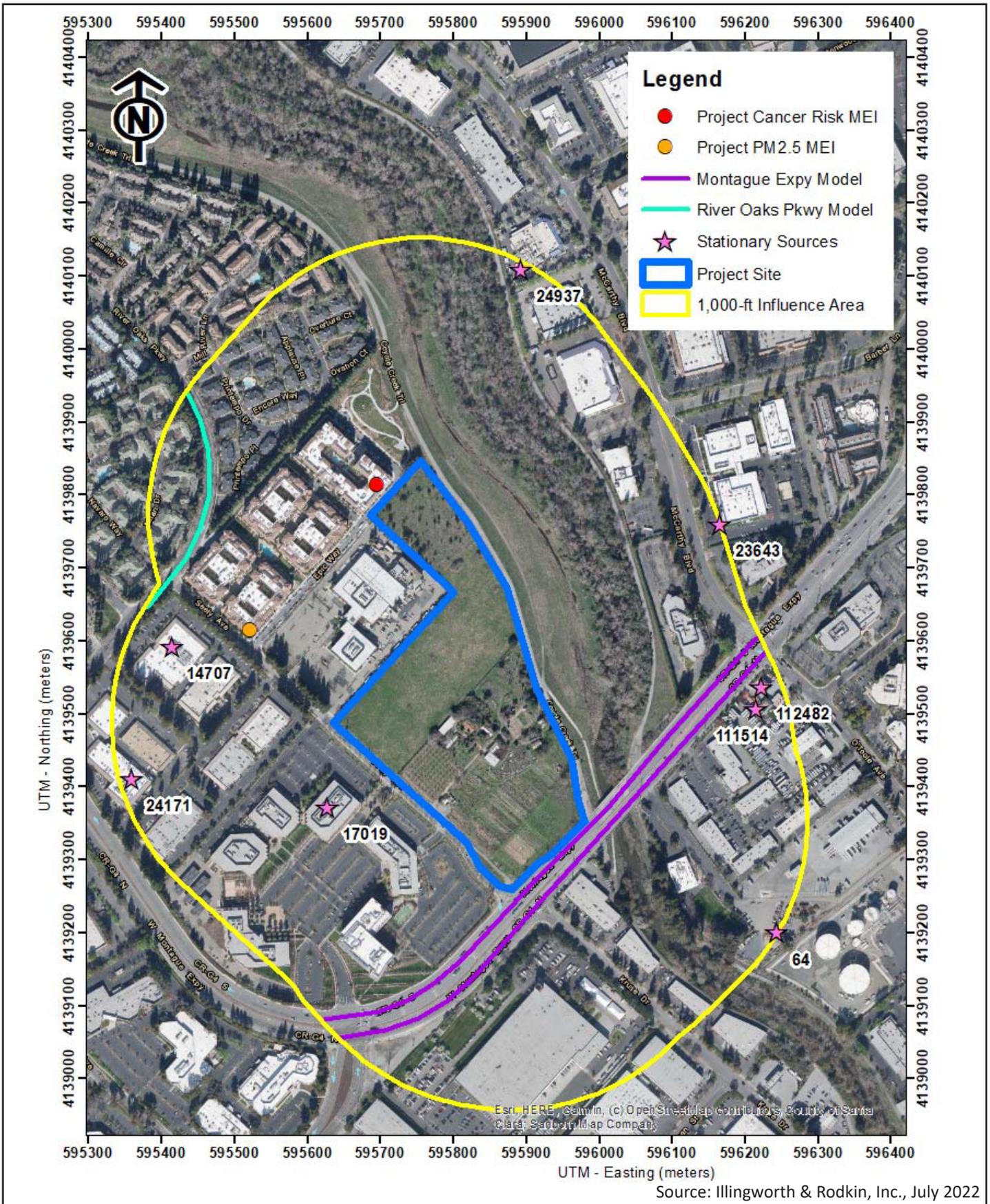
Table 3-12 Cumulative Health Risk Impacts at the Location of the Project MEIs

Source		Cancer Risk* (per million)	Annual PM _{2.5} * (µg/m ³)	Hazard Index
Project Impacts				
Total/Maximum Project Impacts	Unmitigated	9.69 (infant)	0.14	<0.01
	Mitigated	1.57 (infant)	0.14	<0.01
BAAQMD Single-Source Threshold		10	0.3	1.0
<i>Exceed Threshold?</i>				
	Unmitigated	No	No	No
	Mitigated	No	No	No
Cumulative Sources				
Montague Expressway, ADT 62,560		0.46	0.03	<0.01
River Oaks Parkway, ADT 11,940		0.15	0.16	<0.01
Equilon Enterprises LLC-San José Terminal (Facility ID #64, Petroleum Station), MEIs at +1,000/+1,000 feet		1.15	-	0.01
Verizon Business - SQZPCA (Facility ID #14707, Generators), MEIs at +1,000/190 feet		2.77	0.02	<0.01
Cadence Design Systems, Inc (Facility ID #17019, Generators), MEIs at +1,000/750 feet		0.90	<0.01	<0.01
Cordis/Cardinal Health (Facility ID #23643, Generators), MEIs at +1,000/+1,000 feet		0.06	-	-
Eugenus, Inc (Facility ID #24171, Generators), MEIs at +1,000/775 feet		0.05	<0.01	<0.01
Measurement Specialties, Inc. (Facility ID #24937, Generators), MEIs at +1,000/+1,000 feet		0.03	<0.01	<0.01
Montague Car Wash (Facility +1,000/+1,000 feet		0.46	-	<0.01

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Source	Cancer Risk* (per million)	Annual PM _{2.5} * (µg/m ³)	Hazard Index
Propel Fuels Inc. (Facility ID #112482, Gas Dispensing Facility), MEIs at +1,000/+1,000 feet	0.02	-	<0.01
<i>Combined Sources</i> Unmitigated	15.74	<0.38	<0.10
Mitigated	7.62	<0.38	<0.10
<i>BAAQMD Cumulative Source Threshold</i>	100	0.8	10.0
<i>Exceed Threshold?</i> Unmitigated	No	No	No
Mitigated	No	No	No

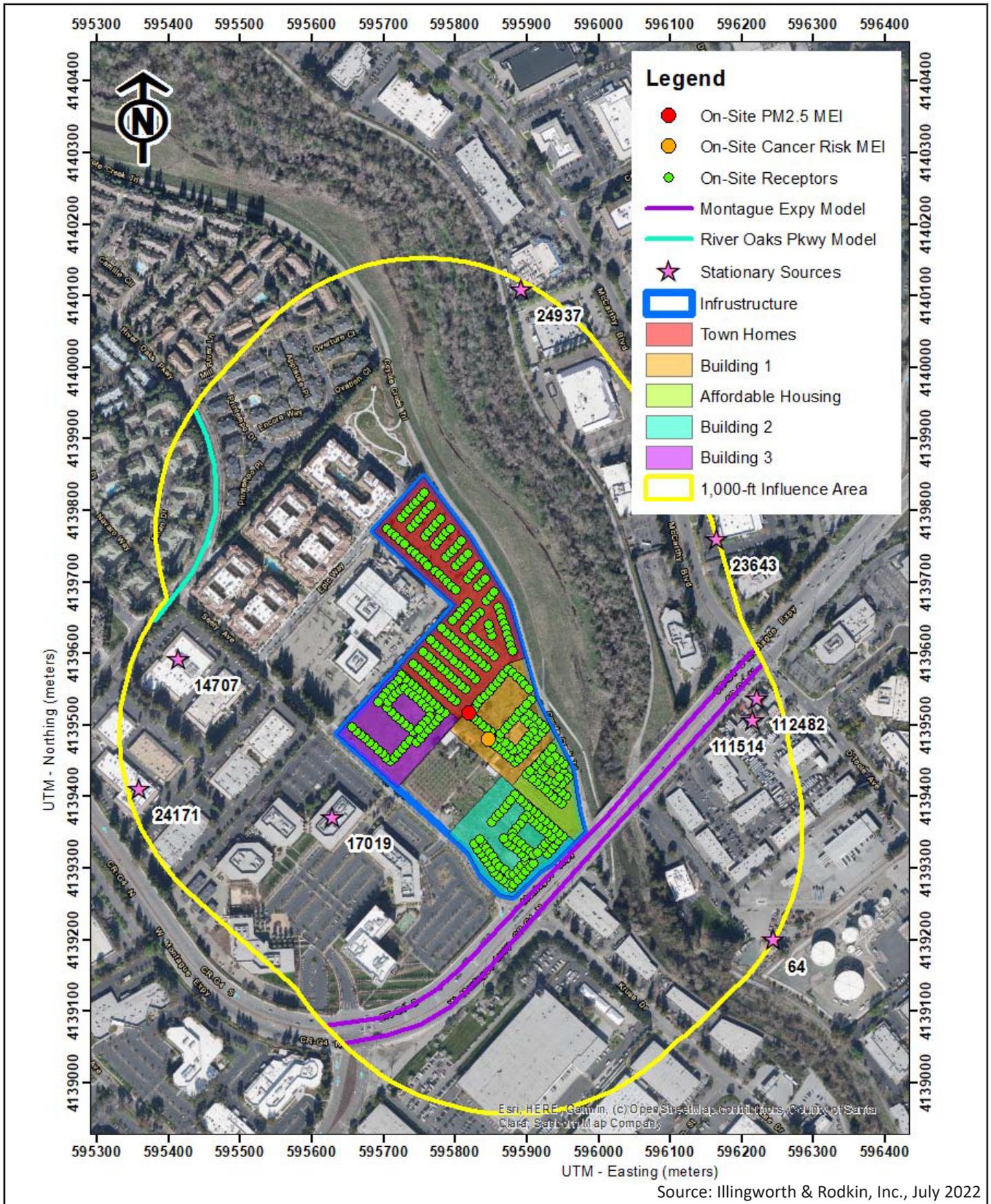
* Maximum cancer risk and maximum PM_{2.5} concentration occur at different receptors.
Source: Illingworth & Rodkin, 2023



Nearby TAC and PM_{2.5} Sources

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Figure
3-7



Project Site and Location of Maximum TAC Impacts
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Figure
3-8

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

Common sources of odors and odor complaints are uses such as transfer stations, recycling facilities, painting/coating facilities, landfills, and wastewater treatment plants. During construction, use of diesel-powered vehicles and equipment could temporarily generate localized odors, which would cease upon project completion. **Figure 3-7** shows the location of the sources affecting the MEI. The project does not include any uses that would generate objectionable odors during operation. Therefore, this impact would be less than significant. **Less Than Significant Impact.**

Non-CEQA Effects

The project would introduce new residents that would be considered sensitive receptors. In December 2015, the California Supreme Court issued an opinion in the California Building Industry Association vs. Bay Area Air Quality Management District (*CBIA vs. BAAQMD*) case that CEQA is primarily concerned with the impacts of a project on the environment, not the effects of the existing environment on a project. In light of this ruling, the effect of existing air pollutants from off-site sources on new sensitive receptors introduced by the project would not be considered an impact under CEQA.

On-Site Sensitive Receptors

2040 General Plan Policy MS-11.1 requires completion of air quality modeling for new sensitive land uses located near sources of pollution and the identification of project design measures to avoid significant risks. The project proposes new sensitive receptors (elderly residents) in the proximity of nearby potential TAC sources. CEQA typically requires analysis of impacts of the projects on the environment rather than impacts of the existing environment on the project. However, the effect of existing TAC sources on future project receptors was conducted to comply with the 2017 CAP goal of reducing TAC exposure and protecting public health as well as 2040 General Plan Policy MS-11.1.

The 2040 General Plan Policy MS-11.1 requires new residential development projects and projects categorized as sensitive receptors to incorporate effective mitigation into project designs to avoid significant risks to health and safety required when new residential are proposed near existing sources of TACs. BAAQMD’s recommended thresholds for health risks and hazards, shown in **Table 3-6**, are used to evaluate on-site exposure.

In addition to evaluating health impact from project construction, a health risk assessment was completed to assess the impact that the phased construction emissions from the project and the existing TAC sources would have on the new sensitive receptors (residents) that the project would introduce. The same TAC sources identified above were used in this health risk assessment. All on-site community risk results are listed in **Table 3-14**.

Table 3-13 Cumulative Health Risk Impacts on On-Site Sensitive Receptors

Source		Cancer Risk (per million)	Annual PM _{2.5} (µg/m ³)	Hazard Index
Project Sources				
Project Construction Impacts	Unmitigated	21.34	0.08	0.01
	Mitigated	4.08	0.03	<0.01
Project Generator Impacts at On-Site MEI		0.48	<0.01	<0.01
Total/Maximum Project Impact	Unmitigated	21.82	0.08	0.01
	Mitigated	4.56	0.03	<0.01
Cumulative Sources				
Montague Expressway, ADT 62,560		0.65	0.08	<0.01
River Oaks Parkway, ADT 11,940		0.04	0.04	<0.01
Equilon Enterprises LLC-San José Terminal (Facility ID #64, Petroleum Station), Project Site at +1,000 feet		1.15	-	0.01
Verizon Business - SQZPCA (Facility ID #14707, Generators), Project Site at 660 feet		5.54	<0.01	0.01
Cadence Design Systems, Inc (Facility ID #17019, Generators), Project Site at 200 feet		9.26	0.01	0.03
Cordis/Cardinal Health (Facility ID #23643, Generators), Project Site at +1,000 feet		0.06	-	-
Eugenus, Inc (Facility ID #24171, Generators), Project Site at 870 feet		0.06	<0.01	<0.01
Measurement Specialties, Inc. (Facility ID #24937, Generators), Project Site at 960 feet		0.03	<0.01	<0.01
Montague Car Wash (Facility ID #111514, Gas Dispensing Facility), Project Site at 820 feet		0.62	-	<0.01

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Source		Cancer Risk (per million)	Annual PM_{2.5} (µg/m³)	Hazard Index
Propel Fuels Inc. (Facility ID #112482, Gas Dispensing Facility), Project Site at 860 feet		0.03	-	<0.01
<i>BAAQMD Single-Source Threshold</i>		<i>10</i>	<i>0.3</i>	<i>1.0</i>
<i>Exceed Threshold?</i>	Unmitigated	<i>Yes</i>	<i>No</i>	<i>No</i>
	Mitigated	<i>No</i>	<i>No</i>	<i>No</i>
Combined Sources	Unmitigated	39.26	<0.24	<0.12
	Mitigated	22.00	<0.19	<0.12
<i>BAAQMD Cumulative Source Threshold</i>		<i>100</i>	<i>0.8</i>	<i>10.0</i>
<i>Exceed Threshold?</i>	Unmitigated	<i>No</i>	<i>No</i>	<i>No</i>
	Mitigated	<i>No</i>	<i>No</i>	<i>No</i>

Source: Illingworth & Rodkin, 2023

Project Phased Construction

Project residents could occupy a building once it has completed construction. Therefore, it was assumed that Building A and the affordable apartment building would have sensitive receptors during the construction of the Town Homes and Buildings B and C, and Building B would be occupied while Building C is being constructed. The construction analysis for the project residents was conducted in the same manner as described above for the off-site cancer risk and PM_{2.5} MEIs. Receptors were placed within each affected residential area and were spaced every 26 feet (8 meters). Project impacts were modeled at receptor heights used to represent the first and second residential levels of the respective buildings. Maximum increased cancer risks were calculated for the residents at the project site using the maximum modeled TAC concentrations. Maximum construction impacts would occur at the first-floor level of Building B, with the on-site cancer risk and PM_{2.5} MEIs at different receptor locations, as shown in **Figure 3-7**. A 30-year exposure period was used in calculating cancer risks assuming the residents would include third trimester pregnancy and infants/children and were assumed to be in the new residential areas for 24 hours per day for 350 days per year. The project construction community risk impacts at the project sites are shown in **Figure 3-8**.

Local Roadways – Montague Expressway and River Oaks Parkway

The roadway analysis for the project residents was conducted in the same manner as described above for the off-site MEIs. Year 2024 emission factors were conservatively assumed as being representative of future conditions during project construction. Roadway ADTs of 62,560 and 11,940 were used for Montague Expressway and River Oaks Parkway, respectively. Traffic impacts from these roadways were calculated at the on-site construction cancer risk and PM_{2.5} MEIs. The roadway community risk impacts at the project sites are shown in **Table 3-14**.

Stationary Sources

The stationary source screening analysis for the new project sensitive receptors was conducted in the same manner as described above for the project MEIs. **Table 3-14** shows the health risk assessment results from the stationary sources.

Cumulative Community Risks

Community risk impacts from both project construction scenarios and existing TAC sources upon the project sites are reported in **Table 3-14**. The risks from the singular TAC sources are compared against the BAAQMD single-source threshold. The risks from all the sources are then combined and compared against the BAAQMD cumulative-source threshold. As shown, the project construction sources' unmitigated cancer risk impacts exceed the single-source thresholds, but not the cumulative-source thresholds. Implementation of identified mitigation and standard permit conditions would reduce cancer risks below the single-source thresholds. The annual PM_{2.5} concentration and hazard index from the project's unmitigated and mitigated impacts, as well as the impacts from the other nearby sources do not exceed the single-source thresholds. The combined maximum cancer risk, annual PM_{2.5} concentrations, and HI from all sources would not exceed the cumulative thresholds.

Community Risk Impacts Associated with Project Construction and Operation

Community risk impacts are addressed by predicting increased lifetime cancer risk, the increase in annual PM_{2.5} concentrations, and computing the HI for non-cancer health risks. These sources include on-site construction activity and construction truck hauling from the project. To evaluate the increased

cancer risks from the project, a 30-year exposure period was used, per BAAQMD guidance,²⁵ with the sensitive receptors being exposed to project construction emissions during this timeframe.

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 was used, per BAAQMD guidance,²⁶ with the sensitive receptors being exposed to both project construction and operation emissions during this timeframe.

The project increased cancer risk is computed by summing 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 MEI is identified as the sensitive receptor that is most impacted by the project's construction and operation.

Community Risks from Project Construction

Construction equipment and associated heavy-duty truck traffic generate diesel exhaust, which is a known TAC. These exhaust air pollutant emissions would not be considered to contribute substantially to existing or projected air quality violations. Construction exhaust emissions may still pose health risks for sensitive receptors such as surrounding residents. The primary community risk impact issue associated with construction emissions are cancer risk and exposure to PM_{2.5}. Diesel exhaust poses both a potential health and nuisance impact to nearby receptors. A health risk assessment of the project construction activities was conducted that evaluated potential health effects to nearby sensitive receptors from construction emissions of DPM and PM_{2.5}.²⁷ This assessment included dispersion modeling to predict the offsite and on-site concentrations resulting from project construction, so that increased cancer risks and non-cancer health effects could be evaluated.

The maximum increased cancer risks were calculated using the modeled TAC concentrations combined with the OEHHA guidance for age-sensitivity factors and exposure parameters as recommended by BAAQMD. Non-cancer health hazards and maximum PM_{2.5} concentrations were also calculated and identified. Age-sensitivity factors reflect the greater sensitivity of infants and small children to cancer causing TACs. Third trimester, infant, child, and adult exposures were assumed to occur at all residences during the entire construction period.

The maximum modeled annual PM_{2.5} concentration was calculated based on combined exhaust and fugitive concentrations. The maximum computed HI values was based on the ratio of the maximum DPM concentration modeled and the chronic inhalation DPM reference exposure level of 5 µg/m³.

The maximum modeled annual DPM and PM_{2.5} concentrations were identified at nearby sensitive receptors to find the MEI from construction activities. Results of this assessment indicated that the construction MEI for both cancer risk and PM_{2.5} occurred at the same location and was located on the first floor (1.5 meters) of an apartment building on Epic Way northwest of the project sites. **Table 3-11** lists the community risks from construction at the location of the construction MEI.

²⁵ BAAQMD, BAAQMD Air Toxics NSR Program Health Risk Assessment Guidelines, 2016.

²⁶ BAAQMD, 2016. *BAAQMD Air Toxics NSR Program Health Risk Assessment Guidelines*. December 2016.

²⁷ DPM is identified by California as a toxic air contaminant due to the potential to cause cancer.

Community Risks from Project Operation – Stationary Sources and Traffic

Operation of the project would have long-term emissions from mobile sources (i.e., traffic) and stationary sources (i.e., generators). While these emissions would not be as intensive at or near the project site as construction activity, they would contribute to long-term effects to sensitive receptors.

The cumulative risk impacts from a project are the combination of construction and operation sources. These sources include on-site construction activity and project traffic. The project cancer risk impact is computed by adding the construction cancer risk for an infant/child to the increased cancer risk for the project operational conditions for the project traffic at the MEI over a 30-year period. The project cancer risk MEI is identified as the sensitive receptor that is most impacted by the project's construction and operation. The project annual PM_{2.5} concentration impact is computed as the total combined PM_{2.5} concentrations from construction and operation. The project PM_{2.5} concentration MEI is identified as the sensitive receptor that is most impacted by the project's construction and operation.

For this project, the sensitive receptors identified as the construction MEI is the project cancer risk MEI. At this location, the MEI would be exposed to emissions from 4 years of construction and 26 years of project operational (includes project traffic). The project annual PM_{2.5} concentration was located at a different receptor than the construction MEI due to the larger annual PM_{2.5} concentration from project traffic along Seely Avenue. The project PM_{2.5} concentration MEI was located on the first floor (1.5 meters) of another apartment building at the corner of Seely Avenue and Epic Way, northwest of the project sites. The cancer risks from construction and operation of the project were added together. Unlike the increased maximum cancer risk, the annual PM_{2.5} concentration and hazard index impacts are not additive but based on maximum annual values for any year over the entirety of the project.

Project risk impacts for on-site receptors are shown in **Table 3-14**. The unmitigated maximum cancer risks, annual PM_{2.5} concentration, and HI from construction and operation activities at the residential project MEI locations would not exceed the single-source significance thresholds. However, the project's cancer risk impact would be 21.82 chances per million, which is above the BAAQMD threshold of 10 in one million. As discussed under **threshold c)**, above, the applicant has agreed to include a condition of approval for the project to ensure that health risk thresholds are not exceeded in any event. Implementation of this voluntary condition of approval would reduce the cancer risk impact to on-site receptors by approximately 81 percent to 4.56 chances per million, which is well below the single-source threshold.

Table 3-14 Cumulative Community Health Risk Impacts on On-Site Sensitive Receptors

Source		Cancer Risk (per million)	Annual PM _{2.5} (µg/m ³)	Hazard Index
Project Sources				
Project Construction Impacts	Unmitigated	21.34	0.08	0.01
	Mitigated	4.08	0.03	<0.01
Project Generator Impacts at On-Site MEI		0.48	<0.01	<0.01
Total/Maximum Project Impact	Unmitigated	21.82	0.08	0.01
	Mitigated	4.56	0.03	<0.01
Cumulative Sources				
Montague Expressway, ADT 62,560		0.65	0.08	<0.01
River Oaks Parkway, ADT 11,940		0.04	0.04	<0.01
Equilon Enterprises LLC-San José Terminal (Facility ID #64, Petroleum Station), Project Site at +1,000 feet		1.15	-	0.01
Verizon Business - SQZPCA (Facility ID #14707, Generators), Project Site at 660 feet		5.54	<0.01	0.01
Cadence Design Systems, Inc (Facility ID #17019, Generators), Project Site at 200 feet		9.26	0.01	0.03
Cordis/Cardinal Health (Facility ID #23643, Generators), Project Site at +1,000 feet		0.06	-	-
Eugenus, Inc (Facility ID #24171, Generators), Project Site at 870 feet		0.06	<0.01	<0.01
Measurement Specialties, Inc. (Facility ID #24937, Generators), Project Site at 960 feet		0.03	<0.01	<0.01
Montague Car Wash (Facility ID #111514, Gas Dispensing Facility), Project Site at 820 feet		0.62	-	<0.01

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Source		Cancer Risk (per million)	Annual PM _{2.5} (µg/m ³)	Hazard Index
Propel Fuels Inc. (Facility ID #112482, Gas Dispensing Facility), Project Site at 860 feet		0.03	-	<0.01
BAAQMD Single-Source Threshold		10	0.3	1.0
Exceed Threshold?	Unmitigated	Yes	<i>No</i>	<i>No</i>
	Mitigated	<i>No</i>	<i>No</i>	<i>No</i>
Combined Sources	Unmitigated	39.26	<0.24	<0.12
	Mitigated	22.00	<0.19	<0.12
BAAQMD Cumulative Source Threshold		100	0.8	10.0
Exceed Threshold?	Unmitigated	<i>No</i>	<i>No</i>	<i>No</i>
	Mitigated	<i>No</i>	<i>No</i>	<i>No</i>

Source: Illingworth & Rodkin, 2023

Community Risks from Diesel Generator

As described in Section 2.3.4, the new well on-site would require the installation of an emergency standby diesel generator. The generator would be tested periodically and power the well in the event of a power failure. Emissions associated with generator testing were factored into the broader on-site receptor analysis, as shown in Table 3-13. However, because generator emissions would have the potential for specific localized impacts, a separate analysis of the generator was conducted in the same manner as described for the off-site MEIs, above.

For modeling purposes, it was assumed that the generator would be operated for testing and maintenance purposes as well as non-testing purposes per BAAQMD's newest Guidelines. CARB and BAAQMD requirements limit these engine operations to 50 hours each per year for testing and maintenance, and new BAAQMD Guidelines recommend including 100 hours each year for non-testing and non-maintenance operations. During testing periods, the engine would typically be run for less than one hour. The engine would be required to meet CARB and EPA emission standards and consume commercially available California low-sulfur diesel fuel. Additionally, the generator would have to meet BAAQMD BACT requirements for IC Engine-Compression Ignition: Stationary Emergency, non-Agricultural, non-direct drive fire pump sources. The emissions from the operation of the generator were calculated using the CalEEMod model.

The maximum generator impacts on the project site occurred at a different location from the maximum on-site construction impact locations. The maximum risk occurred on the third residential level at the southernmost receptor in the affordable housing area closest to the generator. In that location, the maximum cancer risk impact from the generator alone was 15.18 per million, which would exceed the threshold of 10 chances per million. To reduce the health risk impact associated with the diesel generator to below the threshold, SJMW will either:

1. Use a generator that is 300 kw or less; or
2. Add controls to the generator such that it meets U.S. EPA Tier 4 standards for particulate matter emissions or equip the generator with a CARB-certified Level 3 diesel particulate filter that achieves 85 percent reduction in particulates.

With implementation of the condition of approval above, health risk impacts from the generator to the affordable housing units would be reduced below the single-source significance threshold.

3.4 Biological Resources

This section is based in part on the arborist report and tree mitigation memorandum prepared to document the existing trees within and adjacent to the project site by HortScience/Bartlett Consulting, dated October 2021 (Appendix C). In addition, a biological resources analysis was prepared to address the potential impacts to biological resources on and immediately adjacent to the project site by Johnson Marigot Consulting, LLC, dated December 2022 (Appendix D). The conclusions and recommendations of these reports are discussed in the following section.

During the public scoping process, four commenters raised concerns about potential biological resources impacts. Specifically, commenters requested that the EIR consider the following issues:

- Potential impacts to burrowing owl (*Athene cunicularia*) and golden eagle (*Aquila chrysaetos*)
- Effects of tree removal on nesting birds
- Proximity to Coyote Creek and associated riparian areas
- Avian collisions with new buildings
- Request for an extension for the deadline to comment on the NOP

Each of these topics is covered in **Section 3.4.2.2, Project Impacts**. While the NOP comment period was not formally extended, comments received after the official comment period were still considered in the EIR.

3.4.1 Environmental Setting

3.4.1.1 Regulatory Framework

Federal

The Federal Endangered Species Act (FESA) and the Migratory Bird Treaty Act (MBTA) are the primary federal planning, treatment, and review mechanisms for biological resources in the study area (i.e., the project site). Each is summarized below.

Endangered Species Act

The U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) are the designated federal agencies responsible for administering the FESA. The FESA defines species as “endangered” and “threatened” and provides regulatory protection for any species thus designated. FESA Section 9 prohibits the “take” of species listed by USFWS as threatened or endangered. As defined in the FESA, taking means “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in such conduct.” Recognizing that take cannot always be avoided, FESA Section 10(a) includes provisions for takings that are incidental to, but not the purpose of, otherwise lawful activities.

FESA Section 7(a)(2) requires all federal agencies, including USFWS, to evaluate projects authorized, funded, or carried out by federal agencies with respect to any species proposed for listing or already listed as endangered or threatened and the species’ critical habitat, if any is proposed or designated. Federal agencies must undertake programs for the conservation of endangered and threatened species

and are prohibited from authorizing, funding, or carrying out any action that would jeopardize a listed species or destroy or modify its “critical habitat.”

As defined in the FESA, “individuals, organizations, states, local governments, and other nonfederal entities are affected by the designation of critical habitat only if their actions occur on federal lands, require a federal permit, license, or other authorization, or involve federal funding.”

Migratory Bird Treaty Act

The MBTA is the domestic law that affirms and implements a commitment by the U.S. to four international conventions (with Canada, Mexico, Japan, and Russia) for the protection of a shared migratory bird resource. One species protected under this act is the burrowing owl (*Athene cunicularia*). It is classified as a priority 2 California Species of Special Concern by the CDFW. The habitat of the burrowing owl is typically within open, dry grassland and deserts and are also found in grass, forb, and open shrub habitats. Unless and except as permitted by regulations, the MBTA makes it unlawful at any time, by any means, or in any manner to intentionally pursue, hunt, take, capture, or kill migratory birds anywhere in the U.S. The law also applies to the intentional disturbance and removal of nests occupied by migratory birds or their eggs during the breeding season.

On December 22, 2017, the U.S. Department of the Interior redefined incidental take under the MBTA such that “the MBTA’s prohibition on pursuing, hunting, taking, capturing, killing, or attempting to do the same applies only to direct and affirmative purposeful actions that reduce migratory birds, their eggs, or their nests, by killing or capturing, to human control.” Thus, the federal MBTA definition of take does not prohibit or penalize the incidental take of migratory birds that results from actions that are performed without motivation to harm birds. This interpretation differs from the prior federal interpretation of take, which prohibited all incidental take of migratory birds, whether intentional or incidental. However, California state regulations protect bird nests with eggs or young from incidental take, as discussed below.

State

In addition to CEQA, the primary state planning, treatment, and review mechanisms for biological resources in the study area are the California Endangered Species Act (CESA); California Fish and Game Code (CFG) Sections 16001603 and 3503, 3503.5, and 3511; and the National Pollutant Discharge Elimination System (NPDES) General Permit. Each is summarized below.

California Endangered Species Act

The CESA closely parallels the conditions of the FESA; however, it is administered by CDFW. CESA prohibits the “taking” of listed species except as otherwise provided in state law. Unlike the FESA, CESA applies the take prohibitions to species petitioned for listing (state candidates). State lead agencies are required to consult with CDFW to ensure that any actions are not likely to jeopardize the continued existence of any state-listed species or result in destruction or degradation of required habitat. CDFW is required to coordinate with USFWS for actions that involve both federally listed and state-listed species.

Under CFGC Section 2081, CDFW may authorize individuals or public agencies to import, export, take, or possess any endangered, threatened, or candidate species in the state of California. These acts that are otherwise prohibited may be authorized through permits or memoranda of understanding if:

- The take is incidental to an otherwise lawful activity;

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- Impacts of the authorized take are minimized and fully mitigated;
- The permit is consistent with any regulations adopted pursuant to any recovery plan for the species; and
- The project applicant ensures adequate funding to implement the measures required by CDFW.
- CDFW makes this determination based on the best scientific and other information that is reasonably available and includes consideration of the species' capability to survive and reproduce.

California Fish and Game Code Sections 1600-1603

All diversions, obstructions, or changes to the natural flow or bed, channel, or bank of any river, stream, or lake in California that supports fish or wildlife resources are subject to the regulatory authority of CDFW under CFGC Sections 1600–1603. Under the CFGC, a stream is defined as a body of water that flows at least periodically, or intermittently, through a bed or channel having banks and supporting fish or other aquatic life. Included are watercourses with surface or subsurface flows that support or have supported riparian vegetation. Specifically, CFGC Section 1603 governs private-party individuals, and CFGC Section 1601 governs public projects.

CDFW jurisdiction in altered or artificial waterways is based on the value of those waterways to fish and wildlife. CDFW must be contacted by the public or private party for a streambed alteration agreement for any project that might substantially affect a streambed or wetland. CDFW has maintained a “no net loss” policy regarding potential impacts and has required replacement of lost habitats on at least an acre-for-acre basis.

California Fish and Game Code Sections 3503, 3503.5, and 3513

Under these Fish and Game Code sections, a project operator is not allowed to conduct activities that would result in the taking, possessing, or destroying of any birds of prey; the taking or possessing of any migratory non-game bird; the taking, possessing, or needlessly destroying of the nest or eggs of any raptors or non-game birds; or the taking of any non-game bird under CFGC Section 3800. CFGC Section 3513 adopts the U.S. Department of the Interior’s take provisions under the MBTA. As described above, in 2017, the U.S. Department of the Interior redefined incidental take under the MBTA; however, CDFW subsequently issued an advisory that affirms that California law continues to prohibit incidental take of migratory birds.

Bald and Golden Eagle Protection Act

The Bald and Golden Eagle Protection Act (16 U.S.C. 668-668d, as amended in 1959, 1962, and 1972) prohibits the take (pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb) of bald eagles and golden eagles, including their parts, nests, or eggs. The act further defines “disturb” as “to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, 1) injury to an eagle, 2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or 3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior”. These prohibitions extend to human-induced alterations in proximity to a previously used nest site during a time when eagles are not present, if, upon the eagle's return, such alterations agitate or bother an eagle to a

degree that interferes with or interrupts normal breeding, feeding, or sheltering habits, and causes injury, death or nest abandonment. The USFWS issues permits for take of bald and golden eagles related to scientific collecting, falconry (golden eagles only), raptor propagation, depredation, taxidermy, Native American religious purposes, and education purposes.

Regional and Local

Santa Clara Valley Habitat Plan/Natural Communities Conservation Plan

The Santa Clara Valley Habitat Plan/Natural Communities Conservation Plan (HCP) was developed through a partnership between Santa Clara County, the Cities of San José, Morgan Hill, and Gilroy, the SCVWD, Santa Clara Valley Transportation Authority (VTA), USFWS, and the CDFW. The HCP is intended to promote the recovery of endangered species and enhance ecological diversity and function, while accommodating planned growth in approximately 500,000 acres of southern Santa Clara County. The project site is located within the boundaries of the HCP and is designated as follows:

- Area 4: Urban Development Equal to or Greater than 2 Acres Covered
- Land Cover: Row-crop, Hay and Pasture, Disked/Short-term Fallowed (22 acres), Urban-Suburban (0.3 acres)
- Land Cover Fee Zone: Fee Zone B (Agricultural and Valley Floor Lands) and Fee Zone C (Small Vacant Sites Under 10 Acres)

Santa Clara Valley Habitat Plan Conditions

The Santa Clara Valley Habitat Plan developed a guide to assist co-permittees, such as a lead agency, and private applicants in implementing conditions that apply to covered activities under the Habitat Plan. The relevant conditions are as follows:

- Avoid Direct Impacts on Legally Protected Plant & Wildlife Species
- Maintain Hydrologic Conditions and Protect Water Quality
- Avoidance and Minimization Measures for In-Stream Operations and Maintenance
- Rural Development Design and Construction Requirements
- Stream and Riparian Setbacks
- Wetland and Pond Avoidance and Minimization

City of San José Tree Ordinance

The City's Municipal Code includes tree protection measures (Municipal Code Title 13, Chapters 13.28 [Street Trees, Hedges and Shrubs] and 13.32 [Tree Removal Controls]) that regulate the removal of trees. An "ordinance-sized tree" on private property is defined as any tree having a main stem or trunk, 12 inches in diameter (38 inches or more in circumference) at a height measured 54 inches (4.5 feet) above ground. For multi-trunk trees, the circumference is measured as the sum of the circumferences of all trunks at 54 inches above grade. On single-family or duplex lots, a permit is required to remove ordinance-sized trees, even if they are unhealthy or dead. On multi-family, commercial, or industrial lots, a permit is required to remove a tree of any size. The Code defines a "heritage tree" as any tree that because of factors including but not limited to its history, girth, height, species or unique quality,

has been found by the City Council to have a special significance to the community. Pruning or removing a heritage tree is illegal without first consulting the City Arborist and obtaining a permit. Finally, street trees are those that are located in the public right-of-way between the curb and sidewalk. A permit is required before pruning or removing a street tree.

Council Policy 6-34: Riparian Corridor Protection and Bird-Safe Design

The City’s Riparian Corridor Policy Study analyzed streams and riparian corridors in the City and addresses how development should protect and preserve these riparian corridors. Furthermore, the City’s Riparian Corridor Protection and Bird-Safe Design Policy (Council Policy 6-34) supplements the regulations for riparian corridors and provides guidance for project design that protects and preserves these riparian corridors (City of San José 2016). The Riparian Corridor Policy applies to projects within 300 feet of a riparian corridor’s top of bank or edge of vegetation, whichever is greater. The Riparian Corridor Protection and Bird-Safe Design Policy establishes a standard of a 100-foot riparian corridor setback, with an exception for projects where no significant environmental impact will occur. The policy also includes guidance to reduce the incidence of avian collisions with windows and other reflective surfaces.

2040 General Plan

Policies in the 2040 General Plan have been adopted for the purpose of avoiding or mitigating biological resource impacts from development projects. The following policies in **Table 3-15** are applicable to the project.

Table 3-15 Envision San José 2040 Relevant Biological Resource Policies

Policy CD-1.24	Within new development projects, include preservation of ordinance-sized and other significant trees, particularly natives. Avoid any adverse effect on the health and longevity of such trees through design measures, construction, and best maintenance practices. When tree preservation is not feasible, include replacements or alternative mitigation measures in the project to maintain and enhance our Community Forest.
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 (HCP/NCCP).
Policy ER-2.2	Ensure that a 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.
Policy ER-4.4	Require that development projects incorporate mitigation measures to avoid and minimize impacts to individuals of special-status species.
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 of activities that could result in impacts to nests during the breeding season or maintenance of buffers between such activities and active nests would avoid such impacts.

0 Seely Avenue Mixed-Use Project

Policy ER-5.2	Require that development projects incorporate measures to avoid impacts to nesting migratory birds.
Policy ER-6.5	Prohibit use of invasive species, citywide, in required landscaping as part of the discretionary review of a proposed development.
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-21.8	For Capital Improvement Plan or other public development projects, or through the entitlement process for private development projects, require landscaping including the selection and planting of new trees to achieve the following goals: <ol style="list-style-type: none"> 1. Avoid conflicts with nearby power lines. 2. Avoid potential conflicts between tree roots and developed areas. 3. Avoid use of invasive, non-native trees. 4. Remove existing invasive, non-native trees. 5. Incorporate native trees into urban plantings in order to provide food and cover for native wildlife species. 6. Plant native oak trees and native sycamores on sites which have adequately sized landscape areas and which historically supported these species.

Source: City of San José, 2022

3.4.1.2 Existing Conditions

The project site is partially developed with two residences, a fruit stand, ancillary structures, and an orchard. The project site also contains 584 trees of various species. A tree survey was completed for the project by Bartlett Consulting, dated October 2021, and is contained in Appendix C. Based on the biological resources analysis, habitat types within the project site consist of active agricultural land, abandoned orchard, fallow field, anthropogenic/ornamental land cover types, and ornamental trees. No special-status habitats such as waters of the U.S. and/or State or riparian habitat occur on the project site. The on-site trees, shrubs, abandoned buildings, and fallow fields provide suitable nesting habitat for passerines and raptors. The on-site abandoned buildings also provide suitable roosting habitat for special-status bats. These bat species include the western mastiff bat (*Eumops perotis*), western red bat (*Lasiurus blossevillii*), Townsend’s big-eared bat (*Pelcotus townsendii*), and pallid bat (*Antrozous pallidus*). A habitat map, special-species map, and Coyote Creek riparian map are provided in Appendix D.

Coyote Creek and Coyote Creek Trail are present along the entire eastern boundary of the project site. The City's Riparian Corridor Policy applies to projects within 300 feet of a riparian corridor's top of bank or edge of vegetation, whichever is greater. According to the HCP, this creek is a perennial stream. The riparian canopy and/or low-flow channel of this segment of Coyote Creek range between 90 and 350 feet east of the northeastern project boundary. The project site has been developed with agricultural, residential, and commercial uses for many years and does not support riparian habitat or other vegetation (Appendix D).

3.4.2 Impacts and Mitigation

3.4.2.1 Thresholds of Significance

For the purposes of this analysis and in accordance with CEQA Guidelines, a project impact to biological resources would be considered significant if the project would:

- a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service;
- b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or U.S. Fish and Wildlife Service;
- c) Have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means;
- d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites;
- e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance; or
- f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan.

3.4.2.2 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 California Department of Fish and Game or U.S. Fish and Wildlife Service?**

A literature search and a site visit were conducted for the project site to determine the potential for suitable habitat for special-status species (presence of habitat components necessary to support the species) and sensitive habitat types. The project site is characterized by agricultural uses (orchards and a fruit stand) as well as vacant residential buildings, ornamental vegetation, and fallow fields. No special-status habitats such as waters of the U.S./State or riparian habitat occur on the project site. Additionally, the biological resource analysis determined there is no probability of the golden eagle occurring at the project site, as it lacks suitable habitat for hunting and nesting.

The trees, shrubs, abandoned buildings, and fallow fields that occur on the project site may provide nesting habitat for migratory birds, including raptors. Nesting birds, including raptors and their nests are protected under the MBTA of 1918 and California Fish and Game Code Sections 3503 and 3503.5. Construction disturbance, including tree removals, during the breeding season could result in the incidental loss of fertile eggs or nestlings, or otherwise lead to nest abandonment. Disturbance that causes nest abandonment and/or loss of reproductive effort is considered “take” by the CDFW and represents a significant impact.

To avoid operational impacts associated with avian collisions, the project would comply with the City’s Bird-Safe Design guidelines (City Council Policy 6-34) by avoiding mirrors and large areas of reflective glass; avoiding transparent glass skyways, walkways, or entryways, free-standing glass walls, and transparent building corners; and avoiding funneling open space to a building façade.

Four species of special-status bats are known to occur in the vicinity of San José: pallid bat (*Antrozous pallidus*), Townsend's big-eared bat (*Corynorhinus townsendii*), and long-eared myotis (*Myotis evotis*). While these species have not been documented within three miles of the project site, the on-site trees and structures do provide potentially suitable night roosting cover, maternity roost sites, and winter hibernacula.

As part of site preparation activities, trees and on-site structures would be removed, resulting in permanent impacts to suitable bat roosting habitat. Project-related activities could result in take of protected bats in the form of disturbance causing maternal roost abandonment or destruction. Implementation of the following mitigation measures would reduce adverse impacts to special status species to a less-than-significant level.

Impact BIO-1: Project construction, including the removal of vegetation, shrubs/trees, and structures, that would occur during the migratory bird nesting season could result in a significant impact to nesting bird species.

Mitigation Measures

MM BIO-1 Avoidance: Prior to the issuance of any tree removal, grading, building or demolition permits (whichever comes first), the project applicant shall schedule all 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 1 through September 15 (inclusive). Construction activities include any site disturbance such as, but not limited to, tree trimming or removal, demolition, grading, and trenching.

Nesting Bird Surveys: If construction activities cannot be scheduled to occur between September 16 and January 31, inclusive, pre-construction surveys for nesting birds and raptors shall be completed by a qualified ornithologist or biologist to ensure that no nests shall be disturbed during project implementation. The survey shall be completed no more than 14 days prior to the initiation of construction activities during the early part of the breeding season (February 1 through April 30 inclusive), and no more than 30 days prior to the initiation these activities during the late part of the breeding season (May 1 through September 15 inclusive). During this survey, the qualified ornithologist/biologist shall inspect all suitable nesting habitat on the project site and within the zone of influence (the area immediately surrounding the Project site that supports suitable nesting habitat that could be impacted by the

project due to visual or auditory disturbance associated with the removal of vegetation and construction activities scheduled to occur during the nesting season).

Buffer Zone: If an active nest is found, the qualified ornithologist/biologist shall determine an appropriately sized species-specific buffer around the nest in which no work will be allowed until the young have successfully fledged. In general, buffer sizes of 200 feet for raptors and 50 feet for other birds should suffice to prevent disturbance to birds nesting in the urban environment, but these buffer sizes may be increased or decreased, as appropriate, depending on the bird species and the level of disturbance anticipated near the nest. The construction contractor shall establish a construction free buffer zone around the nest as determined by the qualified ornithologist/biologist to ensure that migratory bird and raptor nests shall not be disturbed during project construction. This buffer shall remain in place until such a time as the young have been determined (by a qualified ornithologist/biologist) to have fledged. Any birds that begin nesting amid construction activities shall be assumed to be habituated.

Reporting: Prior to the initiation of any tree removal, or approval of any grading or demolition permits (whichever occurs first), the qualified ornithologist/biologist shall submit a report indicating the results of the survey and any designated buffer zones to the satisfaction of the Director of the Planning, Building, and Code Enforcement or the Director's designee.

Impact BIO-2: Project construction, including the removal of trees and building demolition could negatively impact roosting bat habitat if done during the maternity roosting season (May 1 to September 15).

Mitigation Measures

MM BIO-2 **Avoidance:** Prior to the issuance of any tree removal, grading, building or demolition permits (whichever comes first), the project applicant shall schedule all construction activities to avoid the bat reproductive season (generally considered May 1 through September 15, inclusive). Construction activities include any site disturbance such as, but not limited to, tree trimming or removal, demolition, grading, and trenching.

If construction activities cannot be scheduled to occur between September 16 and April 30, a qualified bat specialist or wildlife biologist shall conduct site surveys to characterize bat utilization of roosting habitat on and immediately adjacent to the project site and potential bat species present prior to construction.

Based on the results of these initial surveys, one or more of the following shall occur:

No Detection: If it is determined that bats are not present on or adjacent to the Project site, no additional mitigation is required. If no bats are found roosting, bat exclusion devices will be installed to prevent bats from taking up occupancy of the vacant structures prior to the onset of construction.

Buffer Zone: If it is determined that bats are utilizing the project site or adjacent trees and may be impacted by the project, pre-construction surveys shall be conducted within 50 feet of construction limits no more than 30 days prior to the start of construction. If, according to the bat specialist/wildlife biologist, no bats or bat signs are observed in the course of the pre-construction surveys, the qualified bat specialist /wildlife biologist shall determine if disturbance will jeopardize the roost (i.e., maternity, foraging, day, or night).

Roosting: If a single bat and/or only adult bats are roosting, removal of trees or structures may proceed after the bats have been safely excluded from the roost. Exclusion techniques shall be determined by the qualified bat specialist /wildlife biologist and would depend on roost type. If an active maternity roost is detected, avoidance is preferred. Work in the vicinity of the roost (buffer to be determined by qualified bat specialist or wildlife biologist) shall be postponed until the qualified bat specialist /wildlife biologist monitoring the roost determines that the young have fledged and are no longer dependent on the roost. The monitor shall ensure that all bats have left the area of disturbance prior to initiation of pruning and/or removal of trees that would disturb the roost. If a roost of bats is found in any of the existing structures, the bats shall be safely evicted under the direction of a qualified biologist. Eviction of bats will occur at night to decrease the likelihood of predation (compared to eviction during the day). Eviction will occur outside of the maternity season but will not occur during long periods of inclement or cold weather (as determined by the qualified biologist) when prey are not available or bats are in torpor. Eviction activities will be performed under the supervision of a qualified biologist.

Reporting: Prior to the issuance of any grading, building or demolition permits (whichever comes first), the qualified bat specialist/wildlife biologist shall submit a report indicating the results of the survey and any designated buffer zones to the satisfaction of the Director of the Planning, Building, and Code Enforcement or the Director's designee for the regionally known bat species with suitable on-site roosting habitat.

With implementation of the mitigation measures **MM BIO-1** and **MM BIO-2**, the project's impact to nesting birds and raptors would be less than significant. **Less Than Significant Impact with Mitigation Incorporated.**

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

As documented in Appendix C, the project site is not home to any sensitive natural communities, as defined by the California Natural Diversity Database (CNDDB). Although oak trees are present on the project site, these would not be considered part of a sensitive natural community because they are not part of woodlands or forests, but rather are scattered within grassland communities and the existing structures on the project site.

The project is located near riparian habitat associated with Coyote Creek. The riparian canopy and/or low-flow channel of the site-adjacent segment of Coyote Creek range between 90 and 350 feet east of the northeastern project boundary. The City's Riparian Corridor Policy Protection and Bird-Safe Design

Policy applies to projects within 300 feet of a riparian corridor's top of bank or edge of vegetation, whichever is greater. Since portions of the project are within 300 feet of either the top of the bank or the edge of vegetation at Coyote Creek, the Riparian Corridor Policy would apply to the project. A small portion of the project site overlaps with the 100-foot setback boundary of the top of the bank of the Coyote Creek Riparian Corridor. Although there is a slight overlap, the proposed development has been designed so that no new buildings would be placed within the 100-foot setback as shown in Figure 3-9. The overlap sliver currently contains undeveloped land and a chain link fence separating the project site from Coyote Creek Trail. As part of the project, the existing chain link fence would be replaced with a new 4-foot-high wood and wire mesh fence. No other development would occur within this sliver. The project would comply with relevant requirements of the City's Riparian Corridor Protection and Bird-Safe Design Policy, which would be enforced through conditions in Development Permits. For example, the project would use materials and lighting designed and constructed to reduce light and glare impacts to riparian corridors. The project would also avoid the use of mirrors and large areas of reflective glass.

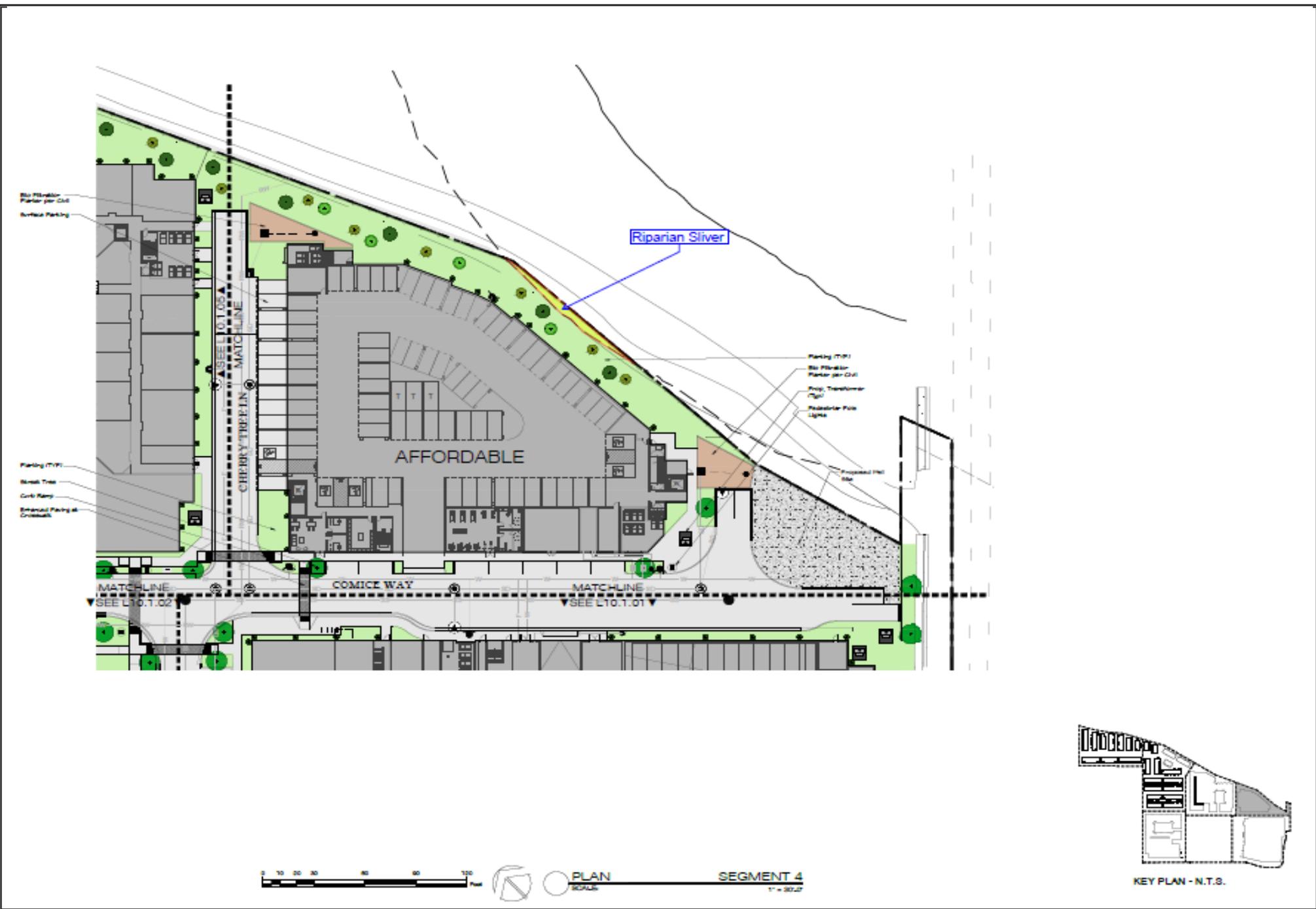
Given that the project would comply with all relevant requirements in the City's Riparian Corridor Protection and Bird-Safe Design Policy, the project would have a less than significant impact on riparian habitat or other sensitive natural communities. **Less Than Significant Impact.**

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

The project site includes partially developed land and is situated within an urban neighborhood, surrounded by developed/disturbed land uses to the north, west, and south, including existing buildings, roadways, and paved parking lots. Although Coyote Creek is located to the east of the project site, the biological constraints analysis prepared for the project site indicated that state or federally protected wetlands do not occur within the boundaries of the project site. Additionally, the installation and use of the proposed well would not draw water from or have any impact on surface or subsurface flow in/from Coyote Creek (see **Section 3.10**). Therefore, the project development would not have a substantial adverse effect on State or federally protected wetlands. **Less Than Significant Impact.**

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

The project site includes partially developed land and does not support native resident or wildlife species. Surrounding urban land uses discourage the project site as a wildlife corridor. The closest potential wildlife corridor is Coyote Creek, located over 100 feet east of the project site; however, no direct disturbance would occur within Coyote Creek. Additionally, urban development on both sides of Coyote Creek further discourages through wildlife movement. Furthermore, final project plans would include measures to reduce impacts to the riparian corridor from on-site structures and site occupation, including avoidance of bright colors and glossy and/or glare producing building finishes on structures facing the riparian corridor and directing low-intensity exterior lighting downward and away from the riparian corridor to the greatest extent feasible. Therefore, 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. **Less Than Significant Impact.**



100 Foot Setback Zoom-in

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Draft Environmental Impact Report

Figure
3-9

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

As shown in Table 6 of Appendix C, Arborist Report and Tree Mitigation Memorandum, the project would remove 584 trees on-site, 261 of which are ordinance size. There would be a total amount of 803 replacement trees to be planted. The City requires replacement of removed trees in accordance with established tree replacement ratios, as outlined in the standard permit condition below in compliance with the City’s Tree Protection Ordinance.

Standard Permit Condition

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

Table 3-16 City of San José Tree Replacement Ratios

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

*Native trees are those that are naturally inherent to the Santa Clara Valley. These species include, but are not limited to, California Bay Laurel (*Umbellularia californica*), Aptos Blue Redwood (*Sequoia sempervirens* ‘Aptos Blue’), Valley Oak (*Quercus lobata*), California Buckeye (*Aesculus californica*), Box Elder (*Acer negundo*), Western Sycamore (*Platanus racemose*), and Red Willow (*Salix laevigata*).

x:x = tree replacement to tree loss ratio
 38-inch tree equals 12.1 inches in diameter
 24-inch box tree = two 15-gallon trees
 Source: HortScience, Bartlett Consulting, 2021

Following these requirements, a total of 584 trees on-site would be removed. Of these, 291 are non-ordinance-sized orchard trees, which do not require any replacement, as shown in . For the remaining trees, 89 trees would be replaced at a 1:1 ratio, 42 trees at a 2:1 ratio, 70 trees at a 3:1 ratio, 40 trees at a 4:1 ratio, and 52 trees at a 5:1 ratio. In total, the project would be required plant 803 15-gallon replacement trees on site.

If there is insufficient area on the project site to accommodate the required replacement trees, one or more of the following measures shall be implemented, to the satisfaction of the Director of Planning, Building and Code Enforcement or Director’s designee. Changes to an approved landscape plan requires the issuance of a Permit Adjustment or Permit Amendment.

- The size of a 15-gallon replacement tree may be increased to 24-inch box and count as two replacement trees to be planted on the project site.

- Pay Off-Site Tree Replacement Fee(s) to the City, prior to the issuance of building permit(s), in accordance with the City Council approved Fee Resolution in effect at the time of payment. The City will use the off-site tree replacement fee(s) to plant trees at alternative sites.

Tree Protection Standards. The Applicant shall maintain the trees and other vegetation shown to be retained in this project and as noted on the Approved Plan Set. Maintenance shall include pruning and watering as necessary and protection from construction damage. Prior to the removal of any tree on the project site, all trees to be preserved shall be permanently identified by metal numbered tags. Prior to issuance of the Grading Permit or removal of any tree, all trees to be saved shall be protected by chain link fencing, or other fencing type approved by the Director of Planning. Said fencing shall be installed at the dripline of the tree in all cases and shall remain during construction. No storage of construction materials, landscape materials, vehicles or construction activities shall occur within the fenced tree protection area. Any root pruning required for construction purposes shall receive prior review and approval and shall be supervised by the consulting licensed arborist. Fencing and signage shall be maintained by the project applicant to prevent disturbances during the full length of the construction period that could potentially disrupt the habitat or trees.

Conformance with the standard permit conditions above would ensure the project does not conflict with any local policies or ordinances protecting trees. As proposed, the project would plant trees for the new development consistent with the City's requirements. Implementation of the standard permit conditions identified above would result in a less than significant impact. **Less Than Significant Impact.**

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

The project is located within the Santa Clara Valley Habitat Plan (SCVHP) plan area. The project is located on land primarily designated by the SCVHP as Row-Crop, Hay and Pasture, Disked/Short-term Fallowed, which can provide movement and foraging habitat for special-status wildlife species identified in the SCVHP. However, the project site is not located in a wildlife survey zone based on the SCVHP Geobrowser.²⁸

The project site is adjacent to the Coyote Creek Riparian flow channel as shown in Figure 3-10 and the Coyote Creek expanded floodplain. HCP designated Coyote Creek as a Category 1 (i.e., perennial) stream, which has a 100-foot set back requirement measured from the top of the stream bank.²⁹ The eastern project site boundary ranges between 90 and 350 feet from the top of the Coyote Creek stream bank, meaning that a small (less than 5 feet wide) sliver of the project site overlaps with the 100-foot set-back from the top of the bank of the Coyote Creek Riparian Corridor shown in **Figure 3-11**. This sliver currently contains undeveloped land and a chain link fence separating the project site from Coyote Creek Trail. The project has been designed so that no new buildings would be placed within the 100-foot

²⁸ Santa Clara Valley Habitat Agency Geobrowser. Available: <http://www.hcpmaps.com/habitat/>. Accessed December 13, 2022.

²⁹ Santa Clara Valley Habitat Agency, 2021. *Santa Clara Valley Habitat Plan Clarification and Interpretation: Condition 11 – Stream Setback Applicability*. Available: <https://scv-habitatagency.org/DocumentCenter/View/1494/No-2021-01-Stream-Setback-Applicability#:~:text=Category%20%20streams%20are%20defined,species%20in%20the%20permit%20area>. Accessed : December 4, 2023.

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setback. The existing chain link fence would be replaced with a new 4-foot-high wood and wire mesh fence. No other development would occur within this sliver. Therefore, this area would remain in a similar state to existing conditions and the project would be consistent with this the SCVHP setback policy.

Because the project would result in an increase in vehicle trips, the SCVHP's nitrogen deposition fee would apply. A nitrogen deposition fee would be required for each new vehicle trip generated by the project, at the time of development.

Standard Permit Condition

The project may be subject to applicable SCVHP conditions and fees (including the nitrogen deposition fee) prior to issuance of any grading permits. The project applicant shall submit the [Santa Clara Valley Habitat Plan Coverage Screening Form](https://www.scv-habitatagency.org/DocumentCenter/View/151/Coverage-Screening-Form?bidId=) (<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>.

Implementation of the standard permit conditions identified above would reduce project impacts to a less than significant level. Given that the project would comply with all relevant requirements of the SCVHP, this impact would be less than significant. **Less Than Significant Impact.**

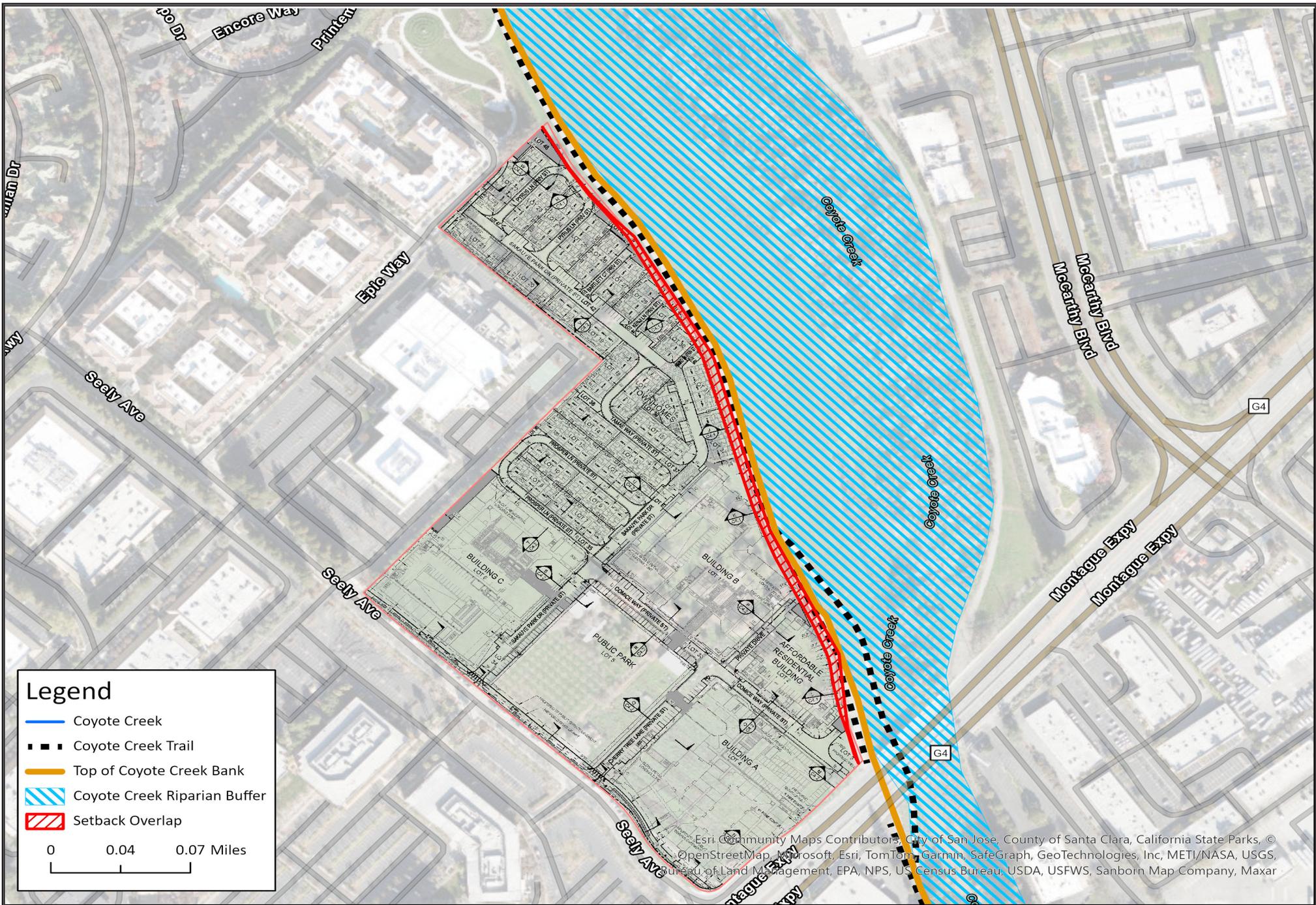


Coyote Creek Riparian and Low-Flow Channel Map

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Environmental Impact Report

Figure

3-10



Legend

- Coyote Creek
- Coyote Creek Trail
- Top of Coyote Creek Bank
- Coyote Creek Riparian Buffer
- Setback Overlap

0 0.04 0.07 Miles

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Floodplain Map

0 Seely Avenue Mixed-Use Project
Draft Environmental Impact Report

Figure
3-11

3.5 Cultural Resources

This section discusses the impacts on cultural resources that would result from implementation of the project. The following discussion is based in part on a Historic Resource Evaluation (HRE) prepared for the project site by Evans & De Shazo Archaeology and Historic Preservation, dated October 18, 2023 (Appendix E) and a City Landmark District evaluation prepared by Evans & De Shazo in September 2023 (Appendix F). The following discussion is also based in part on an archaeological literature review titled the Basin Research Report prepared by Basin Research Associates for the project site (April 8, 2021)(Appendix G), and a cultural resources assessment report by ESA dated September 2023 (Appendix H).³⁰

During the public scoping process, one commenter requested consideration of the existing structures on the project site for listing on the National Register of Historic Places (NRHP), California Register of Historical Resources (CRHR), and/or as a City Landmark due to the history of agricultural use on the project site. This analysis is included in both **Section 3.5.2.2** of this EIR, and Appendices E and F. The commenter also requested consideration of an alternative that would preserve the existing structures or on-site commemoration of the site’s agricultural history. This alternative is considered in **Section 8.5.3, Alternative 3: Historic Resource Avoidance Alternative.**

3.5.1 Environmental Setting

3.5.1.1 Regulatory Framework

Federal

National Register of Historic Places

The NRHP is the nation’s most comprehensive list of historic resources and includes historic resources significant in American history, architecture, archeology, engineering, and culture, at the local, State, and national level. 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” and second, the property must retain integrity of those features necessary to convey its significance. A resource is considered eligible for the National Register if the quality of significance in American history, architecture, archaeology, engineering, and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association and:

- a) are associated with events that have made a significant contribution to the broad pattern of our history; or
- b) are associated with the lives of persons significant to our past; or

³⁰ The archaeological literature review and the cultural resources assessment report both discuss locations of specific archaeological sites and therefore are confidential. For this reason, Appendix F and Appendix H are not included in this document. Qualified personnel, however, may request a copy of the report from the Department of Planning, Building and Code Enforcement located at 200 East Santa Clara Street, 3rd Floor, during normal business hours, or through the Lead Agency contact, Shannon Hill.

- c) embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
- d) yielded, or may be likely to yield, information important in prehistory or history.

State

California Health and Safety Code Sections 7050.5 and 7054

Section 7050.5 states that “[i]n the event of discovery or recognition of any human remains in any location other than a dedicated cemetery, there shall be no further excavation or disturbance of the project site or any nearby area reasonably suspected to overlie adjacent remains until the coroner of the county in which the human remains are discovered has determined... that the remains are not subject to the provisions of Section 27491 of the Government Code or any other related provisions of law concerning investigation of the circumstances, manner and cause of any death, and the recommendations concerning the treatment and disposition of the human remains have been made to the person responsible for the excavation.” The coroner shall make his or her determination within two working days from the time the person responsible for the excavation, or his or her authorized representative, notifies the coroner of the discovery or recognition of the human remains. If the coroner determines that the remains are not subject to his or her authority and if the coroner recognizes the human remains to be those of a Native American, or has reason to believe that they are those of a Native American, he or she shall contact, by telephone within 24 hours, the Native American Heritage Commission (NAHC).

Section 7054 of the California Health and Safety Code regulates the disposal of human remains, classifying the disposal of human remains in any place, except in a cemetery, as a misdemeanor offense, punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding ten thousand dollars (\$10,000), or both that imprisonment and fine. This section does not apply to the reburial of Native American remains.

California Environmental Quality Act (CEQA) and California Register of Historical Resources

CEQA requires regulatory compliance for projects involving historic resources throughout the State. Under CEQA, public agencies must consider the effects of their actions on historic resources (PRC, Section 21084.1). The CEQA Guidelines define a significant resource as any resource listed in or determined to be eligible for listing in the California Register of Historical Resources (California Register) [see PRC, Section 21084.1 and CEQA Guidelines Section 15064.5 (a) and (b)].

The California Register of Historical Resources was created to identify resources deemed worthy of preservation and was modeled closely after the National Register of Historic Places. The criteria are nearly identical to those of the National Register, which includes resources of local, State, and regional and/or national levels of significance. Under California Code of Regulation Section 4852(b) and PRC Section 5024.1, an historical resource generally must be greater than 50 years old and must be significant at the local, State, or national level under one or more of the following four criteria:

- a) It is associated with events that have made a significant contribution to the broad patterns of local or regional history, or the cultural heritage of California or the U.S.
- b) It is associated with the lives of persons important to local, California, or national history.

0 Seely Avenue Mixed-Use Project

- c) It embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of a master or important creative individual or possesses high artistic values.
- d) It has yielded, or has the potential to yield, information important to the prehistory or history of the local area, California, or the nation.

Properties of local significance that have been designated under a local preservation ordinance (local landmarks register or landmark districts) or that have been listed in a local historical resources inventory may be eligible for listing in the California Register and are presumed to be historical resources for the purposes of CEQA unless a preponderance of evidence indicates otherwise (PRC, Section 5024.1g; California Code of Regulations, Title 14, Section 4850). The fact that a resource is not listed in, or determined to be eligible for listing in the California Register of Historical Resources, not included in a local register of historical resources (pursuant to Section 5020.1(k) of the Public Resources Code), or identifies in a historical resources survey (meeting the criteria in Section 5024.1(g) of the Public Resources Code) does not preclude a lead agency from determining that the resource may be an historical resource as defined in Public Resources code Sections 5020.1(J) or 5.2024.1.

California Code of Regulations Section 4852I addresses the issue of “integrity,” which is necessary for eligibility for the California Register. Integrity is defined as “the authenticity of an historical resource’s physical identity evidenced by the survival of characteristics that existed during the resource’s period of significance.” Section 4852(c) provides that historical resources eligible for listing in the California Register must meet one of the criteria for significance defined by 4852(b)(1 through 4), and retain enough of their historic character of appearance to be recognizable as historical resources and to convey the reasons for their significance.

Native American Heritage Commission

The NAHC was created by statute in 1976, is a nine-member body appointed by the Governor to identify and catalog cultural resources (i.e., places of special religious or social significance to Native Americans and known graves and cemeteries of Native Americans on private lands) in California. The Commission is responsible for preserving and ensuring accessibility of sacred sites and burials, the disposition of Native American human remains and burial items, maintaining an inventory of Native American sacred sites located on public lands, and reviewing current administrative and statutory protections related to these sacred sites.

California Assembly Bill 52

California AB 52 went into effect on July 1, 2015, and establishes a new category of CEQA resources for “tribal cultural resources” (PRC §21074). The intent of AB 52 is to provide a process and scope that clarifies California tribal government’s involvement in the CEQA process, including specific requirements and timing for lead agencies to consult with tribes on avoiding or mitigating impacts to tribal cultural resources. AB 52 also creates a process for consultation with California Native American Tribes in the CEQA process. Tribal Governments can request consultation with a lead agency and give input into potential impacts to tribal cultural resources before the agency decides what kind of environmental assessment is appropriate for a project. The PRC requires avoiding damage to tribal cultural resources, if feasible. If not, lead agencies must mitigate impacts to tribal cultural resources to the extent feasible.

Archaeological Resources and Human Remains

Archaeological sites are protected by policies and regulations under the California PRC, California Code of Regulations (Title 14 Section 1427), and California Health and Safety Code. California PRC Sections 5097.9-5097.991 require notification of discoveries of Native American remains and identifies appropriate measures for the treatment and disposition of human remains and grave-related items.

Both State law and Santa Clara County Code (Sections B6-19 and B6-20) require that the Santa Clara County Coroner be notified if cultural remains are found. If the Coroner determines the remains are Native American, the NAHC and a most likely descendant (MLD) must also be notified.

Government Code Sections 6254(r) and 6254.10

These sections of the California Public Records Act were enacted to protect archaeological sites from unauthorized excavation, looting, or vandalism. Section 6254(r) explicitly authorizes public agencies to withhold information from the public relating to “Native American graves, cemeteries, and sacred places maintained by the Native American Heritage Commission.” Section 6254.10 specifically exempts from disclosure requests for “records that relate to archaeological site information and reports, maintained by, or in the possession of the Department of Parks and Recreation, the State Historical Resources Commission, the State Lands Commission, the Native American Heritage Commission, another state agency, or a local agency, including the records that the agency obtains through a consultation process between a Native American tribe and a state or local agency.”

Local

Historic Preservation Ordinance: City of San José’s Criteria for Local Significance

The City’s Historic Preservation Ordinance (Chapter 13.48 of the Municipal Code) establishes significance criteria for the designation and/or listing in the Historic Resources Inventory of resources as a City landmark, City landmark district, Candidate City Landmark or Candidate City Landmark District. In addition to the significance criteria for listing properties in the NRHP and CRHR, the City of San José also uses the significance criteria outlined in Section 13.48.020, Section 13.48.110 (H) and Section 13.48.120 (H) in determining whether a resource qualifies as a historic resource under CEQA. In Section 13.48.110(H), the City considers the following factors in considering whether a particular structure has special historical, architectural, cultural, aesthetic, or engineering interest or value of an historical nature, and that its designation as a landmark conforms with the goals and policies of the 2040 General Plan:

- 1) Its character, interest, or value as 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; and
- 8) Its embodiment of elements of architectural or engineering design, detail, materials or craftsmanship which represents a significant architectural innovation or which is unique.

Section 13.48.120 (H) also provides significance criteria to evaluate a potential historic district which is: “a geographically definable area of urban or rural character, possessing a significant concentration or continuity of site, building, structures or objects unified by past events or aesthetically by plan or physical development (Section 13.48.020 B).

2040 General Plan

Policies in the 2040 General Plan have been adopted for the purpose of avoiding or mitigating cultural resource impacts from development projects. Policies applicable to the project are presented in **Table 3-17** below.

Table 3-17 Envision San José 2040 Relevant Cultural Resource Policies

Policy LU 13.1	Preserve the integrity and fabric of candidate or designated Historic Districts.
Policy LU 13.2	Preserve candidate or designated landmark buildings, structures and historic objects, with first priority given to preserving and rehabilitating them for their historic use, second to preserving and rehabilitating them for a new use, or third to rehabilitation and relocation on-site. If the City concurs that no other option is feasible, candidate or designated landmark structures should be rehabilitated and relocated to a new site in an appropriate setting.
Policy LU 13.4	Require public and private development projects to conform to the adopted City Council Policy on the Preservation of Historic Landmarks.
Policy LU 13.5	Evaluate areas with a concentration of historically and/or architecturally significant buildings, structures, or sites and, if qualified, preserve them through the creation of Historic Districts.
Policy 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.
Policy LU 13.7	Design new development, alterations, and rehabilitation/remodels within a designated or candidate Historic District to be compatible with the character of the Historic District and conform to the Secretary of the Interior’s Standards for the Treatment of Historic Properties, appropriate State of California requirements regarding historic buildings and/or structures (including the California Historic Building Code) and to applicable historic design guidelines adopted by the City Council.
Policy LU 13.15	Implement City, State, and Federal historic preservation laws, regulations, and codes to ensure the adequate protection of historic resources.

Policy LU-13.22	Require the submittal of historic reports and surveys prepared as part of the environmental review process. Materials shall be provided to the City in electronic form once they are considered complete and acceptable.
Policy ER-10.1	For proposed development sites that have been identified as archaeologically or paleontologically sensitive, require investigation during the planning process in order to determine whether potentially significant archaeological or paleontological information may be affected by the project and then require, if needed, that appropriate mitigation measures be incorporated into the project design.
Policy ER-10.2	Recognizing that Native American human remains may be encountered at unexpected locations, impose a requirement on all development permits and tentative subdivision maps that upon discovery during construction, development activity will cease until professional archaeological examination confirms whether the burial is human. If the remains are determined to be Native American, applicable state laws shall be enforced.
Policy ER-10.3	Ensure that City, State, and Federal historic preservation laws, regulations, and codes are enforced, including laws related to archaeological and paleontological resources, to ensure the adequate protection of historic and pre-historic resources.
Policy ER-10.4	The City will maintain a file of archaeological and paleontological survey reports by location to make such information retrievable for research purposes over time.

Source: City of San José, 2022

3.5.1.2 Existing Conditions

Archaeological Resources

A due diligence-level Archaeological Resources Review and Assessment was completed for the project site by Basin Research Associates (April 2021). This study was supplemented in September 2023 by ESA with a Cultural Resources Assessment Report. The ESA report included an archaeological sensitivity assessment and a review of geologic maps, historic maps, historic aerials, geotechnical reports, and relevant literature.

Based on records searches performed for these studies, three archaeological resources have been recorded within a 0.5-mile radius of the project site. These include one historic-period archaeological site (structural remains and refuse), one pre-contact archaeological site (human burials), and one pre-contact archaeological isolate (chert pebble). None of these archaeological resources are located on the project site itself; all identified resources are located over 0.25 mile from the project site.

Native American archaeological sites have been recorded adjacent to major creeks and tributaries in this area of the County, especially near confluences. To determine the actual presence or absence of such resources on the project site, ESA conducted an archaeological testing program in conjunction with geotechnical investigations by ENGEO on April 11 and 12, 2023, and an Extended Phase I investigation of the northern part of the project site on August 29 and 30, 2023.

During the archaeological testing program, an ESA archaeologist monitored the excavation of each trench made by ENGEO and collected 5-gallon soil samples at 0.5 feet, 2.0 feet, 3.5 feet, and 5.0 feet below ground surface, and at stratigraphic boundaries when present. These samples were screened through 1/8-inch mesh to identify any cultural materials. The archaeologist recorded soil stratigraphy and closely examined the soil strata for the presence of paleosols, which represent formerly stable and livable ground surfaces that would be identified on the basis of color, structure, horizon development,

bioturbation, lateral continuity, and the nature of the upper boundary with the overlying deposit. No archaeological sites or evidence of buried archaeological resources or paleosols (i.e., ancient soils) were detected as part of this testing program.

The goals and methods of the Extended Phase I testing were generally the same as those for the archaeological testing program, however ESA archaeologists directed equipment to remove soil in small lifts of no more than 4-6 inches and a larger 1/4-inch mesh was used when materials were impassable through the 1/8-inch mesh. As with the archaeological testing program, no archaeological sites or evidence of buried archaeological resources or paleosols were observed during testing. While some historic-era materials were encountered in one trench, these items were in a highly disturbed context within a trench that contained plastic pipes and utilities. These materials were determined to represent isolated sheet scatter characteristic of 20th century agricultural properties, and there was no evidence that these materials were related to a larger, intact, significant deposit.

Historic Built Resources

An HRE was completed for the project by Evans & De Shazo, Inc on October 18, 2023 and is included as Appendix E to this EIR. The purpose of this evaluation was to determine if the built environment resources within the project site qualify for listing in the NRPH, CRHR and/or the San José Historic Resources Inventory as a Candidate City Landmark and/or Candidate City Landmark district, and to assist the City in determining whether the project site is an eligible historical resource under CEQA.

Evans & De Shazo, Inc (EDS) conducted a historic architectural survey of the project site to identify the style, form, character-defining features, materials, and changes to the built environment. Additional research was conducted using available database files, libraries, consultation with individuals and local historical organizations, and other applicable reference material. The archaeological literature review conducted by Basin Research Associates (April 2021) (Appendix G) was also reviewed as a component of the research by EDS. The purpose of the research and historic architectural survey was to develop the historical context of the project site and identify the potential significance following the criteria for listing in the NRPH, CRHR and in the San José Historic Resources Inventory as a Candidate City Landmark and Candidate City Landmark District. Based on this effort, EDS concluded that the project site contains both an individually eligible resource and a collection of resources eligible as a historic district on the state and local levels.

An 11-acre parcel within the project site (APN 097-15-033) contains 19 built environment resources and the associated historic landscape is being used for agricultural purposes, including orchards and a fruit stand. Of the 19 historic resources on the project site, 7 structures and the associated landscape including fruit trees, planted rows of vegetables, and dirt roads have been determined to be contributing resources to a historic district eligible for listing in the CRHR and the San José Historic Resources Inventory as a Candidate City Landmark District for their association with Japanese farming in Santa Clara Valley from ca. 1907 to 1941 and association with farming in the Santa Clara Valley from ca. 1900 to 1940. The following structures contribute to a significance of the eligible district: 1) ca. 1920 cottage (EDS 2); 2) ca. 1930 pump house (EDS 4); 3) ca. 1920 "Sakauye house" (EDS 6); 4) ca. 1910 barn (EDS 8); 5) ca. 1930 shed (EDS 10); 6) ca. 1930 pump house (EDS 11); and 7) ca. 1930 barn/wagon house (EDS 12). The remaining 12 structures on the project site do not contribute to the historic significance of the property.

The HRE found that the property appears eligible for listing as a historic district in the CRHR under Criterion 1 for two events, including its association with Japanese farming of the Santa Clara Valley

during a period of significance from ca. 1907 to 1941 and early twentieth-century agriculture in the Santa Clara Valley within a period of significance from ca. 1900 to ca. 1940; and under Criterion 2 for its association with Eiichi “Ed” Sakauye’s related to his achievements as a Japanese farmer and a community leader in San José within a period of significance of ca. 1925 to 2010; and retains all seven aspects of historic integrity (i.e., location, design, setting, materials, workmanship, feeling and association, all of which are discussed further in Appendix F). The HRE also determined that the ca. 1920 “Sakauye house” is individually eligible for listing on the CRHR under Criterion 3 for its association with Spanish Colonial Revival architecture with the period of significance of ca. 1920 and retains all seven aspects of historic integrity.

With regard to the City’s Historic Resource Inventory, the HRE found that the “Sakauye House” is individually eligible for listing as a Candidate City Landmark under significance Criterion 3 due to its association with Eiichi Sakauye and Criterion 6 due to its embodiment of the Spanish Colonial Revival architectural style. The HRE also recommended that the seven structures and associated landscape described above be collectively considered eligible for listing as a Candidate City Landmark District under Criteria 1 (for association with Japanese farming from ca. 1907 to 1941), 2 (for association with the success of the Sakauye family in particular and, to a lesser extent, Japanese American farming in general), 3 (for its association with Eiichi Sakauye), and 4 (for its exemplification of the cultural, economic, social, and historic heritage of San José’s Japanese history).

3.5.2 Impacts and Mitigation

3.5.2.1 Thresholds of Significance

For the purposes of this analysis and in accordance with CEQA Guidelines, a project impact to cultural resources would be considered significant if the project would:

- a) Cause a substantial adverse change in the significance of a historical resource pursuant to in §15064.5;
- b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to §15064.5; or
- c) Disturb any human remains, including those interred outside of dedicated cemeteries.

3.5.2.2 Project Impacts

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

Based on the HRE, the City of San José determined that the project site, including 7 contributing structures and the associated landscape including fruit trees, planted rows of vegetables, and dirt roads, is eligible for listing on the CRHR as a historic district under Criterion 1 (association with Japanese farming in the Santa Clara Valley during a period of significance from 1907 and 1941 and association with early twentieth century agriculture in the Santa Clara Valley during a period of significance from 1900 and 1940) and Criterion 2 (association with Eiichi “Ed” Sakauye, a noted community leader and person of historical significance). The City also determined that the project site is eligible for listing in the San José Historic Resource Inventory as a Candidate City Landmark District under Criteria 1, 2, 3, and 4. In addition, the “Sakauye House” on the project site was determined to be individually eligible for listing on the CRHR and individually eligible for listing on the San José Historic Resources Inventory under

Criterion 3 as a Candidate City Landmark for its association with Spanish Colonial Revival architecture with a period of significance of circa 1920. The project would include demolition of all existing buildings and structures on the project site; therefore, the project would have a significant impact on historical resources under CEQA.

Impact CR-1: The project includes the demolition of structures and site features that are collectively and individually eligible for listing under in the CRHR and the San José Historic Resources Inventory as a Candidate City Landmark and Candidate City Landmark District.

Mitigation Measures

The following mitigation measures would be required to lessen the impact, but would not mitigate the significant impact to a less than significant level:

MM CR-1.1 **Action Plan:** Prior to issuance of any demolition permits or any other approval that would allow ground disturbance on the project site, the Permittee 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 all required steps, actions, and documents identified within this EIR have been satisfied in accordance with the Action Plan. The Action Plan shall outline the roles and responsibilities of the Permittee, City staff, and outside individuals, groups, firms, and consultants and timelines in carrying out required mitigation measures MM CR-1.2 to MM CR-1.6.

MM CR-1.2 **Documentation - Historic American Building Survey (HABS) Outline Format.** Prior to issuance of any demolition permit or any other approval that would allow ground disturbance on the project site, all contributing buildings, structures, and landscape features to the eligible historic district and individually significant buildings on the property shall be documented in accordance with the guidelines established for the Historic American Building Survey (HABS) and shall consist of the following components:

Drawings – Prepare sketch floor plans.

Photographs – Digital photographic documentation of the interior, exterior, and setting of the buildings in compliance with the National Register Photo Policy Fact Sheet. Photos must have a permanency rating of approximately 75 years.

Written Data – HABS Outline Format written documentation.

The Permittee shall retain a qualified historic resources consultant or equivalent professional meeting the Secretary of the Interior’s Professional Qualification Standards to preparation of the drawings, photographs and written data. The City of San José’s Historic Preservation Officer shall review and approve the documentation. After City review and approval, the Permittee shall submit the final documentation to the Director of Planning, Building and Code Enforcement or Director’s designee of the City, file the documentation with History San José

and the California Room of the Martin Luther King Library, and submit proof of receipt by these entities to the City.

MM CR-1.3 Three-Dimensional (3D) Laser Scanning. Prior to issuance of any demolition permits or any other approval that would allow ground disturbance on the project site, all individually significant and contributing buildings and structures to the eligible historic district shall be 3D laser scanned. The Permittee shall retain a qualified historic resources consultant or equivalent professional meeting the qualifications in the Secretary of the Interior's Professional Qualification Standards to perform the 3D laser scanning. The laser scanning shall document the existing conditions of the property, utilizing 3D Laser Scanning techniques to capture the significant buildings and create a 3D point cloud model for digital archival purposes. A plan of the proposed procedures for the laser scanning shall be submitted as part of the required Action Plan (MM CR-1.1) prior to commencement. The documentation from the 3D Laser Scanning shall be reviewed and approved by the City's Historic Preservation Officer. After City review and approval, the Permittee shall submit the documentation to the Director of Planning, Building and Code Enforcement or Director's designee of the City, file the documentation with History San José and the California Room of the Martin Luther King Library, and submit proof of receipt by these entities to the City.

MM CR-1.4 Relocation and Salvage. Prior to issuance of any demolition permits or any other approval that would allow ground disturbance on the project site, the Permittee shall separately advertise the availability of all individually significant and contributing buildings, structures and site features to the eligible historic district for relocation and then salvage by a third party.

Relocation. The Permittee shall advertise the availability of the buildings for relocation for a period of no less than 60 days. The advertisements must include a newspaper of general circulation, a website, and notice visible from the public right-of-way on the project site. The Permittee must submit evidence (i.e., receipts, date and time stamped photographs, etc.) to the Director of Planning, Building and Code Enforcement or the Director's designee that this condition has been met. If a third party agrees to relocate any of the buildings, the following measures must be followed:

1. The City's Director of Planning, Building and Code Enforcement or the Director's designee, based on consultation with the City's Historic Preservation Officer, must determine that the receiver site is suitable for the buildings.
2. Prior to relocation, the third party shall hire a qualified historic preservation architect and a qualified structural engineer to undertake an existing conditions study. The purpose of the study shall be to establish the baseline condition of the building/s prior to relocation. The documentation shall outline how to protect and preserve the buildings and their character-defining features from damage during the relocation process. The documentation shall be reviewed and approved by the City's Historic Preservation Officer prior to relocation.

3. To protect the building during relocation, the third party shall engage a building mover who has experience moving historic structures. A qualified structural engineer shall also be engaged to determine if the building/s needs to be reinforced/stabilized before the move.

4. Once relocated, the building/s shall be repaired and restored, as needed, by the 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 restored in a manner that preserves their historic integrity for long-term preservation. Upon completion of the work, a qualified historic resources consultant or equivalent professional meeting the qualifications in the Secretary of the Interior's Professional Qualification Standards shall prepare a written report outlining how the work was conducted in conformance with the Secretary of the Interior's Standards for the Treatment of Historic Properties and the Permittee shall submit the report to the City's Historic Preservation Officer.

Salvage. If at the end of the 60-day period minimum relocation advertisement period no third party relocates the significant buildings, the historic building materials shall be made available for salvage and reuse. The Permittee shall advertise the availability of the buildings for salvage for a period of no less than 30 days. The advertisements must include a newspaper of general circulation, a website, and notice visible from the public right-of-way on the project site. The Permittee shall submit evidence (i.e., receipts, date and time stamped photographs, etc.) to the City's Director of Planning, Building and Code Enforcement or the Director's designee that this condition has been met.

MM CR-1.5 Commemoration and Public Interpretation Concepts. Prior to issuance of any building permits, the Permittee shall retain a qualified historic resources consultant or equivalent professional meeting the qualifications in the Secretary of the Interior's Professional Qualification Standards to initiate the design development of a commemorative and interpretive program, exhibit, and/or display including, but not limited to interpretive text and historic photographs, art or sculpture, video, interactive media, and/or documentation of oral histories, that is integral to the project. The preliminary design concepts for commemoration and public interpretation shall be submitted to the City Historic Preservation Officer for review and approval.

MM CR-1.6 Commemoration and Public Interpretation Implementation. The specific design and details of the commemorative and interpretive program shall be fully developed in close coordination with the City as the project is implemented. The final design shall be reviewed and approved by the City's Historic Preservation Officer prior to production. The commemoration and public interpretation program shall be completed and made accessible to the public. If the approved program includes a physical installation, it shall be placed in a suitable publicly accessible location on the project site as determined by the City and subject to the following timing:

- 1) For commemoration and interpretation elements constructed within, on, or adjacent to an apartment building, prior to issuance of a certificate of occupancy for that building.
- 2) For commemoration and interpretation elements constructed by the Permittee within the City park, prior to City acceptance of the public park.

Even with implementation of the identified mitigation measures, demolition, relocation or salvage of the significant buildings and structures on-site would remain a significant unavoidable impact because they would be permanently lost or moved. Relocation of the structures, while preserving them in a different location, would result in a loss of connection to their historical development at the current location. Specifically, the property would no longer represent its association with Japanese farming in the Santa Clara Valley during a period of significance from 1907 and 1941 and association with early twentieth century agriculture in the Santa Clara Valley during a period of significance from 1900 and 1940). Although the mitigation measures listed above would reduce the magnitude of the impact, the residual effect of removal of historic resources from their historic context on the project site would represent a significant and unavoidable impact. **Significant and Unavoidable Impact.**

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

As discussed in Section 3.5.1.2, above, the archaeological testing program and Extended Phase I testing did not identify any archaeological resources or potentially archaeologically-sensitive soils within the project site. While some historic-era materials were encountered in one trench, these items were in a highly disturbed context within a trench that contained plastic pipes and utilities. These materials were determined to represent isolated sheet scatter characteristic of 20th century agricultural properties, and there was no evidence that these materials were related to a larger intact deposit. Given the negative findings during archaeological testing, the potential to encounter pre-contact and historic-era archaeological resources during construction is considered low, and no additional archaeological work is recommended. Although the potential to encounter archaeological resources is considered low, the following mitigation measures will be implemented to reduce this potentially significant impact to a less-than-significant level.

Impact CR-2: The project may impact Native American and historic-era archaeological deposits during excavation and construction activities.

Mitigation Measures

MM CR-2.1 Retention of a Qualified Archaeologist. Prior to issuance of any grading, building or demolition permits, the project applicant shall retain a qualified archaeologist meeting the Secretary of the Interior’s Professional Qualifications Standards for Archeology (codified in 36 Code of Federal Regulations [CFR] Part 61; 48 Federal Register [FR] 44738-44739) to oversee and ensure that all mitigation related to archaeological resources is carried out.

MM CR-2.2 Tribal Cultural Resources Awareness Training. Prior to issuance of any demolition or grading permits, whichever occurs first, the project applicant shall be required to submit evidence that conduct a Cultural Awareness Training has been provided to for construction personnel prior to ground disturbances. The training shall be facilitated by a qualified project 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 CR 2.3 Native American Monitoring. A qualified Native American Monitor, registered with the Native American Heritage Commission (NAHC) 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, in collaboration with a qualified Archeologist shall also be present during applicable earthmoving activities such as, but not limited to, trenching, initial or full grading, boring on-site, or major landscaping.

MM CR 2.4 Final Disposition of Cultural Materials. For any archaeological materials recovered from the projects site during construction, the following shall apply:

- Disposition of Native American archaeological materials shall be determined through consultation 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, the Director of Planning, Building and Code Enforcement or the Director's designee, and the Qualified Archeologist. Disposition of human remains and associated grave goods shall be determined through consultation between the Most Likely Descendant and the landowner.
- Disposition of significant historic-era archaeological materials shall include the following options, in order of preference. Final disposition of these materials shall take into account input from descendant communities.
 - Curation at a repository accredited by the American Association of Museums that meets the standards outlined in 36 CFR 79.9.
 - Curation at a non-accredited repository as long as it meets the minimum standards set forth by 36 CFR 79.9.
 - Donation of the collection to a public, non-profit institution with a research interest in the materials.
 - Donation to a local school or historical society in the area for educational purposes.

In addition to the mitigation measures identified above, as part of the development permit approval, the project would conform to the following standard permit conditions to avoid impacts associated with disturbance to buried archaeological resources during construction for accidental discovery outside of the monitored times.

Standard Permit Condition

If prehistoric or historic resources are encountered during excavation and/or grading of the project site, all activity within a 50-foot radius of the find shall be stopped, the Director of

Planning, Building and Code Enforcement 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 representative registered with the Native American Commission for the City and that is traditionally and culturally affiliated with the geographic area as described in PRC Section 21080.3 shall examine the find. The archaeologist shall 1) evaluate the find(s) to determine if they meet the definition of a historical or archaeological resource; and 2) make appropriate recommendations regarding the disposition of such finds prior to issuance of building permits. Recommendations could include collection, recordation, and analysis of any significant cultural materials. A report of findings documenting any data recovery shall be submitted to Director of PBCE or the Director's designee and the City's Historic Preservation Officer and the Northwest Information Center (if applicable). Project personnel shall not collect or move any cultural materials.

With implementation of mitigation measures **MM CR-2.1** through **MM CR-2.4** and the standard permit conditions identified above, this impact would be less than significant. **Less Than Significant Impact with Mitigation Incorporated.**

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

In the event that human remains are discovered during construction, the project applicant would comply with the California Health and Safety Code Section 7050.5 regarding human remains, and the PRC Section 5097.98 regarding the treatment of Native American human remains. Therefore, the project would incorporate the following standard permit condition in the event of an unanticipated discovery of human remains.

Standard Permit Conditions

If any human remains are found during any field investigations, grading, or other construction activities, all provisions of California Health and Safety Code Sections 7054 and 7050.5 and Public Resources Code Sections 5097.9 through 5097.99, as amended per Assembly Bill 2641, shall be followed. If human remains are discovered during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The project applicant shall immediately notify the Director of Planning, Building and Code Enforcement (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

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

With implementation of this standard permit condition, project related impacts to human remains would be reduced to a less-than-significant level. **Less Than Significant Impact.**

3.6 Energy

This section discusses the impacts on energy and energy consumption that would result from implementation of the project. No public scoping comments related to energy use were received.

3.6.1 Environmental Setting

3.6.1.1 Regulatory Framework

Many federal, State, and local statutes and policies address energy conservation. At the federal level, energy standards set by the EPA apply to numerous consumer and commercial products (e.g., the EnergyStar™ program). The EPA also sets fuel efficiency standards for automobiles and other modes of transportation.

State

California Renewable Energy Standards

In 2002, California established its Renewables Portfolio Standard (RPS) Program, with the goal of increasing the percentage of renewable energy in the State's electricity mix to 20 percent of retail sales by 2010. In 2006, California's 20 percent by 2010 RPS goal was codified under SB 107. Under the provisions of SB 107 (signed into law in 2006), investor-owned utilities were required to generate 20 percent of their retail electricity using qualified renewable energy technologies by the end of 2010. In 2008, Executive Order S-14-08 was signed into law and requires that retail sellers of electricity serve 33 percent of their load with renewable energy by 2020. As described previously, PG&E's (the electricity provider to the project site) 2015 electricity mix was 30 percent renewable.

In October 2015, Governor Brown signed SB 350 to codify California's climate and clean energy goals. A key provision of SB 350 for retail sellers and publicly owned utilities, requires them to procure 50 percent of the State's electricity from renewable sources by 2030.

California Building Codes

At the State level, the Energy Efficiency Standards for Residential and Nonresidential Buildings, as specified in Title 24, Part 6, of the California Code of Regulations (Title 24), was established in 1978 in response to a legislative mandate to reduce California's energy consumption. Title 24 is updated approximately every three years. Compliance with Title 24 is mandatory at the time new building permits are issued by city and county governments.³¹

The California Green Building Standards Code (CalGreen) establishes mandatory green building standards for all buildings in California. The code covers five categories: planning and design, energy efficiency, water efficiency and conservation, material conservation and resource efficiency, and indoor environmental quality.

³¹ California Energy Commission (CEC), Building Energy Efficiency Standards for Residential and Nonresidential Buildings for the 2016 Building Efficiency Standards, 2017.

Local

Council Policy 6-32 Private Sector Green Building Policy

At the local level, the City’s green building standards for municipal development. All projects are required to submit a Leadership in Energy and Environmental Design (LEED),³² GreenPoint,³³ or Build-It-Green checklist as part of their development permit applications. Council Policy 6-32 “Private Sector Green Building Policy,” adopted in October 2008, establishes baseline green building standards for private sector new construction and provides a framework for the implementation of these standards. It fosters practices in the design, construction, and maintenance of buildings that will minimize the use and waste of energy, water and other resources in the City. Private developments are required to implement green building practices if they meet the Applicable Projects criteria defined by Council Policy 6-32 and shown in **Table 3-18** below.

Table 3-18 Private Sector Green Building Policy Applicable Projects

Applicable Project Minimum Green Building Rating	Minimum Green Building Rating
Commercial/Industrial – Tier 1 (Less than 25,000 square feet)	LEED Applicable New Construction Checklist
Residential < 10 units - Tier 1	GreenPoint or LEED Checklist
Residential ≥ 10 units - Tier 2	GreenPoint Rated 50 points or LEED Certified
High Rise Residential (75' or higher)	LEED Certified

Source: City of San José, 2008

Municipal Code

The City’s Municipal Code includes regulations associated with energy efficiency and energy use. City regulations include a Green Building Ordinance (Chapter 17.84) to foster practices to minimize the use and waste of energy, water and other resources in the City of San José, Water Efficient Landscape Standards for New and Rehabilitated Landscaping (Chapter 15.10), requirements for Transportation Demand Programs for employers with more than 100 employees (Chapter 11.105), and a Construction and Demolition Diversion Deposit Program that fosters recycling of construction and demolition materials (Chapter 9.10).

Climate Smart San José

Climate Smart San José is a plan developed by the City to reduce air pollution, save water, and create a healthier community. The plan articulates how buildings, transportation/mobility, and citywide growth need to change in order to minimize impacts on the climate. The plan outlines strategies that City

³² Created by the U.S. Green Building Council, LEED is a certification system that assigns points for green building measures based on a 110-point rating scale.

³³ Created by Build It Green, GreenPoint is a certification system that assigns points for green building measures based on a 381-point scale for multi-family developments and 341-point scale for single-family developments.

departments, related agencies, the private sector, and residents can take to reduce carbon emissions consistent with the Paris Climate Agreement. The plan recognizes the scaling of renewable energy, electrification and sharing of vehicle fleets, investments in public infrastructure, and the role of local jobs in contributing to sustainability. It includes detailed carbon-reducing commitments for the City, as well as timelines to deliver on those commitments.

In January 2010, the State of California adopted the CalGreen code, which establishes mandatory green building standards for all buildings in California. The code was subsequently updated in 2013. The code covers five categories: planning and design, energy efficiency, water efficiency and conservation, material conservation and resource efficiency, and indoor environmental quality.

San José Reach Code Initiative for Building Efficiency

The City Council approved Ordinance No. 30311 in September 2019 to amend various sections of Title 24 of the City’s Municipal Code to adopt provisions of the 2019 CalGreen code with certain exceptions, modifications and additions which serve as a Reach Code to increase building efficiency, mandate solar readiness and increase requirements related to electric vehicle (EV) charging stations. The Reach Code went into effect January 1, 2020 and affects all new construction.

2040 General Plan

Policies in the 2040 General Plan have been adopted for the purpose of avoiding or mitigating energy impacts from development projects. Policies applicable to the project are presented in **Table 3-19** below.

Table 3-19 Envision San José 2040 Relevant Energy Policies

Policy MS-1.6	Recognize the interconnected nature of green building systems, and, in the implementation of Green Building Policies, give priority to green building options that provide environmental benefit by reducing water and/or energy use and solid waste.
Policy MS-2.1	Develop and maintain policies, zoning regulations, and guidelines that require energy conservation and use of renewable energy sources
Policy MS-2.2	Encourage maximized use of on-site generation of renewable energy for all new and existing buildings.
Policy MS-2.3	Utilize solar orientation (i.e., building placement), landscaping, design, and construction techniques for new construction to minimize energy consumption.
Policy MS-2.4	Promote energy efficient construction industry practices.
Policy MS-2.6	Promote roofing design and surface treatments that reduce the heat island effect of new and existing development and support reduced energy use, reduced air pollution, and a healthy urban forest. Connect businesses and residents with cool roof rebate programs through City outreach efforts.
Policy MS-2.11	Require new development to incorporate green building practices, including those required by the Green Building Ordinance. Specifically, target reduced energy use through construction techniques (e.g., design of building envelopes and systems to maximize energy performance), through architectural design (e.g., design to maximize cross ventilation and interior daylight) and through site design techniques (e.g., orienting buildings on sites to maximize the effectiveness of passive solar design).

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Policy MS-3.1	Require water-efficient landscaping, which conforms to the State’s Model Water Efficient Landscape Ordinance, for all new commercial, institutional, industrial, and developer-installed residential development unless for recreation needs or other area functions
Policy MS-5.5	Maximize recycling and composting from all residents, businesses, and institutions in the City.
Policy MS-14.1	Promote job and housing growth in areas served by public transit and that have community amenities within a 20-minute walking distance.
Policy MS-14.4	Implement the City’s Green Building Policies (see Green Building Section) so that new construction and rehabilitation of existing buildings fully implements industry best practices, including the use of optimized energy systems, selection of materials and resources, water efficiency, sustainable site selection, passive solar building design, and planting of trees and other landscape materials to reduce energy consumption.
Policy 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.
Policy TR-3.3	As part of the development review process, require that new development along existing and planned transit facilities consist of land use and development types and intensities that contribute toward transit ridership. In addition, require that new development is designed to accommodate and to provide direct access to transit facilities.

Source: City of San José, 2022

3.6.1.2 Existing Conditions

SJCE is the electricity provider for residents and businesses in the City. SJCE sources electricity, and the Pacific Gas and Electric Company (PG&E) delivers it to customers using existing PG&E utility lines. SJCE buys its power from several suppliers. Sources of renewable and carbon-free power include California wind, solar, and geothermal; Colorado wind; and hydroelectric power from the Pacific Northwest. SJCE customers are automatically enrolled in the GreenSource program, which provides 80 percent GHG emission-free electricity. Customers can enroll in the TotalGreen program through SJCE and receive 100 percent GHG-free electricity from entirely renewable resources.

PG&E also furnishes natural gas for residential, commercial, industrial, and municipal uses. In 2021, natural gas facilities provided 7 percent of PG&E’s electricity delivered to retail customers; nuclear plants provided 39 percent; hydroelectric operations provided 4 percent; and renewable energy facilities including solar, geothermal, and biomass provided 50 percent.³⁴

Total energy usage in California was approximately 7,881 trillion British thermal units (Btu) in the year 2017, the most recent year for which this data was available. In 2017, California was ranked second in total energy consumption in the nation, and 48th in energy consumption per capita. The breakdown by sector was approximately 18 percent (1,416 trillion Btu) for residential uses, 19 percent (1,473 trillion Btu) for commercial uses, 23 percent (1,818 trillion Btu) for industrial uses, and 40 percent (3,175 trillion

³⁴ Pacific Gas & Electric (PG&E), Clean energy solutions, 2021.

Btu) for transportation. This energy is mainly supplied by natural gas, petroleum, nuclear electric power, and hydroelectric power.

Electricity

Electricity in Santa Clara County in 2020 was consumed primarily by the commercial sector (72 percent), followed by the residential sector consuming 26 percent. In 2020, a total of approximately 16,435 gigawatt hours (GWh) of electricity was consumed in Santa Clara County.³⁵ SJCE is the electricity provider for residents and businesses in the City. SJCE sources the electricity and PG&E delivers it via their existing utility lines. SJCE customers are automatically enrolled in the GreenSource program, which provides 80 percent GHG emission-free electricity. Customers can choose to enroll in SJCE's TotalGreen program at any time to receive 100 percent GHG emission-free electricity from entirely renewable sources.

Natural Gas

PG&E provides natural gas services within the City. In 2018, approximately one percent of California's natural gas supply came from in-state production, while the remaining supply was imported from other western states and Canada.³⁶ In 2018, residential and commercial customers in California used 34 percent of the state's natural gas, power plants used 35 percent, the industrial sector used 21 percent, and other uses used 10 percent. Transportation accounted for one percent of natural gas use in California. In 2020, Santa Clara County used approximately 3.4 percent of the state's total consumption of natural gas.³⁷

Fuel for Motor Vehicles

In 2019, 15.4 billion gallons of gasoline were sold in California.³⁸ The average fuel economy for light-duty vehicles (autos, pickups, vans, and sport utility vehicles) in the U.S. has steadily increased from about 13.1 miles per gallon (mpg) in the mid-1970s to 25.4 mpg in 2020.³⁹ Federal fuel economy standards have changed substantially since the Energy Independence and Security Act was passed in 2007. That standard, which originally mandated a national fuel economy standard of 35 miles per gallon by the year 2020, was subsequently revised to apply to cars and light trucks model years 2011 through 2020.^{40,41}

³⁵ CEC, Energy Consumption Data Management System: Electricity Consumption by County, 2021.

³⁶ California Gas and Electric Utilities, 2019 California Gas Report Supplement, 2019.

³⁷ CEC, Energy Consumption Data Management System: Gas Consumption by County, 2021.

³⁸ California Department of Tax and Fee Administration, Motor Vehicle Fuel Distribution, 2020.

³⁹ United States Environmental Protection Agency (EPA), The 2021 EPA Automotive Trends Report: Greenhouse Gas Emissions, Fuel Economy, and Technology since 1975, 2021.

⁴⁰ United States Department of Energy, Alternative Fuels Data Center: Energy Independence and Security Act of 2007, 2007.

⁴¹ United States Government Publishing Office, Public Law 110–140—Dec. 19, 2007 Energy Independence and Security Act of 2007, 2007.

3.6.2 Impacts and Mitigation

3.6.2.1 *Thresholds of Significance*

For the purposes of this analysis and in accordance with CEQA Guidelines, a project impact to energy would be considered significant if the project would:

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

3.6.2.2 *Project Impacts*

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

The project would increase energy consumption relative to existing conditions. A discussion of the project's effect on energy use is presented below.

Construction Impacts

The anticipated construction schedule assumes that the project would be built out over a period of approximately 51 months, and would be built in phases. Construction of the project would require energy during demolition, site preparation, grading, site construction, paving, and architectural coating. Petroleum-based fuels such as diesel fuel and gasoline would be the primary sources of energy for these tasks. The construction energy use has not been determined at this time.

The overall construction schedule and process is already designed to be efficient to avoid excess monetary costs. That is because equipment and fuel are not typically used wastefully due to the added expense associated with renting the equipment, maintaining it, and fueling it. Therefore, the opportunities for future efficiency gains during construction are limited. The project does, however, include several measures that would improve the efficiency of the construction process. Implementation of the BAAQMD BMPs detailed as standard permit conditions in **Section 3.3. Air Quality** would restrict equipment idling times to five minutes or less and would require the applicant to post signs on the project site reminding workers to shut off idle equipment.

With implementation of the BAAQMD BMPs, the short-term energy impacts associated with use of fuel or energy related to construction would be less than significant. **Less Than Significant Impact.**

Operational Impacts

Operation of the project would consume energy, in the form of electricity, primarily for building heating and cooling, lighting, cooking, and water heating. The City passed an ordinance in December 2020 that prohibits the use of natural gas infrastructure in new buildings. This ordinance applies to any new construction (except for hospitals and commercial kitchens) and took effect August 1, 2021. The ordinance is the latest milestone for Climate Smart San José, the City's GHG emission reduction plan adopted by City Council in 2018. **Table 3-20** summarizes the estimated energy use of the project.

Table 3-20 Estimated Annual Energy Use of Project (2030)

Project Component	Electricity Use (kWh)
Apartments Mid-Rise	8,352,500
City Park	--
Condo/Townhouse	1,525,640
Enclosed Parking Structure	368,666
Enclosed Parking with Elevator	3,136,260
Regional Shopping Center	209,847
Total	13,592,913

Source: Illingworth & Rodkin, Inc., 2022. Electricity Use is measured in Kilowatt-hour (kWh)

The energy use increase is a conservative estimate because the estimates for energy use do not consider the efficiency measures incorporated into the project. The project would incorporate several efficiency measures to minimize the consumption of energy, such as the project would be built to the most recent CBC standards and Title 24 energy efficiency standards (or subsequently adopted standards during the one-year construction term), and CALGreen code. These measures include insulation and design provisions to minimize wasteful energy consumption, thereby improving the efficiency of the overall project. In addition, as described previously the project would be required to submit a LEED, GreenPoint, or Build-It-Green checklist as part of their development permit applications in accordance with Council Policy 6-32, which promotes practices to minimize the use and waste of energy, water, and other resources in the City.

Transportation-Related Energy Use

The project would result in an increase in approximately 5,664 net new daily traffic trips (see Appendix P). The total annual vehicle miles travelled (VMT) for the project is approximately 20,901,010 assuming an average trip length of 10.11 per capita after mitigation (refer to **Section 3.17, Transportation**). Using the U.S. EPA’s estimated average fuel economy of 25.4 mpg, the project would result in the consumption of approximately 822,874 gallons of gasoline per year.^{42,43}

The project is near major transit services provided by the VTA and Altamont Commuter Express (ACE). VTA local bus route 20 operates along Montague Expressway near the project site. Route 20 operates between the Milpitas BART station and the Sunnyvale Transit Center and provides service every 30 minutes during the weekday AM and PM peak commute periods of the day. Bus stops are located along Montague Expressway within walking distance of the project site at Trimble Road (about 0.25 mile from

⁴² EPA, The 2021 EPA Automotive Trends Report: Greenhouse Gas Emissions, Fuel Economy, and Technology since 1975, 2021.

⁴³ The approximate consumption of 822,874 gallons of gasoline per year is a conservative estimation, as it is anticipated that some cars will be all electric.

the project site) and McCarthy Boulevard (about 0.33 mile from the project site). The ACE Brown shuttle operates along Seely Avenue and provides service between the Great America ACE station and south Sunnyvale. ACE provides four eastbound shuttles during the weekday AM commute period and four westbound shuttles during the weekday PM commute period. The ACE Brown shuttle stops on Seely Avenue adjacent to the project site. Proximity to transit would encourage the use of alternative methods of transportation to and from the project site reducing transportation-related energy use.

In addition, the project would include new sidewalks along the project's frontage on Seely Avenue. The Coyote Creek Trail is a multi-use trail (Class I bikeway) that runs along both sides of Coyote Creek and is separate from motor vehicle traffic. The Coyote Creek Trail extends from the northern extent of McCarthy Boulevard south to Zanker Road in San José. Trail access is provided via Montague Expressway at the southern boundary of the project site and Iris Chang Park on Epic Way at the northern boundary of the project site. The project site is also about 1.2 miles east of the Guadalupe River bike trail. This trail runs from Alviso to south San José. The trail can be accessed from Trimble Road. In addition, the project would include the installation of a new Class II and Class IV separated bike lane on Seely Avenue.

The existing bike facilities in the project vicinity would provide bicyclists with connections to other bicycle facilities in the City and encourage the use of alternative methods of transportation to and from the project site, further reducing transportation-related energy use.

The project would provide long-term bicycle parking spaces for the residential component of the development and short-term bicycle parking spaces for the commercial component of the development, consistent with the requirements of the City's Municipal Code. The inclusion of bicycle parking and proximity to transit would offer future residents alternative methods of transportation to and from the project site. Based on the measures required for LEED Certification, the project would comply with existing State energy standards.

Based on the discussion above, the project would not result in wasteful, inefficient, or unnecessary consumption of energy resources, during project construction or operation and there would be no impact. **No Impact.**

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

Operation of the residential components of the project would consume energy for building heating and cooling, lighting, cooking, and water heating. Operation of the commercial components of the project would consume energy for building heating and cooling, lighting, refrigeration, and water heating. Energy would also be consumed during vehicle trips generated by residential occupants and customers of the proposed commercial uses. Although the project would increase the project site's energy use, the project would be required to comply with the current energy efficiency standards set forth in Title 24, CALGreen, and the City's Municipal Code. The project would not conflict with or obstruct a state or local plan for renewable energy or energy efficiency, and would therefore not have an impact. **No Impact.**

3.7 Geology and Soils

This section discusses the impacts on geology and soils that would result from implementation of the project. The following discussion is based in part on a pair of geotechnical exploration reports prepared by ENGEO for the two project parcels site, dated March 2021 and August 2021, respectively. Copies of these reports are provided in Appendix I of this EIR. No public scoping comments related to geology or soils were received.

3.7.1 Environmental Setting

3.7.1.1 Regulatory Framework

State

Alquist-Priolo Earthquake Fault Zoning Act

The Alquist-Priolo Earthquake Zoning Act was passed in 1972 with the intent to reduce the loss of life and property associated with surface rupture caused by active fault lines. The Alquist-Priolo Earthquake Zoning Act prohibits the placement of structures for human occupancy above active faults and sets minimum distances for construction away from the fault line. These fault lines are shown on Alquist-Priolo Maps, which are produced by the California Geological Survey.

Seismic Hazards Mapping Act

The 1990 Seismic Hazards Mapping Act directs the California Geological Survey to identify and map areas prone to various earthquake-related hazards, including liquefaction, landslides, and amplified ground shaking. The Seismic Hazards Mapping Act is intended to reduce the threat of seismic hazards to public health and to minimize the loss of life and property through identification and mitigation of seismic hazards. The State Geologist establishes regulatory zones (Zones of Required Investigation) and issues Seismic Hazard Zone Maps. These maps are distributed to all affected cities, counties, and state agencies for their use in planning and controlling construction and development.

California Building Code

The CBC was published on July 1, 2019 and took effect on January 1, 2020. The CBC is a compilation of three types of building criteria from three different origins:

- Building standards that have been adopted by state agencies without change from building standards contained in national model codes;
- Building standards that have been adopted and adapted from the national model code standards to meet California conditions; and
- Building standards, authorized by the California legislature, that constitute extensive additions not covered by the model codes that have been adopted to address particular California concerns.

The CBC identifies acceptable design criteria for construction that addresses seismic design and load-bearing capacity, including specific requirements for seismic safety; excavation, foundation and retaining wall design, site demolition, excavation, and construction, and; drainage and erosion control.

Changes in the 2019 CBC provide enhanced clarity and consistency in application. The basis for the majority of these changes resulted from California amendments to the 2018 model building codes. Some of the most significant changes include the following:

- Aligns engineering requirements in the building code with major revisions to national standards for structural steel and masonry construction, minor revisions to standards for wood construction, and support and anchorage requirements of solar panels in accordance with industry standards;
- Clarifies requirements for testing and special inspection of selected building materials during construction; and
- Recognizes and clarifies design requirements for buildings within tsunami inundation zones.

Paleontological Resources Regulations – California Public Resources Code

Paleontological resources are the fossilized remains of organisms from prehistoric environments found in geologic strata. They range from mammoth and dinosaur bones to impressions of ancient animals and plants, trace remains, and microfossils. California Public Resources Code (Section 5097.5) stipulates that the unauthorized removal of a paleontological resource is a misdemeanor. Under the CEQA Guidelines, a project would have a significant impact on paleontological resources if it would disturb or destroy a unique paleontological resource or site or unique geologic feature.

Local

Municipal Code Chapter 17.04 – Building Code

Chapter 17.04 sets forth rules and regulations to control excavation, grading, and earthwork construction, including fills and embankments; establishes the administrative procedure for issuance of permits; and provides for approval of plans, specifications, and inspection of grading construction. The purpose of Chapter 17.04 is to safeguard life, limb, property, water quality and natural resources, and to promote the public welfare by regulating grading and to establish uniform engineering standards and procedures for grading, and to allow reasonable deviations from these standards.

Municipal Code Chapter 17.10 – Geologic Hazard Regulations

Chapter 17.10 of the City's municipal code provides regulations for natural and artificial geologic hazards. Geologic hazard zones are defined as being any land in an area identified as very high, high, or moderate/high landslide susceptibility zones, being on a California earthquake fault zone map, or one of the City maps dated 1983 or 1985. Provisions made under this Chapter include prohibiting construction or grading of any property in a geologic hazard zone except in full compliance with Chapter 17.10, and granting any certificate holder, contractor, certified engineering geologist or consulting geotechnical and/or civil engineer the power to order immediate cessation of construction in the event a new geologic hazard is discovered.

Section 17.10.600 of this code states that “[n]o regional study which requires or contemplates any invasive testing or soil disturbance shall be conducted by an applicant unless and until the director approves a plan for the regional study.” This section outlines various requirements for such a report, including requiring supervision of a certified engineering geologist or geotechnical engineer, incorporation of dust control measures to avoid air quality impacts from fugitive dust, requiring

preparation of a cultural resources assessment to avoid cultural impacts, and other requirements. According to Section 17.10.300, the project will require a site-specific geotechnical investigation report addressing the potential hazard of liquefaction, during the design phase prior to construction. This analysis must be prepared by a licensed geologist (Section 17.10.510).⁴⁴ The City Public Works Department’s City Geologist will review the geotechnical investigation and issue a Geologic Clearance letter prior to the issuance of final grading permits.

2040 General Plan

Policies in the 2040 General Plan have been adopted for the purpose of avoiding or mitigating geology and soils impacts from development projects. Policies applicable to the project are presented in **Table 3-21** below.

Table 3-21 Envision San José 2040 Relevant Geology and Soil Policies

Policy EC-3.1	Design all new or remodeled habitable structures in accordance with the most recent California Building Code and California Fire Code as amended locally and adopted by the City of San José, including provisions regarding lateral forces.
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 storm water controls.
Policy EC-4.2	Development in areas subject to soils and geologic hazards, including unengineered fill and weak soils and landslide-prone areas, only when the severity of hazards have been evaluated and if shown to be required, appropriate mitigation measures are provided. New development proposed within areas of geologic hazards shall not be endangered by, nor contribute to, the hazardous conditions on the site or on adjoining properties. The City of San José Geologist will review and approve geotechnical and geological investigation reports for projects within these areas as part of the project approval process. [The City Geologist will issue a Geologic Clearance for approved geotechnical reports.]
Policy EC-4.4	Require all new development to conform to the City of San José’s Geologic Hazard Ordinance.
Policy EC-4.5	Ensure that any development activity that requires grading does not impact adjacent properties, local creeks, and storm drainage systems by designing and building the site to drain properly and minimize erosion. An Erosion Control Plan is required for all private development projects that have a soil disturbance of one acre or more, adjacent to a creek/river, and/or are located in hillside areas. Erosion Control Plans are also required for any grading occurring between October 1 and April 30.
Action EC-4.11	Require the preparation of geotechnical and geological investigation reports for projects within areas subject to soils and geologic hazards, and require review and implementation of mitigation measures as part of the project approval process.

⁴⁴ City of San José.2023. San José Municipal Code. Available: [Chapter 17.10 - GEOLOGIC HAZARD REGULATIONS | Code of Ordinances | San José, CA | Municode Library](#). Accessed January 2023.

Action EC-4.12	Require review and approval of grading plans and erosion control plans prior to issuance of grading permits by the Director of Public Works.
Policy ES-4.9	Permit development only in those areas where potential danger to health, safety, and welfare of the persons in that area can be mitigated to an acceptable level.

Source: City of San José, 2022

3.7.1.2 Existing Conditions

The project site is in Santa Clara Valley, an alluvial basin that lies between the Santa Cruz Mountains to the southwest and the Diablo Range to the northeast. Santa Clara Valley bedrock consists of Franciscan Complex and Cretaceous-age marine sediment. This bedrock is overlain by Santa Clara Formation sediments, which consist of a complex distribution of sand, silt, and clay lenses.

The project site is located within the seismically active San Francisco Bay Area. Santa Clara Valley is located between the active San Andreas Fault to the west, and the active Hayward and Calaveras faults to the east. Surface fault rupture tends to occur along existing fault traces. The nearest active fault with a significant contribution to the overall seismic hazard at the project site is the Silver Creek fault, approximately 0.7 mile away. This fault is considered capable of generating earthquakes with moment magnitudes up to 6.8. Other active faults located near the project site include the Hayward fault, which is located approximately 4.5 miles away and considered capable of generating a moment magnitude earthquake of up to 7.1, the Calaveras fault, which is located approximately 6.8 miles away and considered capable of generating a moment magnitude of 7.3, and the San Andreas fault, which is located approximately 13.6 miles away and considered capable of generating a moment magnitude earthquake of 8.0. The California Geological Survey (formerly Division of Mines and Geology) has produced maps showing Alquist-Priolo Earthquake Fault Zones along faults that pose a potential surface faulting hazard. No Alquist-Priolo zones are mapped in the vicinity of the project.⁴⁵ The project site is located within an area zoned by the State of California as having potential for seismically induced liquefaction hazards (ibid). The project site is also located within an area zoned in the Santa Clara County Geologic Hazard Zone maps as a Liquefaction Hazard Zone.⁴⁶ Liquefaction is a phenomenon in which the strength and stiffness of a soil is reduced by seismic shaking or other rapid loading. Liquefied soil can also settle.

Two geotechnical reports were prepared for APN 097-15-033, 097-15-034, and a portion of 097-66-0084 , and copies of both reports are provided in Appendix I of this EIR. The project site is relatively flat, with existing elevations ranging between 33 and 44 feet above mean sea level, and a gradual slope from northeast to southwest. Regionally, the topographic slope is to the north, towards the San Francisco Bay. The project site is partially developed with two residences, a fruit stand, agricultural land and supporting structures.

Subsurface testing for the two eastern parcel, APN 097-15-034, and 097-66-008 indicated that the project site soil was composed of clay and silty clay. A sandy layer was encountered several feet below grade with a thickness between 2 and 8 feet. Clay and silty clay was encountered about 35 feet below existing grade below the sandy material. These clayey materials are underlain by dense sand or gravel to

⁴⁵ California Geological Service, Earthquake Zones of Required Investigation Milpitas Quadrangle, 2004.

⁴⁶ County of Santa Clara, Santa Clara County Geologic Hazard Zones Sheet 11, 2012.

the maximum depths explored. Subsurface testing for the western parcel (APN 097-15-033) indicated that the project site soil was composed of loose to medium dense silty sand, or soft to medium stiff sandy silt in the upper 7 to 10 feet below ground surface. A medium stiff to very stiff lean clay layer was encountered several feet below grade with a thickness of about 20 feet. At about 40 feet below surface, a layer of medium dense to very stiff lean clay was encountered.

3.7.2 Impacts and Mitigation

3.7.2.1 Thresholds of Significance

For the purposes of this analysis and in accordance with CEQA Guidelines, a project impact to geology and soils would be considered significant if the project would:

- a) Directly or indirectly cause potential substantial adverse effects, including the risk of loss, injury, or death involving:
 - i. Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42;
 - ii. Strong seismic ground shaking;
 - iii. Seismic-related ground failure, including liquefaction; or
 - iv. Landslides
- b) Result in substantial soil erosion or the loss of topsoil;
- c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse;
- d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial direct or indirect risks to life or property;
- e) Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water; or
- f) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature.

3.7.2.2 Project Impacts

- a) **Would the project directly or indirectly cause potential substantial adverse effects, including the risk of loss, injury, or death involving:**
 - i) **Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.**

The project site is not located within a State of California Earthquake Fault Hazard Zone and no known active faults cross the project site. The risk of ground rupture on the project site is considered low. The

project site is not mapped within an Alquist-Priolo Earthquake Fault Zone. Furthermore, the project would be designed and developed in accordance with the CBC guidelines to avoid or minimize potential direct or indirect damage from seismic shaking on the project site as described below of the standard permit conditions.

Standard Permit Conditions

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

With implementation of the standard permit conditions identified above, the project would have a less than significant impact. **Less Than Significant Impact.**

ii) Strong seismic ground shaking?

Due to its location in a seismically active region, the proposed building, infrastructure, and associated structures would likely be subject to strong seismic ground shaking during their design life in the event of a major earthquake on any of the region's active faults. This could pose a risk to proposed structures and infrastructure. Earthquake faults in the region, specifically the San Andreas, Calaveras, and Hayward faults are capable of generating earthquakes larger than 7.0 in magnitude. Seismic impacts would be minimized by implementation of standard engineering and construction techniques in compliance with the requirements of the California and Uniform Building Codes for Seismic Zone 4. The project will be designed and constructed in accordance with a design-level geotechnical investigation as a standard permit condition discussed in **a.i.)** above. **Less Than Significant Impact.**

iii) Seismic-related ground failure, including liquefaction?

As described above, the project site may be subject to strong ground shaking in the event of a major earthquake. The project site is located within an area zoned by the State of California as having potential for seismically induced liquefaction hazards and within an area zoned in the Santa Clara County Geologic Hazard Zone maps as a Liquefaction Hazard Zone. Impacts associated with seismic and liquefaction hazards would be minimized by applying appropriate engineering and construction techniques. A site-specific design-level geotechnical exploration would be prepared to provide recommendations to minimize these hazards as presented in the standard permit conditions in **a.i.)** above. This would reduce any potentially significant geotechnical impacts to a less-than-significant level. **Less Than Significant Impact.**

iv) Landslides?

The project site is located in a topographically flat area and would not be subject to landslides. **No Impact.**

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

Development of the project would require the grading of 30,796 CY of cut and 24,412 CY of fill, which could result in a temporary increase in erosion. The project would implement the following standard permit conditions which would reduce potential soil erosion impacts to a less-than-significant level. **Less Than Significant Impact.**

Standard Permit Conditions

- All excavation and grading work shall be scheduled in dry weather months or construction sites shall be weatherized.
- Stockpiles and excavated soils shall be covered with secured tarps or plastic sheeting.
- Ditches shall be installed to divert runoff around excavations and graded areas if necessary.
- The project shall be constructed in accordance with the standard engineering practices in the CBC, as adopted by the City. A grading permit from the San José Department of Public Works shall be obtained prior to the issuance of a Public Works clearance. These standard practices would ensure that the future building on the site is designed to properly account for soils-related hazards on the site.

With implementation of the standard permit conditions identified above, the project would have a less than significant impact. **Less Than Significant Impact.**

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

The project may contain soil and geologic hazards that could result in lateral spreading, subsidence, or liquefaction, which could damage proposed structures. Impacts associated with these soil and geotechnical hazards would be minimized by applying appropriate engineering and construction techniques. The project would be designed according to the specifications of the project site-specific design-level geotechnical analyses prepared for the two project parcels. This would include including adherence to recommendations for shallow soil treatment, fill placement, and installation of a podium structures for foundation stability, as well as installation of post-tensioned mat foundations for the townhome buildings, and installation of vapor retarder membrane to reduce moisture in the proposed buildings. In addition, adherence to the standard permit conditions identified in response **a.i.)** above, would further reduce impacts related to unstable soil. This would reduce any potentially significant geotechnical impacts to a less-than-significant level. **Less Than Significant Impact.**

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

The project may contain expansive soils, which could damage proposed structures on the project site. Impacts associated with expansive soils or other soil hazards would be minimized by applying appropriate engineering and construction techniques, including recommendations for shallow soil treatment as identified in the geotechnical reports for the project. In addition, a site-specific design-level geotechnical analysis would be prepared to provide recommendations to minimize these hazards as described in the standard permit condition for **a.i.)** above. This would reduce any potentially significant direct or indirect geotechnical impacts to a less-than-significant level. **Less Than Significant Impact.**

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

The project does not propose any septic systems. The project would tie into the City's existing sanitary sewer system. **No Impact.**

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

The project site is in an area mapped as "high sensitivity at depth" in the 2040 General Plan EIR.⁴⁷ The project includes grading and excavation up to a maximum depth of 11 feet, which could potentially disturb paleontological resources. Additionally, construction of the new well would require drilling to a depth of at least 250 feet to reach the deep aquifer in the project area. Consistent with 2040 General Plan Policy ER-10.3, the following standard permit condition will be implemented by the project to avoid or minimize impacts to paleontological resources during construction. No other unique geological features are found on this site.

Standard Permit Condition

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

With implementation of the standard permit condition identified above the project would result in a less than significant impact. **Less Than Significant Impact.**

⁴⁷ Figure 3.11-1. San José, City of, Draft Program Environmental Impact Report for the Envision San José 2040 General Plan, 2011.

3.8 Greenhouse Gas Emissions

This section discusses the impacts on greenhouse gas (GHG) emissions that would result from implementation of the project. The following discussion is based in part on the air quality assessment prepared for the project by Illingworth & Rodkin, Inc., dated May 25, 2023. This report is contained in Appendix B of this EIR. In addition, a GHG Reduction Strategy Compliance Checklist (checklist) was developed and applied to the project. The checklist is contained in Appendix J of this EIR. No public scoping comments related to GHG emissions were received.

3.8.1 Environmental Setting

3.8.1.1 Regulatory Framework

Federal

Federal Clean Air Act

The FCAA, first passed in 1970, is the overarching federal-level law that, as of 2007 via the U.S. Supreme court decision in *Massachusetts v. EPA*, enables the U.S. EPA to provide regulations of key GHG emissions sources (mobile emissions), established a mandatory emissions reporting program for large stationary emitters, and implementation of vehicle fuel efficiency standards.

State

Assembly Bill 32 – California Global Warming Solutions Act

AB 32, the Global Warming Solutions Act of 2006, codifies the State of California’s GHG emissions target by directing CARB to reduce the state’s global warming emissions to 1990 levels by 2020. AB 32 was signed and passed into law by Governor Schwarzenegger on September 27, 2006. Since that time, the CARB, the California Energy Commission (CEC), the California Public Utilities Commission (CPUC), and the Building Standards Commission have all been developing regulations that will help meet the goals of AB 32 and Executive Order S-3-05.⁴⁸ A Scoping Plan for AB 32 was adopted by CARB in December 2008. It contains the State of California’s main strategies to reduce GHGs from business as usual (BAU) emissions projected in 2020 back down to 1990 levels. BAU is the projected emissions in 2020, including increases in emissions caused by growth, without any GHG reduction measures. The Scoping Plan has a range of GHG reduction actions, including direct regulations, alternative compliance mechanisms, monetary and non-monetary incentives, voluntary actions, and market-based mechanisms such as a cap-and-trade system. It required CARB and other state agencies to develop and adopt regulations and other initiatives reducing GHGs by 2012. As directed by AB 32, CARB has also approved a statewide GHG emissions limit. On December 6, 2007, CARB staff resolved an amount of 427 MMT of Carbon Dioxide Equivalent (CO₂e) as the total statewide GHG 1990 emissions level and 2020 emissions limit. The limit is a cumulative statewide limit, not a sector-or facility-specific limit. CARB updated the future 2020 BAU annual emissions forecast, in light of the economic downturn, to 545 MMT of CO₂e. Two GHG emissions reduction measures currently enacted that were not previously included in the 2008 Scoping Plan

⁴⁸ Note that AB 197 was adopted in September 2016 to provide more legislative oversight of CARB.

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baseline inventory were included, further reducing the baseline inventory to 507 MMT of CO₂e. Thus, an estimated reduction of 80 MMT of CO₂e is necessary to reduce statewide emissions to meet the AB 32 target by 2020. CARB prepared an updated Scoping Plan which was released in 2017. The 2017 Scoping Plan identifies ways for California to reach the statewide 2030 climate target and next steps for reaching the 2050 target goal.

Senate Bill 1368

SB 1368 is the companion bill of AB 32 and was signed by Governor Schwarzenegger in September 2006. SB 1368 required the CPUC to establish a GHG emission performance standard. Therefore, on January 25, 2007, the CPUC adopted an interim GHG Emissions Performance Standard in an effort to help mitigate climate change. The Emissions Performance Standard is a facility-based emissions standard requiring that all new long-term commitments for baseload generation to serve California consumers be with power plants that have emissions no greater than a combined cycle gas turbine plant. That level is established at 1,100 pounds of Carbon Dioxide (CO₂) per megawatt-hour. “New long-term commitment” refers to new plant investments (new construction), new or renewal contracts with a term of five years or more, or major investments by the utility in its existing baseload power plants. In addition, the CEC established a similar standard for local publicly owned utilities that cannot exceed the GHG emission rate from a baseload combined-cycle natural gas fired plant. On July 29, 2007, the Office of Administrative Law disapproved the CEC’s proposed Greenhouse Gases Emission Performance Standard rulemaking action and subsequently, the CEC revised the proposed regulations. SB 1368 further requires that all electricity provided to California, including imported electricity, must be generated from plants that meet the standards set by the CPUC and CEC.

Senate Bill 32 – California Global Warming Solutions Act of 2006

In September 2015, the California Legislature passed SB 350 (de Leon 2015), which increases the State’s RPS for content of electrical generation from the 33 percent target for 2020 to a 50 percent renewables target by 2030.

Senate Bill 375 – California’s Regional Transportation and Land Use Planning Efforts

SB 375, signed in August 2008, requires sustainable community strategies (SCS) to be included in regional transportation plans to reduce emissions of GHGs. The MTC and ABAG adopted an SCS in July 2013 that meets GHG reduction targets. The Plan Bay Area is the SCS document for the Bay Area, which is a long-range plan that addresses climate protection, housing, healthy and safe communities, open space and agricultural preservation, equitable access, economic vitality, and transportation system effectiveness within the San Francisco Bay region (MTC 2013). The document is updated every four years, so the MTC and ABAG are currently developing the Plan Bay Area 2040.

Executive Order S-03-05

On June 1, 2005 Governor Schwarzenegger signed Executive Order S-03-05, the purpose of which was to implement requirements for the California Environmental Protection Agency (Cal EPA) to provide ongoing reporting on a biennial basis to the State Legislature and Governor’s Office on how global warming is affecting the State. Required areas of impact reporting include public health, water supply, agriculture, coastline, and forestry. The Cal EPA secretary is required to prepare and report on ongoing and upcoming mitigation designed to counteract these impacts.

Executive Order B-30-15

On April 15, 2015 Governor Brown signed Executive Order B-30-15, the purpose of which is to establish a GHG reduction of 40 percent below 1990 levels by 2030. The Executive Order is intended to help the State work towards a further emissions reduction target of 80 percent below 1990 levels by the year 2050. The order directed state agencies to prepare for climate change impacts through prioritization of adaptation actions to reduce GHG emissions, preparation for uncertain climate impacts through implementation of flexible approaches, protection of vulnerable populations, and prioritization of natural infrastructure approaches.

Executive Order B-55-18 and SB 100 – 100 Percent Clean Energy Act of 2018

On September 10, 2018 Governor Brown signed both SB 100 – 100 Percent Clean Energy Act of 2018 and Executive Order B-55-18 to Achieve Carbon Neutrality. SB 100 set California on course to achieving carbon-free emissions from the electric power production sector by 2045. SB 100 also increased the required emissions reduction generated by retail sales to 60 percent by 2030, an increase in 10 percent compared to previous goals. B-55-18 established a new goal of achieving statewide “carbon neutrality as early as possible and no later than 2045, and to achieve and maintain net negative emissions thereafter.”

Regional and Local

Bay Area Air Quality Management District

The BAAQMD is primarily responsible for assuring that the federal and state ambient air quality standards for criteria pollutants are attained and maintained in the Bay Area. The BAAQMD’s May 2017 CEQA Air Quality Guidelines update the 2010 CEQA Air Quality Guidelines, addressing the California Supreme Court’s 2015 opinion in the *California Building Industry Association vs. Bay Area Air Quality Management District* court case. In an effort to attain and maintain federal and state ambient air quality standards, the BAAQMD establishes thresholds of significance for construction and operational period emissions for criteria pollutants and their precursors (see **Table 3-6**).

2017 Bay Area Clean Air Plan

The BAAQMD, along with other regional agencies such as ABAG and the MTC, develops plans to reduce air pollutant emissions. The most recent clean air plan is the *Bay Area 2017 Clean Air Plan: Spare the Air, Cool the Climate* (2017 CAP), which was adopted by BAAQMD in April 2017. This is an update to the 2010 CAP, and centers on protecting public health and climate. The 2017 CAP identifies a broad range of control measures. These control measures include specific actions to reduce emissions of air and climate pollutants from the full range of emission sources and is based on the following four key priorities:

- Reduce emissions of criteria air pollutants and TACs from all key sources.
- Reduce emissions of “super-GHGs” such as methane, black carbon, and fluorinated gases.
- Decrease demand for fossil fuels (gasoline, diesel, and natural gas).
- Decarbonize our energy system.

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 Ordinance (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)

Council Policy 6-32 Private Sector Green Building Policy

In October 2008, the City Council adopted the Council Policy 6-32 "Private Sector Green Building Policy", which identifies baseline green building standards for new private construction and provides a framework for the implementation of these standards. This Policy requires that applicable projects achieve minimum green building performance levels using the Council adopted standards.

City of San José 2030 Greenhouse Gas Reduction Strategy

On December 15, 2015, the San José City Council certified a Supplemental Program Environmental Impact Report to the Envision San José 2040 Final Program Environmental Impact Report and re-adopted the City's GHG Reduction Strategy in the 2040 General Plan. The GHG Reduction Strategy is intended to meet the mandates as outlined in the CEQA Guidelines and standards for "qualified plans" as set forth by BAAQMD. Projects that conform to the 2040 General Plan Land Use/Transportation Diagram and supporting policies are considered consistent with the City's GHG Reduction Strategy.

The GHG Reduction Strategy identifies GHG emissions reduction measures to be implemented by development projects in three categories: built environment and energy; land use and transportation; and recycling and waste reduction. Some measures are mandatory for all proposed development projects and others are voluntary. Voluntary measures can be incorporated as mitigation measures for proposed projects, at the City's discretion.

The Greenhouse Gas Reduction Strategy was updated for 2030. The 2030 GHG Reduction Strategy was adopted and the EIR Addendum were certified by the City Council on November 17, 2020. The 2030 GHG Reduction Strategy went into effect on December 17, 2020.

The 2030 GHG Reduction Strategy outlines the actions the City will undertake to achieve its proportional share of State GHG emission reductions for the interim target year 2030. The 2030 GHG Reduction Strategy presents the City's comprehensive path to reduce GHG emissions to achieve the 2030 reduction target, based on SB 32, BAAQMD, and OPR requirements. Additionally, the 2030 GHG Reduction Strategy leverages other important City plans and policies; including the 2040 General Plan, Climate Smart San José, and the City Municipal Code in identifying reductions strategies that achieve the City's target. CEQA Guidelines Section 15183.5 allows for public agencies to analyze and mitigate GHG emissions as part of a larger plan for the reduction of GHGs. Accordingly, the City's 2030 GHG Reduction Strategy represents San José's qualified climate action plan in compliance with CEQA.

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As described in the 2030 GHG Reduction Strategy, the GHG reductions will occur through a combination of City initiatives in various plans and policies to provide reductions from both existing and new developments. A GHG Reduction Strategy Compliance Checklist (checklist) was developed that applies to proposed discretionary projects that require CEQA review. Therefore, the checklist is a critical implementation tool in the City's overall strategy to reduce GHG emissions. Implementation of applicable reduction actions in new development projects will help the City achieve incremental reductions toward its target. Per the 2030 GHG Reduction Strategy, the City will monitor strategy implementation and make updates, as necessary, to maintain an appropriate trajectory to the 2030 GHG target. Specifically, the purpose of the checklist is to:

- Implement GHG reduction strategies from the 2030 GHGRS to new development projects.
- Provide a streamlined review process for proposed new development projects that are subject to discretionary review and trigger environmental review pursuant to CEQA.

Climate Smart San José

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

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

The CEC updates the California Building Energy Efficiency Standards every three years, in alignment with the California Code of regulations. Title 24 Parts 6 and 11 of the California Building Energy Efficiency Standards and the California Green Building Standards Code (CALGreen) address the need for regulations to improve energy efficiency and combat climate change. The 2019 CAL Green standards include some substantial changes intended to increase the energy efficiency of buildings. For example, the code encourages the installation of solar and heat pump water heaters in low-rise residential buildings. The 2019 California Code went before City Council in October 2019 for approval, with an effective date of January 1, 2020. As part of this action, the City adopted a "reach code" that requires development projects to exceed the minimum Building Energy Efficiency requirements.⁴⁹ The City's reach code applies only to new residential and non-residential construction in San José. It incentivizes all-electric construction, requires increased energy efficiency and electrification-readiness for those choosing to maintain the presence of natural gas. The code requires that non-residential construction include solar readiness. It also requires additional EV charging readiness and/or EV service equipment installation for all development types.

⁴⁹ San José, City of, San José Reach Code, 2020.

2040 General Plan

In addition to the above, policies in the 2040 General Plan have been adopted for the purpose of avoiding or mitigating GHG emissions impacts from development projects. Policies applicable to the project are presented in **Table 3-22** below.

Table 3-22 Envision San José 2040 Relevant Greenhouse Gas Reduction Policies

Policy CD-2.5	Integrate Green Building Goals and Policies of this Plan into site design to create healthful environments. Consider factors such as shaded parking areas, pedestrian connections, minimization of impervious surfaces, incorporation of stormwater treatment measures, appropriate building orientations, etc.
Policy CD-3.2	Prioritize pedestrian and bicycle connections to transit, community facilities (including schools), commercial areas, and other areas serving daily needs. Ensure that the design of new facilities can accommodate significant anticipated future increases in bicycle and pedestrian activity
Policy CD-3.3	Within new development, create and maintain a pedestrian-friendly environment by connecting the internal components with safe, convenient, accessible, and pleasant pedestrian facilities and by requiring pedestrian connections between building entrances, other site features, and adjacent public streets.
Policy CD-5.1	Design areas to promote pedestrian and bicycle movements, to facilitate interaction between community members, and to strengthen the sense of community.
Policy MS-1.2	Continually increase the number and proportion of buildings within San José that make use of green building practices by incorporating those practices into both new construction and retrofit of existing structures.
Policy MS-2.3	Encourage consideration of solar orientation, including building placement, landscaping, design, and construction techniques for new construction to minimize energy consumption.
Policy MS-2.11	Require new development to incorporate green building practices, including those required by the Green Building Ordinance. Specifically, target reduced energy use through construction techniques (e.g., design of building envelopes and systems to maximize energy performance), through architectural design (e.g. design to maximize cross ventilation and interior daylight) and through site design techniques (e.g. orienting buildings on sites to maximize the effectiveness of passive solar design).
Policy MS-5.5	Maximize recycling and composting from all residents, businesses, and institutions in the City
Policy MS-6.5	Reduce the amount of waste disposed in landfills through waste prevention, reuse, and recycling of materials at venues, facilities, and special events.
Policy MS-6.8	Maximize reuse, recycling, and composting citywide.
Policy MS-14.4	Implement the City’s Green Building Policies so that new construction and rehabilitation of existing buildings fully implements industry best practices, including the use of optimized energy systems, selection of materials and resources, water efficiency, sustainable site selection, passive solar building design, and planting of trees and other landscape materials to reduce energy consumption.

Policy LU-5.4	Require new commercial development to facilitate pedestrian and bicycle access through techniques such as minimizing building separation from public sidewalks; providing safe, accessible, convenient, and pleasant pedestrian connections; and including secure and convenient bike storage.
Policy TR-2.18	Provide bicycle storage facilities as identified in the Bicycle Master Plan.

Source: City of San José, 2022

3.8.1.2 Existing Conditions

Various gases in the earth’s atmosphere, classified as atmospheric GHGs, play a critical role in determining the earth’s surface temperature. Solar radiation enters the atmosphere from space and a portion of the radiation is absorbed by the earth’s surface. The earth emits this radiation back toward space, but the properties of the radiation change from high-frequency solar radiation to lower-frequency infrared radiation. GHGs, which are transparent to solar radiation, are effective in absorbing infrared radiation. As a result, this radiation that otherwise would have escaped back into space is retained, resulting in a warming of the atmosphere. This phenomenon is known as the greenhouse effect. Among the prominent GHGs contributing to the greenhouse effect, or climate change, are carbon dioxide (CO₂), methane (CH₄), ozone (O₃), water vapor, nitrous oxide (N₂O), and chlorofluorocarbons (CFCs). Human-caused emissions of these GHGs in excess of natural ambient concentrations are responsible for enhancing the greenhouse effect. Climate change is a cumulative effect from local, regional, and global GHG emission contributions. According to the EPA on a Global scale, CARB on a state scale, and BAAQMD on a County scale, the transportation sector is the largest emitter of GHG emissions, followed by electricity generation and the industrial sector.^{50,51,52} San José’s transportation sector is also the largest emitter of GHG emission, but followed by residential and commercial development.⁵³ The U.S. EPA reported that in 2020, total gross nationwide GHG emissions were 5,981.4 million metric tons (MMT) carbon dioxide equivalent (CO₂e).⁵⁴ These emissions were lower than peak levels of 7,434.8 MMT that were emitted in 2005. CARB updates the statewide GHG emission inventory on an annual basis where the latest inventory includes 2000 through 2019 emissions.⁵⁵ In 2019, GHG emissions from statewide emitting activities were 418.2 MMT. The 2020 emissions have decreased by 15 percent since peak levels in 2004 and are 13 MMT below the 1990 emissions level and the State’s 2020 GHG limit. Per capita GHG emissions in California have dropped from a 2001 peak of 14.1 MT per person to 10.5 MT per person in 2019. The most recent Bay Area emission inventory was computed for the year 2011.⁵⁶ The Bay Area GHG emission were 87 MMT. As a point of comparison, statewide

⁵⁰ EPA, Inventory of U.S. Greenhouse Gas Emissions and Sinks, 2022.

⁵¹ CARB, Current California GHG Emission Inventory Data, 2022.

⁵² BAAQMD, Bay Area Emissions Inventory Summary Report: Greenhouse Gases Base Year 2011, 2015.

⁵³ City of San José, San José 2030 Greenhouse Gas Reduction Strategy, August 2020.

⁵⁴ EPA, Inventory of U.S. Greenhouse Gas Emissions and Sinks, 2022.

⁵⁵ CARB, Current California GHG Emission Inventory Data, 2022.

⁵⁶ BAAQMD, Bay Area Emissions Inventory Summary Report: Greenhouse Gases Base Year 2011, 2015.

emissions were about 444 MMT in 2011. According to San José's GHGRS, the City's emissions were 5.71 MMT.

The project site is partially developed with two residences, a fruit stand, and agricultural land. The existing GHG emissions at the project site would be from vehicles traveling to and from the project site and agricultural activities, as well as energy usage from electricity and natural gas.

3.8.2 Impacts and Mitigation

3.8.2.1 Thresholds of Significance

For the purposes of this analysis and in accordance with CEQA Guidelines, a project impact to greenhouse gas emissions would be considered significant if the project would:

- Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment; or
- Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases.

3.8.2.2 Project Impacts

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

Construction

GHG emissions associated with construction were computed to be 1,143 MT of CO₂e for the total construction period. These consist of emissions from on-site operation of construction equipment, vendor and hauling truck trips, and worker trips. Neither the City nor BAAQMD have an adopted threshold of significance for construction-related GHG emissions, although BAAQMD recommends quantifying emissions and disclosing GHG emissions during construction. BAAQMD also encourages the incorporation of BMPs to reduce GHG emissions during construction where feasible and applicable.

Operations

Long-term operational emissions would be generated from vehicular traffic and energy and water use. However, the GHG generation would be considered less than significant provided the project demonstrates that it is consistent with the City's 2030 GHG Reduction Strategy which serves as the City's Qualified Climate Action Plan. The project is subject to the GHG reduction strategies identified in the City's 2030 GHG Reduction Strategy Compliance Checklist (see Appendix J). The project would implement and comply with all relevant GHG reduction measures as determined by the City to reduce the project's GHG Emissions. The project would be consistent with the Land Use/Transportation Diagram designation of *Industrial Park* with the *TERO* that applies to the project site. The project would include construction of new sidewalks along the frontages of Seely Avenue and Epic Way, as well as within the project site, to help facilitate pedestrian movement within and around the project site. In addition, the project would include the construction of Class II and Class IV bicycle lanes along the project frontage on Seely Avenue. The GHG Reduction Strategies to be incorporated into the project include the following:

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- Implementation of green building measures through construction techniques and architectural design;
- Incorporation of energy conservation measures;
- Enrollment of the multi-family housing project components into the SJCE GreenSource program;
- Installation of rooftop solar panels;
- Incorporation of bicycle storage and related facilities;
- Incorporation of water-efficient landscaping;
- Incorporation of appropriate landscaping species;
- Providing an area for future installation of rooftop solar panels;
- Incorporation of EV charging stations;
- Integration of water and waste reduction features (see MM TR-1.1); and
- Implementation of a TDM plan that includes the following elements:
 - Car sharing program.
 - Unbundled parking.
 - Voluntary travel behavior change program

With incorporation of the GHG-reduction strategies above, the project would be consistent with the City's 2030 GHG reduction strategy and the impact would be less than significant. **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 greenhouse gases?

The City's 2030 GHG Reduction Strategy Compliance Checklist has been completed for the project. In fulfillment of GHG Reduction Strategies #1 and #3, the applicant plans to enroll the multi-family components of the development in the SJCE GreenSource program and would install rooftop solar panels. In addition, the project would include all electrical infrastructure and would not utilize natural gas, in compliance with the City's natural gas prohibition ordinance. Upon completion, the project would participate in the City's Zero Waste Strategic plan per GHG Reduction Strategy #5 and would utilize water efficient landscaping species and equipment consistent with GHG Reduction Strategy #7. The project would be consistent with the existing 2040 General Plan land use diagram and the TERO Overlay. The completed project would provide pedestrian and bicycle facilities consistent with the Municipal Code, and would comply with green building ordinances and all applicable energy efficiency measures. The Project would also comply with the following standard permit condition:

Proof of Enrollment in SJCE. Prior to issuance of any Certificate of Occupancy for the project, the occupant shall provide to the Director of the Department of Planning, Building, and Code Enforcement (PBCE), or Director's designee, proof of enrollment in the San José Community Energy (SJCE) GreenSource program (approximately 95 percent carbon free power) assumed in the approved environmental clearance for the project in accordance with CEQA. If it is determined the project's environmental clearance requires enrollment in the TotalGreen

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program, neither the occupant, nor any future occupant, may opt out of the TotalGreen program.

Therefore, the project would not conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing the emissions of GHGs, since the project would comply with the City's 2030 GHG Reduction Strategy. **Less Than Significant Impact.**

3.9 Hazards and Hazardous Materials

This section is based on two Phase I and one Phase II Environmental Site Assessments (ESA) prepared by ENGEO for the two eastern parcels (APN 097-15-033 and 097-66-004) and one western parcel (APN 097-15-034). The two Phase I ESAs are dated March 2021 and July 2021, and the Phase II ESA is dated December 2021. The Phase I, Parcel 1, ESA is provided as Appendix K in this EIR. The Phase I, Parcel 2 ESA is provided as Appendix L, and the Phase II ESA is provided in Appendix M of this EIR. Subsequent to preparation of the Phase II ESA, the Santa Clara County Department of Environmental Health (SCCDEH) requested additional soil vapor testing. The results of this testing are included as Appendix N.

During the public scoping process, one commenter requested that the EIR analyze potential contamination of the project site due to the history of agricultural uses.

3.9.1 Environmental Setting

3.9.1.1 Regulatory Framework

Federal

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), commonly known as Superfund, was enacted by Congress in 1980 and is administered by the U.S. EPA. 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. CERCLA 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.

Resource Conservation and Recovery Act

The Resource Conservation and Recovery Act (RCRA) is a Federal law passed by Congress in 1976 to address the increasing problems from the nation's growing volume of municipal and industrial waste. RCRA creates the framework for the proper management of hazardous and non-hazardous solid waste and is administered by the U.S. EPA. RCRA protects communities and resource conservation by enabling the EPA to develop regulations, guidance, and policies that ensure the safe management and cleanup of solid and hazardous waste, and programs that encourage source reduction and beneficial reuse. The term RCRA is often used interchangeably to refer to the law, regulations, and EPA policy and guidance.

State

California Department of Toxic Substances Control

The California Department of Toxic Substances Control (DTSC) is a State agency that protects State citizens and the environment from exposure to hazardous wastes by enforcing hazardous waste laws and regulations. DTSC enforces action against violators; oversees cleanup of hazardous wastes on contaminated properties; makes decisions on permit applications from companies that want to store,

treat or dispose of hazardous waste; and protects consumers against toxic ingredients in everyday products.

Cortese List: Section 65692.5(a)

California Code of Regulations Section 65962.5(a) requires that the DTSC compile and update an annual list, known as the Cortese List, of all hazardous waste facilities subject to corrective action, pursuant to Section 25187.5 of the Health and Safety Code. Facilities are added to the Cortese List are those that have failed to comply with a posted date for taking corrective action for an existing hazard or because DTSC determined that immediate corrective action is necessary to abate an imminent or substantial endangerment.

California Code of Regulations, Title 8 Section 1529 – Asbestos

California Code of Regulations, Title 8, Section 1529 regulates asbestos exposure in all construction work, including structure demolition, removal of asbestos-containing materials, activities involving construction or alteration of existing structures that contain asbestos, installation of asbestos-containing products, emergency cleanup, and other activities. Section 1529 regulates permissible exposure limits for individual employees, standards for demarcation of regulated asbestos work areas, and safety protocol and equipment.

California Code of Regulations, Title 8 Section 1532.1 – Lead

California Code of Regulations, Title 8, Section 1532.1 applies to all construction work where an employee may be occupationally exposed to lead. As defined in this section, an employer shall assure that no employee is exposed to lead at concentrations greater than fifty micrograms per cubic meter of air (50µg/m³) averaged over an 8-hour period. Employers are required to identify hazards at existing job sites and provide workers with training and sanitation stations for decontamination. Compliance is regulated by the California Occupational Safety Health Program (CAL/OSHA).

California Accidental Release Prevention Program

The California Accidental Release Prevention (CalARP) program is designed to help prevent the accidental release of substances that pose harm to public health and the environment. CalARP also provides guidance for minimizing damage from spills and requires businesses to develop Risk Management Plans (RMPs) if they handle a certain amount of a regulated substance. RMPs are detailed engineering documents that analyze the potential accident factors and identify mitigation for rapid implementation to reduce accident potential and address any accidental releases. The CalARP program is facilitated by Unified Program Agencies at the local government levels. Unified Program Agencies work directly with businesses to review and approve RMPs, conduct inspections, and provide public-facing data.

California State Water Resources Control Board

The California State Water Resources Control Board (SWRCB) and its nine regional boards are responsible for preserving, enhancing, and restoring the quality of California’s water resources and drinking water for the protection of the environment, public health, and all beneficial uses. Through the

1969 Porter-Cologne Act, the State and Regional Water Boards have been entrusted with broad duties and powers to preserve and enhance all beneficial uses of the state’s water resources.

Local

Regional Water Quality Control Board

The San Francisco Bay Regional Water Quality Control Board (RWQCB) is the lead agency responsible for identifying, monitoring and remediating leaking underground storage tanks in the Bay Area. Local jurisdictions may take the lead agency role as a Local Oversight Program entity, implementing State as well as local policies.

Santa Clara Department of Environmental Health

The County of Santa Clara Department of Environmental Health reviews CalARP RMPs as the Certified Unified Program Agency for the City. The CalARP Program aims to prevent accidental releases of regulated hazardous materials that represent a potential hazard beyond the project site boundaries. 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. A RMP is required for such facilities. The intents of the RMP are to provide basic information that may be used by first responders in order to prevent or mitigate damage to the public health and safety and to the environment from a release or threatened release of a hazardous material, and to satisfy federal and state Community Right-to-Know laws.

2040 General Plan

Policies in the 2040 General Plan have been adopted for the purpose of avoiding or mitigating hazardous materials impacts from development projects. All future development allowed by the proposed land use designation would be subject to the hazardous materials policies in the 2040 General Plan presented in **Table 3-23** below.

Table 3-23 Envision San José 2040 Relevant Hazardous Material Policies

Policy EC-6.6	Address through environmental review for all proposals for new residential, park and recreation, school, day care, hospital, church or other uses that would place a sensitive population in close proximity to sites on which hazardous materials are or are likely to be located, the likelihood of an accidental release, the risks posed to human health and for sensitive populations, and mitigation measures, if needed, to protect human health.
Policy EC-6.8	The City will use information on file with the County of Santa Clara Department of Environmental Health under the California Accidental Release Prevention (CalARP) Program as part of accepted Risk Management Plans to determine whether new residential, recreational, school, day care, church, hospital, seniors or medical facility developments could be exposed to substantial hazards from accidental release of airborne toxic materials from CalARP facilities.

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Policy EC-6.9	Adopt City guidelines for assessing possible land use compatibility and safety impacts associated with the location of sensitive uses near businesses or institutional facilities that use or store substantial quantities of hazardous materials by June 2011. The City will only approve new development with sensitive populations near sites containing hazardous materials such as toxic gases when feasible mitigation is included in the projects.
Policy EC-7.1	For development and redevelopment projects, require evaluation of the proposed site's historical and present uses to determine if any potential environmental conditions exist that could adversely impact the community or environment.
Policy EC-7.2	Identify existing soil, soil vapor, groundwater and indoor air contamination and mitigation for identified human health and environmental hazards to future users and provide as part of the environmental review process for all development and redevelopment projects. Mitigation measures for soil, soil vapor and groundwater contamination shall be designed to avoid adverse human health or environmental risk, in conformance with regional, state and federal laws, regulations, guidelines and standards.
Policy EC-7.4	On redevelopment sites, determine the presence of hazardous building materials during the environmental review process or prior to project approval. Mitigation and remediation of hazardous building materials, such as lead-paint and asbestos-containing materials, shall be implemented in accordance with state and federal laws and regulations.
Policy EC-7.5	In development and redevelopment sites, require all sources of imported fill to have adequate documentation that it is clean and free of contamination and/or acceptable for the proposed land use considering appropriate environmental screening levels for contaminants. Disposal of groundwater from excavations on construction sites shall comply with local, regional, and State requirements.
Action EC-7.8	Where an environmental review process identifies the presence of hazardous materials on a proposed development site, the City will ensure that feasible mitigation measures that will satisfactorily reduce impacts to human health and safety and to the environment are required of or incorporated into the projects. This applies to hazardous materials found in the soil, groundwater, soil vapor, or in existing structures.
Action EC-7.9	Ensure coordination with the County of Santa Clara Department of Environmental Health, Regional Water Quality Control Board, Department of Toxic Substances Control or other applicable regulatory agencies, as appropriate, on projects with contaminated soil and/or groundwater or where historical or active regulatory oversight exists.
Action EC-7.10	Require review and approval of grading, erosion control and dust control plans prior to issuance of a grading permit by the Director of Public Works on sites with known soil contamination. Construction operations shall be conducted to limit the creation and dispersion of dust and sediment runoff.
Action EC-7.11	Require sampling for residual agricultural chemicals, based on the history of land use, on sites to be used for any new development or redevelopment to account for worker and community safety during construction. Mitigation to meet appropriate end use such as residential or commercial/industrial shall be provided.
Policy MS-13.2	Construction and/or demolition projects that have the potential to disturb asbestos (from soil or building material) shall comply with all the requirements of the California Air Resources Board's air toxics control measures (ATCMs) for Construction, Grading, Quarrying, and Surface Mining Operations.

3.9.1.2 Existing Conditions

Summary of Phase I Environmental Site Assessments

The project site is currently occupied by two residential structures, barns and other storage structures, a fruit stand, vacant land, and agricultural land (orchards), and miscellaneous dumped debris (multiple tanks, farming equipment, tires, pipes, and other debris) is prevalent in several locations across the project site. Review of historical records indicates that the project site has been in its current configuration since the late 1990s, and agricultural practices have been conducted at the property since the late 1930s.

The assessment included a review of local, state, tribal, and federal environmental record sources, standard historical sources, aerial photographs, fire insurance maps and physical setting sources. A reconnaissance of the project site was conducted to review site use and current conditions to check for the storage, use, production or disposal of hazardous or potentially hazardous materials and interviews with persons knowledgeable about current and past site use.

The project site reconnaissance and records review identified documentation or physical evidence of soil or groundwater impairments associated with the use or past use of the project site. A review of regulatory databases maintained by county, state, tribal, and federal agencies found no documentation of hazardous materials violations or discharge on the project site and did not identify contaminated facilities within the appropriate American Society for Testing and Materials (ASTM) search distances that would reasonably be expected to impact the project.

Based on the findings of this assessment, one REC was identified for the project site: one underground storage tank (UST). According to the property owner, the UST is estimated to be a 200-gallon heating oil tank. The tank has not been used in 20 years and is assumed to be empty.

Based on the review of regulatory databases and site reconnaissance, the following features were identified but determined not to be RECs:

- a) Two above-ground storage tanks (ASTs) were observed during the project site reconnaissance. According to the property owner, the ASTs were previously filled with diesel and gasoline and had been used to fuel farming equipment.
- b) Numerous remnant storage tanks of varying sizes and drums were observed scattered throughout the project site during the project site reconnaissance. According to the property owner, the tanks and drums had been disposed of on-site without their consent.
- c) According to historical aerial photographs, the project site has been utilized with orchards and other row crops since at last the late 1930s.
- d) One water supply well was observed on the project site during ENGEO's reconnaissance and five water supply wells (two active and three standby) were identified during agency file review. The wells should be abandoned in accordance with local and State regulations.

Due to the identification of the UST, ASTs, discarded drums and tanks, and row crops and orchards; the following were recommended:

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- a) Groundwater sampling at the property to evaluate any impacts to groundwater due to the historical land use and the existing USTs and ASTs.
- b) Surficial soil sampling to identify any pesticide impacts from the orchards and row crop operations around the property and around structures.
- c) Completion of a lead, asbestos, and PCB survey for the structures prior to demolition or significant renovation.
- d) Proper decommissioning of the water wells in conformance with local and State regulations if their operation is not to be continued in the future.

Summary of Phase II Environmental Site Assessment

A Phase II Environmental Site Assessment was conducted to evaluate potential impacts from agricultural use of the property and to characterize soils for off-haul. Field sampling activities associated with the Phase II ESA were performed in two rounds, with the first round of sampling occurring March 16, 2021, and the second round of sampling taking place on June 28, 2021, and July 1, 2021.

First Round of Sampling

A total of 24 surface soil samples were collected from one of the western parcels (APN 097-15-034) and eastern parcel (APN 097-66-004) on March 16, 2021, at depths of 0 to 6 inches. In addition, one surface soil sample was collected from the base of the greenhouse. The laboratory was instructed to create six 4-point composite samples. Six composite soil samples were analyzed for:

- Organochlorine pesticides (OCPs)
- Total arsenic and lead

In addition, five borings were advanced on the project site to a depth of approximately 18 feet below ground surface for the purpose of groundwater sampling. Grab groundwater samples could only be collected from two of the five borings, since the other borings were dry. Groundwater was encountered at depths of 12.5 and 13.6 feet below ground surface in borings GW-1 and GW-4, respectively. The grab groundwater samples were analyzed for:

- Total petroleum hydrocarbons (TPH) as gasoline (TPH-g) and full-suite volatile organic compounds (VOCs)
- TPH as diesel (TPH-d) and TPH as motor oil (TPH-mo)

Second Round of Sampling

On June 28 and July 1, 2021, an additional 15 borings were taken on the eastern parcel to depths of 2.5 feet below ground surface. Soil samples were collected from each boring at depths of 6 to 12 inches, 12 to 18 inches, 18 to 24 inches, and 24 to 30 inches. The laboratory was instructed to create five 3-point composite samples at each depth. Five composite soil samples (depths of 6 to 12 inches) were initially analyzed for OCPs. In addition, samples collected at depths of 6 to 12 inches and 12 to 18 inches from each boring were analyzed for lead and arsenic. The deeper samples were initially placed on hold pending results of the shallow samples, with testing of deeper samples occurring where concentrations of analytes in the 12 to 18 inches exceeded the screening levels.

An additional 15 borings were advanced on the western parcel at depths of 0 to 6 inches, 6 to 12 inches, 12 to 18 inches, 18 to 24 inches, and 24 to 30 inches from each boring. Shallower samples from each boring (0 to 6 inches, 6 to 12 inches, 12 to 18 inches) were analyzed for lead and arsenic. The deeper samples were put on hold pending results of the shallow samples. The laboratory was instructed to create five 3-point composite samples at each depth. Ten composite soil samples (depths of 0 to 6 inches, 6 to 12 inches) were initially analyzed for OCPs.

Results – Groundwater Sampling

Groundwater analytical results were compared to San Francisco RWQCB's Maximum Contaminant Level (MCL) priority ESLs. TPH-g and VOCs were not detected in either of the samples. TPH-d was detected at a concentration slightly exceeding the corresponding ESL in one of the groundwater samples (GW-1). TPH-mo was also detected at a low concentration in this sample.

Results – Soil Sampling

Soil sample results were compared to the RWQCB's Environmental Screenings Levels (ESLs) for residential land use. Arsenic concentrations were compared to typical naturally occurring background concentrations in the general vicinity of the property (11 milligrams per kilograms (mg/kg)).

Eastern Parcels (APN 097-15-033 and 097-66-004): In the two eastern parcels, detectable concentrations of lead and arsenic were observed across the property generally to depths of 18 to 24 inches. The reported concentrations for OCPs were all below the applicable ESLs for residential soil in the composite soil samples. Arsenic concentrations in the discrete soil samples exceeded the background concentration of 11 mg/kg in several samples. Arsenic concentrations ranged between 5.1 to 55.5 mg/kg. Lead concentrations exceeded the residential screening level of 80 mg/kg in several discrete soil samples. Lead concentrations ranged between 10.1 to 198 mg/kg. The cumulative concentrations of DDD/DDT/DDE exceeded 1 mg/kg, the Total Threshold Limit Concentration (TTL) established by Title 22 of the California Code of Regulations (CCR) in two composite surface soil samples (S-5-8 Composite and S-13-16 Composite). The soil at these locations would be categorized as Class I hazardous material, if disposed offsite at a landfill.

Western Parcel (APN 097-15-034): In the western parcel, elevated concentrations of arsenic were observed at one sample location (S8) to a depth of 24 to 30 inches. The reported concentrations for OCPs were all below the applicable ESLs for residential soil in the composite soil samples. Arsenic concentrations in the discrete soil samples exceeded the background concentration of 11 mg/kg in several samples. Arsenic concentrations ranged between 6.1 to 40.2 mg/kg. Lead concentrations exceeded the residential screening level of 80 mg/kg in nine discrete soil samples, all collected at depths of 0 to 6 inches. Lead concentrations ranged between 6.05 to 208 mg/kg. None of the cumulative concentrations of DDD/DDT/DDE exceeded 1 mg/kg in any of the composite soil samples.

Based on the review of the laboratory test results, elevated concentration of lead and arsenic were observed at the property up to depths of 30 inches. The cumulative concentrations of DDD/DDT/DDE exceeded 1 mg/kg, the TTL established by CCR, Title 22, in two composite surface soil samples.

Summary of Soil Vapor Testing

In June 2022, SCCDEH requested a soil vapor testing report to determine if subsurface soil vapor conditions would pose a risk to future residents and visitors of the project. In response, ENGEO

conducted a field investigation on August 24, 2022 in accordance with a soil vapor sampling work plan approved by SCCDEH. For a full discussion of the sampling methods used, refer to Appendix N.

Soil vapor concentrations measured during testing were compared to the Regional Water Quality Control Board's (RWQCB) ESLs for residential land use, as well as the DTSC Human and Ecological Risk Office (HERO) Note 3 Screening Levels for residential air. Benzene, vinyl chloride, and trichloroethylene (TCE) were detected at samples collected at 15 feet below ground surface, at concentrations exceeding the ESLs. However, all VOCs detected in shallow and deeper samples were below the relevant ESLs. Benzene was detected in one shallow soil vapor sample at 5 feet below ground surface at a concentration exceeding relevant ESLs. A Site Management Plan was submitted in October 2023 and a conditional approval of the SMP was issued in January 2024.⁵⁷

3.9.2 Impacts and Mitigation

3.9.2.1 Thresholds of Significance

For the purposes of this analysis and in accordance with CEQA Guidelines, a project impact to hazards and hazardous materials would be considered significant if the project would:

- a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials;
- b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment;
- c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within 0.25 mile of an existing or proposed school;
- d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment;
- e) For a project located within an airport land use plan or, where such a plan has not been adopted, within 2 miles of a public airport or public use airport, would the project result in a safety hazard or excessive noise for people residing or working in the project area;
- f) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan; or
- g) Expose people or structures, either directly or indirectly, to a significant risk of loss, injury or death involving wildland fires.

⁵⁷ State Water Resources Control Board GeoTracker. 2024. Regulatory Activities. Available: https://geotracker.waterboards.ca.gov/profile_report?global_id=T10000017625&mytab=esidata&subcmd=edfsummarytable#esidata. Accessed January 2024.

3.9.2.2 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?

The operation of the project would not involve the routine transport, use, or disposal of hazardous materials. Relatively small quantities of miscellaneous household cleaning supplies and other chemicals may be used on the project site in residential and commercial areas. These materials would be stored and used in accordance with the manufacturer's specifications. Given this, the project would have a less than significant impact. **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 Phase I Assessments for the project site, a single REC was identified at the property. The REC was a 200-gallon underground storage tank (UST) which was discovered during site reconnaissance. Other non-REC items were noted during site reconnaissance, including two above-ground storage tanks (ASTs), drums and storage tanks dumped on-site, and water supply wells. In addition, as discussed above, the project site has been used for agricultural purposes since the 1930's. The Phase I Assessments recommended that additional testing be conducted at the project site. These recommendations included groundwater sampling, sampling surface soils to identify pesticide impacts, completion of a lead, asbestos, and PCB survey for the existing structure, and decommissioning of the existing water wells. During soil vapor testing, elevated levels of benzene, vinyl chloride, and TCE were also detected.

Due to the current and historical use of the project site for agricultural purposes, the soil at the project site has the potential to contain contaminants from pesticide application on the project site. The soil sampling conducted as part of the Phase II ESA determined that soil at the project site contained elevated concentrations of lead and arsenic at depths of 30 inches. In addition, the cumulative concentrations of DDD/DDT/DDE for two of the composite soil samples exceeded 1 mg/kg, above the TTL threshold established by CCR, Title 22.

Impact HAZ-1: The project could result in a potentially significant impact from the removal of the existing heating oil underground/above-ground storage tanks.

Mitigation Measures

MM HAZ-1 Prior to the issuance of any grading, demolition, or building permits (whichever occurs first), the project applicant shall obtain proper permits from the Santa Clara County Department of Environmental Health (SCCDEH) and San José Fire Department prior to removal of the existing underground storage tank (UST) and aboveground storage tank (ASTs). Collect and analyze sampling beneath the tanks after the removals under the direction of the SCCDEH and provide confirmation of the UST removal to the City's Planning, Building and Code Enforcement. If the SCCDEH has determined the storage tanks have leaked, the project applicant shall perform all subsequent investigation and remediation as required under SCCDEH oversight to meet regulatory requirements and ensure the project site is safe for the development.

With implementation of mitigation measures **MM HAZ-1.1** and **MM HAZ-1.2**, which will ensure that the project site is safe for development, and exposure to hazardous materials is managed, the potentially significant impact would be reduced to a less-than-significant level. **Less than Significant Impact with Mitigation Incorporated.**

Impact HAZ-2: The project could result in a potentially significant impact from the potential for harmful vapors (benzene, vinyl chloride, and TCE) volatilizing from contaminated soil and migrating into structures, leading to possible adverse health impacts to residents.

MM HAZ-2: In connection with the construction of each building on the project site (i.e., Building A, Building B, Building C, Townhomes, and Affordable Apartment Building), the project applicant shall, in accordance with the SMP discussed in MM HAZ-1.2, obtain regulatory oversight with Santa Clara County Department of Environmental Health (SCCDEH) and determine if potential vapor intrusion risks exist from the identified VOCs and then, as necessary, evaluate and/or mitigate any such potential vapor intrusion risks through the installation of vapor mitigation measures. The project applicant shall comply with all applicable reporting, testing, mitigation, and/or operation & maintenance protocols documented in the SMP and Vapor Intrusion Mitigation System Pre-Occupancy Verification Monitoring Report (if required) and any other reports required by the SCCDEH. Prior to occupancy, the applicant shall submit to the City evidence of SCCDEH's written approval of the SMP and the Vapor Intrusion Mitigation System Pre-Occupancy Verification Completion and Monitoring Report and other reports (if required).

With implementation of mitigation measures **MM HAZ-2**, which will ensure that soil vapor levels are below their relevant ESLs, this impact would be reduced to a less-than-significant level. **Less than Significant Impact with Mitigation Incorporated.**

In February 2022, the project applicant entered into an agreement with the SCCDEH Site Cleanup Program. The project applicant has proposed encapsulating the contaminated soils beneath future buildings to prevent any potential public health risk. The remediation plan has been presented in a site management plan that is currently being reviewed by the SCCDEH.

Impact HAZ-3: Due to its agricultural history, soils on the project site contain elevated levels of lead and arsenic that exceed the applicable regulatory ESLs within certain areas of the project site. If the identified soil impacts are not mitigated, construction of the project could result in exposure of construction workers, adjacent properties, and future site occupants to pesticide contamination.

MM HAZ-3: Prior to issuance of any demolition and/or grading permit, the project applicant shall obtain approval of a soil management plan from the Santa Clara County Department of Environmental Health's (SCCDEH) Site Cleanup Program. All work and reports produced shall be performed under the regulatory oversight and approval.

Evidence of regulatory oversight, and approved plan(s) shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee and the Environmental Compliance Officer of the City of San José for approval prior to the issuance of any grading permits.

By complying with the SCCDEH's Site Cleanup Program (**MM HAZ-3**), which will ensure the project site is safe for construction workers and the public, impacts related to historic agricultural chemicals and/or

waste would be reduced to a less-than-significant level. **Less than Significant Impact with Mitigation Incorporated.**

Asbestos & Lead Based Paint in Demolished Buildings

The existing buildings that may be demolished as part of the project may contain asbestos containing materials (ACMs) and/or lead-based paint. Incorporation of standard permit conditions identified below will assure that ACMs or lead-based paint are not released during demolition activities.

Standard Permit Conditions

- In conformance with State and local laws, a visual inspection/pre-demolition survey, and possible sampling, shall be conducted prior to the demolition of on-site building(s) to determine the presence of ACMs and/or lead-based paint (LBP).
- During demolition activities, all building materials containing lead-based paint shall be removed in accordance with Cal/OSHA Lead in CCR, Title 8, Section 1532.1, including employee training, employee air monitoring, and dust control. Any debris or soil containing lead-based paint or coatings shall be disposed of at landfills that meet acceptance criteria for the type of lead being disposed.
- All potentially friable ACMs shall be removed in accordance with National Emission Standards for Air Pollution (NESHAP) guidelines prior to demolition or renovation activities that may disturb ACMs. All demolition activities shall be undertaken in accordance with Cal/OSHA standards contained in CCR, Title 8, 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 project 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.

Decommissioning of Existing Wells

The Phase I Assessment indicated that there are six on-site supply wells at the project site. These wells would be decommissioned and removed to make way for the project. The project applicant would be required to obtain a permit from the SCVWD prior to decommissioning and removing the on-site wells.

⁵⁸ Adherence to permitting requirements outlined by the SCVWD would ensure that decommissioning of the existing wells would not result in any impacts to groundwater. With the implementation of **MM HAZ-1** through **MM HAZ-3** and the standard permit conditions identified above, the project would have a less than significant impact. **Less Than Significant Impact with Mitigation.**

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<https://www.valleywater.org/contractors/doing-businesses-with-the-district/wells-well-owners/ordinance-90-1>

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 project site is not located within a 0.25 mile of any existing or proposed schools. The closest school is Dolores Huerta Middle School, which is approximately one mile to the northwest. There is no potential for hazardous materials impacts from the project to any existing or proposed school. There would be no impact. **No Impact.**

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

The project site is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 (i.e., Cortese List): the project is listed on the State Water Board's Geotracker program due to the site's acceptance into the County's Site Cleanup Program in 2022. However, as discussed under **threshold b)** above, the project site does contain contaminated soils which would need to be handled and disposed of appropriately. Implementation of **MMs HAZ-1.1, HAZ-1.2, and HAZ-2**, as well as the City's standard permit conditions, would reduce potential hazards to the public and the environment to a less-than significant level. **Less Than Significant Impact.**

e) For a project located within an airport land use plan or, where such a plan has not been adopted, within 2 miles of a public airport or public use airport, would the project result in a safety hazard or excessive noise for people residing or working in the project area?

The project site is located approximately 1.75 miles northeast of the Norman Y. Mineta San José International Airport. The project is not located within the Santa Clara County Airport Land Use Commission's adopted Comprehensive Land Use Plan for the airport.⁵⁹ **Less than Significant Impact.**

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

The project would not interfere with any adopted emergency or evacuation plans. All construction staging would occur on the project site and would therefore not obstruct nearby emergency access or evacuation routes. Additionally, access to the project site would be preserved during all phases of project construction, including construction of bike lanes, medians, and intersection improvements. Further, during operation, emergency access to the site would be improved through the provision of new driveways on Seely Avenue. Thus, the project would not create any barriers to emergency or other vehicle movement in the area and would be designed to incorporate all Fire Code requirements. **Less Than Significant Impact.**

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

The project would not expose people or structures, either directly or indirectly, to risk of loss, injury or death from wildland fires since it is located in a highly urbanized area that is not prone to such events. See also **Section 3.20. Wildfire** for further discussion of wildfire impacts. **No Impact.**

⁵⁹ County of Santa Clara.2016. Comprehensive Land Use Plan Santa Clara County: Norman E. Mineta International Airport San José. Available: https://stgenpln.blob.core.windows.net/document/ALUC_SJC_CLUP.pdf. Accessed December 2022.

3.10 Hydrology and Water Quality

This section discusses the impacts on hydrology and water quality that would result from implementation of the project. The following discussion is based in part on a water quality assessment prepared by Luhdorff and Scalmanini Consulting Engineers dated March 2022. This report is provided in Appendix M.

During the public scoping period, four commenters raised concerns regarding hydrology and water quality. Specifically, commenters requested that the EIR consider the following topics:

- Potential for excavation to affect groundwater
- Flooding risks
- Effects of proposed well on hydrology of Coyote Creek
- Coordination with CDFW regarding a Lake and Streambed Alteration (LSA) Agreement

The first three topics listed above are discussed below in **Section 3.10.2.2, Project Impacts**. Because the project would not result in any ground disturbance or development within Coyote Creek, a Lake and Streambed Alteration Agreement is not required.

3.10.1 Environmental Setting

3.10.1.1 Regulatory Framework

The federal Clean Water Act (CWA) and California's Porter-Cologne Water Quality Control Act are the primary laws regulating water quality in California. Requirements established by the EPA and the SWRCB have been developed to fulfill the requirements of this legislation. EPA regulations include the NPDES permit program, which controls sources that discharge pollutants into the Waters of the U.S. (e.g., streams, lakes, bays, etc.). These regulations are implemented at the regional level by the RWQCBs. The project site is within the jurisdiction of the San Francisco Bay RWQCB.

Federal and State

Clean Water Act – Section 404

The CWA establishes the basic structure for regulating discharges of pollutants into the Waters of the U.S. and regulating quality standards for surface waters. Its goals are to restore and maintain the chemical, physical, and biological integrity of the nation's waters. Under the CWA, the U.S. EPA has implemented pollution control programs and established water quality standards, and together with the U.S. Army Corps of Engineers, regulates discharge of dredged and fill material into waters of the U.S. under Section 404 of the CWA and its implementing regulations. Waters of the U.S. are defined broadly as waters susceptible to use in commerce (including waters subject to tides, interstate waters, and interstate wetlands) and other waters.

National Flood Insurance Program

The Federal Emergency Management Agency (FEMA) established the National Flood Insurance Program in order to reduce 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 (FIRM) that identify Special Flood Hazard Areas. A Special Flood Hazard Area 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.

Porter-Cologne Water Quality Act

The Porter-Cologne Act delegates authority to the SWRCB to establish RWQCBs. The San Francisco Bay Area RWQCB has authority to use planning, permitting, and enforcement to protect beneficial uses of water resources in the project region. Under the Porter-Cologne Water Quality Control Act (California Water Code Sections 13000-14290), the RWQCB is authorized to regulate the discharge of waste that could affect the quality of the state's waters, including projects that do not require a federal permit through the U.S. Army Corps of Engineers. To meet RWQCB 401 Certification standards, all hydrologic issues related to a project must be addressed, including the following:

- Wetlands
- Watershed hydrograph modification
- Proposed creek or riverine related modifications
- Long-term post-construction water quality

Any construction or demolition activity that results in land disturbance equal to or greater than one acre must comply with the Construction General Permit (CGP), administered by the SWRCB. The CGP requires the installation and maintenance of BMPs to protect water quality until the project site is stabilized. The project would require CGP coverage based on area of land disturbed (22 acres).

Statewide Construction General Permit

The SWRCB has implemented a NPDES CGP for the State of California. For projects disturbing one acre or more, 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 CGP includes requirements for training, inspection, 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. The project would require CGP coverage based on area of land disturbed, which exceeds one acre.

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 Stormwater Permit

The San Francisco Bay RWQCB has issued a Municipal Regional Stormwater NPDES Permit (MRP) 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. The City is required to operate under the MRP to discharge stormwater from the City's storm drain system to surface waters. The MRP mandates that the City use its planning and development review authority to require that stormwater management measures are included in new and redevelopment projects to minimize and properly treat stormwater runoff. Provision C.3 of the MRP regulates the following types of development projects: Projects that create or replace 10,000 square feet or more of impervious surface.

Special Land Use Categories that create or replace 5,000 square feet or more of impervious surface. The MRP requires regulated projects to include Low Impact Development (LID) practices. These include site design features to reduce the amount of runoff requiring treatment and maintain or restore the project site's natural hydrologic functions, source control measures to prevent stormwater from pollution, and stormwater treatment features to clean polluted stormwater runoff prior to discharge into the storm drain system. The MRP requires that stormwater treatment measures are properly installed, operated, and maintained.

The MRP also requires regulated projects to include measures to control hydromodification impacts where the project would otherwise cause increased erosion, silt pollutant generation, or other adverse impacts to local rivers and creeks. Development projects that create and/or replace one acre or more of impervious surface, create an increase in total impervious surface from pre-project conditions, and are located in a subwatershed or catchment that is less than 65 percent impervious, must manage increases in runoff flow and volume so that post-project runoff shall not exceed estimated pre-project rates and durations. According to the City's Subwatersheds Map, the project site is located in an area identified as a subwatershed greater than or equal to 65 percent impervious.⁶⁰ The project would not create an acre or more of impervious surface or create an increase in total impervious surface from pre-project conditions.

All development projects, whether subject to the CGP or not, shall comply with the City's Grading Ordinance, which requires the use of erosion and sediment controls to protect water quality while the project site is under construction. Prior to the issuance of a permit for grading activity occurring during the rainy season (October 1 to April 30), the project will submit to the Director of Public Works an Erosion Control Plan detailing BMPs that will prevent the discharge of stormwater pollutants.

City of San José Post-Construction Urban Runoff Management (Policy 6-29)

The City's Policy 6-29 implements the stormwater treatment requirements of Provision C.3 of the Municipal Regional Stormwater NPDES Permit. Policy 6-29 requires all new development and redevelopment projects to implement post-construction BMPs and Treatment Control Measures. This

⁶⁰ City of San José. 2011. Classification of Subwatersheds and Catchment Areas for Determining Applicability of HMP Requirements. Available: <https://www.sanjoseca.gov/home/showpublisheddocument/27925/636691773051670000>. Accessed December 2022.

policy also establishes specific design standards for post-construction Treatment Control Measures for projects that create, add, or replace 10,000 square feet or more of impervious surfaces.

City of San José Hydromodification Management (Policy 8-14)

City Policy No. 8-14 implements the stormwater treatment requirements of Provision C.3 of the MRP. Policy No. 8-14 requires all new and redevelopment projects that create or replace one acre or more of impervious surface to manage development-related increases in peak runoff flow, volume, and duration, where such hydromodification is likely to cause increased erosion, silt pollutant generation or other impacts to beneficial uses of local rivers, streams, and creeks. The policy requires these projects to be designed to control project-related hydromodification through a Hydromodification Management Plan (HMP).

Green Stormwater Infrastructure Plan

The City 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.

2040 General Plan

Policies in the 2040 General Plan have been adopted for the purpose of avoiding or mitigating hydrology and water quality impacts from development projects. Policies applicable to the project are presented in **Table 3-24** below.

Table 3-24 Envision San José 2040 Relevant Hydrology and Water Quality Policies

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 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 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-8.5	Ensure that all development projects in San José maximize opportunities to filter, infiltrate, store and reuse or evaporate stormwater runoff on-site.

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.
Policy EC-7.10	Require review and approval of grading, erosion control and dust control plans prior to issuance of a grading permit by the Director of Public Works on sites with known soil contamination. Construction operations shall be conducted to limit the creation and dispersion of dust and sediment runoff.

Source: City of San José, 2022

3.10.1.2 Existing Conditions

Flood Zone

The project site is located south of Coyote Creek (ranging from 90 to 350 feet along the northern boundary). The FIRMs issued by FEMA indicate that the project site is located within Zone X – Shaded (Panel 06085C0068J, effective 2/19/2014). Zone X – Shaded is defined as an area where the annual flood risk is between 0.2 percent and one percent.

Surface Water

The project site slopes slightly to the south and lies at an elevation ranging between 29 to 35 feet above mean sea level (Appendix D). The existing site lacks developed stormwater infrastructure throughout the project site and naturally flows towards Monterey Highway. Stormwater runoff is directed to 6 existing storm inlets located on the northern, southern, and western sides of the project site, 3 along Seely Avenue, 2 along Epic Way, and one on Montague Expressway. Due to the natural slope Coyote Creek borders the project site to the north and flows from northwest to southeast.

Groundwater

The project site is located primarily in the Guadalupe River Watershed with the northeastern edge of the project site bordering the Coyote Creek Watershed.⁶¹ According to the City’s Subwatersheds Map, the project site is located in an area identified as a subwatershed greater than or equal to 65 percent impervious.⁶²

⁶¹ City of San José. 2022. *All Watersheds*. Available at: <https://www.sanjoseca.gov/home/showpublisheddocument/1240/636618313753300000>. Accessed December 2022.

⁶² City of San José. 2011. Classification of Subwatersheds and Catchment Areas for Determining Applicability of HMP Requirements. Available: <https://www.sanjoseca.gov/home/showpublisheddocument/27925/636691773051670000>. Accessed December 2022.

ENGEO's geotechnical exploration reports for the project site (Appendix I) include nearby records of depth to groundwater. These records indicate that while groundwater level was measured at 25 feet below ground surface, the depth to groundwater on the project site may vary between 17 and 39 feet below ground surface.

Water Quality

Water service to the project would be provided by the San José Municipal Water System. No existing potable water supply infrastructure is located within the project site. More information regarding the existing water supply can be found in Section 3.19, Utilities and Service Systems.

3.10.2 Impacts and Mitigation

3.10.2.1 *Thresholds of Significance*

For the purposes of this analysis and in accordance with CEQA Guidelines, a project impact to hydrology and water quality would be considered significant if the project would:

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

3.10.2.2 Project Impacts

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

Construction

Construction of the project would include but not be limited to demolition, site clearing, grading, and landscaping on-site. Construction activities would involve grading of the entire project site and permanent disturbance of the site. These activities have the potential to generate stormwater runoff and to discharge pollutants, such as fuel, solvents, oil, paints, and trash, into the City's storm drain system. Protection of water quality during construction would be subject to the NPDES permit program, issued by the San Francisco Bay RWQCB, prior to the commencement of any clearing, grading or excavation. Compliance with NPDES General Construction Permit would require the preparation of a SWPPP and incorporation of BMPs to control sedimentation, erosion, and hazardous materials from contacting stormwater, with the intent of keeping all products of erosion from moving offsite into receiving waters. In addition, **MM HAZ-2**, described in **Section 3.9.2, Hazards and Hazardous Materials** would establish management practices for handling impacted groundwater.

Construction of the new well would include production of drilling fluids and initial development water (water initially extracted from the well to clear excess fine grained sediments) that would be disposed of to the sanitary sewer. Prior to discharging to the sanitary sewer, fluids would be directed through a series of two storage tanks to allow solids to settle out. Upon completion of well construction and prior to finalizing connections to the existing water distribution system, new pipes would be flushed and disinfected. Final development, testing, and clean flow would be directed to the nearest storm drain inlet in accordance with regulatory storm discharge requirements. Aside from drilling for the well itself, only minimal excavation and drilling would be required for the above-ground well structure. Given that the depth of groundwater in this area has been measured at approximately 25 feet below ground surface, no dewatering would be required for construction of the above-ground well structure.

With conformance to the regulatory requirements and implementation of **MM HAZ-1.2**, potentially significant impacts related to water quality during construction would be reduced to a less-than-significant level. **Less Than Significant with Mitigation Incorporated.**

Operation

The project is located in an urban environment and operation of the proposed commercial and residential uses would not utilize materials that would significantly harm the water quality in the area. While the existing site is utilized for agricultural use and currently lacks developed stormwater infrastructure, the project would include the installation of stormwater infrastructure to connect with the existing stormwater systems in Epic Way and Seely Avenue. Furthermore, the project would comply with applicable regulations and laws, as discussed in the regulatory framework section above, to ensure proper discharge into the City's stormwater and sanitary sewer infrastructure, would not violate any water quality standards or waste discharge requirements, or degrade surface or groundwater quality as described below under **threshold b). Less Than Significant Impact.**

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

The project is located within the Santa Clara Subbasin and would be consistent with the goals and objectives of applicable groundwater management plans. The project would result in the creation of new impervious surfaces on the project site that is sparsely developed and could potentially impact groundwater recharge. As shown in Figure 2-1 of the 2021 Groundwater Management Plan for the Santa Clara and Llagas Subbasin, the project site is located within the Santa Clara Plain confined area but is not located on or near the Santa Clara Plain recharge area. This means that subsurface geologic formations in the project area restricts the vertical flow of groundwater. However, an increase in 716,060 square feet of impervious area could potentially impact groundwater because areas currently available for the infiltration of rainfall would be reduced. The project would incorporate 226,592 square feet of pervious surface at the project site consisting of landscaped areas and bioretention treatment areas. Thus, it is not anticipated that construction of the project would decrease groundwater supplies or interfere substantially with groundwater recharge (such that the project may impede sustainable groundwater management of the basin), because the project would be on a developed site that is not recharging groundwater through injection well-related measures (e.g., infiltration trenches, infiltration galleries).

A new well would be constructed as part of the project, which would result in additional use of groundwater within the Santa Clara and Llagas Subbasin. The depth of groundwater in the project site vicinity was measured at 25 feet below ground surface, but may range between 17 feet and 39 feet below ground surface. Municipal supply wells in the Santa Clara Subbasin are designed to target the deep aquifer, and average approximately 278 feet in depth. The proposed well will be at least 250 feet deep and would not impact recharge occurring in the shallow aquifer.⁶³ Additionally, wells penetrating shallow aquifers are constructed with cement to prevent intrusion of pollutants into the water.⁶⁴

Water required for operation of the project would be provided by SJMW, whose water supplies would be augmented by the new well that would produce 1,452 acre feet per year (AFY) of potable water. As discussed in the WSA (Appendix Q), the Santa Clara subbasin has not been identified or projected to be in overdraft by the California Department of Water Resources. Groundwater within the subbasin is managed by Valley Water using in-lieu recharge programs that maintain adequate storage to meet annual water supply needs and provide a buffer against drought or other shortages. Because SJMW would own and operate the new well in compliance with all Valley Water's 2021 Groundwater Management Plan for the Santa Clara and Llagas subbasins, the additional use of groundwater would not impede sustainable groundwater management of the subbasin. **Less Than Significant Impact.**

c) Would the project substantially alter the existing drainage pattern of the project site or area, including through the alteration of the course of a stream or river or through the addition of impervious surfaces, in a manner which would:

i) Result in substantial erosion or siltation on- or off-site?

⁶³ California Department of Water Resources, 2004. California's Groundwater Bulletin 118. Available: https://water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/Groundwater-Management/Bulletin-118/Files/2003-Basin-Descriptions/2_009_02_SantaClaraSubbasin.pdf

⁶⁴ Valley Water (formerly Santa Clara Valley Water District), 2021. 2021 Groundwater Management Plan for the Santa Clara and Llagas Subbasins. 2021. Available: https://s3.us-west-2.amazonaws.com/assets.valleywater.org/2021_GWMP_web_version.pdf

Construction

Construction of the project would require demolition, vegetation removal, and grading activities that could result in a temporary increase in erosion affecting the quality of stormwater runoff. The project site is adjacent to Coyote Creek. Although the creek is bordered by an engineered levee, runoff could flow into the Creek, degrading water quality.

Prior to the commencement of any clearing, grading or excavation, the project would be required to comply with the SWRCB's NPDES General Construction Activities Permit. Subject to NPDES, the project applicant would develop, implement, and maintain a SWPPP to control the discharge of stormwater pollutants including sediments associated with construction activities. The SWPPP shall be posted at the project site and would be updated to reflect current site conditions. Additionally, the project applicant would file an NOI with the SWRCB to comply with the General Permit.

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

Project construction would comply with the City's Grading Ordinance, including erosion and dust control during site preparation and with the City's Zoning Ordinance requirements for keeping adjacent streets free of dirt and mud during construction. The BMPs would be implemented as standard permit conditions to prevent stormwater pollution and minimize potential sedimentation during construction.

Standard Permit Conditions

- 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 project 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’s Grading Ordinance, including implementing erosion and dust control during site preparation and with the City’s Zoning Ordinance requirements for keeping adjacent streets free of dirt and mud during construction.

Post-Construction Impacts

The project development would increase impervious surfaces on the project site and modify the drainage pattern on the project site. The project would comply with applicable provisions of the following City Council Policies: Council Policy 6-29 Post-Construction Urban Runoff Management and Council Policy 8-14 Post-Construction Hydromodification Management. The project will be required to implement Council Policy 6-29 Post-Construction Urban Runoff Management, which includes site design measures, source controls, and numerically-sized LID stormwater treatment measures that can help minimize stormwater pollutant discharges. The project is not located in a Hydromodification Area as shown on City’s Hydromodification Map.⁶⁵ The project is proposing to treat runoff utilizing media filters, flow-through planters, and self-treating landscaping. Details of specific Site Design, Pollutant Source Control, and Stormwater Treatment Control Measures demonstrating compliance with Provision C.3 of the MRP (NPDES Permit Number CAS612008), would be included in the project design, to the satisfaction of the Director of Planning, Building and Code Enforcement or Director’s designee.

In conclusion, the project would not substantially alter existing drainage patterns or cause alteration of streams or rivers by conforming with the requirements of Council Policy 6-29 and Council Policy 8-14. The project will not result in substantial erosion or siltation on or off site by complying with the City’s Grading Ordinance. With implementation of the standard permit conditions identified above the project would result in a less than significant impact. **Less Than Significant Impact.**

- ii) **Substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or offsite?**

The existing project site is largely undeveloped and consists primarily of pervious surfaces. Development of the project would result in a substantial increase in the amount of impervious surfaces on the project site compared to existing conditions. Currently, there is approximately 19,872 square feet of impervious area, after development this area will increase to 716,060 square feet of impervious area on the project site. This increase in impervious surface would increase the surface runoff on the project site. However, the project proposes to implement a stormwater control plan to manage runoff from the project site. Runoff would primarily be collected in stormwater treatment systems, including bioretention areas, where flow rates would be decreased and treated prior to discharging into the City’s drainage system. New storm drain laterals would be built and connect to the existing 21-inch storm drain main in Seely Avenue and the 15-inch storm drain main in Epic Way. As a result, the project would have a less than significant impact associated with flooding on- or off-site due to increased surface runoff. **Less Than Significant Impact.**

⁶⁵ San José, City of, Hydromodification Applicability Map, 2011. Available: <https://www.sanjoseca.gov/home/showpublisheddocument/27925/636691773051670000>. Accessed 1/20/2023

iii) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?

Although the project site currently lacks stormwater infrastructure, infrastructure in the surrounding area is design and built to handle development consistent with the 2040 General Plan, such as the project. Under existing conditions, stormwater infiltrates the soil on the project site; excess stormwater flows are directed by the natural slope of the project site to the existing storm inlet at the southern boundary of the project site. Construction of the project would result in new impervious surfaces that would increase the amount of runoff at the project site. New stormwater infrastructure would be installed including but not limited to new manholes, inlets, and stormwater laterals. This new infrastructure would connect to the City's existing storm drainage system within Epic Way and Seely Avenue. With installation of new stormwater infrastructure, the project is not expected to contribute runoff that would exceed the capacity of existing or planned stormwater drainage systems or result in substantial additional sources of polluted runoff (See also cii above). **Less Than Significant Impact.**

iv) Impede or redirect flood flows?

As shown in Figure 3-11, the primary floodplain in the vicinity of the project is Coyote Creek, which is classified as Flood Zone A; however, the project site is located entirely outside of this floodplain. The Coyote Creek Levee is located on the northeast border of the project site and extends along Coyote Creek, adjacent to the project site. This levee represents the western boundary of the Flood Zone A associated with Coyote Creek and is intended to reduce the risk of flood flows on the project site and surrounding area in the event of flooding in Coyote Creek.

As shown in Figure 3-12, the project site is entirely located within Zone X – Shaded, defined as an area where the annual flood risk is between 0.2 percent and one percent. Neither FEMA nor the City have any floodplain restrictions for development in Zone X. Flooding risks on the project site would be minimized through the installation of new stormwater infrastructure including new inlets and stormwater laterals that would connect to the City's existing storm drainage system.

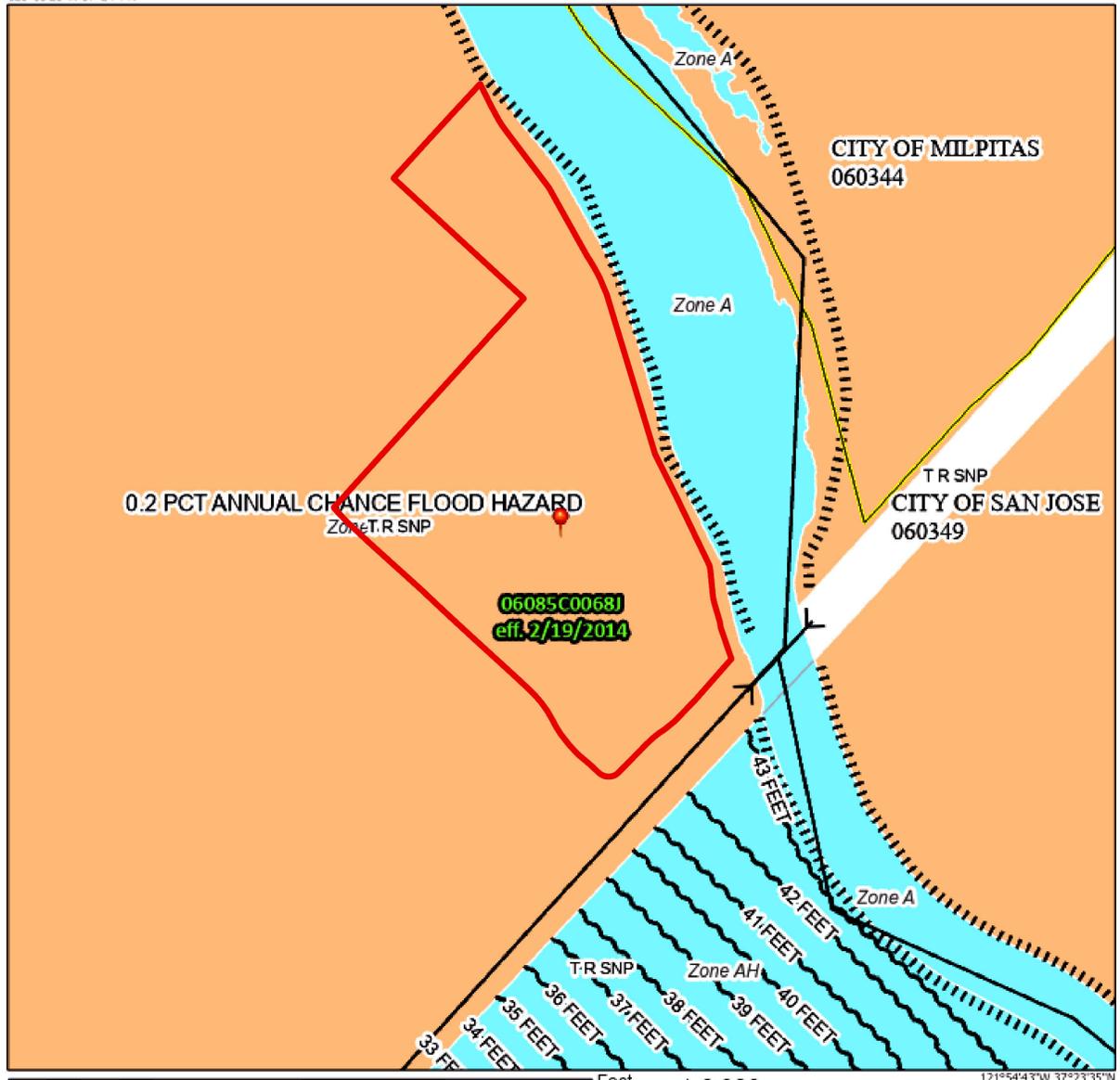
As shown in Figure 2-4, a minimum 15-foot setback from the levee is proposed for all development associated with the project, consistent with Valley Water requirements.⁶⁶ Development of the project would not impact or otherwise interfere with operation of the levee and would not impede or redirect flood flows. Therefore, this impact would be less than significant. **Less Than Significant Impact.**

⁶⁶ Valley Water, 2022. Memorandum from Kevin Thai with Valley Water to Manuel (Alec) Atienza with the City of San José.

National Flood Hazard Layer FIRMette



121°55'21"W 37°24'4"N



Legend

SEE FIS REPORT FOR DETAILED LEGEND AND INDEX MAP FOR FIRM PANEL LAYOUT

SPECIAL FLOOD HAZARD AREAS		Without Base Flood Elevation (BFE) Zone A, V, A99
		With BFE or Depth Zone AE, AO, AH, VE, AR
		Regulatory Floodway
OTHER AREAS OF FLOOD HAZARD		0.2% Annual chance Flood Hazard, Areas of 1% annual chance flood with average depth less than one foot or with drainage areas of less than one square mile Zone X
		Future Conditions 1% Annual Chance Flood Hazard Zone X
		Area with Reduced Flood Risk due to Levee. See Notes, Zone X
		Area with Flood Risk due to Levee Zone D
OTHER AREAS		Area of Minimal Flood Hazard Zone X
		Effective LOMRs
GENERAL STRUCTURES		Channel, Culvert, or Storm Sewer
		Levee, Dike, or Floodwall
OTHER FEATURES		Cross Sections with 1% Annual Chance Water Surface Elevation
		Coastal Transect
		Base Flood Elevation Line (BFE)
		Limit of Study
		Jurisdiction Boundary
		Coastal Transect Baseline
MAP PANELS		Digital Data Available
		No Digital Data Available
		Unmapped

The pin displayed on the map is an approximate point selected by the user and does not represent an authoritative property location.

This map complies with FEMA's standards for the use of digital flood maps if it is not void as described below. The basemap shown complies with FEMA's basemap accuracy standards.

The flood hazard information is derived directly from the authoritative NFHL web services provided by FEMA. This map was exported on 8/22/2023 at 12:54 PM and does not reflect changes or amendments subsequent to this date and time. The NFHL and effective information may change or become superseded by new data over time.

This map image is void if the one or more of the following map elements do not appear: basemap imagery, flood zone labels, legend, scale bar, map creation date, community identifiers, FIRM panel number, and FIRM effective date. Map images for unmapped and unmodernized areas cannot be used for regulatory purposes.

FEMA Floodplain Map

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

The project site is not located in an area subject to significant seiche or tsunami effects. Portions of the project site is located within an inundation area for the Anderson Dam, based on the California Department of Water Resources (CDWR) GIS Application entitled “Dam Breach Inundation Map Web Publisher”.⁶⁷ This map assumes complete failure with a full reservoir. The actual extent and depth of inundation in the event of a failure would depend on the volume of storage in the reservoir at the time of failure. The risks of failure are reduced by several regulatory inspection programs, and risks to people and property in the inundation area are reduced by local hazard mitigation planning. The CDWR, Division of Safety of Dams is responsible for regular inspection of dams in California. CDWR and local agencies (e.g., SCVWD) are responsible for minimizing the risks of dam failure thus avoiding the release of pollutants due to project inundation. **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 project consists of development on an approximately 22-acre infill site. As discussed under **thresholds a) and b)** above, the project would comply with the City’s standard permit conditions, Policy 6-32, and the City’s Grading Ordinance. The project site is within the Santa Clara subbasin, which is managed by Valley Water. Valley Water has adopted the *Groundwater Management Plan for the Santa Clara and Las Llagas Subbasins* to manage the water quality of this basin.⁶⁸ The groundwater management plan includes various programs to protect groundwater quality within the basin, including the well ordinance program. The well ordinance program is intended to:

- Develop standards for the proper construction, maintenance, and destruction of wells and other deep excavations,
- Inform the public, including contractors, consultants and other government agencies about the Well Ordinance and the well standards,
- Verify that wells are properly constructed, maintained, and destroyed using a permitting and inspection mechanism,
- Take enforcement action against violators of the Well Ordinance, and
- Maintain a database and well mapping system to document information about well permitting, well construction and destruction details, a well’s location, and well status.

The project includes construction of a new well by SJMW to serve the project and the surrounding area. The proposed well will be designed, owned, and operated by SJMW, in coordination with Valley Water and in accordance with the standards for construction and maintenance identified in the well ordinance program. As discussed in the WSA (Appendix Q), the Santa Clara subbasin has not been identified or projected to be in overdraft by the California Department of Water Resources. Groundwater within the subbasin is managed by Valley Water using in-lieu recharge programs that maintain adequate storage to meet annual water supply needs and provide a buffer against drought or other shortages. Because

⁶⁷ California Department of Water Resources (DWR), Dam Breach Inundation Map Web Publisher, 2020.

⁶⁸ Valley Water, Groundwater Management Plan for the Santa Clara and Llagas Subbasins. Available at: https://s3.us-west-2.amazonaws.com/assets.valleywater.org/2021_GWMP_web_version.pdf

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SJMW would own and operate the new well in compliance with Valley Water's 2021 Groundwater Management Plan for the Santa Clara and Llagas subbasins, the project would not conflict with or obstruct implementation of a water quality control plan or sustainable groundwater management plan.

Less Than Significant Impact.

3.11 Land Use and Planning

This section discusses impacts related to land use and planning that would result from implementation of the project. No public scoping comments regarding land use or planning were received on this topic.

3.11.1 Environmental Setting

3.11.1.1 Regulatory Framework

State

The California State Density Bonus Law (California Government Code Section 65915) was adopted in 1979 in recognition of California’s acute and growing affordable housing needs. The State Density Bonus Law has been amended multiple times since adoption, in response to evolving housing conditions, to provide clarification on the legislation, to respond to legal and implementation challenges, and to incorporate new or expanded provisions.

Regional and Local

Santa Clara Valley Habitat Plan

As discussed in **Section 3.4, Biological Resources**, the HCP was developed through a partnership between Santa Clara County, the Cities of San José, Morgan Hill, and Gilroy, the SCVWD, VTA, and the CDFW. As it pertains to issues of land use, the HCP helps public and private entities within the HCP’s jurisdiction plan and conduct projects and activities in ways that lessen the impact on natural resources.

2040 General Plan

Policies in the 2040 General Plan have been adopted for the purpose of avoiding or mitigating land use impacts from development projects. Policies applicable to the project are presented in **Table 3-25** below. The project site is designated *Industrial Park* with a *TERO* and *Floating Park Site Overlay* in the 2040 General Plan Land Use/Transportation Diagram.

Table 3-25 Envision San José 2040 Relevant Land Use Policies

Policy CD-1.1	Require the highest standards of architectural and site design, and apply strong design controls for all development projects, both public and private, for the enhancement and development of community character and for the proper transition between areas with different types of land uses.
Policy CD-1.8	Create an attractive street presence with pedestrian-scaled building and landscape elements that provide an engaging, safe, and diverse walking environment. Encourage compact, urban design, including use of smaller building footprints, to promote pedestrian activity through the City
Policy CD-1.12	Use building design to reflect both the unique character of a specific site and the context of surrounding development and to support pedestrian movement throughout the building site by providing convenient means of entry from public streets and transit facilities where applicable, and by designing ground level building frontages to create an

	attractive pedestrian environment along building frontages. Unless it is appropriate to the site and context, franchise-style architecture is strongly discouraged.
Policy CD-4.9	For development subject to design review, ensure the design of new or remodeled structures is consistent or complementary with the surrounding neighborhood fabric (including but not limited to prevalent building scale, building materials, and orientation of structures to the street).
Policy LU-9.3	Integrate housing development with our City’s transportation system, including transit, roads, and bicycle and pedestrian facilities.
Policy LU-9.4	Prohibit residential development in areas with identified hazards to human habitation unless these hazards are adequately mitigated.
Policy LU-9.5	Require that new residential development be designed to protect residents from potential conflicts with adjacent land uses.
Policy LU-9.7	Ensure that new residential development does not impact the viability of adjacent employment uses that are consistent with the Envision General Plan Land Use / Transportation Diagram.
Policy VN-1.7	Use new development within neighborhoods to enhance the public realm, provide for direct and convenient pedestrian access, and visually connect to the surrounding neighborhood. As opportunities arise, improve existing development to meet these objectives as well.
Policy VN-1.11	Protect residential neighborhoods from the encroachment of incompatible activities or land uses which may have a negative impact on the residential living environment.
Policy VN-1.12	Design new public and private development to build upon the vital character and desirable qualities of existing neighborhoods

Council Policy 6-34: Riparian Corridor Protection and Bird-Safe Design

As discussed in **Section 3.4, Biological Resources**, the City’s Riparian Corridor Policy Study analyzed streams and riparian corridors in the City and addresses how development should protect and preserve these riparian corridors. Furthermore, the City’s Riparian Corridor Protection and Bird-Safe Design Policy (Council Policy 6-34) supplements the regulations for riparian corridors and provides guidance for project design that protects and preserves these riparian corridors (City of San José 2016). The Riparian Corridor Policy applies to projects within 300 feet of a riparian corridor’s top of bank or edge of vegetation, whichever is greater. The Riparian Corridor Protection and Bird-Safe Design Policy establishes a standard of a 100-foot riparian corridor setback, with an exception for projects where no significant environmental impact will occur.

3.11.1.2 Existing Setting

The project site is located within an urbanized area of the City. The project site is surrounded by the following uses:

- North: Multi-Family Residential and Commercial Office, Industrial Park and Urban Residential 2040 General Plan designation
- South: Commercial Office, Industrial Park 2040 General Plan designation

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- East: Coyote Creek and Open Space, Open Space, Parklands and Habitat 2040 General Plan designation
- West: Multi-Family Residential and Commercial Office, Industrial Park 2040 General Plan designation

The project site is designated *Industrial Park* in the 2040 General Plan Land Use/Transportation Diagram. The *Industrial Park* designation allows for a fairly broad range of industrial uses, including research and development, manufacturing, assembly, testing, and offices. The project site is also within the TERO⁶⁹. The TERO designation overlay identifies sites within the North San José that may be appropriate for residential development. This overlay supports residential development as an alternate use at a minimum average density of 75 units per acre, with a FAR of 2.0 to 12.0 and 5 to 25 stories. Sites within this overlay may also be developed with uses consistent with the underlying designation. This designation permits development with commercial uses on the first two floors and residential use on upper floors, as well as wholly residential projects.

Currently, the project site is in the Industrial Park Zoning District. The Industrial Park District is intended for industrial uses, including research and development, manufacturing, assembly, testing, and offices.

3.11.2 Impacts and Mitigation

3.11.2.1 Thresholds of Significance

For the purposes of this analysis and in accordance with CEQA Guidelines, a project impact to land use and planning would be considered significant if the project would:

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

3.11.2.2 Project Impacts

a) Would the project physically divide an established community?

The project would be on an infill site that borders open space to the east and urban development to the north, west, and south. Multi-family residential uses are located north and west of the project site and industrial uses are located to the south and west. The project would not physically divide an established community. **No Impact.**

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

The project site is designated *Industrial Park* in the 2040 General Plan. The project site is also within the North San José TERO. The TERO designation overlay identifies sites within the North San José

⁶⁹ The TERO district was originally an element of the North San José Area Development Policy (NSJADP). In May 2022 the San José City Council voted to retire the NSJADP for future development. However the TERO district will remain as part of the San José 2040 General Plan.

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Employment Center that may be appropriate for residential development, but only in accordance with other policies contained in the North San José Area Development Policy. This overlay supports residential development as an alternate use at a minimum average density of 75 units per acre, with a FAR of 2.0 to 12.0 and 5 to 25 stories. The project would comprise infill mixed-use development with 1,472 residential units and 18,965 gross square-feet of retail space and a public park on an approximately 22-acre site. The project proposes a density of approximately 81 DU/AC and an overall FAR of 2.93. Properties to the east and south of the project site also have 2040 General Plan designations of *Industrial Park* with a TERO overlay, which allows a maximum of 250 DU/AC. The proposed density is within the range identified in the 2040 General Plan.

The applicant is proposing a rezoning of the project site to PD – Planned Development and the project would be subject to approval of a Planned Development Permit from the City. The project would comply with the development requirements of these entitlements. The project is consistent with the 2040 General Plan designation for the project site due to the TERO designation applied to the project site, including density and use. In terms of physical impacts on the environment, this EIR analyzes the environmental impacts of the project within each resource section of the document and provides measures and conditions to reduce the physical impacts of the project. Therefore, the project would have a less than significant impact related to conflicts with land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect. **Less Than Significant Impact.**

3.12 Mineral Resources

This section discusses the impacts to mineral resources that would result from implementation of the project. No public scoping comments regarding mineral resources were received.

3.12.1 Environmental Setting

3.12.1.1 Regulatory Framework

State

Surface Mining and Reclamation Act

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

3.12.1.2 Existing Conditions

There are no mineral resources in the project area. Neither the State Geologist nor the State Mining and Geology Board has classified any other areas in San José as containing mineral deposits that are of statewide significance or for which the significance requires further evaluation. Other than the Communications Hill area cited above, San José does not have mineral deposits subject to SMARA. The project site lies outside of the Communications Hill area.

3.12.2 Impacts and Mitigation

3.12.2.1 Thresholds of Significance

For the purposes of this analysis and in accordance with CEQA Guidelines, a project impact to mineral resources would be considered significant if the project would:

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

3.12.2.2 Project Impacts

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

Or

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

The project site is located approximately 7.5 miles north of the Communications Hill area, the only area in San José containing mineral deposits subject to SMARA; therefore, the project will not result in a significant impact from the loss of availability of a known mineral resource. **No Impact.**

3.13 Noise and Vibration

This section discusses the impacts of noise and vibration that would result from implementation of the project. A noise and vibration assessment was prepared for the project by Illingworth & Rodkin, Inc. (August 2023) and is contained in Appendix O. This report was prepared based on a previous project description that included a grocery store and a traffic signal. Therefore, the conclusions in the analysis represent a conservative assumption for construction and operation impacts. The following discussion summarizes the results of this assessment.

During the public scoping process, two commenters requested that the EIR consider noise and vibration from both construction and operation of the project.

3.13.1 Environmental Setting

3.13.1.1 Background Information

Noise Fundamentals

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

Vibration Fundamentals

Several different methods are typically used to quantify vibration amplitude. One method, used by the City, is Peak Particle Velocity (PPV). PPV is defined as the maximum instantaneous positive or negative peak of the vibration wave. For this analysis, the PPV descriptor with units of mm/sec or in/sec is used to evaluate construction generated vibration for building damage and human annoyance.

3.13.1.2 Regulatory Framework

Federal

Federal Highway Administration Roadway Construction Noise Model

The FHWA Roadway Construction Noise Model (RCNM) is the national model for prediction of noise generated by construction projects. Since construction frequently occurs near to residences and businesses, the FHWA developed the RCNM in an effort to control and monitor construction noise to avoid impacts on surrounding communities and neighborhoods. The RCNM provides a federally-recognized construction noise screening tool to reliably and easily predict construction noise levels and to determine compliance with noise limits for construction projects of varying types.

State

California Building Code

The CBC requires interior noise levels attributable to exterior environmental noise sources to be limited to a level not exceeding 45 dBA DNL/CNEL in any habitable room. The State of California established exterior sound transmission control standards for new non-residential buildings as set forth in the California Green Building Standards Code (Section 5.507.4.1 and 5.507.4.2). These sections identify the standards, such as Sound Transmission Class ratings, that project building materials and assemblies need to comply with based on the noise environment.⁷⁰

Local

2040 General Plan Noise Compatibility Guidelines

The 2040 General Plan includes goals and policies pertaining to noise and vibration. Community Noise Levels and Land Use Compatibility (commonly referred to as the Noise Element) of the 2040 General Plan utilizes the DNL descriptor and identifies interior and exterior noise standards for residential uses. The 2040 General Plan includes the criteria shown in **Table 3-26** for land use compatibility and acceptable exterior noise levels in the City based on land use types.

Table 3-26 Land Use Compatibility Guidelines for Community Noise in San José

Land Use Category	Exterior DNL Value In Decibels					
	55	60	65	70	75	80
Residential, Hotels and Motels, Hospitals and Residential Care						
Outdoor Sports and Recreation, Neighborhood Parks and Playgrounds						
Schools, Libraries, Museums, Meeting Halls, and Churches						
Office Buildings, Business Commercial, and Professional Offices						
Sports Arenas, Outdoor Spectator Sports						

⁷⁰ Sound Transmission Class (STC) is a single figure rating designed to give an estimate of the sound insulation properties of a partition. Numerically, STC represents the number of decibels of speech sound reduction from one side of the partition to the other.

Public and Quasi-Public Auditoriums, Concert Halls, and Amphitheaters		
☐	Normally Acceptable: Specified land use is satisfactory, based upon the assumption that any buildings involved are of normal conventional construction, without any special noise insulation requirements.	
▒	Conditionally Acceptable: Specified land use may be permitted only after detailed analysis of the noise reduction requirements and noise mitigation features included in the design.	
■	Unacceptable: New construction or development should generally not be undertaken because mitigation is usually not feasible to comply with noise element policies. (Development will only be considered when technically feasible mitigation is identified that is also compatible with relevant design guidelines.)	

Source: Illingworth & Rodkin, 2022

Additionally, the 2040 General Plan policies summarized in **Table 3-27** have been adopted for the purpose of avoiding or mitigating noise and vibration impacts from development projects.

Table 3-27 Envision San José 2040 Relevant Noise and Vibration Policies

Policy EC-1.1	<p>Locate new development in areas where noise levels are appropriate for the proposed uses. Consider federal, state and City noise standards and guidelines as a part of new development review. Applicable standards and guidelines for land uses in San José include:</p> <p>Interior Noise Levels</p> <p>The City’s standard for interior noise levels in residences, hotels, motels, residential care facilities, and hospitals is 45 dBA DNL. Include appropriate site and building design, building construction and noise attenuation techniques in new development to meet this standard. For sites with exterior noise levels of 60 dBA DNL or more, an acoustical analysis following protocols in the City-adopted California Building Code is required to demonstrate that development projects can meet this standard. The acoustical analysis shall base required noise attenuation techniques on expected <i>Envision General Plan</i> traffic volumes to ensure land use compatibility and General Plan consistency over the life of this plan.</p> <p>Exterior Noise Levels</p> <p>The City’s acceptable exterior noise level objective is 60 dBA DNL or less for residential and most institutional land uses (refer to Table EC-1 in the General Plan. Residential uses are considered “normally acceptable” with exterior noise exposures of up to 60 dBA DNL and “conditionally compatible” where the exterior noise exposure is between 60 and 75 dBA DNL such that the specified land use may be permitted only after detailed analysis of the noise reduction requirements and needed noise insulation features are included in the design.</p>
Policy EC-1.2	<p>Minimize the noise impacts of new development on land uses sensitive to increased noise levels (Land Use Categories 1, 2, 3 and 6 in Table EC-1 in the General Plan by limiting noise generation and by requiring use of noise attenuation measures such as acoustical enclosures and sound barriers, where feasible. The City considers significant noise impacts to occur if a project would:</p> <p>Cause the DNL at noise sensitive receptors to increase by five dBA DNL or more where the noise levels would remain “Normally Acceptable”; or</p>

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	Cause the DNL at noise sensitive receptors to increase by three dBA DNL or more where noise levels would equal or exceed the “Normally Acceptable” level.
Policy EC-1.3	Mitigate noise generation of new nonresidential land uses to 55 dBA DNL at the property line when located adjacent to existing or planned noise-sensitive residential and public/quasi-public land uses.
Policy EC-1.6	Regulate the effects of operational noise from existing and new industrial and commercial development on adjacent uses through noise standards in the City’s Municipal Code.
Policy EC-1.7	<p>Require construction operations within San José to use best available noise suppression devices and techniques and limit construction hours near residential uses per the City’s Municipal Code. The City considers significant construction noise impacts to occur if a project located within 500 feet of residential uses or 200 feet of commercial or office uses would:</p> <p>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.</p> <p>For such large or complex projects, a construction noise logistics plan that specifies hours of construction, noise and vibration minimization measures, posting or notification of construction schedules, and designation of a noise disturbance coordinator who would respond to neighborhood complaints will be required to be in place prior to the start of construction and implemented during construction to reduce noise impacts on neighboring residents and other uses.</p>
Policy EC-2.1	Near light and heavy rail lines or other sources of ground-borne vibration, minimize vibration impacts on people, residences, and businesses through the use of setbacks and/or structural design features that reduce vibration to levels at or below the guidelines of the Federal Transit Administration. Require new development within 100 feet of rail lines to demonstrate prior to project approval that vibration experienced by residents and vibration sensitive uses would not exceed these guidelines.
Policy EC-2.3	Require new development to minimize continuous vibration impacts to adjacent uses during demolition and construction. For sensitive historic structures, including ruins and ancient monuments or buildings that are documented to be structurally weakened, a continuous vibration limit of 0.08 in/sec PPV (peak particle velocity) will be used to minimize the potential for cosmetic damage to a building. A continuous vibration limit of 0.20 in/sec PPV will be used to minimize the potential for cosmetic damage at buildings of normal conventional construction. Avoid use of impact pile drivers within 125 feet of any buildings, and within 300 feet of a historical building, or building in poor condition. On a project-specific basis, this distance of 300 feet may be reduced where warranted by a technical study by a qualified professional that verifies that there will be virtually no risk of cosmetic damage to sensitive buildings from the new development during demolition and construction.

Source: City of San José, 2022

San José Municipal Code

Per the San José Municipal Code Title 20 (Zoning Ordinance) Noise Performance Standards, the sound pressure level generated by any use or combination of uses on a property shall not exceed the decibel levels indicated in **Table 3-28**, below, at any property line, except upon issuance and in compliance with a Special Use permit as provided in Chapter 20.100.

Table 3-28 City of San José Zoning Ordinance Noise Standards

Land Use Types	Maximum Noise Levels in Decibels at Property Line
Residential, open space, industrial or commercial uses adjacent to a property used or zoned for residential purposes	55
Open space, commercial, or industrial use adjacent to a property used for zoned for commercial purposes or other non-residential uses	60
Industrial use adjacent to a property used or zoned for industrial use or other use other than commercial or residential purposes	70

Source: City of San José, 2022

Chapter 20.100.450 of the Municipal Code establishes allowable hours of construction within 500 feet of a residential unit between 7:00 AM and 7:00 PM Monday through Friday unless permission is granted with a development permit or other planning approval.

3.13.1.3 Existing Setting

Existing Noise Environment

A noise monitoring survey was conducted to document ambient noise levels at the project site and in the surrounding area. The survey included three long-term measurements made between Monday November 22, 2021 and Wednesday November 24, 2021 and four short-term measurements made on Monday November 22, 2021. Short-term noise measurements were made over 10-minute periods. The existing noise environment at the project site results primarily from vehicular traffic along Montague Expressway. Secondary noise sources include vehicular traffic along Seely Avenue and distant aircraft flyovers associated with Norman Y. Mineta San José International Airport.

Noise measurement ST-1 was located at the project site approximately 200 feet northwest of the centerline of the Montague Expressway, while noise measurement ST-2 was made at the northern corner of the existing 681 East Trimble Road property, located approximately 850 feet northwest of the centerline of the Montague Expressway. Noise Measurement locations are shown in **Figure 3-13**. The primary noise source at ST-1 and ST-2 was traffic along Montague Expressway, with distant aircraft flyovers also contributing to the noise environment at ST-2. Measurements ST-3 and ST-4 were made near the Epic Apartments community and Iris Chang Park. The primary noise sources at ST-3 and ST-4 were local vehicular activity and aircraft flyovers. All short-term measurement results are summarized in **Table 3-29**.

Table 3-29 Summary of Short-Term Noise Measurements (dBA)

Noise Measurement Location (Date, Time)	L ₍₁₀₎	L ₍₅₀₎	L ₍₉₀₎	L _(eq)	Calculated DNL, dBA*	Primary Noise Sources
ST-1: Coyote Creek Trail, ~200 feet northwest of Montague Expressway	66	62	54	63	66	Highway traffic.

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Noise Measurement Location (Date, Time)	L ₍₁₀₎	L ₍₅₀₎	L ₍₉₀₎	L _(eq)	Calculated DNL, dBA*	Primary Noise Sources
Centerline (11/22/2021, 12:00pm – 12:10pm)						
ST-2: Coyote Creek Trail, near vacant field, ~ 840 feet northwest of Montague Expressway Centerline (11/22/2021, 12:20pm – 12:30pm)	50	48	46	48	53	Distant highway traffic, aircraft flyovers
ST-3: 680 Epic Way, on sidewalk adjacent to Epic Way (11/22/2021, 12:50pm – 1:00pm)	55	53	51	54	56	Local traffic, aircraft flyovers, distant highway traffic and construction noise.
ST-4: 680 Epic Way, on sidewalk adjacent to Epic Way (11/21/2021, 1:10pm – 1:20pm)	55	47	44	52	53	Local traffic, aircraft flyovers, distant highway traffic and construction noise.

*DNL levels calculated through comparison between short-term and long-term noise levels.

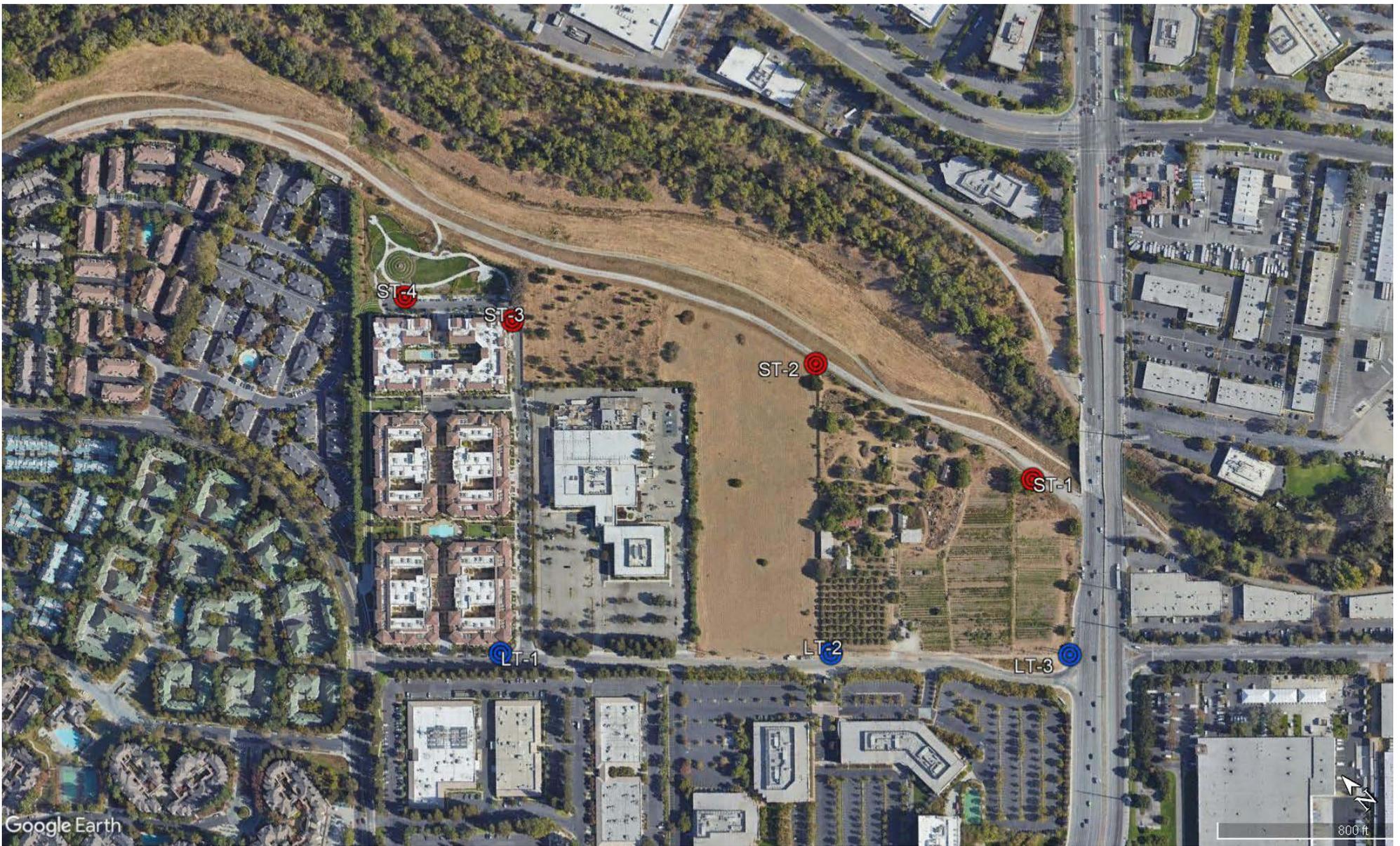
Source: Illingworth & Rodkin, 2022

Long-term measurements LT-1, LT-2, and LT-3 were made starting on Monday, November 22, 2021, and concluding on Wednesday, November 24, 2021. Measurement LT-1 was made to quantify ambient noise levels at the Epic Apartments community located northwest of the project site. Hourly average noise levels at this location typically varied from 60 to 67 dBA L_{eq} during the day and from 54 and 61 dBA L_{eq} at night. The day-night average noise level at measurement LT-1 on Tuesday, November 23, 2021 was 66 dBA DNL. Measurement LT-2 was made to quantify ambient noise levels along the southwestern border of the project site along Seeley Avenue. Hourly average noise levels at this location typically varied from 61 to 65 dBA L_{eq} during the day and from 56 to 65 dBA L_{eq} at night. The day-night average noise level at measurement LT-2 on Tuesday, November 23, 2021 was 67 dBA DNL. Measurement LT-3 was made to quantify ambient noise levels along the southeastern boundary of the project site along the Montague Expressway. Hourly average noise levels at this location typically varied from 70 to 75 dBA L_{eq} during the day and from 64 to 75 dBA L_{eq} at night. The day-night average noise level at measurement LT-3 on Tuesday, November 23, 2021 was 77 dBA DNL.

Existing Sensitive Receptors

Noise impacts resulting from construction depend upon the noise generated by various pieces of construction equipment, the timing and duration of noise-generating activities, and the distance between construction noise sources and noise-sensitive areas. Construction noise impacts primarily result when construction activities occur during noise-sensitive times of the day (e.g., early morning, evening, or nighttime hours), the construction occurs in areas immediately adjoining noise-sensitive land uses, or when construction lasts over extended periods of time.

The nearest sensitive residential land uses are the multi-family residential buildings located approximately 50 feet northwest of the project site, across Epic Way.



- Short-term Measurement Location
- Long-term Measurement Location

Source: Illingworth & Rodkin, July 2022

Noise Measurement Locations

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Figure
3-13

3.13.2 Impacts and Mitigation

3.13.2.1 Thresholds of Significance

For the purposes of this analysis and in accordance with CEQA Guidelines, a project impact to noise and vibration would be considered significant if the project would:

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

3.13.2.2 Project Impacts

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

Construction

As shown above in **Table 2-4**, the project is expected to be constructed in six phases, with construction of the infrastructure and the wells expected to commence first in Summer 2024. However, the Noise Report (Appendix O) analyzed an earlier construction schedule where the first phase was anticipated to begin in January 2024. This earlier start date represents a conservative “worst-case” scenario for those analyses both in terms of timing and phasing. The earlier start date would result in a more conservative analysis scenario because impacts from construction would generally decrease the later construction starts as technology improves and additional regulations go into effect. Phasing was determined to be more conservative due to the proximity of initial phases to sensitive receptors. Construction is proposed between the hours of 7:00 AM to 7:00 PM Monday through Friday, and Saturday 8:00 AM to 5:00 PM. Construction of the project would produce the highest noise levels at the nearest sensitive residential land uses located approximately 50 feet to the northwest, across Epic Way.

Table 3-30 shows the average noise level ranges by construction phase. Hourly average noise levels generated by construction would range between 65 and 89 dBA L_{eq} for a residential development measured at a distance of 50 feet from the center of a busy construction site. The FHWA’s RCNM was used to calculate the hourly average noise levels for each phase of construction, assuming the two loudest pieces of equipment would operate simultaneously, as recommend by the FTA for construction noise evaluations. This construction noise model includes representative sound levels for the most common types of construction equipment and the approximate usage factors of such equipment. The usage factors represent the percentage of time that the equipment would be operating at full power. Equipment expected to be used during the construction of project infrastructure are summarized in **Table 3-31**, and equipment expected to be used during the construction the townhomes are summarized in **Table 3-32**. These tables show the typical noise level at 50 feet, as well as distance to nearby sensitive receptors from the center of the project site for informational purposes. The distances to the nearest sensitive receptors vary between **Table 3-31** and **Table 3-32** because the two tables cover

different phases of construction. The distance to the nearest receptor represents the distance from the relevant construction activity and the nearest receptor, not necessarily between the edge of the project site and the nearest receptor.

Table 3-30 Typical Ranges of Construction Noise Levels at 50 Feet, L_{eq} (dBA)

Construction Activity	Domestic Housing		Office Building, Hotel, Hospital, School, Public Works		Industrial Parking Garage, Religious Amusement & Recreations, Store, Service Station		Public Works Roads & Highways, Sewers, and Trenches	
	I	II	I	II	I	II	I	II
Ground Clearing	83	83	84	84	84	83	84	84
Excavation	88	75	89	79	89	71	88	78
Foundations	81	81	78	78	77	77	88	88
Erection	81	65	87	75	84	72	79	78
Finishing	88	72	89	75	89	74	84	84

I — All pertinent equipment present at site.

II — Minimum required equipment present at site.

Source: EPA, 1973

Table 3-31 Construction Noise Levels – Project Infrastructure

Phase (Work Days)	Construction Equipment (Quantity)	Calculated Hourly Average L_{eq} (dBA) at Nearest Property Lines From Operation of Two Loudest Pieces of Construction Equipment at Acoustic Center of the project site				
		Noise Level at 50 feet	Residential Northwest (900 feet)	Commercial Northwest (475 feet)	Commercial Southwest (700 feet)	Commercial East/ Southeast (940 ft)
Demolition (15 days)	Excavator (1) * Rubber-Tired Dozer (1)* Tractor/Loader/Backhoe (1)	80	55	60	57	55
Site Preparation (64 days)	Grader (3)* Off-Highway Truck (3) Scraper (4) Tractor/Loader/Backhoe (3)	84	59	64	61	59
Trenching (65 days)	Tractor/Loader/Backhoe (2)*	81	56	61	58	56
Paving (66 days)	Paver (1) Paving Equipment (1)* Roller (1) Tractor/Loader/Backhoe (1)*	82	57	62	59	57

*Denotes two loudest pieces of construction equipment per phase; Source: Illingworth & Rodkin, 2022

Table 3-32 Construction Noise Levels – Townhomes

Phase (Work Days)	Construction Equipment (Quantity)	Calculated Hourly Average L_{eq} (dBA) at Nearest Property Lines From Operation of Two Loudest Pieces of Construction Equipment at Acoustic Center of the project site				
		Noise Level at 50 feet	Residential Northwest (475 feet)	Commercial Southwest (225 feet)	Commercial East (750 feet)	Commercial / Southeast (1,400 ft)
Trenching (98 days)	Excavator (1)* Tractor/Loader/Backhoe (1)*	78	58	61	54	49
Paving (56 days)	Paver (1) Roller (2) Grader (1)* Concrete/Industrial Saws (1)*	85	65	68	61	56
Building Foundation (55 days)	Excavator (1)* Tractor/Loader/Backhoe (1)*	78	58	61	54	49
Building Construction (730 days)	Crane (1) Forklift (1) Generator Set (1)* Tractor/Loader/Backhoe (1)*	82	62	65	58	53
Architectural Coating (365 days)	Air Compressor (1)*	74	54	57	50	45

*Denotes two loudest pieces of construction equipment per phase.

Source: Illingworth & Rodkin, 2022

As shown in **Table 3-31** and **Table 3-32**, construction noise levels would intermittently range from 74 to 85 dBA L_{eq} when activities occur approximately 50 feet from nearby residential receptors. The City does not currently have an established quantitative noise standard for construction noise. Policy EC-1.7 of the 2040 General Plan requires that all construction operations within the City to use best available noise suppression devices and techniques and to limit construction hours near residential uses per the Municipal Code allowable hours, which are between the hours of 7 AM and 7 PM, Monday through Friday, when construction occurs within 500 feet of a residential land use. Saturday work between 8 AM and 5 PM within 500 feet of a residential land use may be approved with a development permit. Further, the City requires adherence to the Standard Permit Conditions if a project located within 500 feet of residential uses or 200 feet of commercial or office uses would involve substantial noise-generating construction activities (such as building demolition, grading, excavation, pile driving, use of impact equipment, or building framing) continuing for more than 12 months. The project is scheduled to start construction in 2024 and complete construction within approximately 51 months.

Because project construction would last for a period of more than one year and considering that a portion of the project site is within 500 feet of existing residential uses and within 200 feet of existing commercial uses, this temporary construction impact would be considered potentially significant in accordance with Policy EC-1.7 of the City's General Plan.

Impact NSE-1: Construction of the project could last longer than 12 months and would require work on Saturday between 8:00 am and 5:00 pm, which would result in a potentially significant, temporary construction noise impact.

MM NSE-1 Construction Noise Logistics Plan. Prior to the issuance of any grading or building demolition permits, the project applicant shall submit and implement a construction noise logistics plan that specifies hours of construction, noise and vibration minimization measures, posting and notification of construction schedules, equipment to be used, and designation of a noise disturbance coordinator. The noise disturbance coordinator shall respond to neighborhood complaints and shall be in place prior to the start of construction and implemented during construction to reduce noise impacts on neighboring residents and other uses. The noise logistic plan shall be submitted to the Director of Planning, Building and Code Enforcement or Director's designee prior to the issuance of any grading or demolition permits. As a part of the construction noise logistics plan, construction activities for the project shall include, at a minimum, the following best management practices:

- Prohibit pile driving.
- Construction activities shall be limited to the hours between 7:00 AM and 7:00 PM, Monday through Friday, unless permission is granted with a development permit or other planning approval. No construction activities are permitted on the weekends at sites within 500 feet of a residence (San José Municipal Code Section 20.100.450). Construction outside of these hours may be approved through a development permit based on a site-specific "construction noise mitigation plan" and a finding by the Director of PBCE that the construction noise mitigation plan is adequate to prevent noise disturbance of affected residential uses.

- Construct solid plywood fences or similar along the northwest boundary of the site adjacent to residences to shield adjacent residential land uses from ground-level construction equipment and activities. The temporary 8-foot noise barrier shall be solid over the face and at the base of the barrier in order to provide a 5 dBA noise reduction.
- Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment.
- Unnecessary idling of internal combustion engines shall be strictly prohibited.
- Locate stationary noise-generating equipment such as air compressors or portable power generators as far as possible from sensitive receptors. Construct temporary noise barriers to screen stationary noise-generating equipment when located near adjoining sensitive land uses.
- Utilize “quiet” air compressors and other stationary noise sources where technology exists.
- Control noise from construction workers’ radios to a point where they are not audible at existing residences bordering the project site.
- Notify all adjacent business, residences, and other noise-sensitive land uses of the construction schedule, in writing, and provide a written schedule of “noisy” construction activities to the adjacent land uses and nearby residences.
- Designate a "disturbance coordinator" who shall be responsible for responding to any complaints about construction noise. The disturbance coordinator shall determine the cause of the noise complaint (e.g., bad muffler, etc.) and require that reasonable measures be implemented to correct the problem. Conspicuously post a telephone number for the disturbance coordinator at the construction site and include it in the notice sent to neighbors regarding the construction schedule.

With the implementation of the **MM NSE-1**, temporary construction noise impacts would be less than significant and in accordance with General Plan Policy EC-1.7. **Less Than Significant Impact with Mitigation Incorporated.**

Operation

Noise sources associated with project operation would consist of low speed on-site vehicular noise, equipment (e.g., heating, ventilation, and air conditioning [HVAC] units and lift station equipment). Noise from typical residential HVAC systems and from commercial operations occurring on the project site would not be notable at the nearest residences opposite Epic Way. Low noise levels associated with general conversations and landscape maintenance would be similar to existing noise sources in the project’s urban setting and are therefore not analyzed further.

A new well would be located adjacent to Montague Expressway, and approximately 1,500 feet from the nearest residences opposite Epic Way. The primary noise source associated with the well would be the emergency standby diesel generator. The generator would be tested periodically, typically for periods of less than one hour on a given day. CARB and BAAQMD requirements limit the testing and maintenance of diesel generators to 50 hours per year. Based on the noise data referenced in similar project studies, the type of generator that would likely be installed produces a noise level of 68 dBA at 21 feet.⁷¹

Assuming continuous operation of the generator over the one-hour testing period, the generator would yield a noise level of 31 dBA Leq or less at the nearest residential uses opposite Epic Way.

Noise levels associated with the public park, outdoor rooftop decks, and emergency generator would all be below the City's criteria of 65 dBA DNL and 60 dBA DNL for neighborhood parks residential outdoor uses, respectively, and would not affect other nearby land uses offsite. Therefore, stationary sources of operational noise are not discussed further; the following analysis is limited to operational traffic noise.

Traffic Noise

Vehicular access to the project site would be provided via two new private streets off Seely Avenue and one new private street off Epic Way. Seely Avenue is bookended by River Oaks Parkway to the northwest and Montague Expressway to the southeast. As such, vehicles approaching the project would access Seely Avenue either from Montague Expressway or River Oaks Parkway. Site access via Seely Avenue from Montague Expressway is limited to a right-turn-in and right-turn-out configuration.

According to Policy EC-1.2 of the 2040 General Plan, a significant permanent noise increase would occur if the project would increase noise levels at noise-sensitive receptors by 3 dBA DNL or more where ambient noise levels exceed the "normally acceptable" noise level standard. Where ambient noise levels are at or below the "normally acceptable" noise level standard, noise level increases of 5 dBA DNL or more would be considered significant. The 2040 General Plan defines the "normally acceptable" outdoor noise level standard for the nearby residential land uses to be 60 dBA DNL. Existing ambient levels, based on the measurements made in the project vicinity, exceed 60 dBA DNL. Therefore, a significant impact would occur if traffic due to the project would permanently increase ambient levels by 3 dBA DNL. For reference, a 3 dBA DNL noise increase would be expected if the project would double existing traffic volumes along a roadway.

As described in **Section 3.17, Transportation**, the traffic analysis for this project includes peak hour turning movements at nine intersections in the project vicinity. **Table 3-33** shows the anticipated noise increase associated with project-related traffic. The largest increase would occur on Seely Avenue between River Oaks Parkway and Montague Expressway, where noise levels would increase by 2 dBA, DNL. Therefore, the project would not result in a permanent noise increase of 3 dBA DNL or more at noise-sensitive receptors in the project vicinity and the impact would be less than significant. **Less than Significant Impact.**

⁷¹ Trimble and Agnews Municipal Groundwater Wells Initial Study. City of San José, February 2021. Available: <https://www.sanjoseca.gov/your-government/departments-offices/planning-building-code-enforcement/planning-division/environmental-planning/environmental-review/negative-declaration-initial-studies/trimble-and-agnews-water-production-wells-project>

Table 3-33 Project-Generated Traffic Noise Increase

Roadway Segments	Existing Traffic Volume (PM Peak)	Existing Plus Project Traffic Volume (PM Peak)	Noise Level Increase (dBA, DNL)
Epic Way East of Seely Avenue	104	143	1
Seely Avenue Between River Oaks Parkway and Montague Expressway	566	841	2
River Oaks Parkway West of Seely Avenue	679	731	0
River Oaks Parkway East of Seely Avenue	591	710	1
Montague Expressway West of Seely Avenue	4596	4686	0
Montague Expressway East of Seely Avenue	4701	4885	0

Source: Illingworth & Rodkin, 2022

b) Generation of excessive groundborne vibration or groundborne noise levels?

Construction of the project may generate perceptible vibration when heavy equipment or impact tools are used. Construction phases utilizing such equipment or tools would include demolition, site preparation, grading, trenching, building construction, and paving. Foundation construction techniques involving impact or vibratory pile driving equipment, which can cause excessive vibration, would not be required.

According to Policy EC-2.3 of the 2040 General Plan, a vibration limit of 0.08 in/sec PPV shall be used to minimize the potential for cosmetic damage to sensitive historical structures, and a vibration limit of 0.20 in/sec PPV shall be used to minimize damage at buildings of normal conventional construction. A review of the City’s Historic Resource Inventory identified no registered historic buildings in the project site vicinity. Therefore, this vibration analysis uses the 0.2 in/sec PPV threshold to assess potential vibration impacts.

Table 3-34 presents typical vibration levels from construction equipment at a distance of 25 feet. Jackhammers typically generate vibration levels of 0.035 in/sec PPV and drilling typically generates vibration levels of 0.089 in/sec PPV at 25 feet. Vibration levels would vary depending on soil conditions, construction methods, and equipment used. **Table 3-34** also presents construction vibration levels calculated at the location of the nearest residential building about 50 feet away from the northwest site boundary. Vibration levels are highest close to the source, and then attenuate with increasing distance at the rate $(D_{ref}/D)^{1.1}$, where D is the distance from the source in feet and D_{ref} is the reference distance of 25 feet. All other buildings are located over 50 feet from the project site.

Table 3-34 Vibration Source Levels for Construction Equipment

Equipment		PPV at 25 ft. (in/sec)	PPV at 50 ft. (in/sec)
Clam shovel drop		0.202	0.094
Hydromill (slurry wall)	in soil	0.008	0.004
	in rock	0.017	0.008
Vibratory Roller		0.210	0.098
Hoe Ram		0.089	0.042
Large bulldozer		0.089	0.042
Caisson drilling		0.089	0.042
Loaded trucks		0.076	0.035
Jackhammer		0.035	0.016
Small bulldozer		0.003	0.001
Source: Transit Noise and Vibration Impact Assessment Manual, Federal Transit Administration, Office of Planning and Environment, U.S. Department of Transportation, FTA Report No. 0123, September 2018, as modified by Illingworth & Rodkin, Inc., June 2022.			

Source: Illingworth & Rodkin, 2022

As indicated in **Table 3-34**, construction-related vibration levels would not exceed 0.2 in/sec PPV at the nearest structures; therefore, this impact would be less than significant. **Less-Than-Significant Impact.**

c) For a project located within the vicinity of a private airstrip or an airport land use plan or, where such a plan has not been adopted, within 2 miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?

Norman Y. Mineta San José International Airport is a public-use airport located approximately 1.75 miles southwest of the project site. According to the Airport Master Plan Environmental Impact Report, the project site lies outside the 60 dBA CNEL/DNL contour line.⁷² According to Policy EC-1.11 of the 2040 General Plan, the required safe and compatible threshold for exterior noise levels would be at or below 65 dBA CNEL/DNL for aircrafts. Therefore, the project would be compatible with the City’s exterior noise standards for aircraft noise and the impact would be less than significant. **Less than Significant Impact.**

⁷² David J. Powers & Associates, Inc., Integrated Final Environmental Impact Report, Amendment to Norman I. Mineta San José International Airport Master Plan, 2020.

3.13.3 Non-CEQA Effects

In December 2015, the California Supreme Court issued an opinion in the *California Building Industry Association vs. Bay Area Air Quality Management District* case that CEQA is primarily concerned with the impacts of a project on the environment, not the effects of the existing environment on a project. In light of this ruling, the effect of existing ambient noise on future users or residents of the project would not be considered an impact under CEQA. However, 2040 General Plan Policy EC-1.1 requires that existing ambient noise levels be analyzed for new residences and that noise attenuation be incorporated into the project in order to reduce interior and exterior noise levels to acceptable limits.

The Environmental Leadership Chapter in the 2040 General Plan sets forth policies with the goal of minimizing the impact of noise on people through noise reduction and suppression techniques, and through appropriate land use policies in the City. The applicable 2040 General Plan policies were presented in detail in the regulatory framework section and are summarized below for the project:

- The City's acceptable exterior noise level objective is 60 dBA DNL or less for the proposed residential use.
- The City's standard for interior noise levels in residences is 45 dBA DNL.
- The City's acceptable exterior noise level standard is 70 dBA DNL or less for the proposed commercial land use.
- The City's acceptable exterior noise level standard is 65 dBA DNL or less for the proposed public park land use.
- The Cal Green Code standards specify an interior noise environment attributable to exterior sources not to exceed an hourly equivalent noise level (L_{eq} (1-hr)) of 50 dBA in occupied areas of nonresidential uses during any hour of operation.
- The future noise environment at the project site would continue to result primarily from vehicular traffic along nearby roadways with the Montague Expressway acting as the dominant noise source. Aircraft flyovers associated with the Norman Y. Mineta San José International Airport would continue to act as a secondary noise source.

Future Exterior Noise Environment

Planned outdoor use areas for the project include two podium courtyard spaces at the affordable apartment building, two podium courtyard spaces at Building A, a courtyard space with pool and a roof deck at Building B, a courtyard with pool and rooftop deck at Building C, and a public park located along Seely Avenue in between Buildings A and C. Private residential balconies would be available for some units; however, private balconies are not considered outdoor use areas subject to the City's exterior noise thresholds.

A SoundPLAN 8.2 model was created to model existing and future traffic noise at the project site. SoundPLAN 8.2 is a three-dimensional ray-tracing computer program that considers environmental geometry and sound propagation to model noise. The model was first designed and validated under existing conditions based on the noise measurement survey described above in the Existing Noise Environment section using traffic counts made in person. The model was correct to within 3 dBA and considered validated. Future traffic volumes used in the model were provided in the May 3, 2022 Seely Avenue Mixed-use Development Draft Transportation Analysis conducted by Hexagon Transportation

Consultants, Inc. (Appendix P) and represent the Background Plus Project condition under which the project is built, along with additional nearby, approved projects which use the same roadway network.

Residential Land Uses

With the exception of affordable apartment building Courtyard B, the outdoor areas intended for use by residents are heavily shielded courtyards or highly-elevated rooftop decks which receive a relatively low amount of direct exposure to traffic noise. The affordable apartment building Courtyard B space would face the direction of Coyote Creek and Montague Expressway, the latter being the primary source of noise in the area. The elevations for the project show a wall reaching about two and a half feet high surrounding this courtyard. **Table 3-35** shows the calculated future noise levels at the proposed residential outdoor use areas.

Table 3-35 Calculated Future Exterior Noise Levels at Proposed Outdoor Use Areas

Proposed Outdoor Use	Future Noise Exposure (dBA)	
	Peak Hour (Leq (1-hr))	Day-Night Average (DNL)
Affordable Apartment Building Courtyard A	43	45
Affordable Apartment Building Courtyard B	68	70
Building A Northern Courtyard	44	46
Building A Southern Courtyard	44	46
Building B Courtyard and Pool	40	41
Building B Rooftop Deck	57	59
Building C Courtyard	39	40
Building C Rooftop Deck	56	58

Source: Illingworth & Rodkin, 2022

Increasing the height of the perimeter wall located along the edge of affordable apartment building Courtyard B could reduce noise levels at the courtyard substantially. However, the 2.5-foot wall shown in the January 10, 2022 elevations would provide enough shielding to still result in a noise level that is considered to be “conditionally acceptable” according to City standards. With affordable apartment building Courtyard A exposed to noise levels reaching only 45 dBA DNL, residents of this building would still have access to an outdoor use area that meets the “normally acceptable” exterior noise level criteria.

Public Land Use

The project would convert an area currently occupied by the Tsukuda Fruit Stand to a 2.5-acre public park space. The City’s exterior noise exposure criteria for neighborhood parks is 65 dBA DNL. This park space would be heavily shielded from direct exposure to noise originating from traffic along the Montague Expressway by the planned Buildings A, B, and the affordable apartment building. Seely Avenue, which experiences a much lower volume of traffic overall, would serve as a primary noise

source at the park. Noise levels throughout the park were calculated and mapped using SoundPLAN 8.2. The greatest noise exposure would be along the southwestern end of the park nearest Seely Avenue, where noise levels would reach up to 64 dBA DNL at the far southern corner. More typical noise levels experienced in the center of the park and towards the northeastern end would reach 55 to 56 dBA DNL. Exterior noise levels at the park space are not expected to exceed the City’s criteria of 65 dBA DNL for neighborhood parks.

Future Interior Noise Environment

Residential Land Uses

The City requires that interior noise levels be maintained at 45 dBA DNL or less for residential land uses. Standard residential construction provides approximately 15 dBA of exterior-to-interior noise reduction, assuming the windows are partially open for ventilation. Standard construction with the windows closed provides approximately 20 to 25 dBA of noise reduction in interior spaces. Where exterior noise levels range from 60 to 65 dBA DNL, the inclusion of adequate forced-air mechanical ventilation is often the method selected to reduce interior noise levels to acceptable levels by closing the windows to control noise. Where noise levels exceed 65 dBA DNL, forced-air mechanical ventilation systems and sound-rated construction methods are normally required. Such methods or materials may include a combination of smaller window and door sizes as a percentage of the total building façade facing the noise source, sound-rated windows and doors, sound rated exterior wall assemblies, and mechanical ventilation so windows may be kept closed at the occupant’s discretion.

Residential units are located along most façades of most floors of Buildings A, B, C, and the affordable apartment building. Residential units located on the eastern façades of the affordable apartment building and Building A would experience the greatest total noise exposure due to the proximity to Montague Expressway. Noise exposures at individual building façades, on multiple levels, were calculated using SoundPLAN 8.2. Calculated noise levels at worst-case positions of each façade location along with interior noise levels assuming windows in open and closed positions are shown in **Table 3-36**. Exterior-to-interior noise level reductions of 15 dBA and 25 dBA are assumed for windows open and windows closed, respectively.

Table 3-36 Summary of Future Exterior and Interior Noise Levels Along Each Building Façade

Building Façade	Future Exterior Noise Levels, DNL (dBA)	Future Interior Noise Levels, DNL (dBA) Windows Open	Future Interior Noise Levels, DNL (dBA) Windows Closed	Minimum STC Ratings
Affordable Apartment Building				
Southeast Façade	70 to 75	55 to 60	45 to 50	32 or greater
Southwest Façades	64 to 71	49 to 56	39 to 46	Standard construction
Northeast Façade	68 to 71	53 to 56	43 to 46	Standard construction

Building Façade	Future Exterior Noise Levels, DNL (dBA)	Future Interior Noise Levels, DNL (dBA) Windows Open	Future Interior Noise Levels, DNL (dBA) Windows Closed	Minimum STC Ratings
Northwest Façade	57 to 62	42 to 47	32 to 37	Standard construction
Building A (Market-Rate)				
Southeast Façade	78 to 81	62 to 66	52 to 56	35 or greater
Southwest Façades	70 to 74	55 to 59	45 to 49	Standard construction
Northeast Façade	68 to 73	53 to 58	43 to 48	Standard construction
Northwest Façade	51 to 58	36 to 43	26 to 33	Standard construction
Building B (Market-Rate)				
Southeast Façade	63 to 68	48 to 53	38 to 43	Standard construction
Southwest Façades	57 to 60	42 to 45	32 to 35	Standard construction
Northeast Façade	56 to 63	41 to 48	31 to 38	Standard construction
Northwest Façade	50 to 56	35 to 38	25 to 28	Standard construction
Building C (Market-Rate)				
Southeast Façade	52 to 58	37 to 43	27 to 33	Standard construction
Southwest Façades	52 to 58	43 to 47	33 to 37	Standard construction
Northeast Façade	47 to 56	32 to 41	22 to 31	Standard construction
Northwest Façade	51 to 56	36 to 41	26 to 31	Standard construction

¹ The northeast and northwest facades of the affordable apartment building are adjacent to non-noise-sensitive indoor spaces, such as parking.

Source: Illingworth & Rodkin, 2022

As shown in **Table 3-36**, some residential units could experience interior noise levels exceeding 45 dBA DNL. Project plans indicate rooftop mechanical equipment is proposed and it is anticipated that all residences and interior spaces will be equipped with forced-air mechanical ventilation, allowing for residents to close windows to control noise levels at their discretion. With windows in a closed position, interior noise levels could exceed 45 dBA DNL at residential units located along the northeast, southeast, and southwest façades of Building A and the affordable apartment building. The townhomes would be located at an even greater distance from the primary noise sources in the area and would not be exposed to high noise levels which would exceed City thresholds.

Project elevations indicate each building would be constructed with multiple different surface materials including stucco, brick, fiber cement panels and siding, and tile, with fiber cement panels and siding being the primary material of the affordable apartment building and stucco being the primary material

of Building A. A typical wall assembly including wood studs and fiberglass insulation would result in a Sound Transmission Class (STC) rating of 40 for most fiber cement panel exterior walls shown in the elevations, and an STC rating of 46 could be expected for must stucco exterior walls shown.

Assuming a calculated maximum exterior noise exposure of 75 dBA DNL and a 30 percent window-to-wall area ratio, the southeast façade of the affordable apartment building would require windows with an STC rating of 32 or greater to reduce interior noise levels to 45 dBA DNL or less. Standard windows would provide the necessary noise reduction for residences located along other façades of the affordable apartment building.

Assuming a calculated maximum exterior noise exposure of 81 dBA DNL and a 30 percent window-to-wall area ratio, residential units along the southeastern façade of Building A would require windows with an STC rating of 38 or greater to reduce interior noise levels to 45 dBA DNL or less. Alternatively, incorporating additional sound-rated construction methods into the exterior walls (e.g., adding resilient channels) could increase the STC rating of the wall to a value of about 57. With this additional measure, the southeastern façade of Building A would require windows with an STC rating of 35 or greater to reduce interior noise levels to 45 dBA DNL or below. With typical stucco exterior wall construction and day-night average noise levels reaching up to 74 dBA DNL at other Building A façades, standard windows would suffice to reduce interior noise levels to levels not exceeding 45 dBA DNL.

Commercial Land Uses

Peak-hour noise levels at the southeastern façade of the first-floor commercial use of Building A could reach up to 79 dBA L_{eq} (1-hr). Project elevations show the exterior façade of this part of the building to be constructed with brick veneer. A brick veneer wall with cavity insulation could be expected to result in an STC rating of about 56. As stated in Section 5.507.4.2 of Chapter 5-Nonresidential Mandatory Measures in the Cal Green Code, to reduce interior noise levels to not exceed the limit of 50 dBA L_{eq} (1-hr), windows and doors would need to meet a minimum STC rating of 26.

Given that land uses introduced by the project would have the potential for interior noise levels above City thresholds, the following conditions of approval would apply to both residential and commercial uses, unless otherwise noted.

Conditions of Approval

The following noise insulation features shall be incorporated as noted into the project to reduce interior noise levels to 45 dBA DNL for residential uses and 50 dBA L_{eq} for commercial uses during project operation:

Residential Requirements:

- Preliminary calculations indicate that residential units along the southeastern façade of Building A would require windows and doors with a minimum rating of 38 STC, or with a minimum rating of 35 STC and addition sound-rated wall construction methods resulting in a wall STC of 57 or greater, with adequate forced-air mechanical ventilation to meet the interior noise threshold of 45 dBA DNL.
- Provide a suitable form of forced-air mechanical ventilation, as determined by the local building official, for all residential units on the project site, so that windows can be kept closed at the occupant's discretion to control interior noise and achieve the interior noise standards.

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- Preliminary calculations indicate that residential units along the southeastern façade of the affordable apartment building would require windows and doors with a minimum rating of 32 STC with adequate forced-air mechanical ventilation to meet the interior noise threshold of 45 dBA DNL.
- The project applicant shall prepare final design plans that incorporate building design and acoustical treatments to ensure compliance with State Building Codes and City noise standards. A project-specific acoustical analysis shall be prepared to ensure that the design incorporates controls to reduce interior noise levels to 45 dBA DNL or lower within the residential unit. The project applicant shall conform with any special building construction techniques requested by the City's Building Department, which may include sound-rated windows and doors, sound-rated wall constructions, and acoustical caulking.

Commercial Requirements:

- Preliminary calculations indicate that the southeastern façade of the first-floor commercial use of Building A would require windows and doors with a minimum rating of 26 STC with adequate forced-air mechanical ventilation to meet the Cal Green Code standard of 50 dBA L_{eq} (1-hr).

The implementation of these noise insulation features would reduce interior noise levels for both commercial and residential land uses to 45 dBA DNL or less during project operation.

3.14 Population and Housing

This section discusses the impacts to population and housing that would result from implementation of the project. No public scoping comments related to population or housing were received.

3.14.1 Environmental Setting

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

3.14.1.1 Regulatory Framework

State

Housing-Element Law

State requirements mandating that housing be included as an element of each jurisdiction's general plan is known as housing-element law. The Regional Housing Need Allocation (RHNA) is the state mandated process to identify the total number of housing units (by affordability level) that each jurisdiction must accommodate in its housing element. California housing-element law requires cities to: 1) zone adequate lands to accommodate its RHNA; 2) produce an inventory of sites that can accommodate its share of the RHNA; 3) identify governmental and non-governmental constraints to residential development; 4) develop strategies and a work plan to mitigate or eliminate those constraints; and 5) adopt a housing element and update it on a regular basis.⁷³ The City's Housing Element and related land use policies were last updated in January 2015.

Density Bonus

Effective January 1, 2020, AB 1763 provides various benefits to encourage development of additional affordable and senior housing. AB 1763 provides an 80 percent density bonus to new housing development projects that offer 100 percent affordable housing. AB 1763 also requires local governments to grant concessions to developers in order to reduce development costs for affordable housing, including reducing setbacks, minimum square footage, and other concessions. For projects within a half 0.50 mile of a major transit stop, AB 1763 supersedes all density requirements implemented by local governments, allowing a height increase of three stories or 33 feet. For special needs or supportive housing development types located within 0.50 mile of an accessible bus route or which offer paratransit service, AB 1763 completely eliminates all local parking requirements for new affordable housing development projects.

⁷³ California Department of Housing and Community Development, Regional Housing Needs Allocation, 2022.

Regional and Local

Plan Bay Area 2040

Plan Bay Area 2040 is a long-range transportation, land-use, and housing plan intended to support a growing economy, provide more housing and transportation choices, and reduce transportation related pollution and GHG emissions in the Bay Area. Plan Bay Area 2040 promotes compact, mixed-use residential and commercial neighborhoods near transit, particularly within identified Priority Development Areas.⁷⁴

ABAG allocates regional housing needs to each city and county within the nine-county San Francisco Bay Area, based on statewide goals. ABAG also develops forecasts for population, households, and economic activity in the Bay Area. ABAG, the MTC, and local jurisdiction planning staff created the Regional Forecast of Jobs, Population, and Housing, which is an integrated land use and transportation plan through the year 2040 (upon which Plan Bay Area 2040 is based).

Density Bonus

Chapter 29.190 of the City’s municipal code provides affordable housing and density bonuses and incentives specific to projects within the City. Upon timely request for a regulatory agreement by applicants for affordable housing and senior care housing, the City grants density bonuses as required per State Housing Density Bonuses and Incentives Law. Chapter 29.190 provides all requirements and timing necessary for an applicant to provide a request for a regulatory agreement for a housing density bonus. Chapter 29.190 also provides requirements for parking, building height, setbacks, and other considerations for affordable housing projects.

2040 General Plan

Policies in the 2040 General Plan have been adopted for the purpose of avoiding or mitigating population and housing impacts from development projects. Policies applicable to the project are presented in **Table 3-37**.

Table 3-37 Envision San José 2040 Relevant Population and Housing Policies

<p>Policy CD-1.9</p>	<p>Give the greatest priority to developing high-quality pedestrian facilities in areas that will most promote transit use and bicycle and pedestrian activity. In pedestrian oriented areas such as Downtown, Urban Villages, or along Main Streets, place commercial and mixed-use building frontages at or near the street-facing property line with entrances directly to the public sidewalk, provide high-quality pedestrian facilities that promote pedestrian activity, including adequate sidewalk dimensions for both circulation and outdoor activities related to adjacent land uses, a continuous tree canopy, and other pedestrian amenities. In these areas, strongly discourage parking areas located between the front of buildings and the street to promote a safe and attractive street façade and pedestrian access to buildings</p>
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Source: City of San José, 2022

⁷⁴ Association of Bay Area Governments and Metropolitan Transportation Commission, Plan Bay Area Interactive Project Mapper, 2022.

3.14.1.2 Existing Conditions

Based on information from the State Department of Finance, the City's population was estimated to be 976,482 in January 2022 and had an estimated total of 344,112 housing units, with an average of 2.91 persons per household.⁷⁵ ABAG projects that the City's population will reach 1,377,145 with 448,310 households by 2040.⁷⁶

3.14.2 Impacts and Mitigation

3.14.2.1 Thresholds of Significance

For the purposes of this analysis and in accordance with CEQA Guidelines, a project impact to population and housing would be considered significant if the project would:

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

3.14.2.2 Project Impacts

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

The project proposes 1,472 residential units and would accommodate an estimated 4,199 residents (based on 2.91 residents per unit). This does not represent substantial population growth. The 2040 General Plan EIR concluded that the potential for direct growth inducing impacts from buildout of the 2040 General Plan would be minimal because planned growth would consist entirely of development within the City's existing Urban Growth Boundary and Urban Service Area. The project is consistent with the project site's 2040 General Plan land use designation and, therefore, would not add growth beyond that anticipated from buildout of the 2040 General Plan. Please refer to **Section 3.11, Land Use and Planning** and **Section 5, Growth-Inducing Effects**. This is considered a less than significant impact. **Less Than Significant Impact.**

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

The project site is currently developed with two residences, a fruit stand, and agricultural land and supporting structures. Both residences are currently vacant. The project is an application for a Planned Development Permit to demolish the existing improvements and construct 1,472 residential units and up to 18,965 square-feet of retail space, and a public park. The proposed demolition of the two existing

⁷⁵ California Department of Finance, E-5 Population and Housing Estimates for Cities, Counties, and the State, 2021.

⁷⁶ Association of Bay Area Governments and Metropolitan Transportation Commission, Plan Bay Area 2040 Projections 2040, 2022.

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residences would not constitute a substantial amount of reduced housing availability when combined with the 1,472 residential units proposed for development on the project site. Thus, the project would not displace existing housing or require the construction of replacement housing, and the project would result in a less than significant impact. **Less Than Significant Impact.**

3.15 Public Services

This section discusses the impacts to public services that would result from implementation of the project. No public scoping comments related to public services were received.

3.15.1 Environmental Setting

3.15.1.1 Regulatory Framework

State

California Government Code Section 65996

California Government Code Section 65996 stipulates that an acceptable method of offsetting a project's effect on the adequacy of school facilities is the payment of a school impact fee prior to issuance of a building permit. The legislation states that payments of school impact fees "are hereby deemed to provide full and complete school facilities mitigation" under CEQA [§65996(b)]. The school district is responsible for implementing the specific methods of school impact mitigation under the Government Code. The CEQA documents must identify that school impact fees and the school districts' methods of implementing measures specified by Government Code 65996 would adequately mitigate project-related increases in student enrollment.

Quimby Act – California Code Sections 66475-66478

The Quimby Act (California Government Code Sections 66475-66478) was approved by the California legislature to preserve open space and parkland in the State. The Quimby Act authorizes local governments to establish ordinances requiring developers of new subdivisions to dedicate parks, pay an in-lieu fee, or perform a combination of the two. As described below, the City has adopted a Parkland Dedication Ordinance (PDO) and a Park Impact Ordinance (PIO), consistent with the Quimby Act.

Regional and Local

Parkland Dedication Ordinance and Park Impact Ordinance

The City has adopted the PDO (Municipal Code Chapter 19.38) and PIO (Municipal Code Chapter 14.25), requiring new residential development to either dedicate sufficient land to serve new residents or pay fees to offset the increased costs of providing new park facilities for new development. Under the PDO and PIO, a project can satisfy half of its total parkland obligation by providing private recreational facilities on-site. For projects exceeding 50 units, the City decides whether the project will dedicate land for a new public park site or provide a fee in-lieu of land dedication. Affordable housing including low, very-low, and extremely-low income units are subject to the PDO and PIO at a rate of 50 percent of applicable parkland obligation. The acreage of parkland required is based on the minimum acreage dedication formula outlined in the PDO.

2040 General Plan

Policies in the 2040 General Plan have been adopted for the purpose of avoiding or mitigating public service impacts from development projects. Policies applicable to the project are presented in **Table 3-38** below.

Table 3-38 Envision San José 2040 Relevant Public Service Policies

Policy CD-5.5	Include design elements during the development review process that address security, aesthetics, and safety. Safety issues include, but are not limited to, minimum clearances around buildings, fire protection measures such as peak load water requirements, construction techniques, and minimum standards for vehicular and pedestrian facilities and other standards set forth in local, state, and federal regulations.
Policy FS-5.6	When reviewing major land use or policy changes, consider the availability of police and fire protection, parks and recreation and library services to the affected area as well as the potential impacts of the project on existing service levels.
Policy ES-2.2	Construct and maintain architecturally attractive, durable, resource-efficient, and environmentally healthful library facilities to minimize operating costs, foster learning, and express in built form the significant civic functions and spaces that libraries provide for the San José community. Library design should anticipate and build in flexibility to accommodate evolving community needs and evolving methods for providing the community with access to information sources. Provide at least 0.59 SF of space per capita in library facilities.
Policy ES-3.1	Provide rapid and timely Level of Service (LOS) response time to all emergencies: 1. For police protection, use as a goal a response time of six minutes or less for 60 percent of all Priority 1 calls, and of eleven minutes or less for 60 percent of all Priority 2 calls. 2. For fire protection, use as a goal a total response time (reflex) of eight minutes and a total travel time of four minutes for 80 percent of emergency incidents.
Policy ES-3.9	Implement urban design techniques that promote public and property safety in new development through safe, durable construction and publicly-visible and accessible spaces.
Policy ES-3.11	Ensure that adequate water supplies are available for fire-suppression throughout the City. Require development to construct and include all fire suppression infrastructure and equipment needed for their projects. PR-1.1 Provide 3.5 acres per 1,000 population of neighborhood/community serving parkland through a combination of 1.5 acres of public park and 2.0 acres of recreational school grounds open to the public per 1,000 San José residents.
Policy FS-5.7	Encourage school districts and residential developers to engage in early discussions regarding the nature and scope of proposed projects and possible fiscal impacts and mitigation measures early in the project planning stage, preferably immediately preceding or following land acquisition.
Policy PR-1.1	Provide 3.5 acres per 1,000 population of neighborhood/community serving parkland through a combination of 1.5 acres of public park and 2.0 acres of recreational school grounds open to the public per 1,000 San José residents.

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Policy PR-1.2	Provide 7.5 acres per 1,000 population of citywide /regional park and open space lands through a combination of facilities provided by the City of San José and other public land agencies.
Policy PR-1.12	Regularly update and utilize San José’s Parkland Dedication Ordinance / Parkland Impact Ordinance (PDO/PIO) to implement quality facilities.
Policy PR-2.4	To ensure that residents of a new project and existing residents in the area benefit from new amenities, spend Park Dedication Ordinance (PDO) and Park Impact Ordinance (PIO) fees for neighborhood serving elements (such as playgrounds/tot-lots, basketball courts, etc.) within a 3/4 mile radius of the project site that generates the funds.
Policy PR-2.5	Spend, as appropriate, PDO/PIO fees for community serving elements (such as soccer fields, dog parks, sport fields, community gardens, community centers, etc.) within a 3-mile radius of the residential development that generates the PDO/PIO funds.

Source: City of San José, 2022

3.15.1.2 Existing Conditions

Fire Protection

Fire protection services are provided to the project site by the San José Fire Department (SJFD). The SJFD Responds to around 91,000 service calls each year from 33 fire stations.⁷⁷ The closest fire station to the project site is Station 29, located about one mile from the project site at 199 Innovation Drive.

Police Protection

Police protection services are provided to the project site by the San José Police Department (SJPD) headquartered at 201 West Mission Street, approximately 3.3 miles from the project site. The City has four patrol divisions and 16 patrol districts. Patrols are dispatched from police headquarters and the patrol districts consist of 83 patrol beats, which include 357 patrol beat building blocks.⁷⁸

Parks

The closest park to the project site is Iris Chang Park, bordering the north boundary of the project site on Epic Way, a small neighborhood park that provides green space. River Oaks Park is also located near the project site approximately 0.75 mile to the northwest at River Oaks Parkway and Villagio Street. This small neighborhood park contains a playground, tennis and basketball courts, green space, and picnic tables.

The City has adopted the PDO and PIO, which require residential developers to dedicate public park land or pay in-lieu fees (or both) to compensate for the increase in demand for neighborhood parks.

⁷⁷ San José Fire Department.2022. About SJFD. Available <https://www.sanjoseca.gov/your-government/departments-offices/fire-department/about-sjfd>. Accessed April, 2023.

⁷⁸ San José Police Department, Bureau of Field Operations, 2022

Schools

The project site is located within the Santa Clara Unified School District for grades K-12. The primary public schools serving the project area are Abram Agnew Elementary School, Dolores Huerta Middle School, and Kathleen MacDonald High School. The amount of proposed development represents a small fraction of the total growth identified in the 2040 General Plan.

Libraries

The San José Public Library (SJPL) system is the public library system that serves the project site. The SJPL has 25 branches located throughout the City. The nearest SJPL library facility is the Alviso Branch Library, located at 5050 N^orth 1st Street, about 3.4 miles northwest of the project site.

3.15.2 Impacts and Mitigation

3.15.2.1 *Thresholds of Significance*

For the purposes of this analysis and in accordance with CEQA Guidelines, a project impact to public services would be considered significant if the project would:

- a) Result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:
 - i. Fire Protection;
 - ii. Police Protection;
 - iii. Schools;
 - iv. Parks; or
 - v. Other Public Facilities.

3.15.2.2 *Project Impacts*

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

Fire protection?

The project proposes to redevelop the property, which would intensify the use of the project site and generate additional occupants in the area. This would result in an incremental increase in the demand for fire protection services. The project site is currently served by the SJFD and the amount of proposed development represents a small fraction of the total growth identified in the 2040 General Plan. The SJFD Responds to around 91,000 service calls each year from 33 fire stations. The project, by itself, would not preclude the SJFD from meeting their service goals and would not require the construction of

new or expanded fire facilities. In addition, the project would be constructed in accordance with current building and Fire codes and would be required to be maintained in accordance with applicable City policies to promote public and property safety. Furthermore, the project plans have been reviewed by SJFD as part of the City's standard design review process. Therefore, the proposed residential use would not significantly impact fire protection services or require the construction of new or remodeled facilities.

The 2040 General Plan EIR concluded that, with the buildout of the 2040 General Plan, additional fire staff and equipment may be required to adequately serve a larger population, but no new fire stations would be required other than those already planned. Periodic operation and capital improvements may be required for fire protection services, but those improvements would not result in significant environmental impacts. **Less Than Significant Impact.**

Police protection?

The project proposes to redevelop the project site, which would intensify the use of the project site and generate additional occupants in the area. This would result in an incremental increase in the demand for police protection services. The project site, however, is currently served by the SJPD and the amount of proposed development represents a small fraction of the total growth identified in the 2040 General Plan. The project, by itself, would not preclude the SJPD from meeting their service goals and would not require the construction of new or expanded police facilities. In addition, the project would be constructed in accordance with current building codes and would be required to be maintained in accordance with applicable City policies to promote public and property safety.

The 2040 General Plan EIR concluded that the buildout under the 2040 General Plan could require new police facilities, which will require supplemental environmental review but are not anticipated to result in significant, adverse environmental impacts. Periodic operation and capital improvements may be required for police services, but those improvements would not result in significant environmental impacts.

The project applicant will consult with the SJPD during final project design to assure appropriate security measures are incorporated. Therefore, the project would not significantly impact police protection services or require the construction of new or remodeled facilities. **Less Than Significant Impact.**

Schools?

The project proposes to redevelop the project site with residential uses, which would potentially generate new students. The project site is currently served by the Santa Clara Unified School District. The project, by itself, would not preclude the Santa Clara USD from meeting their service goals and would not require the construction of new or expanded schools. In addition, in accordance with California Government Code Section 65996, the developer would be required to pay a school impact fee to the School District, to offset the increased demands on school facilities caused by the project. **Less Than Significant Impact.**

Parks?

The project will add more residents, which may increase demand on local parks. However, the project includes a new 2.5-acre City-owned public park on the project site. The City's PDO and PIO require residential developers to dedicate public park land or pay in-lieu fees (or both) to compensate for the increase in demand for neighborhood parks. The amount of proposed development represents a small fraction of the total growth identified in the 2040 General Plan. However, because the project would

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add more residents that would utilize park services, the applicant is required to comply with the PDO/PIO. The project, by itself, would not require the construction of new or expanded parks, resulting in less than significant impact. **Less Than Significant Impact.**

Other public facilities?

Although the project would incrementally increase residential development and population growth, the proposed 1,472 units would not require the construction or expansion of additional public facilities or libraries. The project is consistent with the 2040 General Plan designation for the project site; the 2040 General Plan EIR concluded that development allowed under the 2040 General Plan would be adequately served by existing and planned library facilities. **Less Than Significant Impact.**

3.16 Recreation

This section discusses the impacts to recreation that would result from implementation of the project. During the public scoping process, four commenters provided comments regarding the provision of adequate parkland. Specifically, the commenters requested that the EIR consider the following topics:

- Ensuring that the proposed park is large enough to meet the needs of the community
- Consideration of an alternative that would provide additional parkland along the Coyote Creek levee

3.16.1 Environmental Setting

3.16.1.1 Regulatory Framework

State

Assembly Bill 1191 and 1359 – Quimby Act

The Quimby Act, which is within the Subdivision Map Act, authorizes the legislative body of a city or county to require the dedication of land or impose fees for park or recreational purposes as a condition to the approval of a tentative or parcel subdivision map, if specified requirements are met. On September 8, 2013 Governor Brown signed the AB 1359, the purpose of which was to amend the existing Quimby Act to authorize local governments to spend Quimby Act funds beyond parks that serve the development from where the funds were sourced. To reallocate the funds in this manner, AB 1359 requires the legislative body to hold a public hearing before using fees as prescribed in the bill. Subsequently, on September 8, 2015 Governor Brown signed the AB 1191, the purpose of which was to amend the existing Quimby Act to authorize the legislative bodies of cities and counties to require land dedication or to impose fees for future park or recreational purposes as a required condition of approval of a tentative or parcel subdivision map. AB 1191 also eliminated the requirement for a local municipality to repay any unspent funds accrued through the Quimby Act after a five-year period resulting from such fees.

Local

Parkland Dedication Ordinance and Park Impact Ordinance

The City adopted the PDO and PIO requires residential developers to dedicate public park land or pay in-lieu fees (or both) to compensate for the increase in demand for neighborhood parks. See Section 3.15 Public Services for additional discussion.

Activate SJ Strategic Plan

The Activate SJ Strategic Plan was developed by the City as a replacement to the Greenprint 2009 Plan. The Plan serves as an outline of goals and policies of the City's Department of Parks, Recreation, and Neighborhood Services, and is intended to act as a 20-year strategic plan in alignment with the 2040 General Plan. The Plan identifies five major guiding principles, Stewardship, Nature, Equity & Access, Identity, and Public Life, to achieve the City's goal of connecting people through parks, recreation, and neighborhood services.

2040 General Plan

Policies in the 2040 General Plan have been adopted for the purpose of avoiding or mitigating recreation impacts from development projects. Policies applicable to the project are presented below in **Table 3-39**.

Table 3-39 Envision San José 2040 Relevant Recreation Policies

Policy PR-1.1	Provide 3.5 acres per 1,000 population of neighborhood/community serving parkland through a combination of 1.5 acres of public park and 2.0 acres of recreational school grounds open to the public per 1,000 San José residents.
Policy PR-1.2	Provide 7.5 acres per 1,000 population of citywide/regional park and open space lands through a combination of facilities provided by the City of San José and other public land agencies.
Policy PR-1.3	Provide 500 SF per 1,000 population of community center space.
Policy PR-2.4	To ensure that residents of a new project and existing residents in the area benefit from new amenities, spend Park Dedication Ordinance (PDO) and Park Impact Ordinance (PIO) fees for neighborhood serving elements (such as playgrounds/tot-lots, basketball courts, etc.) within a 3/4 mile radius of the project site that generates the funds.
Policy PR-2.5	Spend, as appropriate, PDO/PIO fees for community serving elements (such as soccer fields, dog parks, sport fields, community gardens, community centers, etc.) within a 3-mile radius of the residential development that generates the PDO/PIO funds.

3.16.1.2 Existing Conditions

The closes park to the project site is Iris Chang Park, a 2.6-acre neighborhood park with green space bordering the north boundary of the project site on Epic Way. River Oaks Park is also located near the project site approximately 0.75 mile to the northwest at River Oaks Parkway and Villagio Street. This small neighborhood park contains a playground, tennis and basketball courts, green space, and picnic tables.

3.16.2 Impacts and Mitigation

3.16.2.1 Thresholds of Significance

For the purposes of this analysis and in accordance with CEQA Guidelines, a project impact to recreation would be considered significant if the project would:

- a) Increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated; or
- b) Include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment.

3.16.2.2 Project Impacts

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

The project would generate population that would utilize nearby parks, however, the project, by itself, would not physically deteriorate or require the construction or expansion of park facilities. However, because the project would add more residents that would utilize park services, the applicant is required to comply with the PDO and PIO. The PDO and PIO require residential developers to dedicate public park land or pay in-lieu fees (or both) to compensate for the increase in demand for neighborhood parks, thus resulting in less than significant impact. **Less Than Significant Impact.**

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

The project includes construction of a new 2.5-acre City-owned public park on the project site. The exact features, amenities, and site design of the future park has not been determined at this time. However, the proposed park would not allow activities, such as concerts, and other live events, and would not contain any organized sports fields. Instead, the City will work with members of the community to help develop a park facility that best fits the needs of the community. The project also proposes approximately 70,280 square feet of common open space for the residents' use, consisting of courtyards, roof decks, and other features. Since the common area open space would be private and contained on-site, it would only be used by residents and would not result in a significant impact to recreational facilities. In addition, the increase in park demand from the project would not require the construction or expansion of recreational facilities that could have an adverse physical effect on the environment due to the proposed 2.5-acre City-owned public park and the size of the 1,472-unit residential project. **Less than Significant Impact.**

3.17 Transportation

This section discusses the impacts to traffic and transportation that would result from implementation of the project. The following discussion is based on a transportation analysis prepared for the project by Hexagon Transportation Consultants (October 18, 2023). This study is contained in Appendix P. The transportation analysis was conducted to determine the potential transportation impacts related to the project based on the standards and methodologies set forth the City's *Transportation Analysis Handbook* (April 2020), the VTA Congestion Management Program's Transportation Impact Guidelines (October 2014), and CEQA. Based on the City's *Transportation Policy and Transportation Analysis Handbook*, the transportation study performed a CEQA VMT analysis and a LTA.

During the public scoping process, six commenters raised concerns regarding traffic associated with the project. Specifically, commenters requested that the following topics be considered in the EIR:

- Additional traffic on residential streets and associated safety impacts
- Bicycle and pedestrian improvements including sidewalks and bicycle lanes
- Project-related VMT increases
- LOS impacts

Each of these traffic-related topics are addressed in **Section 3.17.2, Impacts and Mitigation**.

3.17.1 Environmental Setting

3.17.1.1 Regulatory Framework

State

Regional Transportation Plan

The 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 VMT metric intended to promote the reduction of GHG emissions, the development of multimodal transportation networks, and a diversity of land uses. Specifically, SB 743 requires the replacement of automobile delay—described solely by LOS or similar measures of vehicular capacity or traffic congestion—with VMT as the recommended metric for determining the significance of transportation impacts. The Governor's Office of Planning and Research (OPR) approved the CEQA Guidelines implementing SB 743 on December 28, 2018. Local jurisdictions were required 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. Projects located within 0.50 mile of

transit are generally considered to have a less than significant transportation impact based on OPR guidance.

Regional and Local

Final Plan Bay Area 2040

The MTC and ABAG adopted the Final Plan Bay Area 2040 in July 2017. The Final Plan Bay Area 2040 is an updated long-range Regional Transportation Plan and Sustainable Communities Strategy for the nine-county San Francisco Bay Area. This plan focuses on the following strategies:

- Forecasting transportation needs through the year 2040.
- Preserving the character of our diverse communities.
- Adapting to the challenges of future population growth.

This effort grew out of the California Sustainable Communities and Climate Protection Act of 2008 (California SB 375, Steinberg), which requires each of the state’s 18 metropolitan areas – including the Bay Area – to reduce GHG emissions from cars and light trucks. Plan Bay Area 2040 is a limited and focused update of the region’s previous integrated transportation and land use plan, Plan Bay Area, adopted in 2013.

Santa Clara County Congestion Management Program

In accordance with California Statute (Government Code 65088), Santa Clara County has established a Congestion Management Program (CMP). The intent of the CMP legislation is to develop a comprehensive transportation improvement program among local jurisdictions to reduce traffic congestion and improve land use decision-making and air quality. VTA serves as the Congestion Management Agency for Santa Clara County and maintains the County’s CMP.

Council Policy 5-1 Transportation Analysis

In alignment with SB 743 and the City’s goals in the 2040 General Plan, the City has adopted a new “Transportation Analysis Policy” (Council Policy 5-1) to replace the former Transportation Level of Service Policy (Council Policy 5-3). The new policy establishes the thresholds for transportation impacts under CEQA based on VMT rather than intersection LOS. VMT is the total miles of travel by personal motorized vehicles from a project in a day. The intent of this change in policy is to shift the focus of transportation analysis under CEQA from vehicle delay and roadway capacity to a reduction in vehicle emissions and the creation of multimodal networks that support integrated land uses.⁷⁹ According to the policy, an employment facility (e.g., office, R&D) or a 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 or regional per capita VMT 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 existing average regional per capita VMT per employee. The threshold for a retail project is whether it generates net new regional VMT, as new retail

⁷⁹ The new policy took effect on March 29, 2018.

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typically redistributes existing trips and miles traveled as opposed to inducing new travel. 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 LTA to analyze non-CEQA transportation issues, including local transportation operations, intersection LOS, and site access and circulation. The LTA also addresses CEQA issues related to pedestrian, bicycle access, and transit.

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. Under Policy 5-1, the screening criteria are as follows:

- Small Infill Projects,
- Local-Serving Retail,
- Local-Serving Public Facilities,
- Transit Supportive Projects in Planned Growth Areas with Low VMT and High-Quality Transit,
- Restricted Affordable, Transit Supportive Residential Projects in Planned Growth Areas with High Quality Transit;
- Transportation Projects that reduce or do not increase VMT.

The VMT policy does not negate Area Development Policies and Transportation Development Policies approved prior to adoption of Council Policy 5-1. Council Policy 5-1 does, however, negate the City’s Protected Intersection Policy, as defined in Council Policy 5-3.

2040 General Plan

Policies in the 2040 General Plan have been adopted for the purpose of avoiding or mitigating transportation impacts from development projects. Policies applicable to the project are presented in **Table 3-40** below.

Table 3-40 Envision San José 2040 Relevant Transportation Policies

Policy TR-1.1	Accommodate and encourage use of non-automobile transportation modes to achieve San José’s mobility goals and reduce vehicle trip generation and vehicle miles traveled (VMT).
Policy TR-1.2	Consider impacts on overall mobility and all travel modes when evaluating transportation impacts of new developments or infrastructure projects.
Policy TR-1.4	Through the entitlement process for new development, projects shall be required to fund or construct needed transportation improvements for all transportation modes giving first consideration to improvement of bicycling, walking and transit facilities and services that encourage reduced vehicle travel demand. Development proposals shall be reviewed for their impacts on all transportation modes through the study of Vehicle Miles Traveled (VMT), Envision San José 2040 General Plan policies, and other measures enumerated in the City Council Transportation Analysis Policy and its Local Transportation Analysis. Projects shall fund or construct proportional fair share mitigations and improvements to address their impacts on the transportation systems.

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	<p>The City Council may consider adoption of a statement of overriding considerations, as part of an EIR, for projects unable to mitigate their VMT impacts to a less than significant level. At the discretion of the City Council, based on CEQA Guidelines Section 15021, projects that include overriding benefits, in accordance with Public Resources Code Section 21081 and are consistent with the General Plan and the Transportation Analysis Policy 5-1 may be considered for approval. The City Council will only consider a statement of overriding considerations for (i) market-rate housing located within General Plan Urban Villages; (ii) commercial or industrial projects; and (iii) 100 percent deed-restricted affordable housing as defined in General Plan Policy IP-5.12. Such projects shall fund or construct multimodal improvements, which may include improvements to transit, bicycle, or pedestrian facilities, consistent with the City Council Transportation Analysis Policy 5-1.</p> <p>Area Development Policy. An “area development policy” may be adopted by the City Council to establish special transportation standards that identifies development impacts and mitigation measures for a specific geographic area. These policies may take other names or forms to accomplish the same purpose.</p>
Policy TR-1.5	Design, construct, operate, and maintain public streets to enable safe, comfortable, and attractive access and travel for motorists and for pedestrians, bicyclists, and transit users of all ages, abilities, and preferences.
Policy TR-1.6	Require that public street improvements provide safe access for motorists and pedestrians along development frontages per current City design standards.
Policy 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.
Policy TR-3.3	As part of the development review process, require that new development along existing and planned transit facilities consist of land use and development types and intensities that contribute towards transit ridership. In addition, require that new development is designed to accommodate and to provide direct access to transit facilities.
Policy TR-5.3	<p>Development projects’ effects on the transportation network will be evaluated during the entitlement process and will be required to fund or construct improvements in proportion to their impacts on the transportation system. Improvements will prioritize multimodal improvements that reduce VMT over automobile network improvements.</p> <p>Downtown. Downtown San José exemplifies low-VMT with integrated land use and transportation development. In recognition of the unique position of the Downtown as the transit hub of Santa Clara County, and as the center for financial, business, institutional and cultural activities, Downtown projects shall support the long-term development of a world class urban transportation network.</p>
Policy TR-8.4	Discourage, as part of the entitlement process, the provision of parking spaces significantly above the number of spaces required by code for a given use.
Policy TR-8.8	Promote use of unbundled private off-street parking associated with existing or new development, so that the sale or rental of a parking space is separated from the rental or sale price for a residential unit or for non-residential building square footage.
Policy TR-9.1	Enhance, expand and maintain facilities for walking and bicycling, particularly to connect with and ensure access to transit and to provide a safe and complete alternative transportation network that facilitates non-automobile trips.

Policy CD-3.3	Within new development, create a pedestrian friendly environment by connecting the internal components with safe, convenient, accessible, and pleasant pedestrian facilities and by requiring pedestrian connections between building entrances, other site features, and adjacent public streets.
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Source: City of San José, 2022

3.17.1.2 Existing Conditions

Existing Roadway Network

Regional access to the project site is provided via I-880. Local access to the project site is provided via Montague Expressway, Zanker Road, Trimble Road, River Oaks Parkway/Plumeria Drive, McCarthy Boulevard/O’Toole Avenue, and Seely Avenue.

I-880 is an eight-lane north/south freeway with three mixed-flow lanes and one HOV lane in each direction in the project vicinity. It extends northeast to the City of Oakland and south to I-280 in San José, at which point it transitions into SR 17 and extends to Santa Cruz. Access to the project site is provided via a full interchange at Montague Expressway.

Montague Expressway is generally an east-west designated Expressway that begins at U.S. 101 and runs through north San José and Milpitas to I-680. Montague Expressway is an eight-lane roadway, including HOV lanes, and has a posted speed limit of 45 mph. The HOV lane designation is in effect in both directions of travel during both the AM and PM peak commute hours. During other times, the HOV lanes are open to all users. Most segments of Montague Expressway have sidewalks on one side of the street. Montague Expressway provides access to and from the project site via Seely Avenue.

Zanker Road is a north-south oriented divided roadway that extends from SR 237 to the north to Old Bayshore Road to the south. In the vicinity of the project site, Zanker Road is two lanes in each direction and has a posted speed limit of 45 mph. It is designated a City Connector Street in the 2040 General Plan and has Class II bike lanes and sidewalks on both sides of the street.

Trimble Road is an east-west oriented divided roadway that extends from Montague Expressway to U.S. 101 where it transitions into De La Cruz Boulevard. Trimble Road has three lanes in each direction and has a posted speed limit of 45 mph. It is designated a City Connector Street in the 2040 General Plan and has buffered bike lanes and sidewalks on both sides of the street. However, there is no sidewalk along the south side of Trimble Road between Montague Expressway and Junction Avenue.

River Oaks Parkway is generally an east-west two-lane divided roadway extending from North First Street to Montague Expressway. Southwest of Montague Expressway, it becomes E. Plumeria Drive. River Oaks Parkway is designated an On-Street Primary Bicycle Facility in the 2040 General Plan and has buffered bike lanes and sidewalks on both sides of the street. It has a posted speed limit of 35 mph and provides site access via Seely Avenue.

McCarthy Boulevard is a north-south four-lane roadway between Montague Expressway and Tasman Drive with no bicycle lanes. North of Tasman Drive, McCarthy Boulevard is a four- to six-lane roadway with Class II bike lanes. In the project area, McCarthy Boulevard has a mix of left-turn pockets and two-way left-turn lanes, has a posted speed limit of 40 mph, and has a patchy network of sidewalks. South of Montague Expressway, it turns into O’Toole Avenue.

Seely Avenue is a short two-lane collector street that connects Montague Expressway and River Oaks Parkway. It has a posted speed limit of 30 mph, has no bicycle lanes, and has no sidewalk along the project frontage. Seely Avenue provides direct access to the project site.

Existing Pedestrian, Bicycle and Transit Facilities

San José desires to provide a safe, efficient, fiscally, economically, and environmentally sensitive transportation system that balances the needs of bicyclists, pedestrians, and public transit riders with those of automobiles and trucks. The existing bicycle, pedestrian and transit facilities in the study area are described below.

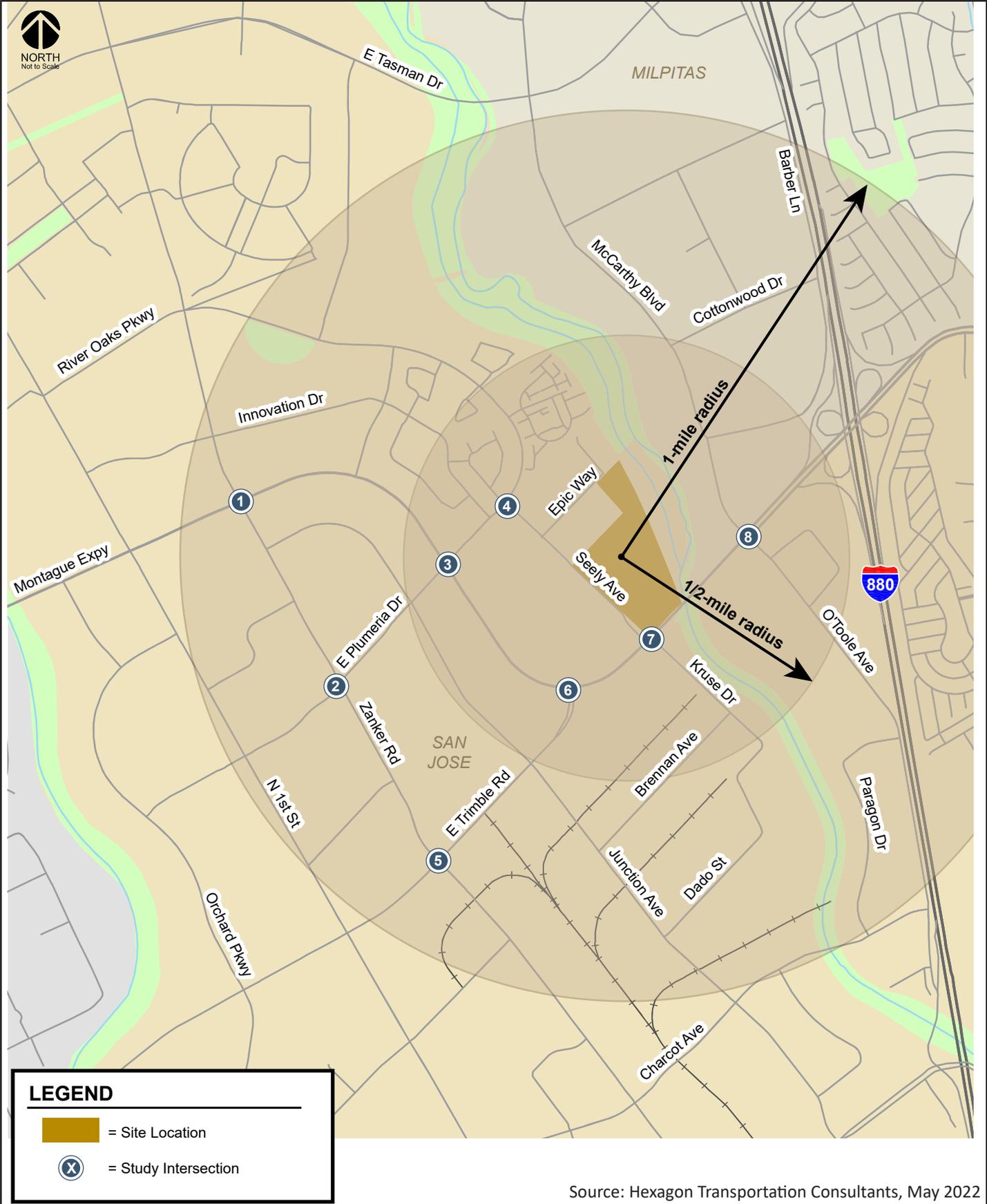
Pedestrian Facilities

Sidewalks are found along some of the previously described local roadways in the study area (shown in **Figure 3-14**). There is no sidewalk along the project frontage on Seely Avenue, as well as some segments of Trimble Road and McCarthy Boulevard. The majority of segments of Montague Expressway have sidewalks on at least one side of the street. Although some roadway segments in the study area are missing sidewalk, the existing network of sidewalks provides adequate connectivity for pedestrians between the project site and other surrounding land uses and transit stops. Crosswalks with pedestrian signal heads and push buttons are located at all the signalized intersections in the study area. Curb ramps are provided at all signalized intersections in the study area, although some do not meet current Americans with Disabilities Act (ADA) design standards. The curb ramps at the following intersections do not meet current ADA standards:

- Trimble Road and Montague Expressway – all corners of the intersection;
- Montague Expressway and River Oaks Parkway – southeast corner; and
- McCarthy Boulevard and Montague Expressway – all corners of the intersection.

Bicycle Facilities

Bicycle facilities are divided into four classes. Class I bikeways are bike paths that are physically separated from motor vehicles and offer two-way bicycle travel on a separate path. Class II bikeways are striped bike lanes on roadways that are marked by signage and pavement markings. Class III bikeways are bike routes and only have signs and/or Sharrows (bike route lane markings) to help guide bicyclists on recommended routes to certain locations. Class IV bicycle facilities (i.e., cycle tracks) are on-street bikeways that incorporate physical barriers (e.g., raised curbs, flexible bollards, vehicle parking, grade separation, etc.) to separate bicycles from the flow of vehicular traffic. There are no Class IV bicycle facilities in the project area.



Source: Hexagon Transportation Consultants, May 2022

Roadway Network & Study Intersections

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Figure

3-14

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There are a number of roadways in the project study area that have striped bike lanes. Bike lanes currently exist on the following roadway segments:

- Zanker Road – Class II bike lanes along its entirety
- Trimble Road – Class II buffered bike lanes along its entirety
- River Oaks Parkway/Plumeria Drive – Class II buffered bike lanes along its entirety
- Junction Avenue – Class II buffered bike lanes south of Trimble Road
- Charcot Avenue – Class II bike lanes between Orchard Parkway and O’Toole Avenue
- Orchard Parkway – Class II buffered bike lanes along its entirety
- N. First Street – Class II bike lanes (much of it buffered) between Brokaw Road and Alviso

The Coyote Creek Trail is a multi-use trail (Class I bikeway) that runs along both sides of Coyote Creek and is completely separate from motor vehicle traffic. The Coyote Creek Trail extends from the northern extent of McCarthy Boulevard south to Zanker Road in San José. Trail access is provided via Montague Expressway at the southern boundary of the project site and Iris Chang Park on Epic Way at the northern boundary of the project site.

The project site is also about 1.2 miles east of the Guadalupe River bike trail. This trail runs from Alviso to south San José. The trail can be accessed from Trimble Road.

Transit Services

Existing bus and shuttle services near the project site are provided by the VTA and Altamont Commuter Express (ACE). The existing transit services are described below.

VTA local bus route 20 operates along Montague Expressway near the project site. Route 20 operates between the Milpitas BART station and the Sunnyvale Transit Center and provides service every 30 minutes during the weekday AM and PM peak commute periods of the day. Bus stops are located along Montague Expressway within walking distance of the project site at Trimble Road (approximately 0.25 mile from the project site) and McCarthy Boulevard (about 0.30 mile from the project site).

The ACE Brown shuttle operates along Seely Avenue and provides service between the Great America ACE station and south Sunnyvale. ACE provides four eastbound shuttles during the weekday AM commute period and four westbound shuttles during the weekday PM commute period. The ACE Brown shuttle stops on Seely Avenue adjacent to the project site.

3.17.2 Impacts and Mitigation

3.17.2.1 Traffic Study Methodologies

CEQA VMT Analysis

To determine whether a project would result in CEQA transportation impacts related to VMT, the City has developed the San José VMT Evaluation Tool (evaluation tool) to streamline the analysis for residential, office, and industrial projects with local traffic. Because the project is a residential development that would generate local traffic, the VMT Evaluation Tool is used to estimate the project VMT and determine whether the project would result in a significant VMT impact.

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Based on the APN of a project, the evaluation tool identifies the existing average VMT per capita and VMT per employee for the area. Based on the project location, type of development, project description, and proposed trip reduction measures, the evaluation tool calculates the project VMT. Projects located in areas where the existing VMT is above the established threshold are referred to as being in “high-VMT areas.” Projects in high-VMT areas are required to include a set of VMT reduction measures that would reduce the project VMT to the extent possible.

The evaluation tool evaluates a list of selected VMT reduction measures that can be applied to a project to reduce the project VMT. There are four strategy tiers whose effects on VMT can be calculated with the evaluation tool:

- Project characteristics (e.g., density, diversity of uses, design, and affordability of housing) that encourage walking, biking and transit uses.
- Multimodal network improvements that increase accessibility for transit users, bicyclists, and pedestrians,
- Parking measures that discourage personal motorized vehicle-trips, and
- TDM measures that provide incentives and services to encourage alternatives to personal motorized vehicle-trips.

The first three strategies – land use characteristics, multimodal network improvements, and parking – are physical design strategies that can be incorporated into the project design. TDM includes programmatic measures that aim to reduce VMT by decreasing personal motorized vehicle mode share and by encouraging more walking, biking, and riding transit. TDM measures should be enforced through annual trip monitoring to assess the project’s status in meeting the VMT reduction goals.

The VMT threshold of significance is 15 percent below the citywide average area for residential developments. Thus, projects that include residential uses are said to create a significant adverse impact when the estimated project generated VMT exceeds the existing citywide average VMT per capita minus 15 percent. Currently, the reported citywide average is 11.91 daily VMT per capita. This equates to a significant impact threshold of 10.12 daily VMT per capita.

Projects that trigger a significant VMT impact can implement a variety of the four strategies described above to reduce the impact. A significant impact is said to be satisfactorily mitigated when the strategies and VMT reductions implemented render the VMT impact less than significant.

Local Transportation Analysis

The non-CEQA LTA supplements the VMT analysis by identifying potential adverse operational effects that may arise due to a new development, as well as evaluating the effects of a new development on site access, circulation, and other safety-related elements in the project study area.

As part of the LTA, a project is typically required to conduct an analysis of intersection operations if the project is expected to add 10 or more vehicle trips per hour per lane to a signalized intersection that is located within 0.50 mile of the project site and is currently operating at LOS D or worse. Based on these criteria, as outlined in the City’s Transportation Analysis Handbook, the LTA comprises an analysis of AM and PM peak hour traffic conditions for the following eight signalized intersections.

- Zanker Road and Montague Expressway (CMP)
- Zanker Road and Plumeria Drive

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- Montague Expressway and River Oaks Parkway
- Seely Avenue and River Oaks Parkway
- Zanker Road and Trimble Road (CMP)
- Trimble Road and Montague Expressway (CMP)
- Seely Avenue and Montague Expressway (future signal)
- McCarthy Boulevard-O'Toole Avenue and Montague Expressway (CMP)

Traffic conditions at the study intersections were analyzed for the weekday AM and PM peak hours for the following scenarios: existing conditions, background conditions, and background plus project conditions. The weekday AM peak hour is generally between 7:00 and 9:00 AM and the weekday PM peak hour is typically between 4:00 and 6:00 PM. It is during these periods that the most congested traffic conditions occur on a typical weekday.

Traffic conditions were evaluated for the following scenarios:

- **Existing Conditions.** Existing AM and PM peak hour traffic volumes were obtained from intersection turning movement counts conducted in 2017, 2018 and 2019 prior to the start of the COVID-19 pandemic. City Department of Transportation (DOT) staff have reviewed and approved the intersection counts for use in this transportation study. As required by the Santa Clara County VTA, the PM peak hour traffic volumes at the CMP study intersections were obtained from the latest version of the CMP Annual Monitoring Report (2018 version).
- **Background Conditions.** Background traffic volumes reflect traffic added by nearby approved projects that are not yet completed or occupied. The added traffic from approved but not yet completed developments was provided by the City in the form of the Approved Trips Inventory (ATI). Background conditions represent the baseline conditions to which project conditions are compared for the purpose of determining potential adverse operational effects.
- **Background Conditions Plus Project Conditions.** Background conditions plus project conditions reflect projected traffic volumes on the planned roadway network after completion of the project and approved developments that are not yet completed or occupied. Background plus project traffic volumes were estimated by adding to background traffic volumes the additional traffic generated by the project.

The LTA also includes a vehicle queuing analysis, an evaluation of bicycle, pedestrian, and transit facilities, and a review of site access, on-site circulation, and parking demand.

3.17.2.2 Thresholds of Significance

For the purposes of this analysis and in accordance with CEQA Guidelines, a project impact to traffic and transportation would be considered significant if the project would:

- a) Conflict with a program, plan, ordinance or policy addressing the circulation system, including transit, roadway, bicycle and pedestrian facilities;
- b) Conflict or be inconsistent with CEQA Guidelines Section 15064.3, subdivision (b);

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- c) Substantially increase hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment); or
- d) Result in inadequate emergency access.

3.17.2.3 Project Impacts

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

The project would not conflict with a program, plan, ordinance or policy addressing the circulation system, including transit, roadway, bicycle and pedestrian facilities as described below. The results of the VMT analysis are addressed in **b)** below.

Pedestrian, Bicycle, Transit Impacts

Pedestrian and Bicycle Facilities

Pedestrian facilities consist mostly of sidewalks along the streets in the immediate vicinity of the project site. Crosswalks with pedestrian signal heads and push buttons are located at all the signalized intersections in the study area. Curb ramps are provided at all signalized intersections in the study area, although some do not meet current ADA design standards. Many roadways in the study area have bicycle lanes, including Zanker Road, Trimble Road, River Oaks Parkway, Junction Avenue, Charcot Avenue, Orchard Parkway, and North First Street.

The project would construct a new 18-foot-wide attached sidewalk with tree wells along the project frontage on Seely Avenue. The sidewalk design includes ADA compliant curb ramps with truncated domes at the two main project driveways on Seely Avenue and at the Seely Avenue/Montague Expressway intersection. The new sidewalk would provide pedestrian access to the project site via connections to an extensive internal network of sidewalks and crosswalks, many with distinct pavement treatments, throughout the project site. ADA accessible features are provided throughout the project site including curb ramps with truncated domes. The internal network of sidewalks and crosswalks would provide safe connections to the proposed centrally-located public park. Additionally, the project includes the construction of a new 10-foot-wide attached sidewalk with tree wells along the Epic Way frontage.

The project would not remove any bicycle facilities, nor would it conflict with any adopted plans or policies for new bicycle facilities. The project would construct a raised Class IV separated bikeway along the east side of Seely Avenue (along the project frontage). The City has indicated that the project would also be required to construct a standard Class II bike lane along the west side of Seely Avenue.

The project would provide secure bike rooms on the first floor of each residential mixed-use building. Providing convenient and secure bike parking on-site would help create a bicycle-friendly environment and encourage bicycling by residents and retail employees of the project.

The project would provide a direct connection to the Coyote Creek multi-use trail (Class I bikeway) that runs along both sides of Coyote Creek. The Coyote Creek Trail extends from the northern extent of McCarthy Boulevard south to Zanker Road in San José. The trail passes under Montague Expressway and thus provides a safe and convenient pedestrian and bicycle connection between the project site and areas south of Montague Expressway.

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The existing and planned networks of pedestrian and bicycle facilities exhibit good connectivity and would provide residents, visitors, and retail employees of the project with safe routes to transit stops and other points of interest in the project vicinity.

Based on the project site location, most children living at the new development would likely attend one of the schools located on the historic Agnews Development Center site: Abram Agnew Elementary School, Dolores Huerta Middle School, or Kathleen MacDonald High School. The elementary and middle schools are now open (since 2021), and the high school is currently under construction. The schools are located about 1 mile northwest of the project site on the east side of Zanker Road.

Safe and direct pedestrian access to all three schools on the Agnews site is provided via a continuous network of sidewalks along the streets in the area. Crosswalks with pedestrian signal heads are provided at all signalized intersections along the school access route. Wheelchair ramps are provided at all corners of the intersections, though some do not meet the current ADA design standards. Adequate bicycle access to the schools is provided via striped bike lanes on River Oaks Parkway and Levee Road (which provides access to the schools). However, bike lanes are not provided on Cisco Way and only a portion of Seely Avenue would have bike lanes (constructed by the project).

The project applicant would work closely with these nearby schools to implement a Safe Routes to Schools program, or participate in a program if one already exists, since some students attending these schools would reside at the project site. Safe Routes to Schools is designed to decrease traffic and pollution and increase the health of children and the community as a whole. The program promotes walking and biking to school through education and incentives. The program also addresses the safety concerns of parents by encouraging greater enforcement of traffic laws, educating the public, and exploring ways to create safer streets. The comprehensive Safe Routes to Schools program would identify a focused area surrounding the school, provide a map with the routes that children can take to and from school, and recommend improvements to routes if necessary. It would address such pedestrian safety issues as dangerous intersections and missing or ineffective crosswalks and sidewalks.

Transit Services

VTA local bus route 20 operates along Montague Expressway near the project site with 30-minute headways during the weekday AM and PM peak commute periods of the day. Bus stops are located along Montague Expressway within walking distance of the project site at Trimble Road, about 0.25 mile from the project site, and McCarthy Boulevard, about a third 0.33 mile from the project site.

The ACE Brown shuttle operates along Seely Avenue and provides service between the Great America ACE station and south Sunnyvale. ACE provides four eastbound shuttles during the weekday AM commute period and four westbound shuttles during the weekday PM commute period. The ACE Brown shuttle stops on Seely Avenue adjacent to the project site.

Due to the convenient locations of the transit stops, it is reasonable to assume that some residents of the project would utilize the transit services provided. The 2040 General Plan identifies the transit commute mode split target as 20 percent for the year 2040. Together, the VTA and ACE provide a total of eight buses per hour during both the AM and PM peak commute periods of the day. Due to the limited transit services in the proximity of the project site, a transit commute mode share of 20 percent is likely not achievable for the project. A 10 percent transit commute mode split is more realistic and could be achieved by the project.

A 19 percent trip reduction was applied to the residential component of the project based on the external trip adjustments obtained from the City's VMT Evaluation Tool. It is assumed that every percent reduction in VMT per capita is equivalent to one percent reduction in motor vehicle trips. This trip reduction reflects the multi-modal infrastructure improvements and TDM measures included as part of the project to reduce the project VMT impact to less than significant. It is estimated that approximately half of this reduction in motor vehicle trips would be attributable to transit usage, which is a reasonable estimate particularly if transit is utilized in combination with bicycle commuting.

Based on the project trip generation estimates, a 19 percent trip reduction equates to 90 AM and PM peak hour motor vehicle trips. Thus, it is estimated that the project would generate 45 fewer vehicle trips due to transit usage. This equates to approximately six new riders per bus currently serving the area during both the AM and PM peak commute periods of the day. It is estimated that the increased transit demand generated by the project could be accommodated by the current available ridership capacities of the VTA bus and ACE shuttle services in the study area.

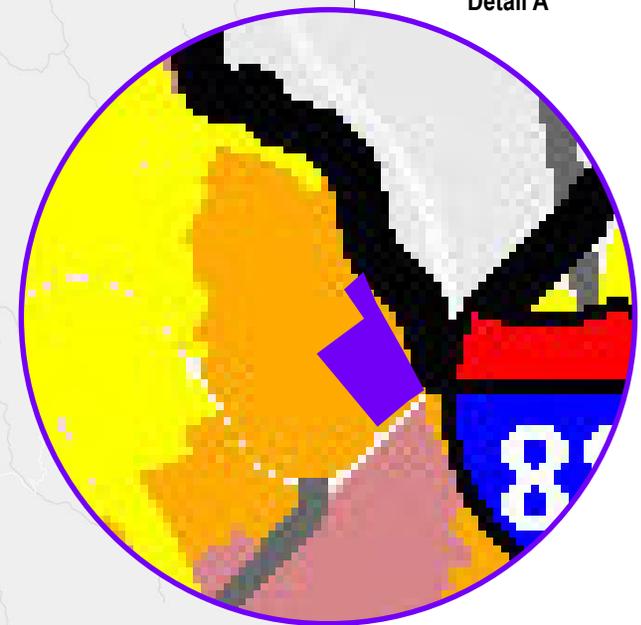
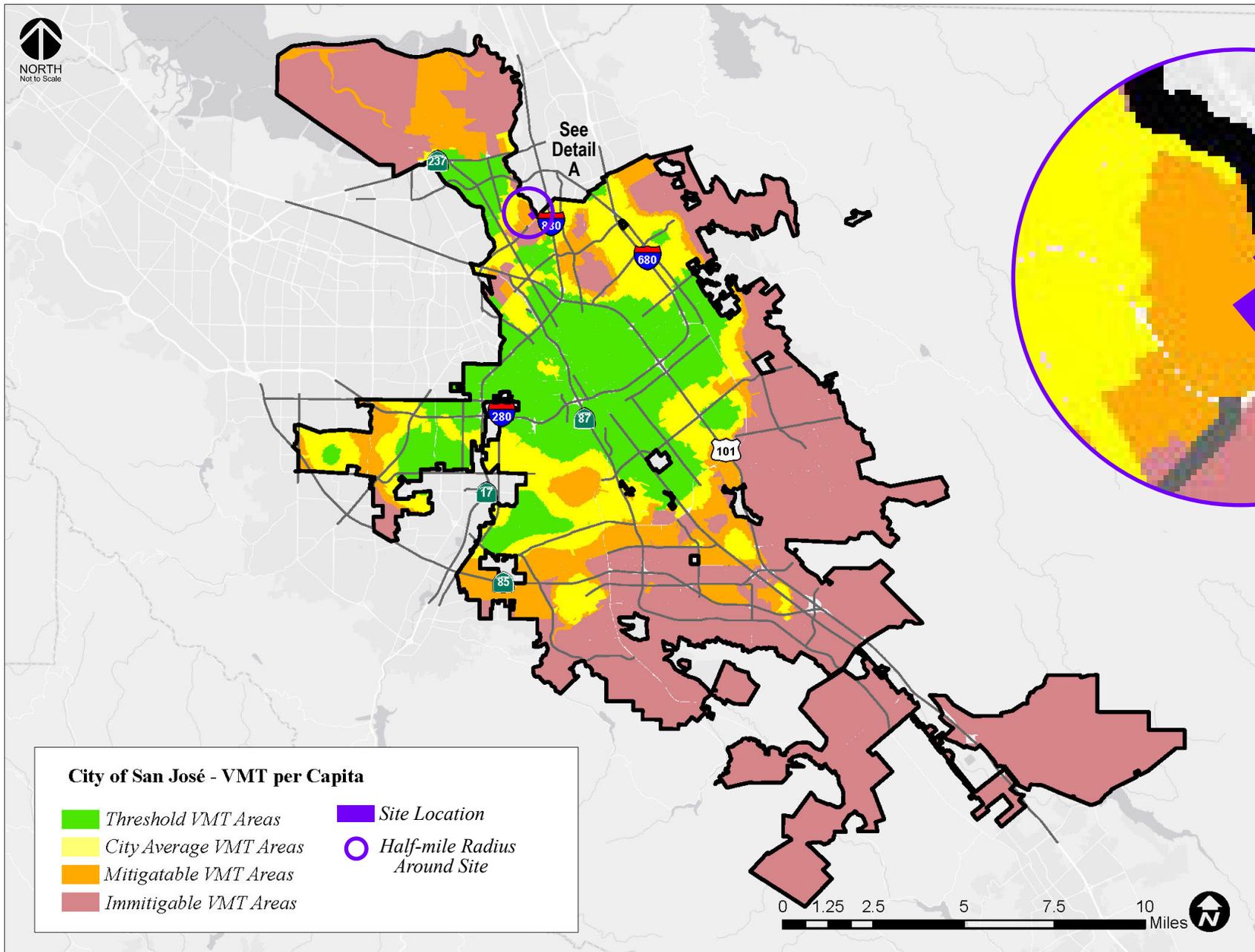
Based on the discussion above, the project would not conflict with a program plan, ordinance or policy addressing the circulation system, including transit, roadway, bicycle and pedestrian facilities. **Less Than Significant Impact.**

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

A VMT analysis was prepared for the project in accordance with the City's methodologies, and consistent with Section 15064.3(b). The results of the VMT analysis are summarized below.

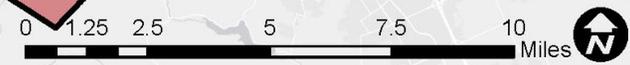
To determine whether a project would result in CEQA transportation impacts related to VMT, the City has developed the San José VMT Evaluation Tool to streamline the analysis for residential, office, and industrial projects with local traffic. The tool estimates a project's VMT and compares it to the appropriate thresholds of significance based on the project location and type of development.

Figure 3-15 shows the current VMT levels estimated by the City for residents based on the locations of residences. Developments in the green-colored areas are estimated to have VMT levels that are below the thresholds of significance, while the yellow-colored areas are estimated to have VMT levels at the City average. The orange and pink-colored areas are estimated to have VMT levels that are above the thresholds of significance. Projects located in areas where the existing VMT is above the established threshold are referred to as being in "high-VMT areas." Projects in high-VMT areas are required to include a set of VMT reduction strategies that would reduce the project VMT to the extent possible.



City of San José - VMT per Capita

 <i>Threshold VMT Areas</i>	 <i>Site Location</i>
 <i>City Average VMT Areas</i>	 <i>Half-mile Radius Around Site</i>
 <i>Mitigatable VMT Areas</i>	
 <i>Immitigable VMT Areas</i>	



Source: Hexagon Transportation Consultants, May 2022

VMT Heat Map - Residents in San José

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Figure
3-15

The project VMT was estimated for the project using the City's VMT Evaluation Tool. **Figure 3-13** shows the current VMT levels estimated by the City for residents based on the locations of residences. The residential component of the project would generate VMT of 11.19 per capita. The project VMT, therefore, exceeds the residential threshold of 10.12 VMT per capita.

Based on the City's VMT Evaluation Tool, implementing the multimodal infrastructure improvements and TDM measures described above would lower the project VMT to 10.11 per capita, which would reduce the project impact to less than significant (i.e., below the City's threshold of 10.12 VMT per capita).

Impact TR-1: The residential component of the project would generate VMT of 11.19 per capita, which would exceed the City's relevant residential VMT threshold of 10.12 VMT per capita. Since the project would result in a significant transportation impact on VMT, mitigation measures are required to reduce the VMT impact to a less-than-significant level.

Mitigation Measures

MM TR-1.1 Prior to the issuance of any demolition, grading and/or building permits, the project applicant shall prepare project construction plans that illustrate the design of the project site enhancements, and shall coordinate with the City Parks, Recreation, & Neighborhood Services, Department of Transportation, and the Department of Public Works to incorporate the following:

- **Bike Access Improvements:** Construct a Class II bike lane along the opposite side of Seely Ave (southbound direction) and Class IV bike lanes on the frontage along Montague Expressway. Coordination with the City would be needed to implement these non-frontage bicycle network improvements.
- **Pedestrian Network Improvements:** Construct a new crosswalk on Seely Avenue and Americans with Disabilities Act (ADA) compliant curb ramps (off-site pedestrian improvements). The project shall provide a trail connection between Building B and the townhomes. Clear pedestrian paths between the trail connections and the proposed on-site public park shall be provided. Implementation of these improvements would require coordination with the City of San José Department of Parks, Recreation & Neighborhood Services (SJPRNS) to provide a connection between the public park and the Coyote Creek trail. An on-site public access easement would also be required.
- **Car Sharing Program:** Provide either subsidies or promotions for a car sharing program (e.g., Zipcar, Car2Go, GetAround, etc.) for residents of the apartments upon request. Dedicated car share vehicle parking would also be provided at a preferential on-site location within each building. All residents of the apartments (both market rate and affordable apartments) with a valid driver's license would be eligible to participate in the car sharing program.
- **Traffic Calming Measures:** The project would construct new bicycle facilities on both sides of Seely Avenue. As a result of these

improvements, the existing travel lane widths along Seely Avenue would be narrowed. Narrowing travel lane widths results in reduced vehicle speeds. Providing traffic calming and safety measures such as narrowing travel lane widths and adding signalized pedestrian crossings creates a safer environment and promotes walking and biking as alternatives to driving.

- **Unbundled Parking:** Provide 100 percent unbundled parking for the designated apartment spaces. Unbundled parking is separating the cost of parking from residential leases and allowing tenants to choose whether to lease a parking space. With this approach those tenants without a vehicle would not be required to pay for parking that they do not want or need.
- **Voluntary Travel Behavior Change Program:** Provide a program that targets individual attitudes and behaviors of apartment residents towards travel and provides information and tools for residents to analyze and alter their travel behavior. Voluntary Travel Behavior Change programs include mass communication campaigns and travel feedback programs, such as travel diaries or feedback on calories burned from alternative modes of travel. This strategy encourages the use of shared ride modes, transit, walking, and biking, thereby reducing drive-alone vehicle trips and VMT. All residents/households would be provided with the information/tools necessary to fully participate in the Voluntary Travel Behavior Change program.
- **On-Site Transportation Demand Management (TDM) Administration and Services:** Designate a transportation coordinator who focuses on transportation issues and is responsible for implementing the TDM measures. The transportation coordinator would be a point of contact for residents, within the Apartment buildings, should TDM-related questions arise and would be responsible for ensuring that residents are aware of all the transportation options available to them. The transportation coordinator would provide the following services and functions:
 - Provide new tenants with information brochures at the time of move-in. The welcome brochures should include information about public transit services, transit passes, bicycle maps, and other rideshare/carpool options.
 - Assist with carpool matching. The transportation coordinator should help match residents interested in carpooling.
 - Be knowledgeable enough to answer residents' TDM program related questions.
- **Information Board/Online Kiosk:** Provide an online kiosk with information regarding non-auto transportation alternatives within the Apartment buildings. The online kiosk shall update key transportation

information included in the welcome brochures. Transportation news and commuter alerts should be posted online. The website shall be operational as soon as the new buildings are ready for leasing.

- **Traffic Calming Measures:** The project applicant shall be required to implement additional traffic calming measures following occupancy of the project if City staff determines that the increase in traffic volume could create safety-related issues along the northern segment of Seely Avenue near the residential neighborhoods north of the project site. If issues are identified following occupancy of the project, City staff will require a focused traffic operations study of Seely Avenue to determine the appropriate traffic calming measures that should be implemented by the project. Additional traffic calming measures could include (but are not limited to) roadway striping, curb markings, enhanced crosswalks, signage, bulb-outs, chicanes, chokers, medians, and road bumps. Should the project ultimately be required to implement traffic calming measures, the cost of such improvements shall not exceed \$450,000.

MM TR-1.2 **On-site TDM Coordinator and Annual Monitoring.** Prior to the issuance of any building or occupancy permits for the apartment complex, the project applicant shall provide a draft Transportation Demand Management (TDM) plan prior to issuance of Planning Permit for review and approval. Prior to clearance for building occupancy, a final TDM Plan shall be submitted to the City for approval. After the project is constructed and occupied, the project applicant shall identify a transportation coordinator. The transportation coordinator would be responsible for implementing the ongoing TDM program. The TDM Plan would need to be re-evaluated annually for the life of the project. It is recommended that the designated transportation coordinator consult with City staff to ensure the monitoring and reporting meets the City's expectations. The TDM Coordinator shall be responsible for submitting the monitoring reports to the Director of Department of Public Works or Director's designee and Director of City Planning, Building and Code Enforcement Department or the Director's designee for the life of the project.

Based on the City's VMT Evaluation Tool, implementation of **MM TR-1.1** and **MM TR-1.2** described above would lower the project VMT to 10.11 per capita, which would reduce the project impact to less than significant (i.e., below the City's threshold of 10.12 VMT per capita). **Less Than Significant Impact with Mitigation Incorporated.**

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 not substantially increase hazards due to a design feature or incompatible uses. Site access was evaluated to determine the adequacy of the driveways with regard to the following: traffic volume, delays, vehicle queues, sight distance, and geometric design. On-site circulation and parking layout were reviewed in accordance with generally accepted traffic engineering standards and transportation planning principles. Final project design would be reviewed by City Departments including Public Works and Transportation to ensure design is consistent with the Municipal Code for access, circulation, and operation. **Less Than Significant Impact.**

d) Would the project result in inadequate emergency access?

The SJFD requires that all portions of the buildings be within 150 feet of a fire access road and requires a minimum of six feet of clearance from the property line along all sides of the buildings. Adequate clearance would be provided around the perimeters of the buildings; however, not all areas of the proposed buildings would be within 150 feet of a fire access road. To address this issue, the project is installing fire hydrants at key locations around the buildings to provide complete fire access coverage. The project driveway widths and drive aisle widths shown on the project site plan would be adequate to accommodate emergency vehicles. The project site plan shows a 30-foot inside turning radius and a 50-foot outside turning radius at all the corners on-site, which would be adequate to serve fire trucks. **Less Than Significant Impact.**

3.17.2.4 Non-CEQA Effects

SB 743, the revised 2019 CEQA Guidelines, and Council Policy 5-1 promote the reduction of GHG emissions, the development of multimodal transportation networks, and a diversity of land uses. Due to these requirements, the VMT metric promotes those statutory purposes better than LOS and was determined to be the significance metric under CEQA. An LTA was prepared for the project to address transportation operational issues of the project, and the effects of the project on transportation, access, circulation, and safety elements in the project area. These operational issues are provided for informational purposes only.

The project would increase traffic to/from the project site. Vehicle trips that would be generated by the project were estimated using the trip generation rates published in the Institute of Transportation Engineers (ITE) Trip Generation Manual, 11th Edition (2020). The magnitude of traffic added to the roadway system by a particular development is estimated by multiplying the applicable trip generation rates by the size of the development.

Trips that would be generated by the residential component of the mixed-use project were estimated using the ITE average trip rates for “Multi-family Housing Mid-Rise” (ITE Land Use 221), “Affordable Housing” (ITE Land Use 223), and “Single-Family Attached Housing” (ITE Land Use 215) located in a General Urban/Suburban setting. Trips that would be generated by the retail component of the project were estimated using the ITE average trip rates for “Strip Retail Plaza (<40,000 s.f.)” (ITE Land Use 822) located in a General Urban/Suburban setting. In accordance with San José’s Transportation Analysis Handbook (April 2020, Section 4.8, “Intersection Operations Analysis”), the project is eligible for adjustments and reductions from the baseline trip generation. The trip generation for the project is presented in **Table 3-41**.

After applying the ITE trip rates to the proposed residential and retail uses and applying the appropriate trip adjustments and reductions, it is estimated that the project would generate 5,664 new daily vehicle trips, with 431 new trips occurring during the weekday AM peak hour and 490 new trips occurring during the weekday PM peak hour. Using the inbound/outbound splits contained in the ITE Trip Generation Manual, the project would produce 119 inbound trips and 312 outbound trips during the weekday AM peak hour, and 290 inbound trips and 200 outbound trips during the weekday PM peak hour.

Intersection Traffic Operations

The results of the intersection LOS analysis (see **Table 3-42**) show that all but the following two signalized study intersections are currently operating at an acceptable LOS D or better during both the

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AM and PM peak hours of traffic and would continue under background and background plus project conditions:

- Zanker Road and Montague Expressway – LOS E during the AM and PM peak hour
- McCarthy Boulevard and Montague Expressway – LOS F during the PM peak hour

Although the CMP intersection of Zanker Road and Montague Expressway would operate unacceptably under background conditions (per City standards), the addition of project-generated trips would not have an adverse effect on intersection operations based on the City’s operational thresholds. Because this is a CMP intersection, LOS E operation is considered acceptable based on the CMP LOS standard.

The CMP intersection of McCarthy Boulevard and Montague Expressway would operate at an unacceptable LOS F during the PM peak hour under background conditions, and the addition of project-generated trips would have an adverse effect on intersection operations based on the City’s operational thresholds.

To address the adverse effect on the signalized intersection of McCarthy Boulevard-O’Toole Avenue and Montague Expressway, the project would make a fair-share monetary contribution of \$200,000 toward planned improvements that were identified for this intersection as part of the recently retired North San Jose Development Policy (NSJDP). Although the policy has officially been closed out, many of the improvements are still planned and are described in the January 2023 settlement agreement between the City of San Jose and the County of Santa Clara.

A grade-separated interchange is planned for the McCarthy Boulevard-O’Toole Avenue and Montague Expressway intersection. The interchange will be designed as a “single-point urban” interchange or, if mutually agreed upon in writing by both the City of San Jose and County of Santa Clara, a design that achieves similar project goals and limits the need for right-of-way acquisition. The final interchange design will maintain all turning movements currently allowed at the at-grade intersection.

Table 3-41 Project Trip Generation Estimates

Land Use	Size	Daily Rate	Daily Trips	AM Peak Hour				PM Peak Hour			
				Peak-Hour Rate	In	Out	Total	Peak-Hour Rate	In	Out	Total
Multi-family Housing (Mid-Rise) ¹	1,143 DU	4.54	5,189	0.37	97	326	423	0.39	272	174	446
Affordable Housing ¹	178 DU	4.81	856	0.36	19	45	64	0.46	48	34	82
Single-Family Attached Housing ¹	154 DU	7.20	1,109	0.48	23	51	74	0.57	50	38	88
<i>Residential & Retail</i>			<i>(165)</i>		<i>(3)</i>	<i>(4)</i>	<i>(7)</i>		<i>(10)</i>	<i>(10)</i>	<i>(20)</i>

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Land Use	Size	Daily Rate	Daily Trips	AM Peak Hour			PM Peak Hour				
				Peak-Hour Rate	In	Out	Total	Peak-Hour Rate	In	Out	Total
<i>Internal Capture</i> ³											
<i>Location-Based Vehicle Mode Share (12%)</i> ⁴			(839)		(16)	(50)	(66)		(43)	(28)	(71)
<i>Project-Specific Trip Reduction (19%)</i> ⁵			(1,169)		(23)	(70)	(93)		(60)	(40)	(100)
Net Residential Trips:			4,981		97	298	395		257	168	425
Retail ²	20,197 SF	54.45	1,100	2.36	29	19	48	6.59	67	66	425
<i>Residential & Retail Internal Capture (15%)</i> ³			(165)		(4)	(3)	(7)		(10)	(10)	(20)
<i>Location-Based Vehicle Mode Share (12%)</i> ⁴			(112)		(3)	(2)	(5)		(7)	(7)	(14)
<i>Retail Pass-By External Trip Reduction</i> ⁶			(140)		0	0	0		(17)	(17)	(34)
Net Retail Trips:			683		22	14	36		33	32	65
Total Net Project Trips:			5,664		119	312	431		290	200	490

Source: Hexagon, 2023

Notes:

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¹ Trip generation for the residential component of the project based on average rates contained in the ITE Trip Generation Manual 11th Edition, for Multi-family Housing Mid-Rise (Land Use 221), Affordable Housing (Land Use 223), and Single-Family Attached Housing (Land Use 215) located in a General Urban/Suburban setting. Rates are expressed in trips per dwelling unit (DU).

² Trip generation for the retail component of the project based on average rates contained in the ITE Trip Generation Manual, 11th Edition, for Strip Retail Plaza <40ksf (Land Use 822) located in a General Urban/Suburban setting. Rates are expressed in trips per 1,000 square feet (SF).

³ A 15 percent residential/retail internal mixed-use trip reduction was applied to the project per the 2014 Santa Clara VTA TIA Guidelines. The 15 percent reduction was first applied to the smaller generator (retail). The same number of trips were subtracted from the larger generator (residential) to account for both trip ends.

⁴ A 12 percent reduction was applied to the residential and retail components of the project based on the location-based vehicle mode share percentage outputs (Table 6 of the TA Handbook) produced from the San José Travel Demand Model for the place type: Suburban with Multi-family Housing.

⁵ A 19 percent trip reduction was applied to the residential component of the project based on the external trip adjustments obtained from the City's VMT Evaluation Tool. This trip reduction reflects the multi-modal infrastructure improvements and TDM measures being proposed by the project to reduce the project VMT impact to a less-than-significant level. It is assumed that every percent reduction in VMT per capita is equivalent to one percent reduction in peak-hour vehicle trips.

⁶ The PM peak hour pass-by trip reduction percentage (34 percent for Shopping Center) was based on the ITE Trip Generation Handbook (Third Edition). There is no AM peak hour pass-by trip reduction. The daily pass-by trip reduction (17 percent) was calculated based on the average of the AM and PM pass-by trip reduction percentages.

Table 3-42 Intersection Level of Service Summary

Intersection #	Signalized Intersection	Peak Hour	Count Date	Existing		Background		Background + Project			
				Avg. Delay (sec)	LOS	Avg. Delay (sec)	LOS	Avg. Delay (sec)	LOS	Incr. In Crit. Delay (sec)	Incr. In Crit. V/C
1	Zanker Rd & Montague Exp *	AM	05/10/18	62.6	E	73.5	E	74.0	E	0.9	0.011
		PM	11/08/18	50.5	D	77.9	E	77.6	E	-0.9	0.008
2	Zanker Rd & Plumeria Dr	AM	06/01/17	23.1	C	25.3	C	26.3	C	1.2	0.021
		PM	06/01/17	23.6	C	26.1	C	27.3	C	1.8	0.024
3	Montague Exp & River Oaks Pkwy	AM	05/10/18	34.9	C	47.5	D	54.0	D	9.0	0.058
		PM	05/10/18	36.4	D	48.9	D	52.2	D	3.2	0.022
4	Seely Av & River Oaks Pkwy	AM	01/09/19	18.5	B	21.3	C	29.6	C	9.2	0.193
		PM	01/09/19	20.4	C	19.6	B	25.9	C	7.8	0.214
5	Zanker Rd & Trimble Rd *	AM	06/01/17	39.5	D	42.4	D	42.5	D	0.1	0.010
		PM	11/08/18	38.9	D	44.5	D	44.7	D	0.5	0.008
6		AM	05/10/18	25.1	C	27.2	C	28.6	C	1.9	0.041

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Intersecti on #	Signalized Intersecti on	Peak Hour	Count Date	Existing		Backgroun d		Background + Project			
				Avg. Delay (sec)	LOS	Avg. Dela y (sec)	LOS	Avg. Dela y (sec)	LO S	Incr. In Crit. Delay (sec)	Incr. In Crit. V/C
	Trimble Rd & Montague Exp *	PM	11/08/18	48.0	D	51.6	D	52.8	D	1.1	0.020
7	Seely Av & Montague Exp	AM	01/09/19	--	--	--	--	--	--	--	--
		PM	01/09/19	--	--	--	--	--	--	--	--
8	McCarthy' Bl-O'Toole & Montague Exp *	AM	05/10/18	31.8	C	34.8	C	34.7	C	0.2	0.005
		PM	11/08/18	82.3	F	109.8	F	113.3	F	5.8	0.012

Source: Hexagon, 2023

Notes:

V/C= volume to capacity ratio

* Denotes a CMP intersection.

Bold indicates a substandard LOS per the City of San José standard (LOS D).

Bold Italics indicates an adverse effect per City of San José intersection operations criteria.

Freeway Segment Analysis

Per CMP technical guidelines, freeway segment LOS analysis shall be conducted on all segments to which the project is projected to add one percent or more to the segment capacity. Since the project is not projected to add one percent to any freeway segments in the area, freeway analysis for the CMP was not required.

3.18 Tribal Cultural Resources

This section discusses the impacts on tribal cultural resources that would result from implementation of the project. The analysis is based in part on a cultural resources assessment report that was prepared by ESA in January 2023. During the public scoping process, one commenter (NAHC) requested that the project comply with SB 18 and AB 52 requirements for tribal consultation and provided recommendations for the cultural resource assessment prepared for the project.

3.18.1 Environmental Setting

3.18.1.1 Regulatory Framework

State

Assembly Bill 52

AB 52, effective July of 2015, established a new category of resources for consideration by public agencies when approving discretionary projects under CEQA, called Tribal Cultural Resources. AB 52 requires lead agencies to provide notice of projects to tribes that are traditionally and culturally affiliated with the geographic area if they have requested to be notified. Where a project may have a significant impact on a tribal cultural resource, consultation is required until the parties agree to measures to mitigate or avoid a significant effect on a tribal cultural resource or when it is concluded that mutual agreement cannot be reached. Under AB 52, TCRs are defined as follows:

- Sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe that are also either:
 - Included or determined to be eligible for inclusion in the California Register of Historic Resources,⁸⁰ or
 - Included in a local register of historical resources as defined in PRC Section 5020.1(k).
 - Resources determined by the lead agency to be TCRs.

AB 52 notification and consultation applies to projects for which a Notice of Intent or Notice of Availability is issued after the effective date of AB 52 in 2015. Notification and consultation are not required for projects covered by a prior EIR or Mitigated Negative Declaration that either predates AB 52 or that has already complied with AB 52.

⁸⁰ See Public Resources Code section 5024.1. The State Historical Resources Commission oversees the administration of the CRHR and is a nine-member state review board that is appointed by the Governor, with responsibilities for the identification, registration, and preservation of California's cultural heritage. The CRHR "shall include historical resources determined by the commission, according adopted procedures, to be significant and to meet the criteria in subdivision (c) (Public Resources Code, Section 5024.1 (a)(b)).

The Native American Heritage Commission

The NAHC was created by statute in 1976, is a nine-member body appointed by the Governor to identify and catalog cultural resources (i.e., places of special religious or social significance to Native Americans and known graves and cemeteries of Native Americans on private lands) in California. The Commission is responsible for preserving and ensuring accessibility of sacred sites and burials, the disposition of Native American human remains and burial items, maintaining an inventory of Native American sacred sites located on public lands, and reviewing current administrative and statutory protections related to these sacred sites.

Senate Bill 18

The intent of SB 18 is to aid in the protection of traditional tribal cultural places through local land use planning by requiring city governments to consult with California Native American tribes on projects which include adoption or amendment of general plans (defined in Government Code Section 65300 et seq.) and specific plans (defined in Government Code Section 65450 et seq.). SB 18 requires local governments to consult with tribes prior to making certain planning decisions and to provide notice to tribes at certain key points in the planning process.

Health and Safety Code Section 7050.5

California Health and Safety Code Section 7050.5 protects human remains by prohibiting the disinterment, disturbance, or removal of human remains from any location other than a dedicated cemetery.

Government Code Sections 6254(r) and 6254.10

These sections of the California Public Records Act were enacted to protect archaeological sites from unauthorized excavation, looting, or vandalism. Section 6254(r) explicitly authorizes public agencies to withhold information from the public relating to “Native American graves, cemeteries, and sacred places maintained by the Native American Heritage Commission.” Section 6254.10 specifically exempts from disclosure requests for “records that relate to archaeological site information and reports, maintained by, or in the possession of the Department of Parks and Recreation, the State Historical Resources Commission, the State Lands Commission, the Native American Heritage Commission, another state agency, or a local agency, including the records that the agency obtains through a consultation process between a Native American tribe and a state or local agency.”

Local

2040 General Plan

Table 3-43 contains the 2040 General Plan archeological and tribal cultural resources policies applicable to the project.

Table 3-43 Envision San José 2040 Relevant Tribal Cultural Resources Policies

Policy ER-10.1	For proposed development sites that have been identified as archaeologically or paleontologically sensitive, require investigation during the planning process in order to determine whether potentially significant archaeological or paleontological information
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	may be affected by the project and then require, if needed, that appropriate mitigation measures be incorporated into the project design.
Policy ER-10.2	Recognizing that Native American human remains may be encountered at unexpected locations, impose a requirement on all development permits and tentative subdivision maps that upon discovery during construction, development activity will cease until professional archaeological examination confirms whether the burial is human. If the remains are determined to be Native American, applicable state laws shall be enforced
Policy ER-10.3	Ensure that City, State, and Federal historic preservation laws, regulations, and codes are enforced, including laws related to archaeological and paleontological resources, to ensure the adequate protection of historic and pre-historic resources.
Action ER-10.4	The City will maintain a file of archaeological and paleontological survey reports by location to make such information retrievable for research purposes over time.

Source: City of San José, 2022

3.18.1.2 Existing Conditions

The project site is located southeast of Coyote Creek. The archaeological review concluded that the project site has a low to low-moderate potential for Native American resources within the project area, especially buried resources.

In 2017, the City 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. Early AB 52 notification was sent to Tamien Nation on January 25, 2022 in accordance with their standing AB 52 notification request. In addition, the tribal representatives for tribes known to have traditional lands and cultural places within the City were sent the NOP for the project in March 2022 in compliance with AB 52. No responses to the NOP were received.

3.18.2 Impacts and Mitigation

3.18.2.1 Thresholds of Significance

For the purposes of this analysis and in accordance with CEQA Guidelines, a project impact to tribal cultural resources would be considered significant if the project would cause a substantial adverse change in the significance of a tribal cultural resource, defined in PRC 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:

- a) Listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in PRC Section 5020.1(k), or;
- b) 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 PRC Section 5024.1. In applying the criteria set forth in subdivision(c) of PRC Section 5024.1, the lead agency shall consider the significance of the resource to a California Native America Tribe.

3.18.2.2 Project Impacts

- a) **Listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code Section 5020.1(k)**

Or

- b) **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 subdivision (c) of Public Resources Code Section 5024.1, the lead agency shall consider the significance of the resource to a California Native America Tribe.**

Tribal cultural resources consider the value of a resource to tribal cultural tradition, heritage, and identity, in order to establish potential mitigation and to recognize that California Native American tribes have expertise concerning their tribal history and practices. According to the cultural resources assessment report, no tribal cultural resources have been listed or determined eligible for listing in the California Register or a local register of historical resources.

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. 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. On January 25, 2022, the City sent an Early Notice request for interest to consult on the project. While no formal letter response was received, the project was discussed at the Tamien Nation and the City's virtual monthly meeting on March 10, 2022. At this meeting, Staff presented the project and described its location and requested feedback from Tamien Nation's Representative. The Representative indicated that the area is considered sensitive and, therefore, recommends tribal cultural training and monitoring on-site during excavation. The recommendations are consistent with **Mitigation Measures CR-2.1** through **2.4** and the standard permit conditions discussed in **Section 3.5, Cultural Resources**. The Representative also requested non-penetrating radar (ground penetrating radar) at this meeting, to determine the presence or absence of buried, unrecorded resources on the project site. As discussed in Section 3.5.1.2, Existing Conditions, an archaeological testing program and Extended Phase I testing were complete in April and August, 2023, respectively. These tests gave archaeologists clear visibility into the subsurface condition and no archaeological sites or evidence of buried archaeological resources or paleosols were observed during testing. Ground penetrating radar could be conducted over the entire surface area, whereas the subsurface testing was only a sample of the area. However, because the kinds of sediments observed by the archaeologists have a low potential to contain archaeological resources, there is a low likelihood that ground penetrating radar would identify any unrecorded resources. Therefore, ESA's professional opinion is that ground penetrating radar is not necessary as a mitigation measure or condition of approval. **Less Than Significant Impact.**

3.19 Utilities and Service Systems

This section discusses the impacts on utilities and service systems that would result from implementation of the project. This section is based in part on a Water Supply Assessment (WSA) prepared for the project by Luhdorff and Scalmanini Consulting Engineers (March 2022). A copy of this report is provided in Appendix Q.

During the public scoping period, one commenter requested that the EIR include a discussion of new utility connections required to serve the project. The recommended text was added to the EIR.

3.19.1 Environmental Setting

3.19.1.1 Regulatory Framework

State

Assembly Bill 939

California AB 939 established the California Integrated Waste Management Board (CalRecycle), which required all California counties to prepare Integrated Waste Management Plans. In addition, AB 939 required all municipalities to divert 50 percent of their waste stream by the year 2000.

Assembly Bill 341

California AB 341 sets forth the requirements of the statewide mandatory commercial recycling program for businesses that generate four or more cubic yards of commercial solid waste per week and multi-family dwellings with five or more units in California. AB 341 sets a statewide goal for 75 percent disposal reduction by the year 2020.

Assembly Bill 1826

California AB 1826 sets forth the requirements of the statewide mandatory commercial organics recycling program for businesses and multi-family dwellings with five or more units that generate two or more cubic yards of commercial solid waste per week. AB 1826 sets a statewide goal for 50 percent reduction in organic waste disposal by the year 2020.

Senate Bill 1383

SB 1383 establishes targets to achieve a 50 percent reduction in the level of the statewide disposal of organic waste from the 2014 level by 2020 and a 75 percent reduction by 2025. The bill grants CalRecycle the regulatory authority required to achieve the organic waste disposal reduction targets and establishes an additional target that at least 20 percent of currently disposed edible food is recovered for human consumption by 2025.

California Green Building Standards Code Compliance for Construction, Waste Reduction, Disposal and Recycling

In January 2017, California adopted the most recent version of the California Green Building Standards Code, which establishes mandatory green building standards for new and remodeled structures in

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California. These standards include a mandatory set of guidelines and more stringent voluntary measures for new construction projects, in order to achieve specific green building performance levels as follows:

- Reduce indoor water use by 20 percent;
- Reduce wastewater by 20 percent;
- Recycling and/or salvaging 65 percent of nonhazardous construction and demolition (“C&D”) debris, or meeting the local construction and demolition waste management ordinance, whichever is more stringent (see San José-specific CALGreen building code requirements in the local regulatory framework section below); and
- Provide readily accessible areas for recycling by occupant.

Local

San José Zero Waste Strategic Plan/ Climate Smart San José

Climate Smart San José provides a comprehensive approach to achieving sustainability through new technology and innovation. The Zero Waste Strategic Plan outlines policies to help the City foster a healthier community and achieve its Climate Smart San José goals, including 75 percent diversion of waste from the landfill by 2013 and zero waste by 2022. Climate Smart San José also includes ambitious goals for economic growth, environmental sustainability, and enhanced quality of life for San José residents and businesses.

Construction and Demolition Diversion Deposit Program

The Construction and Demolition Diversion Deposit Program (CDDD) requires projects to divert at least 50 percent of total projected project waste to be refunded the deposit. Permit holders pay this fully refundable deposit upon application for the construction permit with the City if the project is a demolition, alteration, renovation, or a certain type of tenant improvement. The minimum project valuation for a deposit is \$2,000 for an alteration-renovation residential project and \$5,000 for a non-residential project. There is no minimum valuation for a demolition project and no square footage limit for the deposit applicability. The deposit is fully refundable if construction and demolition materials were reused, donated, or recycled at a City-certified processing facility. Reuse and donation require acceptable documentation, such as photographs, estimated weight quantities, and receipts from donations centers stating materials and quantities.

Though not a requirement, the permit holder may want to consider conducting an inventory of the existing building(s), determining the material types and quantities to recover, and salvaging materials during deconstruction.

California Green Building Standards Code Compliance for Construction, Waste Reduction, Disposal and Recycling

The City requires 75 percent diversion of nonhazardous construction and demolition debris for projects that qualify under CALGreen, which is more stringent than the state requirement of 65 percent (San José Municipal Code Section 9.10.2480).

Council Policy 6-32 Green Building Policy

Council Policy 6-32 “Green Building Policy” for private sector new construction encourages building owners, architects, developers, and contractors to incorporate sustainable building goals early in the building design process. This policy establishes baseline green building standards for new private construction projects and provides a framework for the implementation of these standards. The Policy is also intended to enhance the public health, safety, and welfare of the City’s residents, workers, and visitors by encouraging design, construction, and maintenance practices that minimize the use and waste of energy, water, and other resources in the City.

2040 General Plan

Policies in the 2040 General Plan have been adopted for the purpose of avoiding or mitigating utilities and service system impacts from development projects. Policies applicable to the project are presented in **Table 3-44** below.

Table 3-44 Envision San José 2040 Relevant Utilities and Service System Policies

Policy MS-1.4	Foster awareness in San José’s business and residential communities of the economic and environmental benefits of green building practices. Encourage design and construction of environmentally responsible commercial and residential buildings that are also operated and maintained to reduce waste, conserve water, and meet other environmental objectives.
Policy MS-3.1	Require water-efficient landscaping, which conforms to the State’s Model Water Efficient Landscape Ordinance, for all new commercial, institutional, industrial, and developer-installed residential development unless for recreation needs or other area functions.
Policy MS-3.2	Promote use of green building technology or techniques that can help to reduce the depletion of the City’s potable water supply as building codes permit.
Policy MS-3.3	Promote the use of drought tolerant plants and landscaping materials for nonresidential and residential uses.
Policy MS-19.3	Expand the use of recycled water to benefit the community and the environment.
Policy MS-19.4	Require the use of recycled water wherever feasible and cost-effective to serve existing and new development.
Action 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.
Policy IN-3.3	Meet the water supply, sanitary sewer and storm drainage level of service objectives through an orderly process of ensuring that, before development occurs, there is adequate capacity. Coordinate with water and sewer providers to prioritize service needs for approved affordable housing projects.
Policy IN-3.5	Require development which will have the potential to reduce downstream LOS to lower than “D”, or development which would be served by downstream lines already operating at a LOS lower than “D”, to provide mitigation measures to improve the LOS to “D” or better, either acting independently or jointly with other developments in the same area or in coordination with the City’s Sanitary Sewer Capital Improvement Program.

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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 that define needed drainage improvements for proposed developments 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) permit.

Source: City of San José, 2022

3.19.1.2 Existing Conditions

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

- Wastewater Treatment: treatment and disposal provided by the San José/Santa Clara Water Regional Wastewater Facility (RWF); sanitary sewer lines maintained by the City
- Water Service: San José Municipal Water
- Storm Drainage: City of San José
- Solid Waste: GreenTeam of San José (Garbage & Recycling); GreenWaste Recovery (Yard Trimmings)

Existing Water Supply System

Under existing conditions, potable water on the project site is provided by six on-site groundwater wells.

Groundwater

The project site falls within the Santa Clara Subbasin, and has not been identified or projected to be in overdraft by the DWR (see Appendix Q). The project site is located within the NSJ/Alviso service area of the SJMW. SJMW system owns and operates four wells in the NSJ/Alviso service area, with a combined pumping capacity of approximately 6,000 gallons per day (gpd).⁸¹ Of these wells, two are currently permitted to be used under normal conditions to supply water within the NSJ/Alviso service area, while the other two are available for emergency use purposes.

Surface Water

Customers in the NSJ/Alviso service areas are serviced by the SJMW System that receives treated water from the San Francisco Public Utilities Commission (SFPUC). The Hetch Hetchy Watershed provides a majority of the SFPUC water supply. This water comes from snowmelt that flows down the Tuolumne River before being stored in the Hetch Hetchy Reservoir. Additional SFPUC water supply comes from

⁸¹ San José Municipal Water has three separate service areas, NSJ/Alviso, Evergreen/Edendale, and Coyote Valley. The NSJ Alviso service area is generally bounded by Coyote Creek and the San Francisco Bay to the north, the city boundaries of Mountain View, Sunnyvale, and Santa Clara to the west and south, and the City of Milpitas to the east.

watersheds in Alameda and Santa Clara Counties. Surface water from rainfall and runoff is collected in local reservoirs. Prior to use, the water is treated at the Sunol Valley Water Treatment Plant.⁸²

Recycled Water

The City operates the South Bay Water Recycling (SBWR) system and distributes recycled water generated by the San José/Santa Clara RWF. The SBWR program delivers disinfected tertiary treated wastewater through an extensive recycled water distribution system consisting of over 150 miles of pipeline. The recycled water is used for non-potable purposes such as agriculture; industrial cooling and processing; and irrigation of golf courses, parks, and schools. SBWR pipelines are present within Epic Way, adjacent to the project site, and potentially within the levee north of the site.

Wastewater/Sanitary Sewer System

The City's sanitary sewer/wastewater treatment system has two distinct components: 1) a network of sewer mains/pipes that conveys effluent from its source to the treatment plant; and 2) the water pollution control plant that treats the effluent, including a system of mains/pipes that transports a portion of the treated wastewater for non-potable uses (e.g., irrigation of landscaping, agricultural irrigation, dust suppression during construction, etc.).

Sanitary sewer lines in the project area are owned and maintained by the City. There is an existing 10-inch vitrified clay pipe (VCP) sanitary sewer main along Seely Avenue and an existing 8-inch VCP sanitary sewer main along Epic Way.

Wastewater treatment service for the project area is provided by the City through the San José-Santa Clara RWF. The RWF is located in Alviso and serves over 1,500,000 people in San José, Santa Clara, Milpitas, Campbell, Cupertino, Los Gatos, Saratoga, and Monte Sereno. The San José-Santa Clara RWF treats approximately 110 million gallons per day (mgd) of sewage during dry weather flow, and has a capacity of 167 mgd.⁸³ The City generates approximately 69.8 mgd of dry weather average flow. The treated water from the San José-Santa Clara RWF is discharged to the South San Francisco Bay or delivered to the SBWR Project for distribution to SBWR partner agencies for non-potable use. SBWR partner agencies include the City of San José, City of Milpitas, City of Santa Clara, West Valley Sanitation District, Burbank Sanitary District, Cupertino Sanitary District, Sunol Sanitary District, County Sanitation District No. 2-3, San José Water Company, Great Oaks Water Company, Santa Clara Valley Water District, and United States Bureau of Reclamation. All recycled water in the SBWR is treated to a disinfected tertiary level before being delivered to customers.⁸⁴

Existing Solid Waste Disposal System

Santa Clara County's Integrated Waste Management Plan (IWMP) was approved by CalRecycle in 1996 and was reviewed in 2004, 2007, 2011, and 2016. Each jurisdiction in the county has a diversion requirement of 50 percent for 2000 and each year thereafter. Each jurisdiction in the County has a

⁸² City of San José, Water Supply, 2022.

⁸³ City of San José, San José-Santa Clara Regional Wastewater Facility, 2022.

⁸⁴ City of San José. *Envision San José 2040 General Plan FEIR*. September 2011.

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landfill diversion requirement of 50 percent per year. According to the IWMP, the County has adequate disposal capacity beyond 2030.⁸⁵ Solid waste generated within the County is landfilled at Guadalupe Mines, Kirby Canyon, Newby Island, and Zanker Road landfills.

The closest landfill to the project site is Zanker Road Landfill located approximately 3.6 miles north of Seely Avenue. The Zanker Road landfill has a capacity of 1300,000 cubic yards and the maximum daily permitted throughput is 1,300 tons per day.⁸⁶

Existing Storm Drainage System

The project site is served by an underground storm drainage line maintained by the City via an existing 21-inch storm drain main along Seely Avenue and an existing 15-inch storm drain main along Epic Way.

Electricity and Natural Gas

SJCE is the electricity provider for residents and businesses in the City. SJCE sources electricity, and PG&E delivers it to customers using existing PG&E utility lines. SJCE buys its power from a number of suppliers. Sources of renewable and carbon-free power include California wind, solar, and geothermal; Colorado wind; and hydroelectric power from the Pacific Northwest. SJCE customers are automatically enrolled in the GreenSource program, which provides 80 percent GHG emission-free electricity. Customers can enroll in the TotalGreen program through SJCE and receive 100 percent GHG-free electricity from entirely renewable resources. It is assumed that, once operational, the project would utilize SJCE.

PG&E also furnishes natural gas for residential, commercial, industrial, and municipal uses. In 2021, natural gas facilities provided 7 percent of PG&E's electricity delivered to retail customers; nuclear plants provided 39 percent; hydroelectric operations provided 4 percent; and renewable energy facilities including solar, geothermal, and biomass provided 50 percent.⁸⁷

Total energy usage in California was estimated to be approximately 6,957 trillion Btu in the year 2020, the most recent year for which this data was available. In 2019, California was ranked second in total energy consumption in the nation, and 49th in energy consumption per capita. The breakdown by sector was approximately 21.8 percent (1,508 trillion Btu) for residential uses, 19.6 percent (1,358 trillion Btu) for commercial uses, 24.6 percent (1,701 trillion Btu) for industrial uses, and 34 percent (2,355 trillion Btu) for transportation. This energy is mainly supplied by natural gas, petroleum, nuclear electric power, and hydroelectric power.⁸⁸

⁸⁵ Santa Clara County. *Five-Year CIWMP/RAIWMP Review Report*. 2016.

⁸⁶ CalRecycle. Solid Waste Information System. Available <https://www2.calrecycle.ca.gov/SolidWaste/SiteActivity/Details/1366?siteID=3392>. Accessed December 12, 2022.

⁸⁷ PG&E, Clean energy solutions, 2021.

⁸⁸ United States Energy Information Administration (EIA), California State Profile and Energy Estimates, 2022.

3.19.2 Impacts and Mitigation

3.19.2.1 *Thresholds of Significance*

For the purposes of this analysis and in accordance with CEQA Guidelines, a project impact to utilities and service systems would be considered significant if the project would:

- a) Require or result in the relocation or construction of new or expanded water, or wastewater treatment or storm water drainage, electric power, natural gas, or telecommunications facilities, the construction or relocation of which could cause significant environmental effects;
- b) Have sufficient water supplies available to serve the project and reasonably foreseeable future development during normal, dry and multiple dry years;
- c) Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments;
- d) Generate solid waste in excess of State or local standards, or in excess of the capacity of local infrastructure, or otherwise impair the attainment of solid waste reduction goals; or
- e) Not comply with federal, state, and local management and reduction statutes and regulations related to solid waste project impacts

3.19.2.2 *Project Impacts*

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

Development of the project would incrementally increase demands on utility services. As described in **Section 2.3.5.2.**, the project includes provision of services and utilities to serve the project, including water, storm drainage, wastewater, and solid waste.

Water service to the project site would be provided by SJMW, a public entity that obtains water from a variety of groundwater and surface water sources. The project includes the installation of a domestic water supply well to support the potable water demand of the project. An 0.11 acre area would be dedicated to SJMW for the construction of the new well that would yield 1,452 AFY. The well would tie directly to the potable water distribution system transmission mains (i.e., water main) in Montague Expressway and Epic Way; no other offsite improvements would be required to facilitate these connections. The new well would be constructed, owned and operated by SJMW. Construction impacts of the proposed well are evaluated throughout this EIR. No operational impacts would occur from well operations. The new well would yield 1,452 AFY, and would therefore be more than adequate to meet the project's projected demand of 409 AFY. -

The City owns and maintains the sanitary sewer drain system in the project area. The project site would be served by an existing 10-inch VCP sanitary sewer main along Seely Avenue and an existing 8-inch VCP sanitary sewer main along Epic Way. The project proposes to construct sanitary sewer laterals that would tie into the existing sanitary sewer mains in Epic Way and Seely Avenue. The San José-Santa Clara RWF treats approximately 110 mgd of sewage during dry weather flow, and has a capacity of 167 mgd.

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The project would add an average of 0.28 mgd of sewage, which is well within the RWF's existing capacity.

The project site is served by an existing 21-inch storm drain main along Seely Avenue and an existing 15-inch storm drain main along Epic Way. The project would connect to these mains via new storm laterals. However, no expansion of the existing storm mains would be required. As described in **Section 3.10, Hydrology and Water Quality**, a stormwater control plan is proposed that would direct runoff to stormwater treatment systems prior to flowing into the City's storm drainage system. Therefore, the project would not result in the relocation or construction of new or expanded storm water facilities.

The Phase I Assessment indicated that there are six on-site supply wells at the project site. These wells would be decommissioned in conformance with the Santa Clara Valley Water Ordinance 90-1. However, the decommissioning would not require or result in the relocation or construction of new or expanded wastewater treatment, storm water drainage, electric power, natural gas, or telecommunications facilities.

As described in **Section 3.6. Energy**, the project would have a less than significant impact related to electricity use that would result primarily for building heating and cooling, lighting, cooking, and water heating. The project would incorporate a number of efficiency measures to minimize the consumption of energy, such as the project would be built to the most recent CBC standards and Title 24 energy efficiency standards (or subsequently adopted standards during the one-year construction term), and CALGreen code. In addition, as described previously the project would be required to submit a LEED, GreenPoint, or Build-It-Green checklist as part of their development permit applications in accordance with Council Policy 6-32, which promotes practices to minimize the use and waste of energy, water, and other resources in the City. Therefore, the project would not result in the relocation or construction of new or expanded energy facilities.

The provision/relocation of telecommunication facilities would be coordinated between the project applicant and telecommunication provider and no significant environmental effects are anticipated as a result of the project as the project would not result in the relocation or construction of new or expanded telecommunication facilities.

For the reasons presented above, the project is not expected to require or result in the relocation or construction of new or expanded wastewater treatment, storm water drainage, electric power, natural gas, or telecommunications facilities, the construction or relocation of which could cause significant environmental effects. **Less Than Significant Impact.**

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

The project would incrementally increase demands on utility services. Water service to the project site would be supplied by SJMW. A WSA is required for the project because it includes the development of more than 500 dwelling units and is subject to the CEQA Guidelines Section 15155. Accordingly, a Water Supply Assessment (Appendix P) was prepared for the project. The purpose of a Water Supply Assessment is to assess whether the total projected water supplies available for a project during normal, single dry, and multiple dry water years during a 20-year projection period will meet the projected water demand associated with the project. The potable water demand for the project is estimated to be 409 AFY, which represents 2 percent of the total SJMW potable water demand in 2020 and 1 percent of the projected potable water demand in 2045. The potable water demands of the project fall within the projected water supply for SJMW through 2045. However, the project's rate of residential water demand through 2030 exceeds the assumed rate of residential demand for the North San José/Alviso

service area within the City of San José 2020 Urban Water Management Plan (UWMP). Therefore, a new well would be constructed as part of the project to ensure adequate water supply is available for multiple dry years for the project's water demand. The new well would have a yield of 1,452 AFY which exceeds the projected water demand. The well would also add the SJMW's water portfolio to support the planned growth within the North San Jose/Alviso area. As per the construction schedule assumed in this EIR, the proposed well would be constructed during Phase I of construction along with the infrastructure, ahead of the townhomes and Building A. The applicant would dedicate the land to SJMW for construction of the well and would be subject to the following condition of approval to ensure timely dedication of land to SJMW.

Condition of Approval

The permittee shall dedicate the 0.11-acre parcel to the San Jose Muni Water to allow for construction of a domestic water supply well at the project site in order to ensure that the proposed well meets the water demands of the project as determined by the Water Supply Assessment. The project applicant shall dedicate the 0.11-acre parcel to SJMW for dedication prior to issuance of the first building permit, as feasible.

The new well at the project site is anticipated to be constructed by SJMW during the first phase of construction, after dedication of the well site. The well is anticipated to be operational before project occupancy, but SJMW's completion of the well may not align exactly with occupancy since the precise timing of the well construction is dependent upon logistics such as availability of well driller. However, as noted in the WSA, if the project has any phase(s) ready for occupancy before the well is operational, SJMW would provide interim water to the project phases until the well is operational. The interim supply would be temporarily available under the City's Water Supply Agreement with the City and County of San Francisco and as depicted in the SJMW's UWMP and the WSA. As stated in the WSA, SFPUC must provide 10 years of notice to interrupt the supply and seek out additional sources of water if supplies would be interrupted. Therefore, the earliest an interruption could occur would be 2034, if notice was provided during the beginning of construction in 2024. It is reasonable to assume that the proposed well would be operational by February 2027, and temporary water supply would be available until the time the well is operational.

Therefore, adequate water is available to serve the project in compliance with CEQA Guidelines Section 15155 and impacts would be less than significant. **Less Than Significant Impact.**

c) Would the project result in a determination by the wastewater treatment provider which serves or may serve the project that it has inadequate capacity to serve the project's projected demand in addition to the provider's existing commitments?

Wastewater from the City is treated at the San José-Santa Clara RWF. The RWF has the capacity to provide tertiary treatment of up to 167 mgd of wastewater but is limited to a 120 mgd dry weather effluent flow by the State and RWQCBs.⁸⁹ The design peak-period flow is 271 mgd. Based on the 2040 General Plan EIR, the City's average dry weather flow at full buildout is approximately 100.6 mgd and the City's capacity allocation is approximately 108.6 mgd, leaving the City with approximately 8 mgd of excess treatment capacity. The project would add an average of 0.28 mgd of sewage, with a peak flow contribution of 0.92 mgd. Because the project is consistent with the 2040 General Plan, this total is

⁸⁹ San José, City of San José-Santa Clara Regional Wastewater Facility, 2022.

accounted for in the anticipated 100.6 mgd citywide dry weather flow and would not require additional treatment capacity. Therefore, development of the project would have a less than significant impact on wastewater treatment capacity. **Less Than Significant Impact.**

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

The project would result in an increase in solid waste generation. According to the most recent review of the Santa Clara County's IWMP, Santa Clara County has adequate disposal capacity beyond 2025.⁹⁰ In October 2007, the San José City Council adopted a Zero Waste Resolution (No. 74077) that set a goal of 75 percent waste diversion by 2013 and zero waste (at least 90 percent waste diversion) by 2022. The City generates approximately 700,000 tons per year of solid waste that is disposed of in landfills, including 578,000 tons per year at landfills in San José. The total permitted landfill capacity of the five operating landfills in the City is approximately 5.3 million tons per year.⁹¹

The project would generate approximately 3,000 tons per year of solid waste from residential uses and 50 tons per year of solid waste from commercial uses, which calculates to about 8.5 tons of solid waste per day.⁹² The closest landfill to the project site, the Zanker Road Landfill, has a capacity of 1,300 tons of solid waste per day.⁹³ Waste generated by the project would represent less than one percent of the landfill's overall capacity. Because the closest landfill has sufficient capacity to serve the project, this impact would be less than significant. **Less Than Significant Impact.**

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

Final project design would be required to comply with all federal, state, and local statutes and regulations related to solid waste disposal, including requirements of the CDDD Program described in **Section 3.19.1.1**. Therefore, this impact would be less than significant. **Less Than Significant Impact.**

⁹⁰ Santa Clara County. Five-Year CIWMP/RAIWMP Review Report, 2016.

⁹¹ CalRecycle, Disposal Reporting System, 2023. Available: <https://calrecycle.ca.gov/lgcentral/drs/>

⁹² Based on a rate of 4 pounds/person/day for "multi-family residential" for the 1,58 proposed units at 2.91 residents per unit, and 5 pounds/1000 sq ft/day for "commercial" for the 55,000 sq ft of commercial uses from CalRecycle's Estimated Solid Waste Generation Rates. California Department of Resources Recycling and Recovery (CalRecycle), Estimated Solid Waste Generation Rates, 2022.

⁹³ CalRecycle. 2019. SWIS Facility/Site Activity Details. Available: <https://www2.calrecycle.ca.gov/SolidWaste/SiteActivity/Details/1366?siteID=3392>, Accessed December 2022.

3.20 Wildfire

This section discusses the impacts to wildfire that would result from implementation of the project. During the public scoping process, two commenters requested that the EIR consider the potential for the project to exacerbate brush fire risks along the Coyote Creek trail.

3.20.1 Environmental Setting

3.20.1.1 Regulatory Framework

State

Public Resources Code Section 4201-4204

Sections 4201 through 4204 of the California PRC direct Cal Fire to map Fire Hazard Severity Zones (FHSZ) within State Responsibility Areas, based on relevant factors such as fuels, terrain, and weather. Mitigation strategies and building code requirements to reduce wildland fire risks to buildings within SRAs are based on these zone designations.

Government Code Section 51175-51189

Sections 51175 through 51189 of the California Government Code directs Cal Fire to recommend FHSZs within Local Responsibility Areas. Local agencies are required to designate VHFHSZs in their jurisdiction within 120 days of receiving recommendations from Cal Fire, and may include additional areas not identified by Cal Fire as VHFHSZs.

California Fire Code

The 2016 California Fire Code Chapter 49 establishes the requirements for development within wildland-urban interface areas, including regulations for wildfire protection building construction, hazardous vegetation and fuel management, and defensible space maintained around buildings and structures.

Local

2040 General Plan

Policies in the 2040 General Plan have been adopted for the purpose of avoiding or mitigating wildfire impacts from development projects. Relevant policies applicable to the project are presented in **Table 3-45** below.

Table 3-45 Envision San José 2040 Relevant Wildfire Policies

Policy EC-8.1	Minimize development in very high fire hazard zone areas. Plan and construct permitted development so as to reduce exposure to fire hazards and to facilitate fire suppression efforts in the event of a wildfire.
Policy EC-8.2	Avoid actions which increase fire risk, such as increasing public access roads in very high fire hazard areas, because of the great environmental damage and economic loss associated with a large wildfire.

Policy EC-8.3	For development proposed on parcels located within a very high fire hazard severity zone or wildland-urban interface area, implement requirements for building materials and assemblies to provide a reasonable level of exterior wildfire exposure protection in accordance with City-adopted requirements in the California Building Code.
Policy EC-8.4	Require use of defensible space vegetation management best practices to protect structures at and near the urban/wildland interface.

Source: City of San José, 2022

3.20.1.2 Existing Conditions

The project site is surrounded by residential and commercial development and is not located within a Very-High FHSZ for wildland fires, as designated by the California Department of Forestry and Fire Protection (Cal Fire, Fire Hazard Severity Maps, 2007, 2008).

3.20.2 Impacts and Mitigation

3.20.2.1 Thresholds of Significance

For the purposes of this analysis and in accordance with CEQA Guidelines, a project impact to wildfire would be considered significant if the project would:

- a) If located in or near state responsibility areas or lands classified as very high fire hazard severity zones, substantially impair an adopted emergency response plan or emergency evacuation plan;
- b) If located in or near state responsibility areas or lands classified as very high fire hazard severity zones, would the project due to slope, prevailing winds, and other factors, exacerbate wildfire risks, and thereby expose project occupants to, pollutant concentrations from a wildfire or the uncontrolled spread of a wildfire;
- c) If located in or near state responsibility areas or lands classified as very high fire hazard severity zones, would the project require the installation or maintenance of associated infrastructure (such as roads, fuel breaks, emergency water sources, power lines or other utilities) that may exacerbate fire risk or that may result in temporary or ongoing impacts to the environment; or
- d) If located in or near state responsibility areas or lands classified as very high fire hazard severity zones, would the project expose people or structures to significant risks, including downslope or downstream flooding or landslides, as a result of runoff, post-fire slope instability, or drainage changes

3.20.2.2 Project Impacts

- a) **If located in or near state responsibility areas or lands classified as very high fire hazard severity zones, would the project substantially impair an adopted emergency response plan or emergency evacuation plan?**

The project would not substantially impair an adopted emergency response plan or emergency evacuation plan. The project site is not located within an area of moderate, high, or very high Fire Hazard Severity for the Local Responsibility Area nor does it contain any areas of moderate, high, or very high Fire Hazard Severity for the State Responsibility Area. As stated above in **Section 3.9. Hazards and**

Hazardous Materials, the project would not create any barriers to emergency or other vehicle movement in the area and final design would incorporate all Fire Code requirements. **No Impact.**

b) If located in or near state responsibility areas or lands classified as very high fire hazard severity zones, would the project due to slope, prevailing winds, and other factors, exacerbate wildfire risks, and thereby expose project occupants to, pollutant concentrations from a wildfire or the uncontrolled spread of a wildfire?

The project would not exacerbate wildfire risks due to slope, prevailing winds, and other factors due to the project's urbanized location away from natural areas susceptible to wildfire. The project site is not located within an area of moderate, high, or very high Fire Hazard Severity for the Local Responsibility Area nor does it contain any areas of moderate, high, or very high Fire Hazard Severity for the State Responsibility a. **No Impact.**

c) If located in or near state responsibility areas or lands classified as very high fire hazard severity zones, would the project require the installation or maintenance of associated infrastructure (such as roads, fuel breaks, emergency water sources, power lines or other utilities) that may exacerbate fire risk or that may result in temporary or ongoing impacts to the environment?

Due to the project's urbanized location and lack of interface with any natural areas susceptible to wildfire, the project would not require the installation or maintenance of associated fire suppression or related infrastructure. **No Impact.**

d) If located in or near state responsibility areas or lands classified as very high fire hazard severity zones, would the project expose people or structures to significant risks, including downslope or downstream flooding or landslides, as a result of runoff, post-fire slope instability, or drainage changes?

See above discussion. The project would not expose people or structures to significant wildfire risks given its highly urban location away from natural areas susceptible to wildfire. **No Impact.**

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4 CUMULATIVE IMPACTS

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 Guidelines 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 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. 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. The analysis must then 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 discussion for each environmental issue addresses two aspects of cumulative impacts: 1) would the effects of all the pending development listed result in a cumulatively significant impact on the resources in question; and if that cumulative impact is likely to be significant, and 2) would the contribution to that impact from the project make a cumulatively considerable contribution to those cumulative impacts.

Section 15130(B) of the CEQA Guidelines states that lead agencies should define the geographic scope of the area affected by the cumulative effect. The project would primarily contribute to the cumulative effects of development in the area surrounding the project site, except where otherwise indicated.

Table 4-1 identifies the projects in the project vicinity that are evaluated in the cumulative analysis. These projects are located within the North Planning Area of the City of San José and the City of Milpitas. These consist of projects in the vicinity of the project that are pending City approval, that are approved but not constructed, and that are under construction.

For each environmental issue, cumulative impacts may occur within different geographic areas, as identified in the cumulative evaluation for each issue. For example, the project effects on air quality would combine with the effects of projects in the larger air basin, while noise impacts would be limited to the immediate project area.

Table 4-1 Cumulative Projects List

Project Name	Location	Distance from Project (miles)	Description
Pending City Approval			
Pulte Homes	1355 California Circle, Milpitas	3.3 miles	Construction on a 6.69-acre lot of five buildings with seven units per building of three-storied townhomes. Construction of Eight buildings with twelve units per building of four-storied

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Project Name	Location	Distance from Project (miles)	Description
			condo/flats. Construction of a six storied apartment complex with 75 residential units.
Milpitas Metro Specific Plan	Southeastern portion of Milpitas, just north of San José.	1.07 miles	The Metro Plan will replace the 2008 TASP in its entirety. The Metro Plan aims to update the original TASP vision and complete existing and emerging neighborhoods by expanding access to neighborhood services and retail, creating new opportunities for business and jobs near transit and housing, providing additional affordable and market-rate housing, enhancing multimodal connections and non-vehicular mobility throughout the area, providing a greater variety of shared public spaces, and strengthening the identity and sense of place of the Metro Plan Area.
Approved but not Constructed			
Coleman Highline (PD22-004)	1185 Coleman Avenue, San José	3.0 miles	Construction of a 291,766-square-foot, five-story office building (Building 5), an approximately 12,000-square-foot, two-story amenity building (Amenity 3) and an approximately 3,050-square-foot utility enclosure on a 4.49-gross acre site
Bay 101 Hotel (PDA13-049-03)	1770 North First Street, San José	1.9 miles	Demolition of an existing building and construction of 68,652 sf cardroom with 24-hour use drinking establishment/banquet facility, construction of a nine-story 234,192 sf office building, and construction of 151,870 sf hotel with 174 rooms w/ banquet facility
Bay 101 Technology Place office (Phase II) (PD15-062)	1740 North First Street, San José	1.9 miles	Demolition of an existing building and construction of relocated 68,652 sf cardroom with 24-hour use/drinking establishment/banquet facility, construction of a nine-story 234,192 sf office building, and construction of 151,870 sf hotel with 174 rooms w/ banquet facility
Cloud 10 Skyport Plaza (PD18-039)	1601 Technology Drive, San José	2.3 miles	Construction of a nine-story and one-story industrial office buildings for a total of approximately 350,000 square feet of buildings area, a five-story parking garage, the installation of an on-site standby generator, and the removal of seven ordinance size trees on an approximately 5.29-gross acre site
The Station on North First (H14-029)	2890 North First Street, San José	0.7 mile	Demolition of 8 existing industrial buildings totaling 364,854 sf and construction of up to 1,653,761 sf industrial office and commercial support on 24.3 gross acres

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Project Name	Location	Distance from Project (miles)	Description
Broadcom expansion/Innovation Place (H15-037)	3130, 3120, 3110, and 3100 Zanker Road, San José	0.5 mile	Removal of up to 110 ordinance size trees, façade improvements to two of the four existing office/R&D buildings, and the construction of 536,949 square feet of new office/R&D uses and other permitted use of the IP Industrial Park Zoning District, two parking garages, and related site improvements at an existing office/R&D facility on a 25.53-gross acre site
Brokaw Road Office-Parcel III (HA13-040-03)	90 East Brokaw Road, San José	1.6 miles	Construction of 1,297,000 square feet of office space (5 buildings) and associated parking and amenities
Tribute Hotel	1851 South McCarthy Blvd, Milpitas	0.14 mile	Demolition of an existing office building; and removal of 36 protected trees, and the construction of a five-story hotel, up to 75 feet in height, with a one-story parking garage, a FAR of up to 1.1, located on a 2.71-acre lot in the HS (Highway Services) Zoning District.
Milpitas Stratford School Development Project	455 E Calaveras Blvd, Milpitas	2.5 miles	Project will renovate an existing 44,088-square foot vacant building and construct 12 preschool/prekindergarten classrooms, four kindergarten classrooms, and four first and second grade elementary school classrooms with a total of 480 students and 56 staff.
New Multi-Family Affordable Housing Development	308 Sango Court, Milpitas	1.35 miles	Demolition of existing building and associated improvements on the project site, and the construction of a five-story apartment building with 85 residential units over one-level, podium, on-grade parking.
1724 Sunnyhills Court	1724 Sunnyhills Court, Milpitas	3.8 miles	Demolition of an existing leasing/community building within the existing Sunnyhills Apartment complex and construction of 44 two- to three-story multi-family residential units, a new leasing building, the addition of 87 parking spaces, and associated site improvements including a new driveway.
Under Construction			
Hilton Garden Inn (H17-044)	111 East Gish Road, San José	2.4 miles	Demolition of an approximately 56,640 square foot existing 2-story office building and to allow the construction of an approximately 96,260 square foot, 5-story 150-room hotel with approximately 160 at grade parking stalls, removal of 16 non-ordinance sized trees, 7 ordinance-sized trees, the, and site improvements on a 2.2 gross acre site

Project Name	Location	Distance from Project (miles)	Description
Agnews School Campus	3500 Zanker Road, San José	1.2 miles	Development of a 600 student elementary school, 1,000 student middle school, and 1,600 student high school on a 55-acre site

Notes: sf=square feet
 Source: County of Santa Clara, 2023

4.1 Cumulative Project Impacts

Project impacts were analyzed alongside anticipated impacts from nearby projects included in **Table 4-1** to determine whether the project would make a substantial contribution to a cumulatively significant impact. A discussion of cumulative impacts related to each resource area is provided below.

4.1.1 Aesthetics

The geographic context for cumulative impacts related to aesthetics is the surrounding area and the viewshed most likely visible from the project area. The projects listed in **Table 4-1** are not within viewshed of the project area and would not combine with the project to create a cumulative aesthetic impact given the distance between the projects. As discussed in **Section 3.1, Aesthetics**, the project would not have a substantial adverse effect on a scenic vista, is not located near a state scenic highway, would be consistent with applicable zoning and other regulations governing scenic quality, and would not create a new source of substantial light or glare. Given that the project is an infill project surrounded by urban development, the project would be aesthetically consistent with reasonably foreseeable future development and vice versa. Therefore, cumulative impacts related to aesthetics would be less than significant.

4.1.2 Agricultural Farmland and Forestland

The geographic context for cumulative impacts related to agricultural farmland and forestland is the City. A cumulative agricultural farmland and/or forestland impact would occur if the project combined with other current or reasonably foreseeable projects to convert Important Farmland or forestland to other uses. As described in **3.2, Agricultural and Forestry Resources**, no such lands exist on or near the project site. Therefore, no cumulative impact would occur.

4.1.3 Air Quality

The geographic scope for air quality is the San Francisco Bay Area Air Basin, which is designated as nonattainment for PM₁₀ and PM_{2.5} at the State level. Air quality impacts tend to be cumulative in nature. If the project does not exceed thresholds and is determined to have less-than-significant project-specific impacts, it may still contribute to a significant cumulative impact on air quality if the emissions from the project components, in combination with the emissions from other proposed or reasonably foreseeable future projects, are in excess of established thresholds. However, the project would only be considered to have a significant cumulative impact if its contribution accounts for a significant proportion of the cumulative total emissions (i.e., it represents a “cumulatively considerable contribution” to the cumulative air quality impact). The emissions of all criteria pollutants from the project’s construction

would be below the significance levels. Construction would be short term and temporary in nature, and activities would be considered typical of a mixed-use project. Once construction is completed, construction-related emissions would cease. The project was found to have a significant impact from operational ROG emissions prior to mitigation. With **MM AQ-1**, the impact would be reduced to a less than significant level. As stated in the BAAQMD CEQA Air Quality Guidelines, air pollution by its nature is largely a cumulative impact. No single project is sufficient in size to, by itself, result in nonattainment of ambient air quality standards. Instead, a project's individual emissions contribute to existing cumulatively significant adverse air quality impacts. If a project's contribution to the cumulative impact is considerable, then the project's impact on air quality is considered significant. In this case, because the project would not exceed the identified significance thresholds, its emissions would not be cumulatively considerable, therefore, the cumulative impact would be less than significant.

The project would contribute to significant cumulative increases in community risk impacts for sensitive receptors affected by construction, which represents a potentially significant impact. **Mitigation Measures AQ-2 and AQ-3** would reduce on-site diesel exhaust emissions from construction equipment and ensure that the project's construction single-source and cumulative-source risks would not exceed the significance thresholds. Therefore, there would be no significant cumulative health risk impact with mitigation incorporated. **Less Than Significant Impact with Mitigation Incorporated.**

4.1.4 Biological Resources

The geographic area for cumulative impacts related to biological resources is the City. In the absence of mitigation, the project would result in significant impacts to nesting raptors, bats, and other migratory bird species during construction. With implementation of identified standard permit conditions and **MM BIO-1** and **BIO-2**, this impact would be less than significant. Because similar mitigation measures would be required for all cumulative projects with the potential to impact nesting birds, bats, and migratory bird species, the project would not combine with other projects to result in significant cumulative impacts related to biological resources. As a result, cumulative impacts associated with the project related to biological resources would be **Less than Significant with Mitigation Incorporated.**

4.1.5 Cultural Resources

The geographic area for archaeological resources is the project area and cumulative project sites, and the geographic area for historic resources is the City. The project would result in significant impacts to historic cultural resources. Specifically, as discussed in this EIR, the project would result in the removal of buildings, structures, and site features that are collectively and individually eligible for listing in the CRHR and listing in the San José Historic Resources Inventory as a Candidate City Landmark District and a Candidate City Landmark, which would represent a significant impact. **MM CR-1.1** through **MM CR-1.6** are presented in this EIR to fully document the existing site structures and features prior to demolition and offer the opportunity to relocate the buildings to lessen the impact. However, this impact would remain significant and unavoidable, despite mitigation.

The loss of the contributing buildings, structures, and elements associated with late nineteenth and early twentieth-century agricultural history and events associated with Japanese American agriculture would represent a significant and unavoidable cumulative impact on regional agricultural history and the Japanese American history of the Santa Clara Valley. In addition, there are no feasible mitigation measures that would preserve the farmland. Thus, the project's contribution would remain cumulatively considerable, significant, and unavoidable. **Significant and Unavoidable.**

The project would also result in potentially significant impacts to archaeological resources. Mitigation is identified to reduce the project impacts to cultural resources to less than significant. Specific mitigation measures and standard permit conditions are identified in this EIR to protect archaeological artifacts, if encountered during project construction (see **MM CR-2.1** through **MM CR-2.4**). Similar mitigation measures are required for all projects on the cumulative projects list with the potential to impact archaeological resources; as a result, cumulative impacts associated with the project related to archaeological resources would be **Less than Significant with Mitigation Incorporated**.

4.1.6 Energy

The geographic area for cumulative impacts related to energy is the City. As discussed in **Section 3.6, Energy**, the project would have no impact with regard to the wasteful, inefficient, or unnecessary consumption of energy resources during construction or operation. The project would also be consistent with state and local plans for renewable energy and energy efficiency. Cumulative projects would result in an increased demand for electricity, natural gas, and petroleum. However, each project applicant would have to comply with Title 24 and City's Reach Code, that would decrease the consumption of electricity, natural gas, and petroleum. The project contains energy-efficiency design features, would comply with applicable regulatory standards for the enhancement of energy efficiency, and would not conflict with or obstruct a state or local plan for renewable energy or energy efficiency. Thus, the project would not contribute to a cumulative impact to the wasteful or inefficient use of energy and would not contribute to a cumulative energy impact.

4.1.7 Geology and Soils

The geographic area for cumulative impacts would be addressed on a project-by-project basis, as potential geologic hazards and soil composition vary by site. Geologic conditions with the San Francisco Bay Area can vary widely, even among short distances. Therefore, seismic hazards related to past, current, and reasonably foreseeable development are heavily influenced by site-specific features such as soil composition and slope, and do not have the potential to combine to form cumulative impacts.

Due to the seismically active nature of the region, the recent and reasonably foreseeable development near the project site, including the project itself, must conform to General Plan policies and building codes for the relevant jurisdiction that ensure adequate performance during a seismic event. Incorporation of these design requirements would reduce cumulative hazards related to regional seismic events to a less-than-significant level.

4.1.8 Greenhouse Gas Emissions

The geographic scope for cumulative impacts related to greenhouse gas emissions is the San Francisco Bay Area Air Basin. As discussed in **Section 3.8, Greenhouse Gas Emissions**, impacts from GHG emissions are cumulative in nature, resulting from local, regional and global GHG emission contributions. Analysis of GHG impacts therefore relies on regional thresholds, which are established by BAAQMD for the Bay Area. Because the project would not exceed the relevant thresholds for construction or operation, nor would it conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing the emissions of GHGs, the project would not make a substantial contribution to a significant cumulative GHG impact.

4.1.9 Hazards and Hazardous Materials

The geographic context for cumulative hazards and hazardous materials impacts includes a 2-mile buffer around the project site to account for potential cumulative impacts to airport land use plans. Grading and construction of the project could potentially expose construction workers and the public to soil contaminants on the project site. Specific mitigation and standard permit conditions are identified in this EIR to avoid hazardous materials contamination that exceeds regulatory thresholds (see **MM HAZ-1**, **MM HAZ-2**, and **MM HAZ-3**). Additionally, issues related to hazardous materials contamination are typically localized or site-specific. Cumulative development would be subject to site-specific hazards and/or hazardous materials constraints, pursuant to the City's building requirements. As a result, cumulative impacts associated with the project related to hazards and hazardous materials would be **Less than Significant with Mitigation Incorporated**.

4.1.10 Hydrology and Water Quality

The geographic context for cumulative hydrology and water quality impacts includes the Guadalupe River Watershed and the Coyote Creek Watershed, because the project site is located near the border between the two watersheds. The project and cumulative projects would result in an increase of impervious surfaces in the area. More specifically, other large development projects nearby would result in conversion of large pervious areas to impervious areas. This would potentially result in increased surface runoff, alteration of the regional drainage pattern, and flooding. The discharge of stormwater runoff from new development in California is highly regulated by local, State, and federal laws specifically to ensure that they do not result in the gradual degradation of water quality (refer to **Section 3.10.1.1** for a full discussion of these regulations). Like the project, each individual project applicant would be required to hydrologically engineer the respective cumulative project sites to ensure that post-development surface runoff flows can be accommodated by the regional drainage system. The 2040 General Plan also includes policies that specifically reinforce these regulations, as shown in **Table 3-24**. Point sources of pollution are required to be identified and controlled in order to protect adopted beneficial uses of water. Implementation of these policies occur as part of the development review and construction permitting process. For these reasons, the project would not combine with other past, present, and reasonably-foreseeable future projects to cause a significant cumulative impact. **Less than Significant**.

4.1.11 Land Use and Planning

The geographic context for cumulative land use and planning impacts is the North San José Planning Area, as defined in the 2040 General Plan. As discussed in **Section 3.11, Land Use and Planning**, the project would be consistent with the existing 2040 General Plan TERO overlay and would require a conforming rezoning to PD – Planned Development. With this rezoning, the project would be consistent with local planning in North San José. Because current and reasonably foreseeable future projects would also be consistent with the 2040 General Plan and zoning code, the combined development of these projects would have a less than significant land use impact. **Less Than Significant Impact**.

4.1.12 Mineral Resources

As discussed in **Section 3.12, Mineral Resources**, the project would have no impact on mineral resources, because the project site is located over 7 miles from the nearest location containing mineral

deposits. Therefore, the project would not combine with other past, current, and reasonably foreseeable projects to create a cumulative impact on mineral resources. **No Impact.**

4.1.13 Noise and Vibration

The geographic context for cumulative noise impacts includes an approximately 1,000-foot buffer around the project site. Beyond 1,000 feet, the contributions of noise from other projects would be greatly attenuated by both distance and intervening structures, and their contribution would be expected to be minimal. The closest project from the project site is the planned Tribute Hotel Project, located across Coyote Creek at 1851 McCarthy Boulevard, approximately 1,000 feet away (**Table 4-1**). The project would result in significant impacts related to noise and vibration in the absence of mitigation. Construction of the project would result in potentially significant, short-term noise impacts. **MM NSE-1** identifies construction noise abatement measures to minimize construction noise impacts. According to Milpitas City Council Resolution No. 21-020, similar mitigation measures were put in place for the Tribute Hotel Project, requiring that the contractor equip construction equipment with mufflers, place noise-emitting equipment so that noise is directed away from sensitive receptors, and locating staging areas to maintain the greatest possible distance from sensitive receptors (City of Milpitas, 2021). Given that noise impacts from both projects would be mitigated to a less-than-significant level, cumulative impacts would be **Less than Significant with Mitigation Incorporated.**

4.1.14 Population and Housing

The geographic context for cumulative population and housing impacts is the North San José Planning Area. As discussed in **Section 3.14, Population and Housing**, the project site falls within the City's TERO residential overlay within North San José. Because the project would be consistent with this overlay, the growth associated with the project is accounted for in the 2040 General Plan EIR as updated and amended. Other current and reasonably foreseeable projects in North San José would also be consistent with the TERO residential overlay, which is enforced during the City's standard design review process. Therefore, these projects would not combine to create a cumulative population and housing impact related to unplanned growth or the displacement of substantial numbers of people or housing. **No Impact.**

4.1.15 Public Services

The geographic context for cumulative public services impacts is the North San José Planning Area. As discussed in **Section 3.15, Public Services**, the 2040 General Plan EIR concluded that buildout of planned growth could require new or expanded police, fire, school, and/or park facilities to serve planned growth. Because the project is consistent with the 2040 General Plan, the project would not contribute to a new cumulative impact beyond that already identified in the 2040 General Plan EIR. Furthermore, the project would comply with all required in lieu and fair-share impact fees to fund necessary improvements to shared facilities. Therefore, there would be no new cumulative impact related to Public Services. **No Impact.**

4.1.16 Recreation

The geographic context for cumulative recreation impacts is the North San José Planning Area. As discussed in **Section 3.16, Recreation**, the project would include the construction of a new 2.5-acre City-owned public park, which would obviate the need to expand or create new other new parks to serve the

project. Furthermore, other projects in North San José would be required to comply with the City's PDO and PIO, which require residential developers to dedicate public park land and/or pay in lieu fees to compensate for the increase in demand for neighborhood parks. Therefore, the cumulative impact of these projects would be less than significant. **Less than Significant Impact.**

4.1.17 Transportation

The geographic area for VMT is the City. As discussed in **Section 3.17, Transportation**, the project would generate 11.19 VMT per capita, which would exceed the City's threshold of 10.12 VMT per capita, and would therefore represent a significant impact. Implementation of **MM TR-1.1** and **MM TR-1.2** would reduce per capita VMT to 10.11, resulting in a less than significant project-level impact with mitigation. It is expected that VMT analyses fully analyzing project-specific impacts within their respective study areas would be prepared for all cumulative projects consistent with City Guidelines. These reports would be expected to provide an analysis on VMT impacts and include project specific mitigation measures necessary to address any potentially significant impacts. Furthermore, all cumulative projects would be required to comply with applicable City regulations related to transportation and circulation, as the project does. Therefore, cumulative impacts to transportation as a result of the project along with other cumulative project would be less than significant with mitigation. **Less than Significant with Mitigation.**

4.1.18 Tribal Cultural Resources

The geographic area for tribal cultural resources is comprised of the project area and cumulative project sites. Impacts to tribal cultural resources are generally site specific and do not cumulate. No known tribal cultural resources were identified on the project site. While construction activities could unearth previously undiscovered resources, implementation of **MM CR-2.1** through **MM CR-2.4**, and the standard permit conditions discussed in **Section 3.5, Cultural Resources**, would ensure their proper identification and treatment of such resources. Therefore, the project would not result in a considerable contribution to a cumulative impact to cultural resources and no additional mitigation would be required. **Less than Significant with Mitigation.**

4.1.19 Utilities and Service Systems

The geographic context for cumulative utilities and service system impacts is the North San José Planning Area.

4.1.19.1 Water Supply

The geographic context for water supply is the SJMW service area. As discussed in **Section 3.19, Utilities and Service Systems**, SJMW has sufficient existing and planned potable water supplies to serve the project and the rest of their service area during normal, dry, and multiple dry years through 2045. However, the project's rate of residential water demand increase through 2030 exceeds the assumed rate of residential demand increase for the North San José/Alviso service area within the City's UWMP. Therefore, as part of the project, a new domestic water well would be constructed for SJMW that would yield approximately 1,452 additional AFY, or 3.5 times the project demand. Cumulative projects may be subject to project specific WSAs if warranted and would be required to implement any project specific measures.

As discussed in the WSA (Appendix Q), the Santa Clara subbasin has not been identified or projected to be in overdraft by the California Department of Water Resources. Groundwater within the subbasin is managed by Valley Water using in-lieu recharge programs that maintain adequate storage to meet annual water supply needs and provide a buffer against drought or other shortages. Because SJMW would own and operate the new well in compliance with all Valley Water groundwater management requirements, the additional use of groundwater would not impede sustainable groundwater management of the subbasin. Therefore, SJMW would have sufficient water supplies available to serve the project and reasonably foreseeable future development through normal, dry, and multiple dry years. **Less Than Significant Impact.**

4.1.19.2 Wastewater

The geographic context for wastewater is the service area of San José-Santa Clara RWF provides services in San José, Santa Clara, Milpitas, Campbell, Cupertino, Los Gatos, Saratoga, and Monte Sereno. As discussed in **Section 3.19, Utilities and Service Systems**, the project would contribute a maximum of 0.92 mgd to the City's RWF wastewater treatment facility. Because the project is consistent with the 2040 General Plan EIR, this is accounted for in the anticipated citywide dry weather flow of approximately 100.6 mgd, which the RWF has adequate capacity to serve. Because current and reasonably foreseeable future development in North San José would also be consistent with the 2040 General Plan, cumulative impacts to wastewater capacity would be less than significant. **Less Than Significant Impact.**

4.1.19.3 Stormwater

The geographic context for stormwater is the City and adjacent cities, including Milpitas, that feed into the same storm drainage system. As discussed in **Section 3.10, Hydrology and Water Quality**, the project would include construction of new stormwater infrastructure including inlets and stormwater laterals that would connect to the City's existing storm drainage system within Epic Way and Seely Avenue. No new offsite improvements would be required. All current and reasonably foreseeable future projects in San José would be required to design storm pipes with capacity to convey a 10-year storm event under full flow conditions. Furthermore, the 2040 General Plan EIR concluded that there would be a less-than-significant impact related to stormwater infrastructure with adherence to all relevant flooding hazard, infrastructure, and storm drainage policies and actions established by the 2040 General Plan. Additionally, the project would also comply with the storm drain design criteria set forth by the City of Milpitas and the Santa Clara County Drainage Manual. Because the project and all current and reasonably foreseeable future development in San José and adjacent cities, including Milpitas, would be consistent with the 2040 General Plan, the storm drain design standards in neighboring cities, and the Santa Clara County Drainage Manual, there would be a less than significant cumulative impact on stormwater infrastructure. **Less than Significant Impact.**

4.1.19.4 Solid Waste

The geographic context for solid waste is the service area for the Zanker Road Landfill which is the closest landfill to the project site. As discussed in **Section 3.19, Utilities and Service Systems**, the project would comply with all local, state, and federal regulation regarding solid waste. These regulations include the City's Zero Waste Resolution (No. 74077) and the CDDD Program described in Section 4.19.1.1. Furthermore, waste generated by the project would represent less than one percent of the

Zanker Road Landfill's capacity. Therefore, the project would not make a substantial contribution to a cumulative solid waste capacity impact. **Less than Significant Impact.**

4.1.20 Wildfire

As discussed in **Section 3.20, Wildfire**, the project site is not located in a moderate, high, or very high FHSZ. Therefore, the project would not contribute to cumulative wildfire impacts in the City. **No Impact.**

5 GROWTH-INDUCING IMPACTS

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

Section 15126.2(e) of the California Environmental Quality Act (CEQA) Guidelines mandates that the growth inducing nature of a project be discussed. This CEQA Guideline states the growth-inducing analysis is intended to address the potential for a project to “foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment.” For the purposes of this project, a growth-inducing impact is considered significant if the project would:

- Cumulatively exceed official regional or local population projections;
- Directly induce substantial growth or concentration of population. The determination of significance shall consider the following factors: the degree to which the project would cause growth (i.e., new housing or employment generators) or accelerate development in an undeveloped area that exceeds planned levels in local land use plans; or
- Indirectly induce substantial growth or concentration of population (i.e., introduction of an unplanned infrastructure project or expansion of a critical public facility (road or sewer line) necessitated by new development, either of which could result in the potential for new development not accounted for in local general plans.

Pursuant to CEQA Guidelines Section 15126.2(e), it must not be assumed that growth in any area is necessarily beneficial, detrimental, or of little significance to the environment.

As discussed in **Section 3.14, Population and Housing**, development of the project site would introduce 1,472 residential units, 18,965 square feet of general neighborhood retail space which would introduce new residents and employees or relocate residents and employees within the area. As discussed in Section 3.11, Land Use and Planning, this growth would be consistent with the existing TERO overlay, and was accounted for in the 2040 General Plan. Growth associated with the project would therefore not be considered “unplanned”. Construction of the project would generate an economic stimulus from activities such as the use of building materials, employment of construction workers, and the introduction of new or relocated consumer demand in the area. However, construction is temporary and therefore, the majority of the construction workforce is anticipated to be from the local labor pool and would not result in indirect growth inducement.

Indirect growth can occur from additional infrastructure improvements that would allow for additional unplanned growth in the area. The proposed well would yield 1,452 AFY which exceeds the project demand and therefore could be potentially considered growth inducing due to additional water available. However, the well is intended to serve future planned growth in North San José pursuant to the 2040 General Plan. Furthermore, the proposed well is part of the SJMW’s water portfolio to accommodate planned growth in the North San Jose/Alviso area. The UWMP noted that undeveloped sites in the North San Jose/Alviso area would require wells to support the planned growth. The surplus water is also needed to mitigate the unpredictability of SFPUC supply in multiple dry years. Therefore, while the well would facilitate new growth, this growth is not above and beyond what is planned for in the 2040 General Plan.

6 SIGNIFICANT AND IRREVERSIBLE ENVIRONMENTAL CHANGES

CEQA Guidelines require that an EIR address “significant irreversible environmental changes which would be involved in the project, should it be implemented.” [Section 15126(d)]

If the project is implemented, development on-site would involve the use of nonrenewable resources both during the construction phase and future operations/use of the project site. Construction would include the use of building materials, including materials such as petroleum-based products and metals that could not reasonably be re-created. Construction also involves significant consumption of energy, typically petroleum-based fuels, that deplete supplies of nonrenewable resources. After the project is constructed, residential occupants would use nonrenewable fuels to heat and light the buildings. The project would also result in the increased consumption of water and generate new demand for wastewater treatment and solid waste disposal.

The City encourages the use of building materials that include recycled materials and requires new development to meet minimum green building design standards (2040 General Plan Policy MS-1.4; refer to **Section 3.19, Utilities and Service Systems** for further discussion). The project would be built to current standards of the CALGreen Building Code Title 24, which require insulation and design to minimize wasteful energy consumption (refer to **Section 3.6, Energy** for further discussion). In addition, the project site is an infill location currently served by public transportation, as well as limited bicycle and pedestrian facilities.

The project would result in the irreversible conversion of the project site from agricultural use to mixed-use development. The farmland on the project site is mapped as “Farmland of Local Importance” on the 2018 important farmland map.⁹⁴ However, the project site does not contain land mapped as Prime Farmland, Unique Farmland, or Farmland of Statewide Importance. While this would result in an irreversible environmental change, the conversion of the project site from agricultural land use to a mixed-use development land use would not result in a significant impact under CEQA, as described in **Section 3.2 Agricultural and Forestry Resources**.

Finally, construction of the project would require the demolition or removal of existing buildings and structures that may contribute to the project site’s eligibility for list on the CRHR, as well as the “Sakauye House” which appears to be individually eligible for listing (refer to **Section 3.5, Cultural Resources** for a full discussion of these resources). Demolition of these potentially historic resources would represent an irreversible environmental change.

⁹⁴ CA Dept of Conservation. 2018 Important Farmland Map – Santa Clara County. Available at: <https://filerequest.conservation.ca.gov/RequestFile/2834917>

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7 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 it is proposed. The following significant unavoidable impact has been identified for the project, despite the implementation of all feasible mitigation measures:

- **Cultural Resources:** The project would require demolition of all existing buildings and structures on the project site, including those determined to contribute to the eligibility of the potential historic district. These include structures that appear to be eligible for listing on the CRHR as a historic district under Criterion 1 (association with Japanese farming in the Santa Clara Valley during a period of significance from 1907 and 1941 and association with early twentieth century agriculture in the Santa Clara Valley during a period of significance from 1900 and 1940) and Criterion 2 (association with Eiichi “Ed” Sakauye, a noted community leader and person of historical significance). In addition, the “Sakauye House” appears individually eligible for listing on the CRHR under Criterion 3 for its association with Spanish Colonial Revival architecture with a period of significance of circa 1920. Because the removal of these structures cannot be avoided, the project would have a significant and unavoidable impact on historical resources.

All other significant impacts of the project would be reduced to a less-than-significant level with the implementation of mitigation measures identified in this EIR.

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8 ALTERNATIVES

CEQA Guidelines Section 15126.6 requires the consideration of a range of reasonable alternatives to the project that could feasibly attain most of the basic objectives of the project.

The range of alternatives required in an EIR is governed by a “rule of reason” that considers only those alternatives necessary to permit a reasoned choice. The alternatives are limited to those that would avoid or substantially lessen the significant environmental effects of the project

8.1 Requirements for the Consideration of Alternatives

The Guidelines further require that the discussion focus on alternatives capable of eliminating significant adverse impacts of the project or reducing them to a less-than-significant level. In addition to mandating consideration of the no project alternative, CEQA Guidelines (Section 15126.6(e)) emphasize the selection of a reasonable range of feasible alternatives and adequate assessment, which allows decision-makers to use a comparative analysis. CEQA Guidelines (Section 15126.6(a)) states:

An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. An EIR need not consider every conceivable alternative to a project. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decision making and public participation. An EIR is not required to consider alternatives which are infeasible. The lead agency is responsible for selecting a range of project alternatives for examination and must publicly disclose its reasoning for selecting those alternatives. There is no ironclad rule governing the nature or scope of the alternatives to be discussed other than the rule of reason. (Citizens of Goleta Valley v. Board of Supervisors (1990) 52 Cal.3d 553 and Laurel Heights Improvement Association v. Regents of the University of California (1988) 47 Cal.3d 376).

In accordance with CEQA Guidelines 15126.6, this EIR contains a comparative impact assessment of alternatives to the project. The primary purpose of this assessment is to provide decision makers and the public with a reasonable number of feasible project alternatives that could attain most of the basic project objectives while avoiding or reducing any of the project’s significant adverse environmental effects. The Lead Agency may make an initial determination of which alternatives are feasible and merit in-depth consideration, and which are infeasible (see CEQA Guidelines Section 15126.6(f)(3)). Alternatives may be rejected from detailed consideration in the EIR if they fail to meet project objectives, are infeasible, or do not avoid any significant environmental effects.

8.1.1 No Project Alternative

CEQA Guidelines require that the alternatives be compared to the project’s environmental impacts and that the “no project” alternative be considered (CEQA Guidelines Section 15126.6(d)(e)). Section 15126.6(d)(e)(1) states:

The specific alternative of “no project” shall also be evaluated along with its impact. The purpose of describing and analyzing a no project alternative is to allow decision makers to compare the impacts of approving the proposed project with the impacts of not approving the proposed project. The no project alternative analysis is not the baseline for determining whether the

proposed project's environmental impacts may be significant, unless it is identical to the existing environmental setting analysis which does establish that baseline.

The purpose of describing and analyzing 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.

8.2 Project Objectives

Pursuant to CEQA Guidelines Section 15124, the EIR must identify the objectives sought by the project. The objectives of the project are as follows:

1. Develop a mixed-use project consistent with the goals and vision of the Envision San José 2040 General Plan (2040 General Plan) on an underutilized site that will provide both market rate and affordable housing, with commercial and retail uses nearby.
2. Promote key policies envisioned in the 2040 General Plan for the North San José Growth Area including increasing housing opportunities and providing new high-density residential development exceeding the City's minimum density requirements of 75 dwelling units per acre (du/ac), in close proximity to employment centers.
3. Locate higher density housing with easy access to transportation corridors (e.g., Montague Expressway), bus corridor stops, commercial services, and employment opportunities that reduces vehicle miles traveled (VMT).
4. Offer a mix of unit types, sizes, and levels of affordability to accommodate a range of potential residents. Provide a diverse range of high-quality rental and for-sale housing that will satisfy a variety of household needs in North San José.
5. Deliver affordable housing consistent with the goals set forth in the City's recently amended Inclusionary Housing Ordinance.
6. Assist the City to satisfy its Regional Housing Needs Allocation for both market rate and below market rate housing units.
7. Provide housing and active commercial and open spaces in a vibrant mixed-use neighborhood with the amenities and services necessary to support a diverse, thriving community of residents and workers.
8. Allocate space for a new public park along a public street that would be visible and centrally accessible to the public within convenient walking distance.
9. Create a well-connected neighborhood with on-site services and community amenities.
10. Develop commercial retail spaces on the project site that would attract diverse tenants, adapt to future needs, integrate local small businesses, stimulate local economic activity, serve the neighborhood, and complement adjacent public spaces.
11. Intensify the surrounding neighborhood and community through quality design, materials, and landscaping.

8.3 Significant Impacts of the Project

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.

Alternatives are discussed that could reduce the following identified *significant and unavoidable impacts* associated with the project:

Cultural Resources (Historic): The project includes the demolition of buildings, structures and site features that are collectively and individually eligible for listing in the CRHR and in the San José Historic Resources Inventory as a Candidate City Landmark and Candidate City Landmark District.

Significant impacts that would be reduced *to less than significant with mitigation* include:

Air Quality: Unmitigated emissions from project operations would result in 54.82 lbs/day of ROG, which exceeds the BAAQMD thresholds of 54 lbs/day.

Biological Resources: Project construction, including the removal of trees, that would occur during the migratory bird nesting season could result in a significant impact to nesting raptors and other protected migratory bird species. The removal of trees and building demolition could negatively impact roosting bat habitat if done outside of the maternity roosting season (May to August).

Cultural Resources: Demolition of buildings, structures and site features that are collectively and/or individually eligible for listing in under the CRHR, and the project may impact Native American and historic-era archaeological deposits during excavation and construction activities. Construction would have the potential to disturb archaeological and historic resources.

Hazards and Hazardous Materials: The project would result in potentially significant impacts from the removal of the existing heating oil underground/above-ground storage tanks and the potential to encounter soil contamination such as benzene, vinyl chloride, and TCE vapors, as well as DDD/DDT/DDE from prior agricultural uses on the project site during construction.

Noise and Vibration: Per 2040 General Plan Policy 1.7, construction of the project would result in a significant impact because construction would last longer than 12 months and would require work on Saturdays between 8:00 am and 5:00 pm.

Transportation: The project would generate 11.19 VMT per capita, which would exceed the City's threshold of significance for residential uses in the area (10.12 VMT per capita).

8.4 Alternatives Considered but Rejected

CEQA Guidelines Section 15126.6(c) recommends that an EIR identify any alternatives that were considered by the lead agency but were rejected as infeasible and briefly explain the reasons for their rejection. With respect to the feasibility of potential alternatives to a project, CEQA Guidelines Section 15126.6(t)(l) states the following:

Among the factors that may be taken into account when addressing the feasibility of alternatives are site suitability, economic viability, availability of infrastructure, general plan consistency, other plans or regulatory limitations, jurisdictional boundaries, and whether the proponent can reasonably acquire, control or otherwise have access to the alternative site.

In determining an appropriate range of project alternatives to be evaluated in this EIR, a number of possible alternatives were initially considered and then rejected. Two alternatives for the project were considered, but ultimately rejected from further analysis in the EIR, consistent with Section 15126.6(c) of the CEQA Guidelines. A description of the potential alternative considered, but not carried forward, and the rationale for rejection is provided below.

8.4.1 Alternative Location

There is no rule requiring an EIR to explore off-site project alternatives in every case. As stated in CEQA Guidelines Section 15126.6(F)(2), “an EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives.” (CEQA Guidelines, 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.) The Guidelines, thus, do not always require analysis of off-site alternatives. In considering an alternative location in an EIR, 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.”⁹⁵ The project involves the development of 1,472 housing units, including 178 affordable apartments, as well as up to 18,965 square feet of retail space, 2.5 -acre public park, and a new well on an approximately 22-acre site. The applicant does not own or control another property that could be used to accommodate the project, nor is there a comparable 22-acre site that would be a feasible alternative location that meets the project objectives. Of the possible TERO sites in North San José, there is only one other vacant site, which is only 11 acres. Although moving the project to another location would avoid the significant unavoidable impacts to historic resources on-site, there is no feasible alternative location. For these reasons, an alternative location was not analyzed.

8.4.2 Park Location Alternative

In their joint letter, the Santa Clara Valley Audubon Society and Sierra Club Loma Prieta Chapter requested the analysis of an alternative that would provide parkland along the Coyote Creek levee to allow for the minimum 100-foot riparian buffer from the creek’s top-of-bank. This alternative was considered but rejected as the alternative did not reduce impacts compared to the project. More specifically, impacts to historic resources would remain significant and unavoidable as the demolition of

⁹⁵ CEQA Guidelines Section 15126.6(f)(2)(A)

historic structures would still be required. As described in **Section 3.4, Biological Resources**, the project is required to comply with the City’s Riparian Corridor Policy by placing all development outside of the 100-foot riparian buffer. Furthermore, the applicant coordinated with the SJPRNS department to determine the optimal placement for the new park. During this coordination process, SJPRNS preferred the park location to be easily accessible by the proposed development and existing community. They also wanted the park to be visually prominent from publicly accessible spaces. The proposed central location in between Buildings A, B, and C and the affordable apartment building shown in **Figure 2-4**, with access from Seely Avenue, is the most suitable location to meet these criteria. For these reasons, an alternative park location was not analyzed as it would not meet the project objective of centrally accessible public park and would not reduce any significant impacts.

8.4.3 Off-Site Relocation of Historic Resources

To reduce impacts associated with demolition of the historical resources on the project site, an alternative that would relocate the historic resources to an off-site location was considered. Although moving the historic resources to another location could potentially avoid the significant unavoidable impacts to historic resources, the existing orchard that contributes to the district’s eligibility would still be removed. Removal of the structures from their historical context would contribute to a loss of historic significance because the orchard is an important contributing factor to the significance and eligibility of the district. As discussed in **Section 8.4.1, Alternative Location**, the applicant does not own or control another property that could be used to relocate these resources. Furthermore, there are no equivalent 22-acre parcels with agricultural character or uses within the City that the applicant could feasibly acquire. Therefore, off-site relocation of the historic resources was not analyzed. Instead, **MM CR-1.4** specifies that prior to issuance of any demolition permits or any other approval that would allow ground disturbance of the project site, all contributing and individually significant buildings and structures shall be separately advertised by the Permittee of their availability for relocation and salvage. This would allow for the relocation of historic buildings, provided that another party or landowner is willing to relocate them to a site with comparable historic context. However, the impact to historic resources remains significant and unavoidable. Given this, analysis of a relocation alternative is not required.

8.5 Alternatives Selected for Further Analysis

The following section discusses the alternatives evaluated in this EIR and the comparative environmental effects of each. The alternatives considered in this analysis are as follows:

- Alternative 1: No Project – No Development Alternative
- Alternative 2: No Project – Development Consistent with Existing Land Use and Zoning Designations Alternative
- Alternative 3: Historic Built Resource Avoidance Alternative
- Alternative 4: On-site Relocation of Historical Resources Alternative (Historic District)
- Alternative 5: On-site Relocation of Individual Historical Resources Alternative (Sakaue House Only)

8.5.1 Alternative 1: No Project - No Development Alternative

The CEQA Guidelines [Section 15126(d)4] require that an EIR specifically discuss a “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. Alternative 1 assumes that the project would not be constructed, and that no alternative development would occur on the project site. As a result, Alternative 1 would avoid all of the environmental impacts from the project. However, this Alternative would not meet any of the project objectives, which include provision of planned housing (including affordable apartments), retail space, and a park in the City. Alternative 1 would also not provide a new well that would serve water to other users outside of the project.

Conclusion: Implementation of Alternative 1 would avoid the significant impacts identified in this EIR. This alternative would not, however, meet demand for additional housing, retail space, and parks in the City consistent with the 2040 General Plan. This includes affordable housing and market-rate housing with easy access to transportation corridors, consistent with the Inclusionary Housing Ordinance. This alternative would not meet any of the objectives of the project.

8.5.2 Alternative 2: No Project – Development Consistent with Existing Land Use and Zoning Alternative

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 is not approved, based on current plans and consistent with available infrastructure and community services.” [Section 15126.6(e)(2)] 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)].” To that end, Alternative 2 assumes that if the project were not approved, the unoccupied and underutilized project site would be redeveloped with an alternative development consistent with what is allowed under the City’s General Plan and Municipal Code.

As discussed in **Section 2.2 General Plan and Zoning**, the project site is designated as Industrial Park under the 2040 General Plan. This designation is intended for a wide variety of industrial users such as research and development, manufacturing, assembly, testing and offices, with a floor area ratio (FAR) of up to 10.0 and 2 to 15 stories. The TERO designation overlay identifies sites within the North San José Employment Center that may be appropriate for residential development. This overlay supports residential development as an alternate use at a minimum average density of 75 units per acre, with a FAR of 2.0 to 12.0 and 5 to 25 stories. Sites with this overlay may also be developed with uses consistent with the underlying designation. The TERO permits either residential development with commercial uses on the first two floors or entirely residential projects without a vertical mixed-use component. The project site is located in the IP Industrial Park Zoning District. The IP zoning district is intended for a wide variety of industrial users such as research and development, manufacturing, assembly, testing, and offices. Future projects seeking to build housing and commercial uses would require a rezoning similar to that requested under the project and described in **Section 2.2.2, Zoning**.

For the purpose of this analysis, Alternative 2 is assumed to be consistent with the underlying Industrial Park 2040 General Plan Land Use Designation and zoning, and that no rezoning would be required. Industrial uses supported by the Industrial Park zoning district include manufacturing, assembly, and retail warehousing. These uses are commonly associated with one- and two-story buildings with large footprints, as well as driveways and loading areas designed accommodate the maneuvering of large loading trucks. Because of these requirements, an industrial use would be relatively inflexible to feasibly

work around existing structures and features on the project site. Therefore, under this scenario, it is conservatively assumed that the developer would take advantage of the allowable FAR and height restrictions, resulting in a 50-foot-high building (or buildings) that takes up roughly the same footprint as the project (approximately 17 acres of the 22-acre site). This alternative assumes that a similar public park and well would be required by the City. For the purpose of this analysis, it is also assumed that such construction would require the demolition or relocation of the existing historic resources associated with the eligible historic district and Candidate City Landmark.

Alternative 2 would not meet any of the project objectives but would provide a new project consistent with the 2040 General Plan and underlying zoning. Given that the footprint and amount of construction would be similar to the project, impacts related to ROG emissions, cancer risk, migratory birds, roosting bats, hazardous materials, construction noise, and VMT would be similar to the project.

Conclusion: Alternative 2 would not be consistent with the project objectives and would not substantially decrease any of the significant impacts identified in **Section 8.3, Significant Impacts of the Project**.

8.5.3 Alternative 3: Historic Resource Avoidance Alternative

As discussed in **Section 3.5, Cultural Resources**, the project site contains 7 structures and the associated landscape including fruit trees, planted rows of vegetables, and dirt roads were determined to contribute to the significance of an eligible historic district associated with the events of Japanese farming and farming in Santa Clara Valley.

Alternative 3 would retain the seven contributing structures in their existing location and limit development to the area surrounding the eligible historic resources. The Avoidance Alternative would also retain the existing orchard, which contributes to the eligibility of the historic district. Retained structures would be restored and preserved consistent with the Secretary of the Interior’s Standards for the Treatment of Historic Properties as part of a 3.37-acre historic district with historic interpretive areas. The historic building exteriors would be structurally stabilized and maintained for interpretive use as part of the project. The public park proposed as part of the project would be reduced to a 0.55-acre area located in the Sakauye farm location that would contain neither historic buildings nor orchard trees. **Figure 8-1** depicts the site plan for Alternative 3. Construction of the reduced project surrounding the eligible historic district would not affect the significance of the district. Therefore, the significant impact to historic resources would be reduced to a less-than-significant level.

As shown in **Table 8-1**, Alternative 3 would reduce the size of the proposed residential project by approximately 27 percent (401 units), including a 35 percent reduction in affordable apartments (63 units). The retail space would be reduced by 5,359 square feet. These reductions would occur because there would be less land available for development with preservation of the historic district.

Table 8-1 Proposed Alternative 3 Components

Alternative	Townhomes (for sale)	Market Rate Housing Units	Affordable Apartments	Total Housing Units	Commercial Area (gross square feet)
Alternative 3: Historic Built	188	768	115	1,071	13,606

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Alternative	Townhomes (for sale)	Market Rate Housing Units	Affordable Apartments	Total Housing Units	Commercial Area (gross square feet)
Resource Avoidance Alternative					
<i>Project</i>	<i>154</i>	<i>1,140</i>	<i>178</i>	<i>1,472</i>	<i>18,965</i>
<i>Delta</i>	34	(372)	(63)	(401)	(5,359)

Source: Hanover 2023

Alternative 3 would reduce impacts commensurate with the decrease in residential units and commercial space, including a reduction in traffic generation, construction air pollutants and noise, and a reduction in operational emissions. However, with the exception of historic resources mitigation measures (**MM CR-1.1** through **MM CR-1.6**), the same mitigation measures that are identified for the project would also be required for this alternative to reduce impacts to a less-than-significant level.

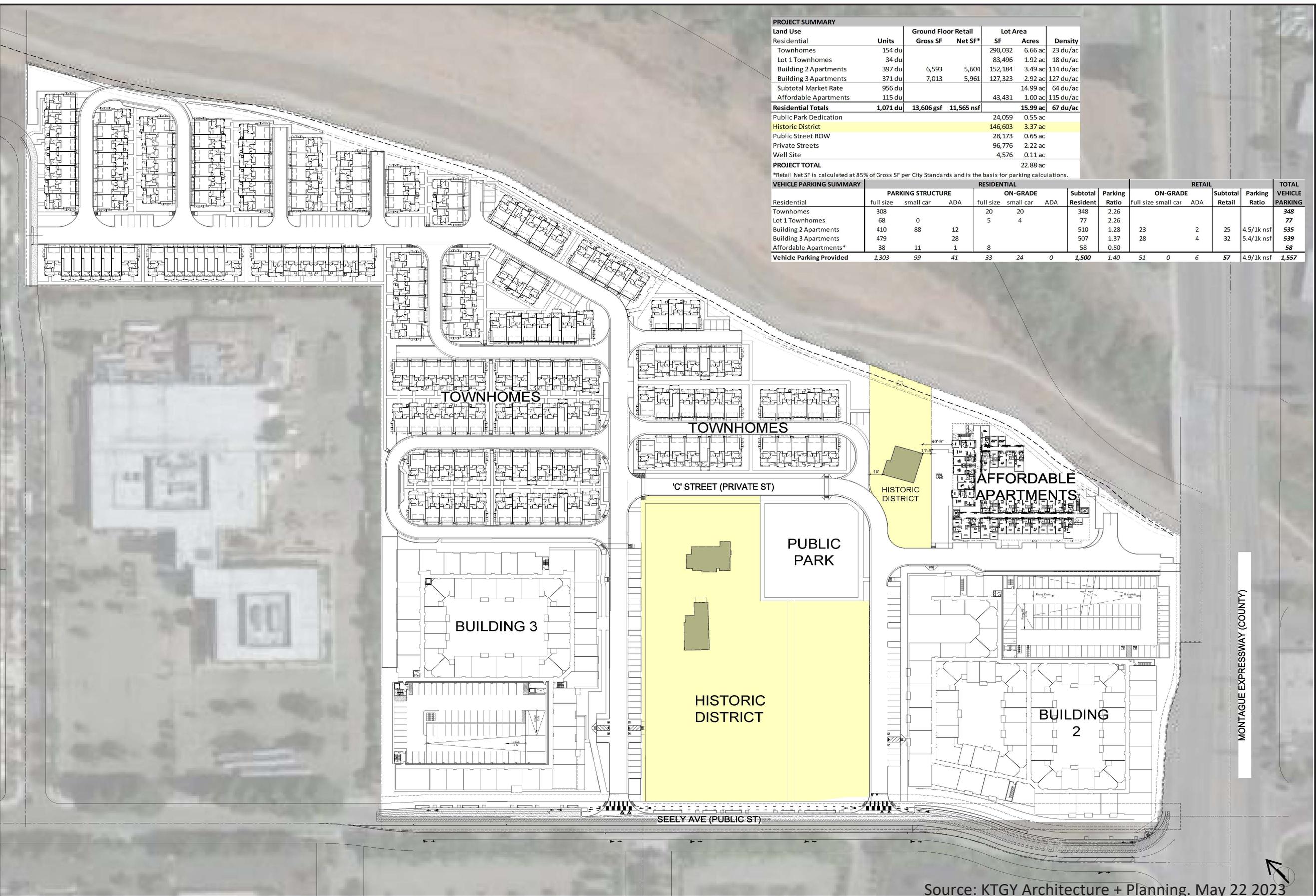
Alternative 3 would not meet project objective 2 because it would reduce the size of the proposed residential project by approximately 27 percent, including a 35 percent reduction in affordable apartments. While a reduction in housing can be considered as part of an Alternatives analysis, CEQA Guidelines Section 15041(c) states that “for projects that include housing development, a Lead or Responsible Agency shall not mitigate for significant environmental effects by reducing the number of units, unless no feasible alternative exists that would provide comparable reductions in effects.”

Conclusion: While Alternative 3 would avoid the significant unavoidable built historic resources impacts identified in this EIR, it would not meet project objective 2 because it would reduce both the number of residential units (including affordable apartments) and the retail component of the project. At 67 dwelling units per acre, this alternative would be below the minimum density established for the project site (75 dwelling units per acre) by the TERO.

PROJECT SUMMARY						
Land Use	Units	Ground Floor Retail		Lot Area		Density
		Gross SF	Net SF*	SF	Acres	
Townhomes	154 du			290,032	6.66 ac	23 du/ac
Lot 1 Townhomes	34 du			83,496	1.92 ac	18 du/ac
Building 2 Apartments	397 du	6,593	5,604	152,184	3.49 ac	114 du/ac
Building 3 Apartments	371 du	7,013	5,961	127,323	2.92 ac	127 du/ac
Subtotal Market Rate	956 du				14.99 ac	64 du/ac
Affordable Apartments	115 du			43,431	1.00 ac	115 du/ac
Residential Totals	1,071 du	13,606 gsf	11,565 nsf		15.99 ac	67 du/ac
Public Park Dedication				24,059	0.55 ac	
Historic District				146,603	3.37 ac	
Public Street ROW				28,173	0.65 ac	
Private Streets				96,776	2.22 ac	
Well Site				4,576	0.11 ac	
PROJECT TOTAL					22.88 ac	

*Retail Net SF is calculated at 85% of Gross SF per City Standards and is the basis for parking calculations.

VEHICLE PARKING SUMMARY	PARKING STRUCTURE			RESIDENTIAL ON-GRADE			Subtotal Resident	Parking Ratio	RETAIL ON-GRADE			Subtotal Retail	Parking Ratio	TOTAL VEHICLE PARKING
	full size	small car	ADA	full size	small car	ADA			full size	small car	ADA			
Townhomes	308			20	20		348	2.26						348
Lot 1 Townhomes	68	0		5	4		77	2.26						77
Building 2 Apartments	410	88	12				510	1.28	23		2	25	4.5/1k nsf	535
Building 3 Apartments	479		28				507	1.37	28		4	32	5.4/1k nsf	539
Affordable Apartments*	38	11	1	8			58	0.50						58
Vehicle Parking Provided	1,303	99	41	33	24	0	1,500	1.40	51	0	6	57	4.9/1k nsf	1,557



Source: KTG Architecture + Planning, May 22 2023

Alternative 3: Historic Resources Avoidance Alternative Site Plan

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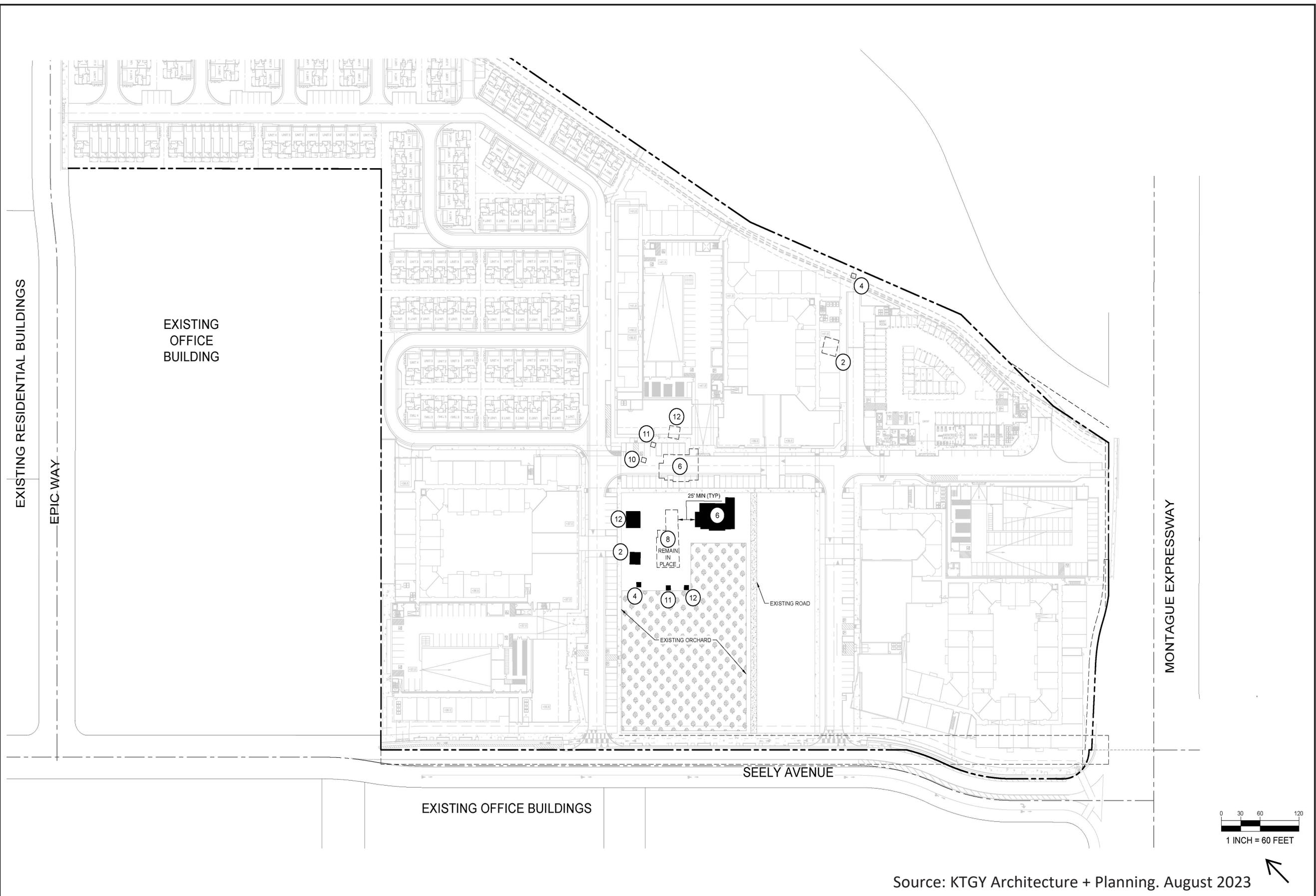
Figure 8-1

8.5.4 Alternative 4: On-Site Relocation of Historical Resources Alternative

To minimize the impact of removing historic resources from the project site, Alternative 4 would relocate the 7 structures that were determined to contribute to the significance of an eligible historic district, including the Sakauye house, and would preserve the associated landscape including fruit trees, planted rows of vegetables, and dirt roads on the 2.5-acre site planned for a public park under the project. To maintain the historic significance of the eligible historic district, the contributing structures would be relocated in a manner that retains their orientation and relationship to each other and relates to their current positions on the site. Under Alternative 4, the historical interpretive use proposed as part of the project would become the primary use of the park. All other aspects of the project, including removal of the existing orchard, would remain the same. Relocated historic structures would occupy approximately 1.65 acres of the original 2.5-acre park site under Alternative 4. Facilities like the dog park and small-scale sport court uses planned as part of the project by SJPRNS would be infeasible because there would not be room for them on the remaining 0.85 acre.

Alternative 4 would reduce impacts associated with demolition of the historic structures to a less-than-significant level. While the new historical park would technically meet objective 8, the amenities that SJPRNS has requested for the new park would not be provided. Because all other aspects of the project would remain the same, Alternative 4 would meet all of the other project objectives, but would not reduce the significance of the air quality, biological resources, hazards and hazardous materials, noise and vibration, or transportation impact identified in **Section 8.2**, above. The same mitigation measures identified in this EIR for the project would be required for Alternative 4, and would reduce impacts to a less than significant level.

Conclusion: Alternative 4 would reduce the significant unavoidable historic resources impacts identified in this EIR to a less-than-significant level and would meet most of the project objectives. The modified historic park would not allow for the park uses planned by SJPRNS and would not meet the parks and open space demands generated by the construction of new housing. As a result, Alternative 4 would result in greater impacts than the project when considering the increase in use of existing neighborhood and regional parks and the construction or expansion of recreational facilities elsewhere in the City. Similar to the project, such impacts would be reduced to a less-than-significant level through compliance with the PDO and PIO.



Source: KTG Architecture + Planning, August 2023

Alternative 4: On-Site Relocation of Historical Resources Alternative Site Plan

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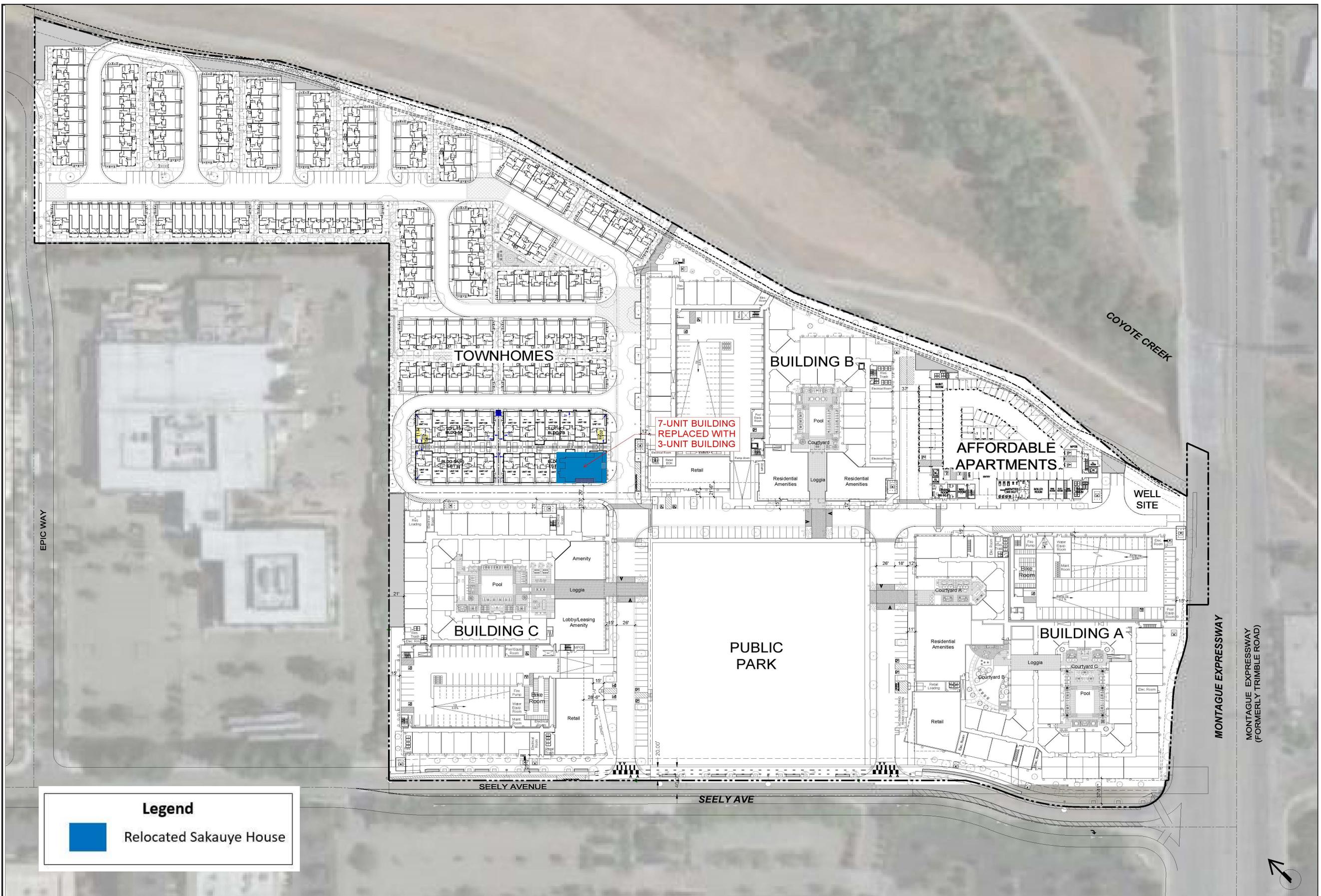
Figure
8-2

8.5.5 Alternative 5: On-Site Relocation of Individual Historical Resource Alternative (Sakauye House Only)

As discussed in **Section 3.5, Cultural Resources**, the Sakauye house (EDS 6) is individually eligible for listing on the CRHR under Criterion 3 for its association with Spanish Colonial Revival architecture. This resource is also eligible for listing in the San José Historic Resource Inventory as a Candidate City Landmark under Criterion 3 due to its association with Eiichi Sakauye and Criterion 6 due to its embodiment of the Spanish Colonial Revival architectural style. Under Alternative 5, the Sakauye house would be relocated to the northern portion of the project site as shown in **Figure 8-3**. As a result, Alternative 5 would provide 4 fewer townhomes than the project. All other aspects of the project would remain the same. The Sakauye house would be preserved and restored consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties. The exterior of the house would be structurally stabilized and maintained for historic interpretive uses as part of the project. The building would not be leased or sold for residential use.

Alternative 5 would reduce the severity of Impact CR-1 and would eliminate the impact to the Sakauye house specifically. However, because the other 6 structures that contribute to the eligibility of the historic district would still be removed, Impact CR-1 would remain significant and unavoidable. Although Alternative 5 would provide 4 fewer dwelling units than the project, it would still have a density of approximately 81 du/acre, and would therefore satisfy project objective 2 by meeting the minimum density requirements for the North San José TERO. Because all other aspects of the project would remain the same under Alternative 5, all other project objectives would be met and all other impacts would remain the same.

Conclusion: Alternative 5 would reduce the severity of the significant unavoidable historic resources impacts identified in this EIR, but the impacts would remain significant and unavoidable. All other impact determinations would remain the same and all project objectives would be met.



Alternative 5: On-Site Relocation of Individual Historical Resources Alternative
 (Sakauye House Only) Site Plan

8.6 Summary of Alternatives to the Project

A comparison of alternatives selected for further consideration based upon whether they avoid or substantially lessen the significant environmental effects outlined of the project are provided in **Table 8-2**.

Table 8-2 Comparison of Environmental Impacts for Alternatives to the Project

Environmental Resource	Alternatives				
	1 (No Project – No Development)	2 (No Project – Development Consistent with Existing Land Use and Zoning)	3 (Historic Resource Avoidance)	4 (On-Site Relocation of Historic Resources)	5 (On-Site Relocation of Sakauye House Only)
Aesthetics	No Impact	Similar to Project	Similar to Project	Similar to Project	Similar to Project
Agricultural Farmland and Forestland	No Impact	Similar to Project	Similar to Project	Similar to Project	Similar to Project
Air Quality	No Impact	Similar to Project	Less Severe than Project (due to decrease in proposed development)	Similar to Project	Similar to Project
Biological Resources	No Impact	Similar to Project	Similar to Project	Similar to Project	Similar to Project
Cultural Resources	No Impact	Similar to Project	Impact Reduced to Less-Than-Significant Level (due to avoidance of historic resources)	Impact Reduced to Less-Than-Significant Level (due to on-site relocation of historic resources)	Less Severe than Project (due to relocation of Sakauye house on-site. Overall impact would remain Significant Unavoidable)
Energy	No Impact	Similar to Project	Less Severe than Project (due to decrease in proposed development)	Similar to Project	Similar to Project
Geology and Soils	No Impact	Similar to Project	Similar to Project	Similar to Project	Similar to Project

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Environmental Resource	Alternatives				
	1 (No Project – No Development)	2 (No Project – Development Consistent with Existing Land Use and Zoning)	3 (Historic Resource Avoidance)	4 (On-Site Relocation of Historic Resources)	5 (On-Site Relocation of Sakauye House Only)
Greenhouse Gas Emissions	No Impact	Similar to Project	Less Severe than Project (due to decrease in proposed development)	Similar to Project	Similar to Project
Hazards and Hazardous Materials	No Impact	Similar to Project	Similar to Project	Similar to Project	Similar to Project
Hydrology and Water Quality	No Impact	Similar to Project	Similar to Project	Similar to Project	Similar to Project
Land Use and Planning	No Impact	Similar to Project	Similar to Project	Similar to Project	Similar to Project
Mineral Resources	No Impact	No Impact	No Impact	No Impact	No Impact
Noise and Vibration	No Impact	Similar to Project	Less Severe than Project (due to decrease in proposed development)	Similar to Project	Similar to Project
Population and Housing	No Impact	Similar to Project	Similar to Project	Similar to Project	Similar to Project
Public Services	No Impact	Similar to Project	Similar to Project	Similar to Project	Similar to Project
Recreation	No Impact	Similar to Project	Similar to Project	More Severe than Project (given the lack of amenities provided at proposed park)	Similar to Project

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Environmental Resource	Alternatives				
	1 (No Project – No Development)	2 (No Project – Development Consistent with Existing Land Use and Zoning)	3 (Historic Resource Avoidance)	4 (On-Site Relocation of Historic Resources)	5 (On-Site Relocation of Sakauye House Only)
Transportation	No Impact	Similar to Project	Less Severe than Project (due to decrease in proposed development)	Similar to Project	Similar to Project
Tribal Cultural Resources	No Impact	Similar to Project	Similar to Project	Similar to Project	Similar to Project
Utilities and Service Systems	No Impact	Similar to Project	Similar to Project	Similar to Project	Similar to Project
Wildfire	No Impact	No Impact	No Impact	No Impact	No Impact

Notes: LTS = Less Than Significant Impact; LSM = Less than Significant with Mitigation Applied; SU = Significant and Unavoidable Impact.

8.7 Environmentally Superior Alternative

CEQA requires the identification of an environmentally superior alternative. The environmentally superior alternative must be an alternative to the project that reduces some of the environmental impacts, regardless of the financial costs associated with this alternative. Identification of the environmentally superior alternative may not be that which best meets the goals or needs of a project. Additionally, if the No Project Alternative is determined to reduce most impacts, CEQA requires that the EIR identify an environmentally superior alternative among the other alternatives (CEQA Guidelines Section 15126.6[e]).

Given the comparative analysis shown in **Section 8.6, Summary of Alternatives to the Project**, Alternative 3, Historic Resource Avoidance Alternative, would be the environmentally superior alternative. Alternative 3 would avoid the significant unavoidable historic resources impact identified in this EIR. Alternative 3 would also reduce the severity of impacts associated with traffic generation, air pollutant emissions, and noise commensurate with the decrease in residential units and commercial space provided. While Alternative 3 would not meet project objective 2, it would meet the rest of the project objectives.

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9 LEAD AGENCY AND CONSULTANTS

9.1 Lead Agency

City of San José Department of Planning, Building and Code Enforcement

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Robert Manford, Deputy Director, Development Review

David Keyon, Principal Planner

Tina Garg, Supervisor Planner, Environmental Review

Bethelhem Telahun, Planner, Environmental Review

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9.2 Consultants

Circlepoint

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Karla Nayakarathne, Associate

Basin Research Associates

Colin Busby, Principal Archaeologist

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Stacey De Shazo, Owner/Principal Historical Architect

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Michael Thill, Senior Consultant/Principal

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10 ACRONYMS AND ABBREVIATIONS

Acronym or Abbreviation	Definition
AB	Assembly Bill
ABAG	Association of Bay Area Governments
ACMs	Asbestos Containing Materials
ADA	Americans with Disabilities Act
ADT	Average Daily Traffic
AFY	Acre-feet Per Year
APN	Assessor’s Parcel Number
BAAQMD	Bay Area Air Quality Management District
BAU	Business as Usual
BMPs	Best Management Practices
Btu	British Thermal Unit
CAAQS	California Ambient Air Quality Standards
CARB	California Air Resources Board
CBC	California Building Standards Code
CalARP	California Accidental Release Prevention
CalEEMod	California Emissions Estimator Model
CalGreen	California Green Building Standards Code
CalRecycle	California Department of Resource Recycling and Recovery
Caltrans	California Department of Transportation
Cal EPA	California Environmental Protection Agency
Cal Fire	California Department of Forestry and Fire Protection
CAL/OSHA	California Occupational Safety Health Program
CARE	Community Air Risk Evaluation
CDFW	California Department of Fish and Wildlife
CDWR	California Department of Water Resources
CEC	California Energy Commission
CEQA	California Environmental Quality Act
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
CFCs	Chlorofluorocarbons

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CGP	Construction General Permit
CH ₄	Methane
CHRIS	California Historical Resources Information System
CMP	Congestion Management Program
CO	Carbon Monoxide
CO ₂	Carbon Dioxide
CO ₂ e	Carbon Dioxide Equivalent
CPUC	California Public Utilities Commission
CWA	Clean Water Act
dB	Decibels
DNL	Day-Night Level
DPM	Diesel Particulate Matter
DTSC	California Department of Toxic Substances Control
du	Dwelling Units
EIR	Environmental Impact Report
EPA	US Environmental Protection Agency
ESLs	Environmental Screening Levels
EV	Electric Vehicle
FAR	Floor Area Ratio
FCAA	Federal Clean Air Act
FEIR	Final Environmental Impact Report
FEMA	Federal Emergency Management Agency
FHSZ	Fire Hazard Severity Zone
FHWA	Federal Highway Administration
FIRM	Flood Insurance Rate Maps
FMMP	Farmland Mapping and Monitoring Program
General Plan	Envision 2040 San José General Plan
GHG	Greenhouse Gas
GSI Plan	Green Stormwater Infrastructure Plan
GWh	Gigawatt Hours
HAPs	Hazardous Air Pollutants
HCP	Santa Clara Valley Habitat Plan/Natural Communities Conservation Plan

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HI	Hazard Index
ITE	Institute of Transportation Engineers
IWMP	Integrated Waste Management Plan
LEED	Leadership in Energy and Environmental Design
LESA	California Agricultural Land Evaluation and Site Assessment
LID	Low Impact Development
LOS	Levels of Service
LTA	Local Transportation Analysis
MBTA	Migratory Bird Treaty Act
MEI	Maximally Exposed Individual
MLD	Most Likely Descendant
mgd	Million Gallons per Day
mpg	Miles per Gallon
mg/kg	Milligrams per Kilogram
MMT	Million Metric Tons
MRP	Municipal Regional Stormwater NPDES Permit
MSAT	Mobile Source Air Toxics
MTC	Metropolitan Transportation Commission
N ₂ O	Nitrous Oxide
NAAQS	National Ambient Air Quality Standards
NAHC	Native American Heritage Commission
NO ₂	Nitrogen Dioxide
NO _x	Oxides of Nitrogen
NOD	Notice of Determination
NOP	Notice of Preparation
NPDES	National Pollutant Discharge Elimination System
O ₃	Ozone
OCPs	Organochlorine Pesticides
OPR	Office of Planning and Research
Pb	Lead
PDO	Parkland Dedication Ordinance
PG&E	Pacific Gas & Electric

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PIO	Park Impact Ordinance
PM	Suspended Particulate Matter
PM _{2.5}	Fine Particulate Matter
PM ₁₀	Respirable Particulate Matter
PPV	Peak Particle Velocity
PRC	Public Resources Code
RCRA	Resource Conservation and Recovery Act
RHNA	Regional Housing Need Allocation
RMP	Risk Management Plan
RCNM	Roadway Construction Noise Model
ROG	Reactive Organic Gases
RPS	Renewables Portfolio Standard
RWF	Regional Wastewater Facility
RWQCB	Regional Water Quality Control Board
SB	Senate Bill
SBWR	South Bay Water Recycling
SCS	Sustainable Community Strategies
SJCE	San José Clean Energy
SJFD	San José Fire Department
SJPD	San José Police Department
SJPL	San José Public Library
SJPRNS	San José Department of Parks, Recreation and Neighborhood Services
SMARA	Surface Mining and Reclamation Act of 1975
SMP	Site Management Plan
SO ₂	Sulfur Dioxide
SR	State Route
SWRCB	State Water Resources Control Board
TAC	Toxic Air Contaminant
TDM	Transportation Demand Management
USFWS	U.S. Fish and Wildlife Service
V/C	Volume-to-Capacity Ratio

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VCP	Vitrified Clay Pipe
VMT	Vehicle Miles Traveled
VOCs	Volatile Organic Compounds
VTA	Santa Clara Valley Transportation Authority
ZNE	Zero Net Carbon Emissions

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