INITIAL STUDY/
MITIGATED NEGATIVE DECLARATION

for

905 N. CAPITOL AVENUE
RESIDENTIAL DEVELOPMENT

File No. H21-015 and ER21-061

CITY OF SAN JOSÉ
CALIFORNIA

April 2022

MITIGATED NEGATIVE DECLARATION

The Director of Planning, Building and Code Enforcement has reviewed the proposed project described below to determine whether it could have a significant effect on the environment as a result of project completion. "Significant effect on the environment" means a substantial or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance.

PROJECT NAME: 905 N. Capitol Avenue Residential Development

PROJECT FILE NUMBER: H21-015 and ER21-061

PROJECT DESCRIPTION: The project includes a proposed residential development on two non-contiguous parcels that make up the project site. The project proposes the removal of 56 trees and the demolition of an existing single-family residence located on the northern 2.12-acre parcel. The project would construct 345 multi-family residential units and 3,000 square feet of office space in a seven-story, mixed-use building with underground parking on the 2.12-acre northern parcel, and the project would construct and subdivide the 1.35-acre southern parcel with 32 for-sale townhomes with two-car garages. The project would involve various site improvements including landscaping, two paved alleys, sidewalk and curb replacement, stormwater treatment areas, and access driveways.

PROJECT LOCATION: The project is located on approximately 3.5-gross acres over two non-contiguous parcels located at 905 N. Capitol Avenue in the City of San José.

ASSESSORS PARCEL NOS.: 254-29-028 and 254-29-026. **COUNCIL DISTRICT:** 4

APPLICANT CONTACT INFORMATION: Hanover R.S. Limited Partnership (Attn: Scott Youdall), 156 Diablo Road, Suite 220, Danville, CA 94526, (925) 490-2990.

FINDING

The Director of Planning, Building and Code Enforcement finds the project described above would not have a significant effect on the environment if certain mitigation measures are incorporated into the project. The attached Initial Study identifies one or more potentially significant effects on the environment for which the project applicant, before public release of this Mitigated Negative Declaration (MND), has made or agrees to make project revisions that will clearly mitigate the potentially significant effects to a less than significant level.

MITIGATION MEASURES INCLUDED IN THE PROJECT TO REDUCE POTENTIALLY SIGNIFICANT EFFECTS TO A LESS THAN SIGNIFICANT LEVEL

A. **AESTHETICS** – The project would not have a significant impact on this resource, therefore no mitigation is required.

B. **AGRICULTURE AND FORESTRY RESOURCES** – The project would not have a significant impact on this resource, therefore no mitigation is required.

C. AIR QUALITY.

Impact AQ-1: Project construction would result in an infant cancer risk of 23.86 in one million at the maximally exposed individual (MEI), which exceeds the BAAQMD's cancer risk significance threshold of 10 in one million.

MM AQ-1: Prior to the issuance of any demolition, grading, or building permits (whichever occurs first), 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 site for more than two continuous days or 20 hours total shall meet U.S. EPA Tier 4 emission standards for particulate matter (PM_{10} 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 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).

- Use of electrical or non-diesel fueled equipment.

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 (whichever occurs earliest).

CalEEMod was used to compute emissions associated with this mitigation measure assuming that all equipment met U.S. EPA Tier 4 interim engines standards and BAAQMD best management practices for construction were included. With these implemented, the project's construction cancer risk impact, assuming infant exposure, would be reduced by 78 percent to 5.38 chances per million. A plan that reduces DPM emissions by 60 percent would reduce cancer risk to about 9.5 chances per million. As a result, the project's construction cancer risk would be reduced below the BAAQMD's single-source threshold for increased cancer risk.

D. BIOLOGICAL RESOURCES.

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

MM BIO-1: The project applicant shall schedule demolition and construction activities to avoid the nesting season. The nesting season for most birds, including most raptors in the San Francisco Bay area, extends from February 1st through August 31st (inclusive).

If demolition and construction cannot be scheduled to occur between September 1st and January 31st (inclusive and as amended), pre-construction surveys for nesting birds shall be completed by a qualified ornithologist or biologist to ensure that no nests shall be disturbed during project implementation. This 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 1st through April 30th, inclusive) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May 1st through August 31st, inclusive). During this survey, the qualified ornithologist/biologist shall inspect all trees and other possible nesting habitats immediately adjacent to the construction areas for nests.

If an active nest is found sufficiently close to work areas to be disturbed by construction, the qualified ornithologist/biologist, in consultation with the California Department of Fish and Wildlife, shall determine the extent of a construction free buffer zone to be established around the nest, typically 250 feet, to ensure that raptor or migratory bird nests shall not be disturbed during project construction.

Prior to 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: Construction activities associated with the project could result in the disturbance of maternal roosting of bats.

MM BIO-2: If project construction is planned during the bat reproductive season (May 1 through September 15, inclusive), the project applicant shall retain a qualified bat specialist or wildlife biologist to conduct site surveys to characterize bat utilization within and 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:

- If it is determined that bats are not present adjacent to the site, no additional mitigation is required.

- If it is determined that bats are utilizing the trees adjacent to the site and may be impacted by the proposed 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, no bats or bat signs are observed in the course of the pre-construction surveys, construction may proceed. If bats and/or bat signs are observed during the pre-construction surveys, the qualified bat specialist or wildlife biologist shall determine if disturbance will jeopardize the roost (i.e., maternity, foraging, day, or night).
- If a single bat and/or only adult bats are roosting, removal of trees, buildings, or other suitable habitat may proceed after the bats have been safely excluded from the roost. Exclusion techniques shall be determined by the qualified bat specialist or wildlife biologist and would depend on the 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 or 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.

- Prior to any tree removal, or approval of any grading or demolition permits (whichever occurs first), the qualified bat specialist or 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.

With implementation of the identified mitigation measures, the project's impact to nesting birds and raptors, as well as roosting bats, would be less than significant.

E. CULTURAL RESOURCES.

Impact CR-1: The project may impact archaeological deposits during excavation and construction activities. This impact would be reduced to a less than significant level with the following mitigation.

MM CR-1.1: Cultural Sensitivity Training. Prior to issuance of any grading permit, the project applicant shall be required to conduct a Cultural Awareness Training for construction personnel. The training shall be facilitated by a qualified 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-1.2: Monitoring Plan. Prior to issuance of any demolition, grading, or building permits (whichever occurs first), a qualified archeologist, in 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, shall prepare a monitoring plan for all earthmoving activities. The Plan shall be submitted to the Director of the Planning, Building, and Code Enforcement or the Director's designee for review. The plan shall include, but is not limited to, the following:

- Monitoring schedules
- Contact information
- Recommendation for monitoring methods
- Timing of reporting finds

MM CR-1.3: Monitoring Plan. Sub-Surface Monitoring. A qualified archeologist in collaboration with a Native American monitor, registered with the Native

American Heritage Commission for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3, shall also be present during applicable earthmoving activities in accordance with in the Monitoring Plan in MM CR-1.2. These could include but not are not limited to, trenching, initial or full grading, lifting of foundation, boring on site, or major landscaping.

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

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

F. **ENERGY** – The project would not have a significant impact on this resource, therefore no mitigation is required.

G. **GEOLOGY AND SOILS** – The project would not have a significant impact on this resource, therefore no mitigation is required.

H. **GREENHOUSE GAS EMISSIONS** – The project would not have a significant impact on this resource, therefore no mitigation is required.

I. **HAZARDS AND HAZARDOUS MATERIALS**.

Impact HAZ-1: The Phase I recommended preparation and implementation of self-directed Soil Site Management Plan to address any unknown and unexpected issues that may be encountered during construction; thus, the proposed project could potentially result in a significant hazard to the public or the environment from hazardous materials release if unknown and unexpected issues are encountered during construction.

MM HAZ-1: Prior to issuance of any grading permits or earthmoving activities, the project applicant shall retain a qualified environmental consultant and prepare a Site Management Plan (SMP) to guide activities during demolition, excavation, and initial construction to ensure that potentially contaminated soils are identified, characterized, removed, and disposed of properly. The purpose of the SMP is to establish appropriate management practices for handling impacted soil, any

potential offsite impacts from the underground storage tank (UST) identified in the adjoining property and/or other unknown materials (e.g., sumps, tanks, stained soils, etc.) that may be encountered during construction activities. The SMP shall provide the protocols for sampling of in-place soil to facilitate the profiling of the soil for appropriate off-site disposal or reuse, and for construction worker safety, dust mitigation during construction and potential exposure of contaminated soil to future users of the site. The SMP shall also include a health and safety plan and protocols for reporting contamination to a regulatory agency and obtaining regulatory oversight. The SMP shall be submitted to City of San José Department of Planning, Building, and Code Enforcement or the Director's designee and the Supervising Environmental Compliance Officer in the City of San José's Environmental Services Department.

J. HYDROLOGY AND WATER QUALITY – The project would not have a significant impact on this resource, therefore no mitigation is required.

K. LAND USE AND PLANNING – The project would not have a significant impact on this resource, therefore no mitigation is required.

L. MINERAL RESOURCES – The project would not have a significant impact on this resource, therefore no mitigation is required.

M. NOISE.

Impact NSE-1: Ambient levels at the surrounding sensitive uses would potentially be exceeded by 5 dBA Leq or more at various times throughout construction. Project construction is expected to last for a period of approximately 25 months. Since project construction would last for a period of more than one year and is within 500 feet of existing residential uses and within 200 feet of existing commercial uses, this temporary construction impact would be considered significant in accordance with General Plan Policy EC-1.7.

MM NSE 1: Construction Noise Logistics Plan. Prior to the issuance of any grading or building 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 proposed project shall include, but are not limited to, 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).

- Construct temporary noise barriers, where feasible, to screen mobile and stationary construction equipment. The temporary noise barrier fences provide noise reduction if the noise barrier interrupts the line-of-sight between the noise source and receiver and if the barrier is constructed in a manner that eliminates any cracks or gaps.

- 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.

- Construction staging areas shall be established at locations that would create the greatest distance between the construction-related noise source and noise-sensitive receptors nearest the project site during all project construction.

- A temporary noise control blanket barrier shall be erected, if necessary, along building facades facing construction sites. This mitigation would only be necessary if conflicts occurred which were irresolvable by proper scheduling.

- If impact pile driving is proposed, foundation pile holes shall be predrilled to minimize the number of impacts required to seat the pile. Pre-drilling foundation pile holes is a standard construction noise control technique. Pre-drilling reduces the number of blows required to seat the pile.

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

- The project applicant shall prepare a detailed construction schedule for major noise-generating construction activities. The construction plan shall identify a procedure for coordination with adjacent residential land uses so that construction activities can be scheduled to minimize noise disturbance.

- 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.

Impact NSE-2: Construction of the project would generate vibration levels exceeding the General Plan threshold 0.2 in/sec PPV or more at buildings of normal conventional construction located within 25 feet of the project site.

MM NSE 2: **Construction Vibration Monitoring, Treatment, and Reporting Plan**. Prior to the issuance of any grading permits, the project applicant shall implement a construction vibration monitoring plan to document conditions prior to, during, and after vibration generating construction activities. All plan tasks shall be undertaken under the direction of a licensed Professional Structural Engineer in the State of California and be in accordance with industry-accepted standard methods. The construction vibration monitoring plan shall include, but not be limited to, the following measures:

- The report shall include a description of measurement methods, equipment used, calibration certificates, and graphics as required to clearly identify vibration-monitoring locations.

- A list of all heavy construction equipment to be used for this project and the anticipated time duration of using the equipment that is known to produce high vibration levels (clam shovel drops, vibratory rollers, hoe rams, large bulldozers, caisson drillings, loaded trucks, jackhammers, etc.) shall be submitted to the Director of Planning or Director's designee of the Department of Planning, Building, and Code Enforcement by the contractor. This list shall be used to identify equipment and activities that would potentially generate substantial vibration and to define the level of effort required for continuous vibration monitoring. Phase demolition, earth-moving, and ground impacting operations so as not to occur during the same time period.

- Prohibit the use of heavy vibration-generating construction equipment within 30 feet of adjacent buildings.

- Use a smaller vibratory roller, such as the Caterpillar model CP433E vibratory compactor, when compacting materials within 30 feet of adjacent buildings. Only use the static compaction mode when compacting materials within 15 feet of buildings.

- Document conditions at all structures located within 30 feet of construction prior to, during, and after vibration generating construction activities with the agreement of property owners. All plan tasks shall be undertaken under the direction of a licensed Professional Structural Engineer in the State of California and be in accordance with industry-accepted standard methods. Specifically:

    - Vibration limits shall be applied to vibration-sensitive structures located within 30 feet of all construction activities identified as sources of high vibration levels.

- Performance of a photo survey, elevation survey, and crack monitoring survey for each structure of normal construction within 30 feet of all construction activities identified as sources of high vibration levels. Surveys shall be performed prior to any construction activity, in regular intervals during construction, and after project completion of vibration generating construction activities, and shall include internal and external crack monitoring in the structures, settlement, and distress, and shall document the condition of the foundations, walls and other structural elements in the interior and exterior of said structures.

- Avoid dropping heavy equipment and use alternative methods for breaking up existing pavement, such as a pavement grinder, instead of dropping heavy objects, within 30 feet of adjacent buildings.

- The contractor shall alert heavy equipment operators to the close proximity of the adjacent structures so they can exercise extra care.

- Designate a person responsible for registering and investigating claims of excessive vibration. The contact information of such person shall be clearly posted on the construction site.

- Develop a vibration monitoring and construction contingency plan to identify structures where monitoring would be conducted, set up a vibration monitoring schedule, define structure-specific vibration limits, and address the need to conduct photo, elevation, and crack surveys to document before and after construction conditions. Construction contingencies shall be identified for when vibration levels approached the limits.

- At a minimum, vibration monitoring shall be conducted during demolition and excavation activities.

- Conduct a post-construction survey on structures where either monitoring has indicated high vibration levels or complaints of damage has been made. Make appropriate repairs or compensation where damage has occurred as a result of construction activities.

Implementation of this mitigation measure would reduce the vibration impact to a less than significant level.

N. POPULATION AND HOUSING – The project would not have a significant impact on this resource, therefore no mitigation is required.

O. PUBLIC SERVICES – The project would not have a significant impact on this resource, therefore no mitigation is required.

P. RECREATION – The project would not have a significant impact on this resource, therefore no mitigation is required.

Q. TRANSPORTATION.

Impact TR-1: The project daily VMT generated by the project would be 10.86 per capita, which exceeds the residential threshold of 10.12 daily VMT per capita. Since the VMT generated by the project would exceed the threshold of significance for residential uses in the area, the project would result in a significant transportation impact on VMT. The project proposes a Transportation Demand Management (TDM) program that will include the measures below.

MM TR-1.1 Prior to the issuance of any development permits, the project applicant shall prepare plans that illustrate the design of the 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 Class IV protected bike lanes along both sides of N. Capitol Avenue between Penitencia Creek Road and Gilchrist Road per the San Jose Better Bike Plan 2025. These bikeway segments would connect the eastern and western trailheads of the Penitencia Creek Trail along N. Capitol Avenue. Implementation of these improvements would require coordination with the City of San José Department of Parks, Recreation & Neighborhood Services (PRNS).

- Pedestrian Network Improvements. Construct a new crosswalk along the south leg of the N. Capitol Avenue/Penitencia Creek Road intersection, including pedestrian signal heads with push buttons and ADA curb ramps. This would provide an additional connection for Penitencia Creek Trail between the eastern and western trailheads.

- Traffic Calming Measures. Narrow the existing travel lane widths along N. Capitol Avenue between Penitencia Creek Road and Gilchrist Road in conjunction with the construction of Class IV protected bike lanes. The project shall also install an all-way stop control and crosswalks at the intersection of Penitencia Creek Road and Kestral Way.

Final plans shall be submitted and review at the Public Improvement Plan. Improvements shall be constructed prior to the issuance of the final occupancy permit.

MM TR-1.2 Prior to issuance of any development or occupancy permits for the apartment complex, the project applicant shall implement the following Transportation Demand Management (TDM) Plan for the apartment component:

- Car Sharing Program. Provide subsidized memberships to a car sharing program eligible to 90% of residents.

- Voluntary Travel Behavior Change Program. Provide a travel behavior change program which includes mass communication campaigns and travel feedback programs that encourage use of using transit, walking, and biking. It is expected that 75% of residents will participate.

MM TR-1.3 **On-site TDM Coordinator and Annual Monitoring.** Prior to the issuance of any development or occupancy permits for the apartment complex, the project applicant

shall provide a draft TDM plan (including one or more options above) prior to issuance of Planning Permit for review and approval. Prior to clearance for building occupancy, a final TDM Plan shall be submitted and shall include an annual monitoring requirement establishing an average daily trip (ADT) cap of 120 AM peak-hour trips and 146 PM peak-hour trips. The annual monitoring shall be prepared by a qualified traffic engineer and the report must demonstrate the project is within 10% of the ADT cap. If the project is not in conformance with the trip cap, the project must add additional TDM measures to meet the trip cap. A follow up report shall be required within six months of the last approved TDM. If the project is still out of conformance, penalties will be assessed. 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 of San José Planning, Building and Code Enforcement Department or the Director's designee for the life of the project.

In conclusion, based on the City's VMT Evaluation Tool, implementing the multimodal infrastructure improvements and TDM measures described above would lower the project VMT to 10.04 per capita, which would reduce the project impact to a less than significant level (below the City's threshold of 10.12 VMT per capita).

R. TRIBAL CULTURAL RESOURCES – The project would not have a significant impact on this resource, therefore no mitigation is required.

S. UTILITIES AND SERVICE SYSTEMS – The project would not have a significant impact on this resource, therefore no mitigation is required.

T. WILDFIRE – The project would not have a significant impact on this resource, therefore no mitigation is required.

U. MANDATORY FINDINGS OF SIGNIFICANCE.

Cumulative impacts would be less than significant. The proposed Project would implement the identified mitigation measures and would have either have no impacts or less-than-significant impacts on riparian habitat or other sensitive natural communities, migration of species, or applicable biological resources protection ordinances. Therefore, the proposed Project would not contribute to any cumulative impact for these resources. The Project would not cause changes in the environment that have any potential to cause substantial adverse direct or indirect effects on human beings.

PUBLIC REVIEW PERIOD

Before 5:00 p.m. on **Monday, May 16, 2022** any person may:

1. Review the Draft Mitigated Negative Declaration (MND) as an informational document only; or

2. Submit written comments regarding the information and analysis in the Draft MND. Before the MND is adopted, Planning staff will prepare written responses to any comments, and revise the Draft MND, if necessary, to reflect any concerns raised during the public review period. All written comments will be included as part of the Final MND.

CHRISTOPHER BURTON, Director
Planning, Building and Code Enforcement

4/25/22
Date

Deputy

Nhu Nguyen
Environmental Project Manager

Circulation period: April 26, 2022 to Monday, May 16, 2022

Table of Contents

List of Figures

List of Tables

Appendices

.

Chapter 1. Background Information

INTRODUCTION

This Initial Study has been prepared to conform to the requirements of the California Environmental Quality Act (CEQA), the CEQA Guidelines (Title 14, California Code of Regulations §15000 et seq.), and the regulations and policies of the City of San José. The purpose of this Initial Study is to provide objective information regarding the environmental consequences of the proposed project to the decision makers considering the project.

The City of San José is the lead agency under CEQA for the proposed project. The City has prepared this Initial Study to evaluate the environmental impacts that might reasonably be anticipated to result from the construction of this project, as described below.

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

City of San José Department of Planning, Building, and Code Enforcement
200 East Santa Clara Street
Tower, Third Floor
San José, California 95113
Attn: Nhu Nguyen
Nhu.Nguyen@sanjoseca.gov

This Initial Study and all documents reference in it are available for public review in the Department of Planning, Building and Code Enforcement at the above address, on the City's environmental page at www.sanjoseca.gov/negativedeclarations and a copy of this Initial Study will be available on the State Clearinghouse CEQAnet Webportal at https://ceqanet.opr.ca.gov/Search/.

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

If the project is approved, the City of San José will file a Notice of Determination (NOD), which will be available for public inspection and posted within 24 hours of receipt at the County Clerk's Office 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 15075(g)).

PROJECT DATA

1. **Project Title**: 905 N. Capitol Avenue Residential Development

2. **Lead Agency Contact:** City of San José Department of Planning, Building and Code Enforcement, 200 E. Santa Clara Street, San José, CA 95113
   Environmental Planner: Nhu Nguyen

3. **Project Owner:** San Jose Commercial Properties, 2051 Junction Avenue, Suite 100, San José, CA 95131

4. **Project Proponent:** Hanover R.S. Limited Partnership (Attn: Scott Youdall), 156 Diablo Road, Suite 220, Danville, CA 94526, (925) 490-2990.

   Project Location: The project is located on approximately 3.5 gross acres over two non-contiguous parcels located at 905 N. Capitol Avenue. The larger northern parcel (2.12-acres) is currently occupied by an existing single-family residence, while the smaller southern parcel (1.35-acres) is vacant.

   Assessor's Parcel Numbers (APNs): 254-29-028 and 254-29-026. **City Council District:** 4

5. **Project Description Summary:** The project is application for a Site Development Permit to allow construction of residential units on two non-contiguous parcels located on either side of Penitencia Creek Road at 905 N. Capitol Avenue in San José, California. The project proposed construction of 345 multi-family residential units and 3,000 square feet of office space in a seven-story mixed-use building with underground parking on the 2.12-acre northern parcel, and development of 32 for-sale townhomes with two-car garages on the 1.35-acre southern parcel. The project also proposes a subdivision of the 1.35-acre parcel in preparation of the sale of the individual townhomes. The project would also involve various site improvements including two paved alleys, sidewalk and curb replacement, stormwater treatment areas, and access driveways. The 2.12-acre parcel is currently occupied by a single-family residence that would be demolished as part of the project. The project proposes to include 5% moderate income units.

6. **Envision 2040 San José General Plan Designation**: *Transit Residential*

7. **Zoning Designation**: R-M Multiple Residence District

8. **Habitat Conservation Plan Designations**:
   Area 4: Urban Development Equal to or Greater than 2 Acres Covered
   Land Cover: Urban-Suburban
   Land Cover Fee Zone: Urban Areas (No Land Cover Fee)

9. **Surrounding Land Uses**:
   - North: Residential
   - South: Penitencia Creek, public trail
   - East: N. Capitol Avenue, light rail, residential, open space, public trail
   - West: Residential, I-680

Chapter 2. Project Description

PROJECT LOCATION

The project site is located within the City limits of San José, in Santa Clara County, at the intersection of Penitencia Creek Road and N. Capitol Avenue (refer to Figure 1). The project site consists of two non-contiguous lots that are 2.12-acres and 1.35-acres in size, for a total of approximately 3.5 gross acres. The project is located on Assessor's Parcel Numbers (APNs) 254-29-028 and 254-29-026 (see Figure 2). The 2.12-acre lot is developed with a single-family residence and driveway, while the 1.35-acre lot is currently vacant. The project site is located in a designated transit corridor, with a light rail system operating on N. Capitol Avenue within the vicinity of the project. An aerial photograph of the project site and surrounding area is presented in Figure 3.

PROJECT DESCRIPTION

The project proposes residential development of the two non-contiguous lots that make up the project site. The project is application for a Site Development Permit to allow construction of a seven-story mixed-use building with 345 residential units and 3,000 square feet of office space on the northern 2.12-acre lot and 32 townhomes within four buildings on the 1.35-acre southern lot. The apartment building proposes a mix of unit sizes and types, including 35 studio apartments, 190 one-bedroom units, and 120 two-bedroom units. The 32 townhomes would consist of three-story, three-bedroom and four-bedroom units. The project proposes to include 5% moderate income units.

The site is designated in the General Plan as *Transit Residential* in the City's 2040 General Plan. The *Transit Residential* designation allows a density of up to 250 du/ac and an FAR of 2.0 to 12.0 at heights of five to 25 stories. The project will be subject to *Transit Residential* standards without the need for a conforming rezoning.

The proposed site plan for the project is presented in Figure 4. Floor plans for the proposed apartment building are provided in Figures 5A through 5F and floor plans for the proposed townhomes are provided in Figures 5G through 5J. Elevations for the proposed apartment building are shown in Figures 6A and 6B, while elevations for the proposed townhomes are provided in Figure 6C. Additional project details are described below.

Residential Development. The proposed 345 apartments are proposed in a single, seven-story building with basement level parking. The proposed 32 townhomes are proposed in four buildings; each unit proposes an attached garage. The apartment building proposes a mix of unit sizes and types. The 32 townhomes would all be three-story, ranging between three-bedroom and four-bedroom units (see the site plan for the project as presented in Figure 4). The maximum height of the seven-story apartment building would be 85.5 feet, while the maximum height of the townhomes would be 39.6 feet (see the elevations in Figure 6A – 6C). A rendering of the proposed apartment building is presented in Figure 6D.

Proposed common outdoor areas for the apartment building consist of two podium-level courtyards located at the center of the project site, including one with a pool, as well as a roof deck. Common open space for the townhomes is proposed to the south of the homes. (See the landscape plans in Figures 9A – 9C). Additional project details are described below.

Commercial Development. The proposed apartment building would include 3,000 square feet of commercial office space on the ground floor. The commercial space would be located on the northeast side of the proposed apartment building, facing N. Capitol Avenue. The proposed office space would consist of six separate office spaces as well as shared conference room and restrooms.

Access and Parking. Vehicular access to the project site would be provided via the signalized intersection of N. Capitol Avenue and Penitencia Creek Road. For the proposed apartments, the project would construct a two-level parking garage. Access to the garage would be provided via a driveway on Penitencia Creek Road. For the proposed townhomes, each unit would contain a two-car garage. Access to the two-car garages would be provided via two separate driveways (alleys A and B) via Penitencia Creek Road. Access to a small 3-space guest parking lot would be provided via a driveway on Kestral Way.

The project would remove the driveways located on N. Capitol Avenue and Penitencia Creek Road for the existing single-family residence. The apartment building and townhomes would both be accessed via Penitencia Creek Drive. The basement-level and first-level parking garage for the apartment building would provide a total of 364 secured parking stalls. For the apartment building, the project is proposing parking for 132 bicycles and 89 motorcycles in the two-level parking garage. Each townhome unit would contain a two-car garage, which, combined with surface parking proposed for the development, would provide 70 vehicle parking spaces, eight (8) motorcycle spaces, and eight (8) bicycle spaces.

The project site is located in the *Transit Residential* General Plan designation, which allows for a 20% reduction in parking. The project also includes a Transportation Demand Management (TDM) program in order to facilitate a further parking reduction of up to 30%. The project would, thus, include an overall parking reduction of 26%. The TDM provides various programs and incentives to reduce resident dependence on automobile transportation.

The project would also include traffic calming measures such as construction of planned bike access improvements along North Capitol Avenue, a new crosswalk on the south leg of the North Capitol Avenue/Penitencia Creek Road intersection (including pedestrian signal heads with push buttons and new ADA compliant curb ramps), and construction of Class IV protected bicycle facility improvements along both sides of North Capitol Avenue between Penitencia Creek Road and Gilchrist Road.

Lighting. Outdoor lighting would be provided for site access and security purposes. All outdoor exterior lighting will conform to the City Council's Outdoor Lighting Policy (4-3), Interim Lighting Policy Broad Spectrum Lighting (LED) for Private Development, and Citywide Design Standards and Guidelines.

Utilities. The project includes the provision of services and utilities to serve the project, including water, storm drainage, wastewater, and solid waste. A stormwater control plan is provided in Figure 7.

Grading. Development of the project would involve the excavation of approximately 23,000 cubic yards (CY) of material to be exported from the site and approximately 1,000 CY of fill material to be imported to the site. A grading and drainage plan is provided in Figure 8.

Public Improvements. The project proposes the replacement of existing 6-foot-wide sidewalks along the Penitencia Creek Road, N. Capitol Avenue, and Kestral Way project frontages, as well as new 4-

foot bevel curbs along the two new alleys. The project would also include installation of Class IV bicycle lanes along both sides of North Capitol Avenue between Penitencia Creek Road and Gilchrist Drive. In addition, the project includes a new crosswalk at the southern leg of the N. Capitol Ave/Penitencia Creek Rd. intersection. The project shall provide street dedication as needed. The proposed vehicle and bicycle driveways for the proposed apartment building will be constructed to meet the City's driveway standards.

Landscaping and Tree Removal. Landscape plans have been prepared for the project, which are presented in Figure 9. The project proposes to remove approximately 56 existing trees (on site and street trees), and is required to replace them with approximately new trees on-site in accordance with the City's requirements (see D. Biological Resources for further discussion).

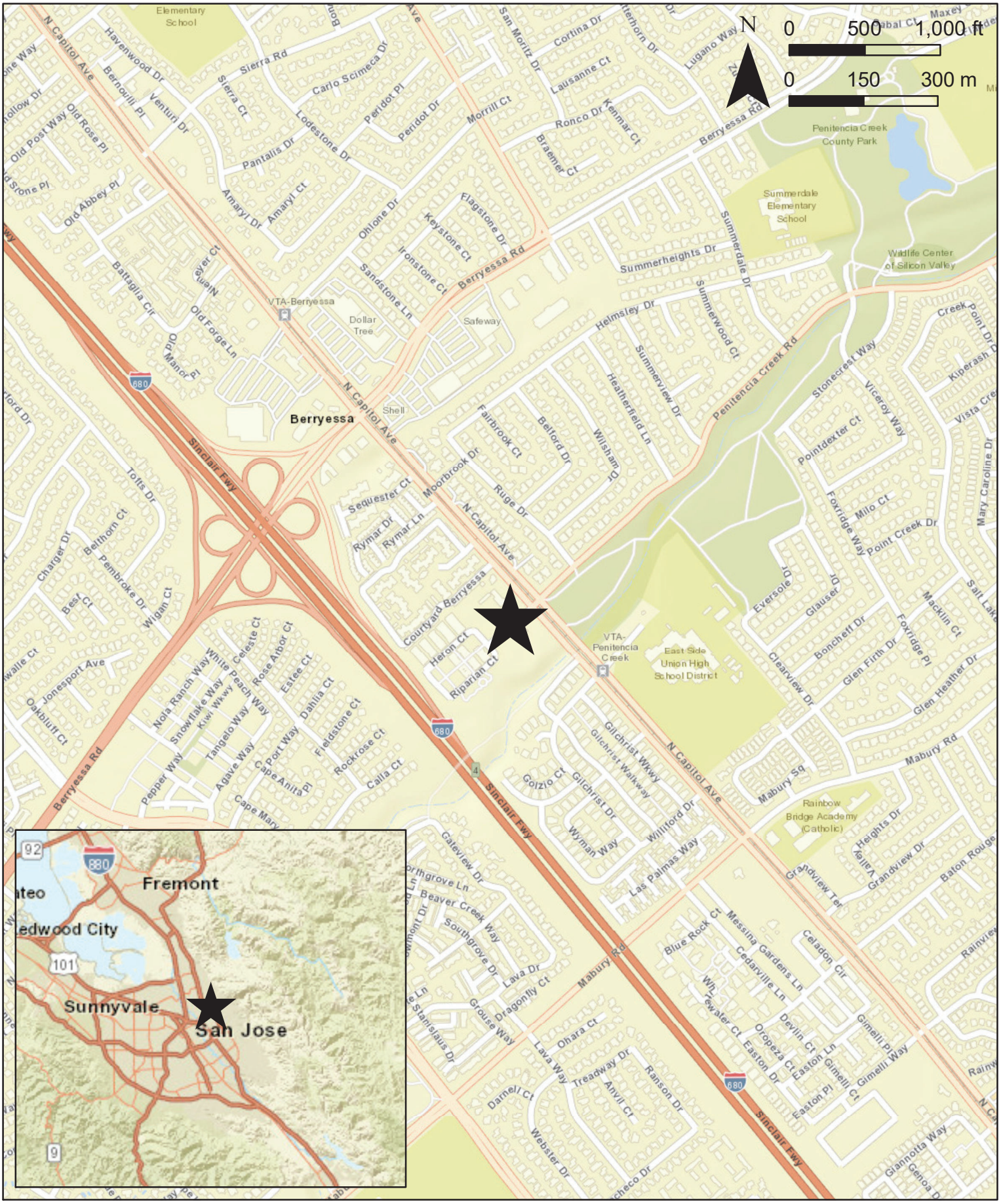
PROJECT CONSTRUCTION

The construction schedule for the project assumes that the earliest possible start date would be September 2022 for both sites. The northern apartment development would be built out over a period of approximately 25 months. The southern townhouse development would be built out over a period of approximately 13 months. The earliest year of full operation for the entire project is assumed to be 2025.

PROJECT APPROVALS

The City of San José is the lead agency with responsibility for approving the proposed project. The project may require the following permits and approvals from the Lead Agency:

- Site Development Permit
- Vesting Tentative Map
- Demolition Permit
- Building Permit
- Grading Permit
- Other Public Works Clearances, as applicable



Location Map

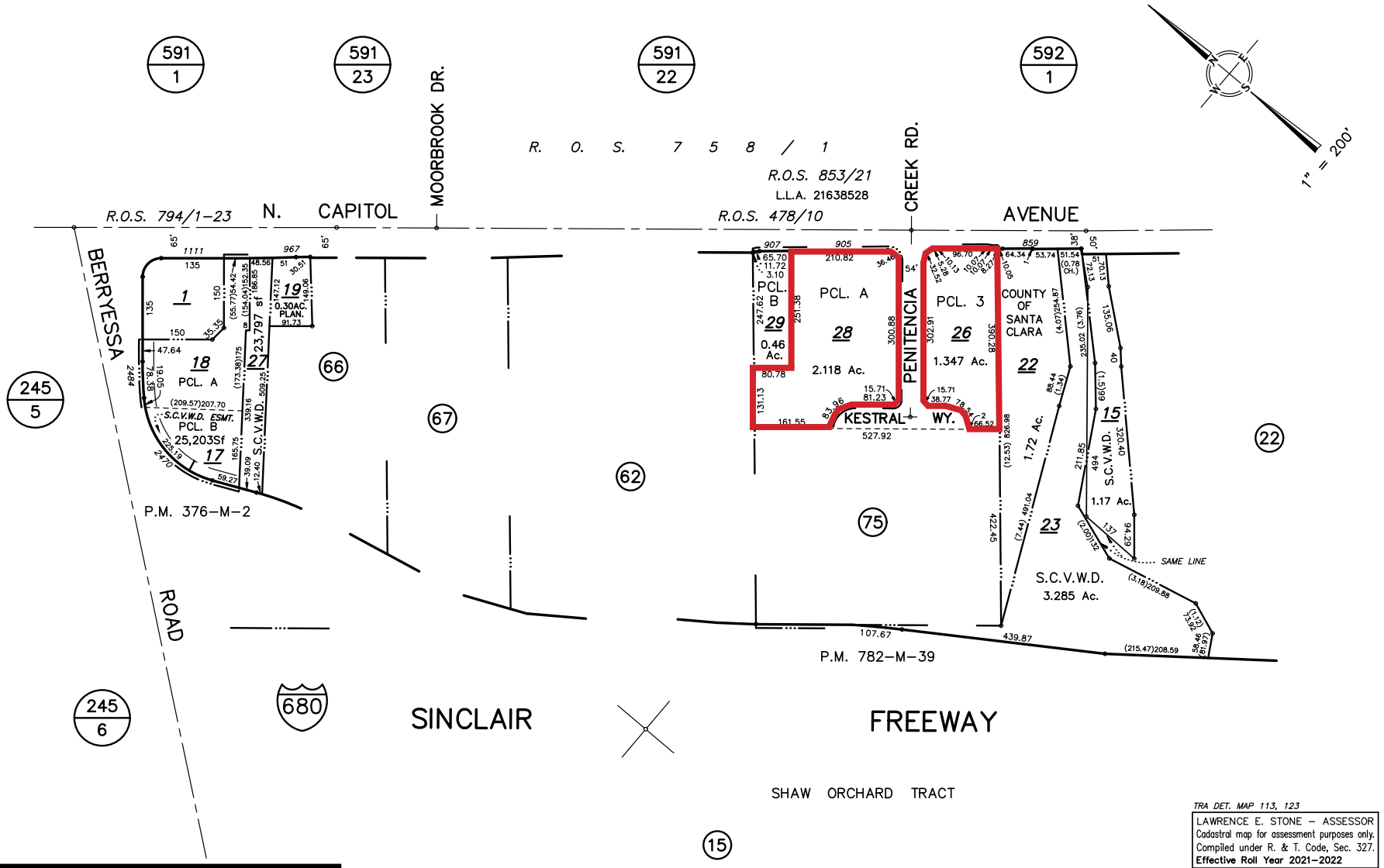
905 N. Capitol Residential
Initial Study

Figure
1

Path: D:\GIS\GIS_Projects\2021-30 N Capitol Ave\Final Products\Fig 1 - Location Map.mxd

OFFICE OF COUNTY ASSESSOR — SANTA CLARA COUNTY, CALIFORNIA

BOOK	PAGE
254	29



Source: Santa Clara County Assessor, July 2021

APN Map

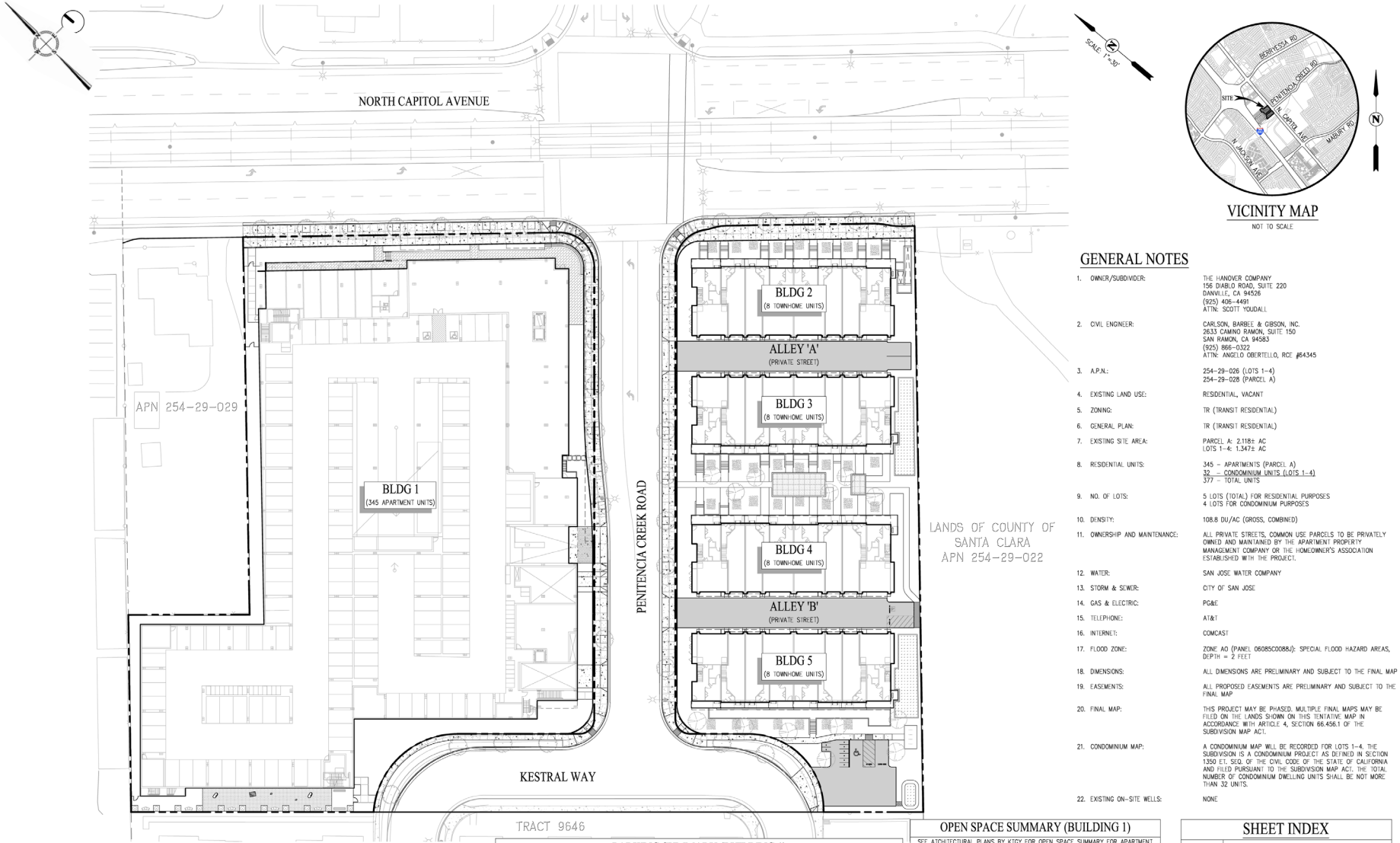
905 N. Capitol Residential
Initial Study

Figure
2

Vicinity Map

905 N. Capitol Residential
Initial Study

Figure
3



VICINITY MAP

NOT TO SCALE

GENERAL NOTES

1.	OWNER/SUBDIVIDER:	THE HANOVER COMPANY 156 DIABLO ROAD, SUITE 220 DANVILLE, CA 94526 (925) 406-4491 ATTN: SCOTT YOUDALL
2.	CIVIL ENGINEER:	CARLSON, BARBEE & GIBSON, INC. 2633 CAMINO RAMON, SUITE 150 SAN RAMON, CA 94583 (925) 866-0322 ATTN: ANGELO OBERTELLO, RCE #64345
3.	A.P.N.:	254-29-026 (LOTS 1-4) 254-29-028 (PARCEL A)
4.	EXISTING LAND USE:	RESIDENTIAL, VACANT
5.	ZONING:	TR (TRANSIT RESIDENTIAL)
6.	GENERAL PLAN:	TR (TRANSIT RESIDENTIAL)
7.	EXISTING SITE AREA:	PARCEL A: 2.118± AC LOTS 1-4: 1.347± AC
8.	RESIDENTIAL UNITS:	345 - APARTMENTS (PARCEL A) 32 - CONDOMINIUM UNITS (LOTS 1-4) 377 - TOTAL UNITS
9.	NO. OF LOTS:	5 LOTS (TOTAL) FOR RESIDENTIAL PURPOSES 4 LOTS FOR CONDOMINIUM PURPOSES
10.	DENSITY:	108.8 DU/AC (GROSS, COMBINED)
11.	OWNERSHIP AND MAINTENANCE:	ALL PRIVATE STREETS, COMMON USE PARCELS TO BE PRIVATELY OWNED AND MAINTAINED BY THE APARTMENT PROPERTY MANAGEMENT COMPANY OR THE HOMEOWNER'S ASSOCIATION ESTABLISHED WITH THE PROJECT.
12.	WATER:	SAN JOSE WATER COMPANY
13.	STORM & SEWER:	CITY OF SAN JOSE
14.	GAS & ELECTRIC:	PG&E
15.	TELEPHONE:	AT&T
16.	INTERNET:	COMCAST
17.	FLOOD ZONE:	ZONE AO (PANEL 06085C0088J): SPECIAL FLOOD HAZARD AREAS, DEPTH = 2 FEET
18.	DIMENSIONS:	ALL DIMENSIONS ARE PRELIMINARY AND SUBJECT TO THE FINAL MAP
19.	EASEMENTS:	ALL PROPOSED EASEMENTS ARE PRELIMINARY AND SUBJECT TO THE FINAL MAP
20.	FINAL MAP:	THIS PROJECT MAY BE PHASED. MULTIPLE FINAL MAPS MAY BE FILED ON THE LANDS SHOWN ON THIS TENTATIVE MAP IN ACCORDANCE WITH ARTICLE 4, SECTION 66.456.1 OF THE SUBDIVISION MAP ACT.
21.	CONDOMINIUM MAP:	A CONDOMINIUM MAP WILL BE RECORDED FOR LOTS 1-4. THE SUBDIVISION IS A CONDOMINIUM PROJECT AS DEFINED IN SECTION 1350 ET. SEQ. OF THE CIVIL CODE OF THE STATE OF CALIFORNIA AND FILED PURSUANT TO THE SUBDIVISION MAP ACT. THE TOTAL NUMBER OF CONDOMINIUM DWELLING UNITS SHALL BE NOT MORE THAN 32 UNITS.
22.	EXISTING ON-SITE WELLS:	NONE

LEGEND

EXISTING	PROPOSED	DESCRIPTION
		PROJECT BOUNDARY
		EASEMENT LINE
		CURB, GUTTER & SIDEWALK

ABBREVIATIONS

BD	BOUNDARY
C	COMPACT PARKING
EX	EXISTING
ESMT	EASEMENT
GR	TOP OF GRATE
LS	LANDSCAPE
INV	INVERT ELEVATION
PUE	PUBLIC UTILITY EASEMENT
RIM	RADIUS
R	RIM ELEVATION
RW	RIGHT-OF-WAY
SD	STORM DRAIN
SS	SANITARY SEWER
SSE	SANITARY SEWER EASEMENT
SW	SIDEWALK
TC	TOP OF CURB
V	VACUUM PARKING
W	WATER

PARKING SUMMARY (BUILDING 1)

SEE ARCHITECTURAL PLANS BY KTGY FOR PARKING SUMMARY FOR APARTMENT BUILDING (BLDG 1)

PARKING SUMMARY (BUILDINGS 2-5)

UNIT TYPE	NUMBER OF UNITS	VEHICULAR PARKING REQUIREMENT	MOTORCYCLE PARKING REQUIREMENT	BICYCLE PARKING REQUIREMENT
3 BEDROOM	16	2.6 SPACES PER UNIT	1 SPACE PER 4 UNITS	1 SPACE PER 4 UNITS
4 BEDROOM	16	2.75 SPACES PER UNIT	1 SPACE PER 4 UNITS	1 SPACE PER 4 UNITS
REQUIRED NUMBER OF PARKING:		85.6	8	8
REDUCED NUMBER OF PARKING (20% REDUCTION, SEE NOTE 2. APPLIES TO VEHICULAR PARKING ONLY)		69	8	8
TOTAL PARKING PROVIDED		70	8	8

PARKING SUMMARY NOTES:

1. SEE ARCHITECTURAL PLANS FOR BUILDING 1 PARKING SUMMARY (INCLUDING VEHICULAR, MOTORCYCLE, AND BICYCLE PARKING).
2. A 20% REDUCTION IN OFF-STREET PARKING SPACE REQUIREMENT IS APPLIED DUE TO THE PROXIMITY OF AN EXISTING RAPID TRANSIT STATION TO THE PROJECT.

OPEN SPACE SUMMARY (BUILDING 1)

SEE ATCHITECTURAL PLANS BY KTGY FOR OPEN SPACE SUMMARY FOR APARTMENT BUILDING (BLDG 1)

OPEN SPACE SUMMARY (BUILDINGS 2-5)

UNIT TYPE	NUMBER OF UNITS ON-SITE	PORCH AREA (SF)	TOTAL PRIVATE OPEN SPACE AREA (SF)
PLAN 1 - TYPICAL	16	80	1,280
PLAN 2 - TYPICAL	16	96	1536
TOTAL PRIVATE OPEN SPACE AREA (SF)			2,816
TOTAL COMMON AREA OPEN SPACE (SF) TOWNHOME PORTION ONLY (BLDGS 2-5)			19,400

SHEET INDEX

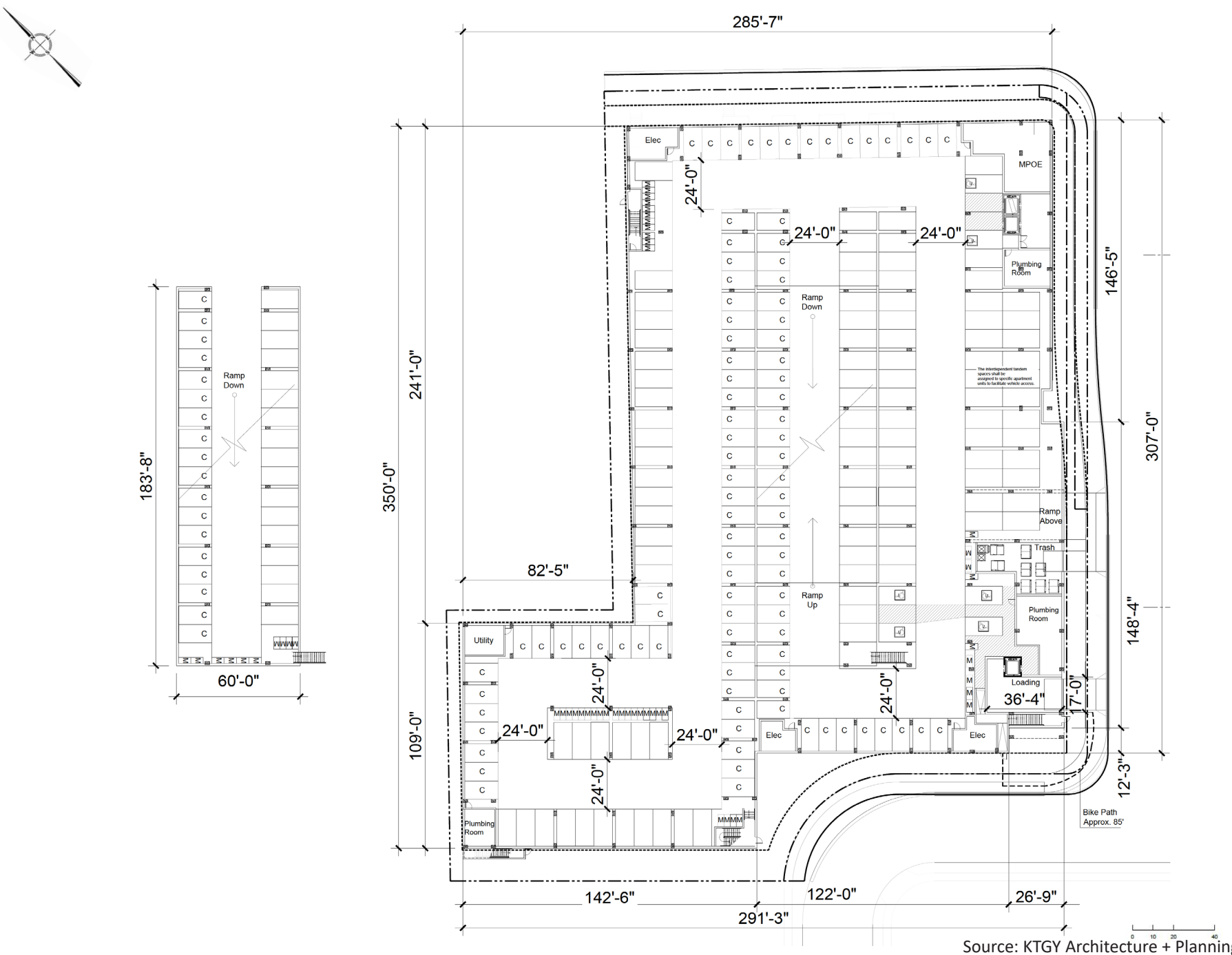
0 15 30 60

Source: KTGY Architecture + Planning, January 2022

Site Plan

905 N. Capitol Residential
Initial Study

Figure
4

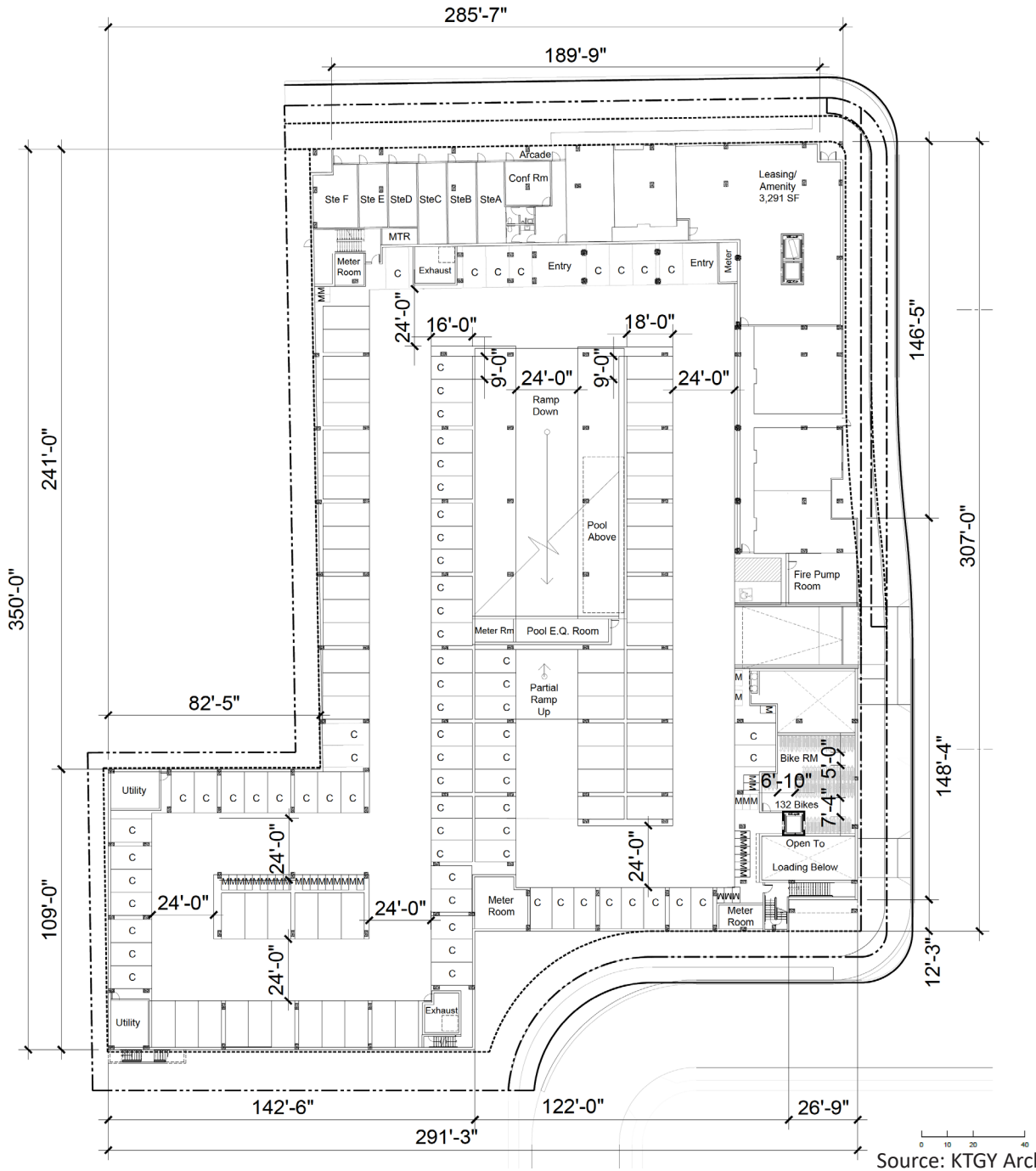


Source: KTGY Architecture + Planning, September 2021

Floor Plan - Apartments - Basement

905 N. Capitol Residential
Initial Study

Figure
5a

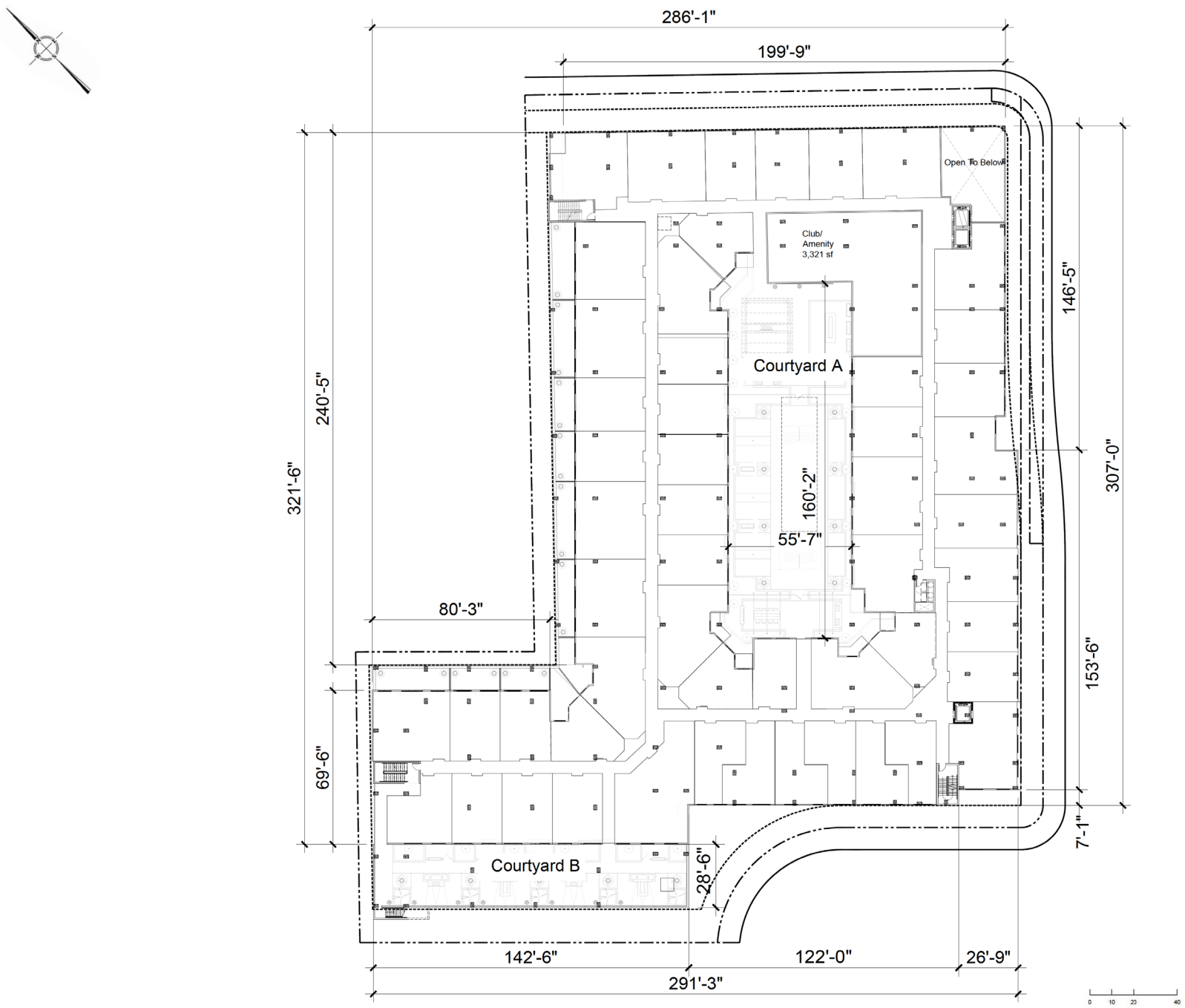


Source: KTGY Architecture + Planning, September 2021

Floor Plan - Apartments - First Floor

905 N. Capitol Residential
Initial Study

Figure
5b

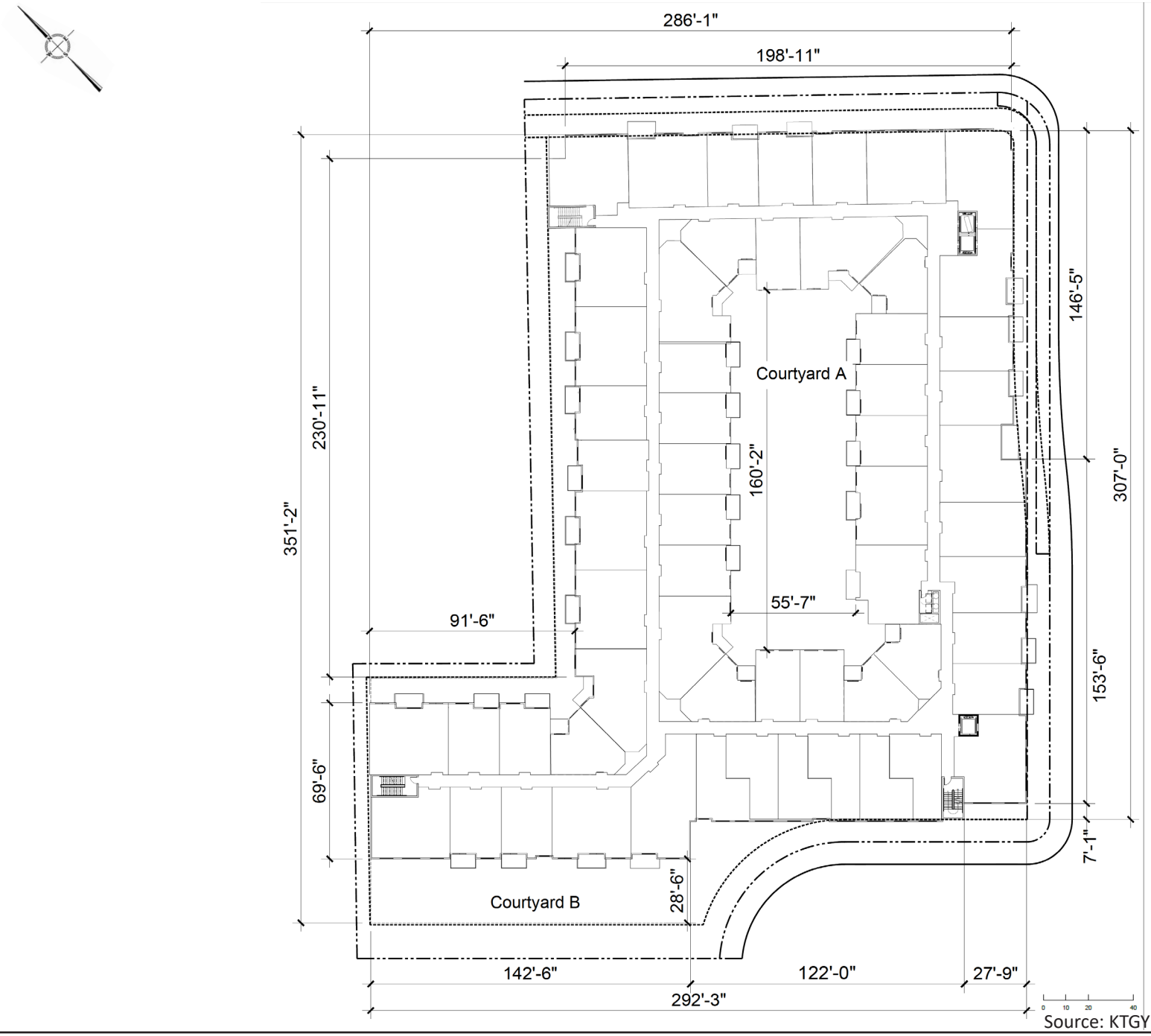


Source: KTGY Architecture + Planning, September 2021

Floor Plan - Apartments - Second Floor

905 N. Capitol Residential
Initial Study

Figure
5c

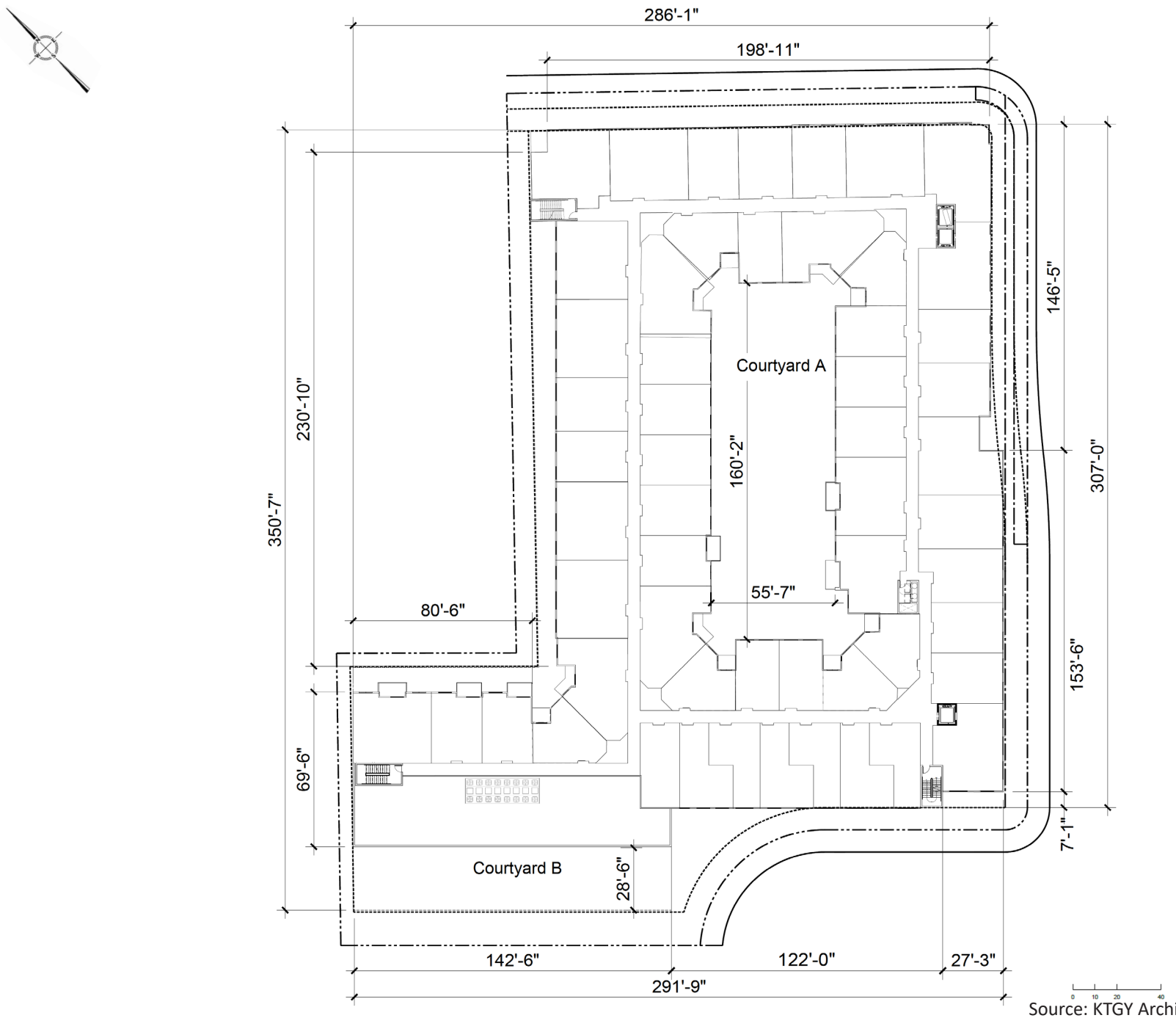


Source: KTGY Architecture + Planning, September 2021

Floor Plan - Apartments - Third-Sixth Floors

905 N. Capitol Residential
Initial Study

Figure
5d

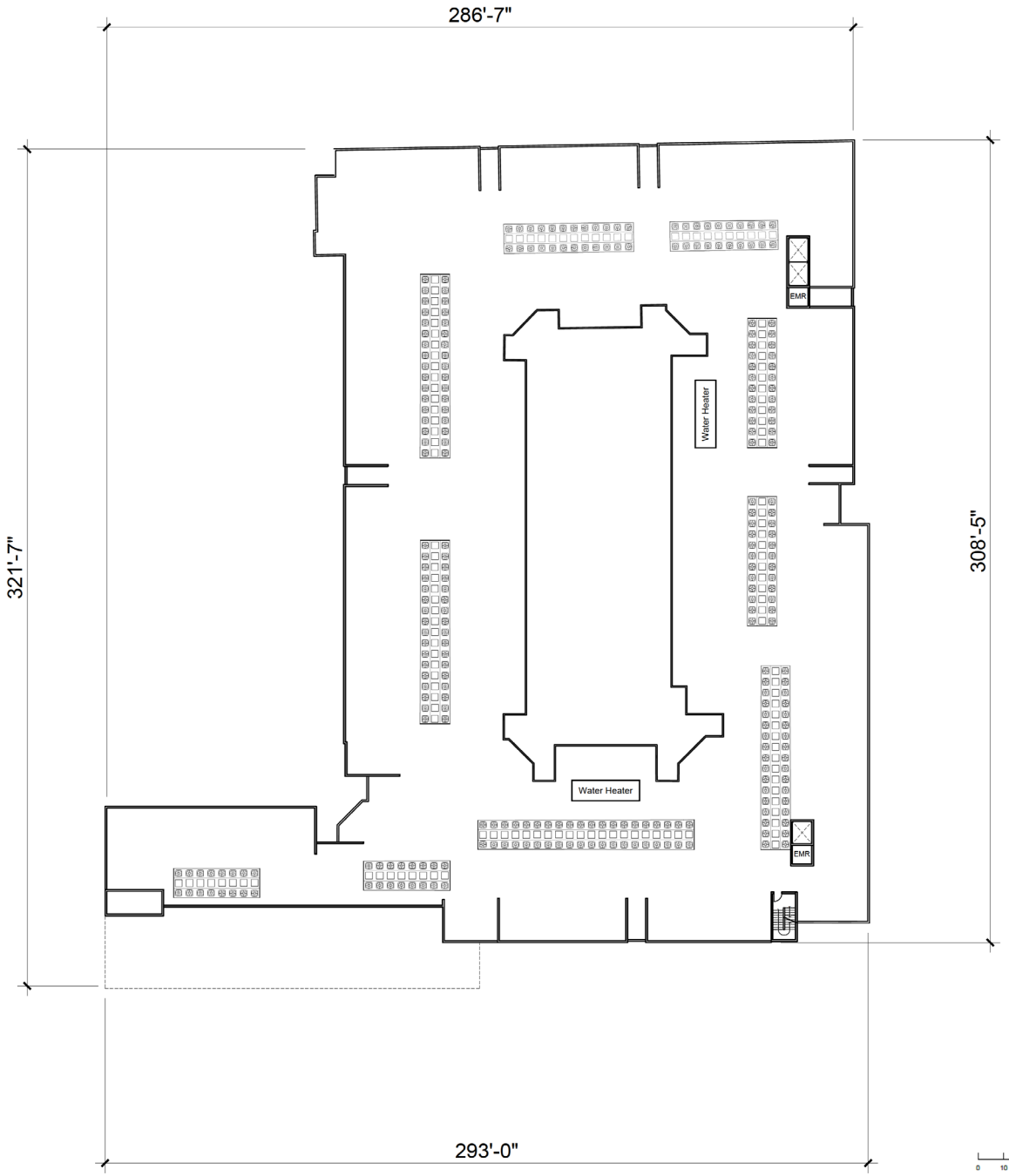


Source: KTGY Architecture + Planning, September 2021

Floor Plan - Apartments - Seventh Floor

905 N. Capitol Residential
Initial Study

Figure
5e

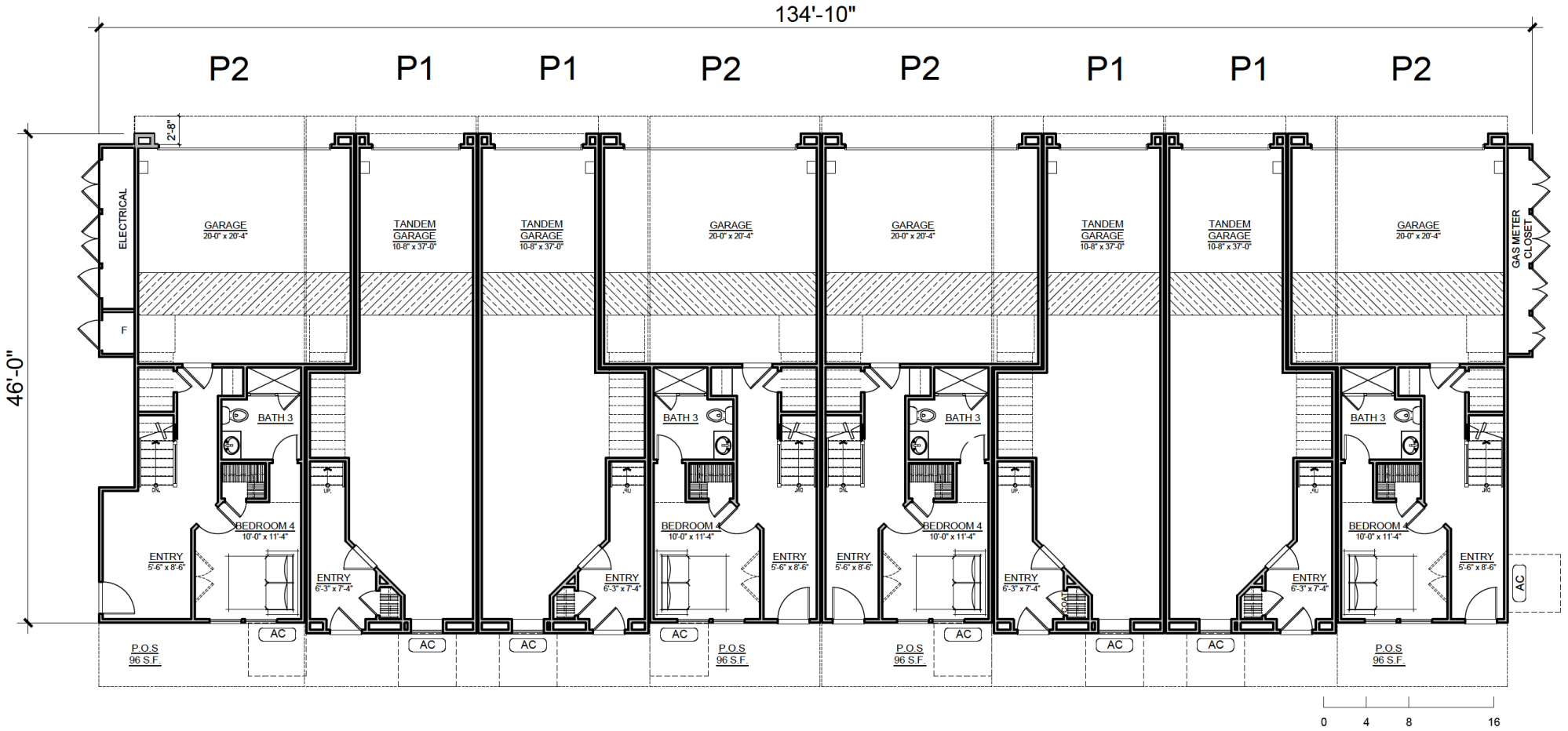


Source: KTGY Architecture + Planning, September 2021

Floor Plan - Apartments - Roof

905 N. Capitol Residential
Initial Study

Figure
5f

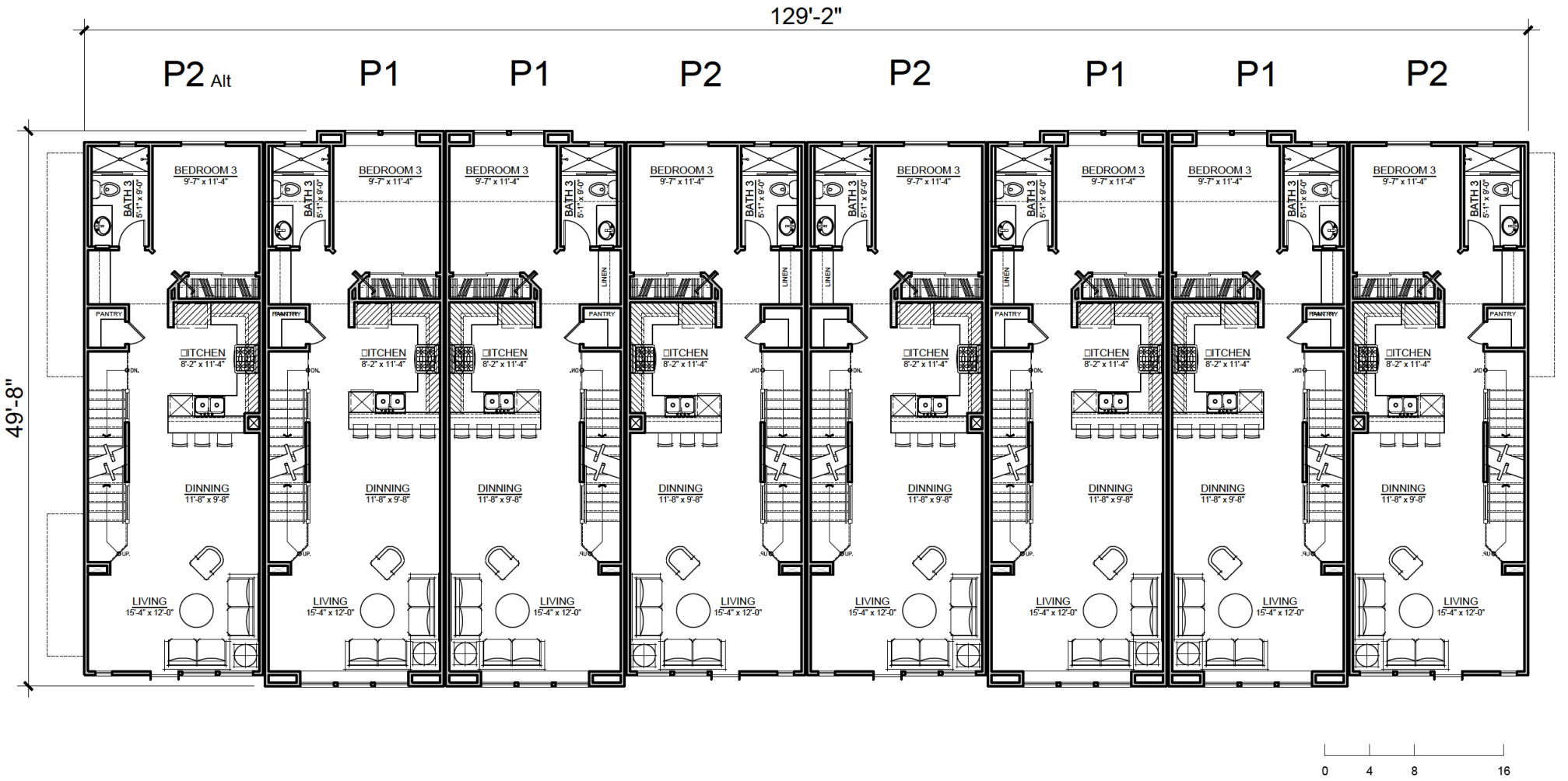


Source: KTGY Architecture + Planning, July 2021

Floor Plan - Condos - First Floor

905 N. Capitol Residential
Initial Study

Figure
5g

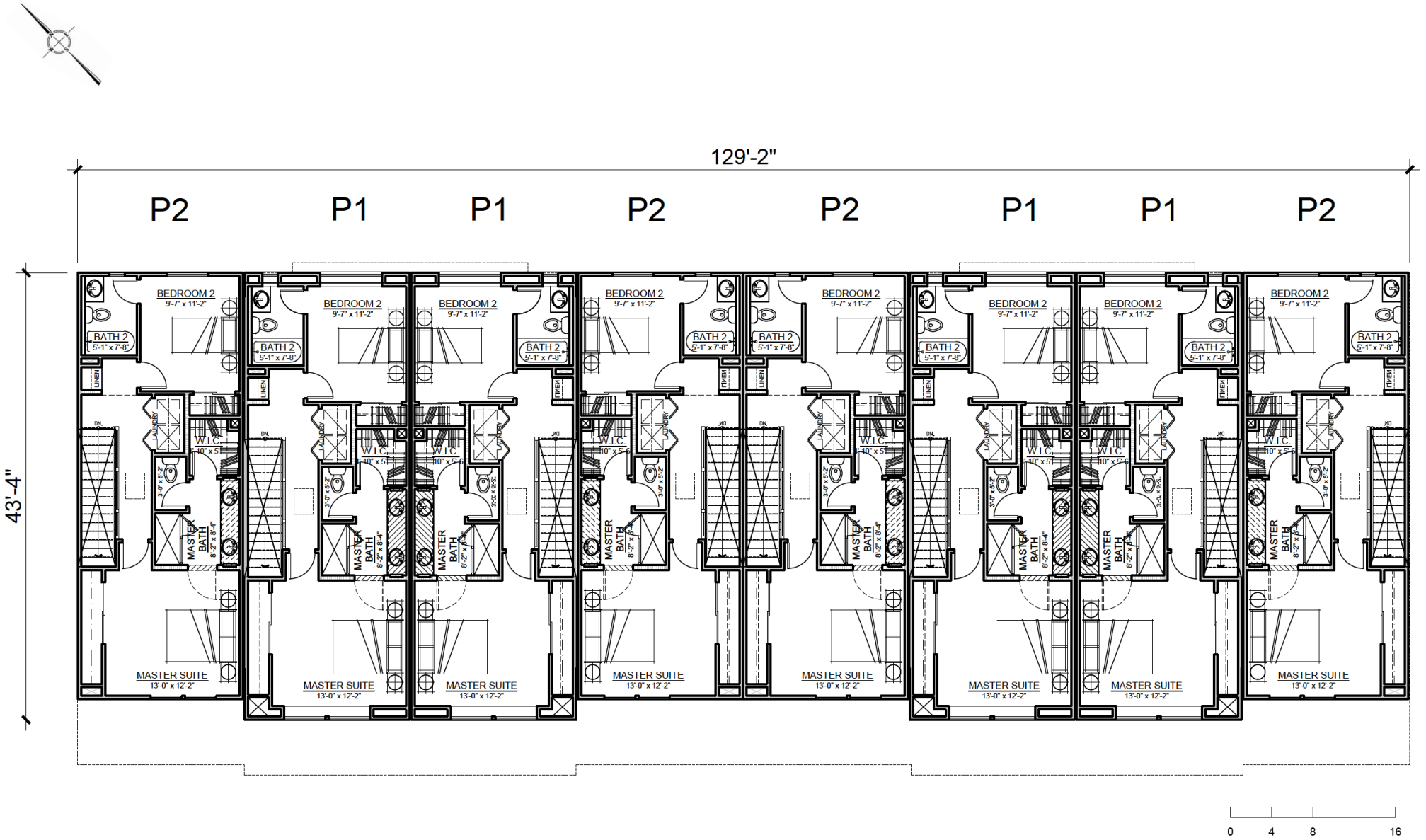


Source: KTGY Architecture + Planning, July 2021

Floor Plan - Condos - Second Floor

905 N. Capitol Residential
Initial Study

Figure
5h

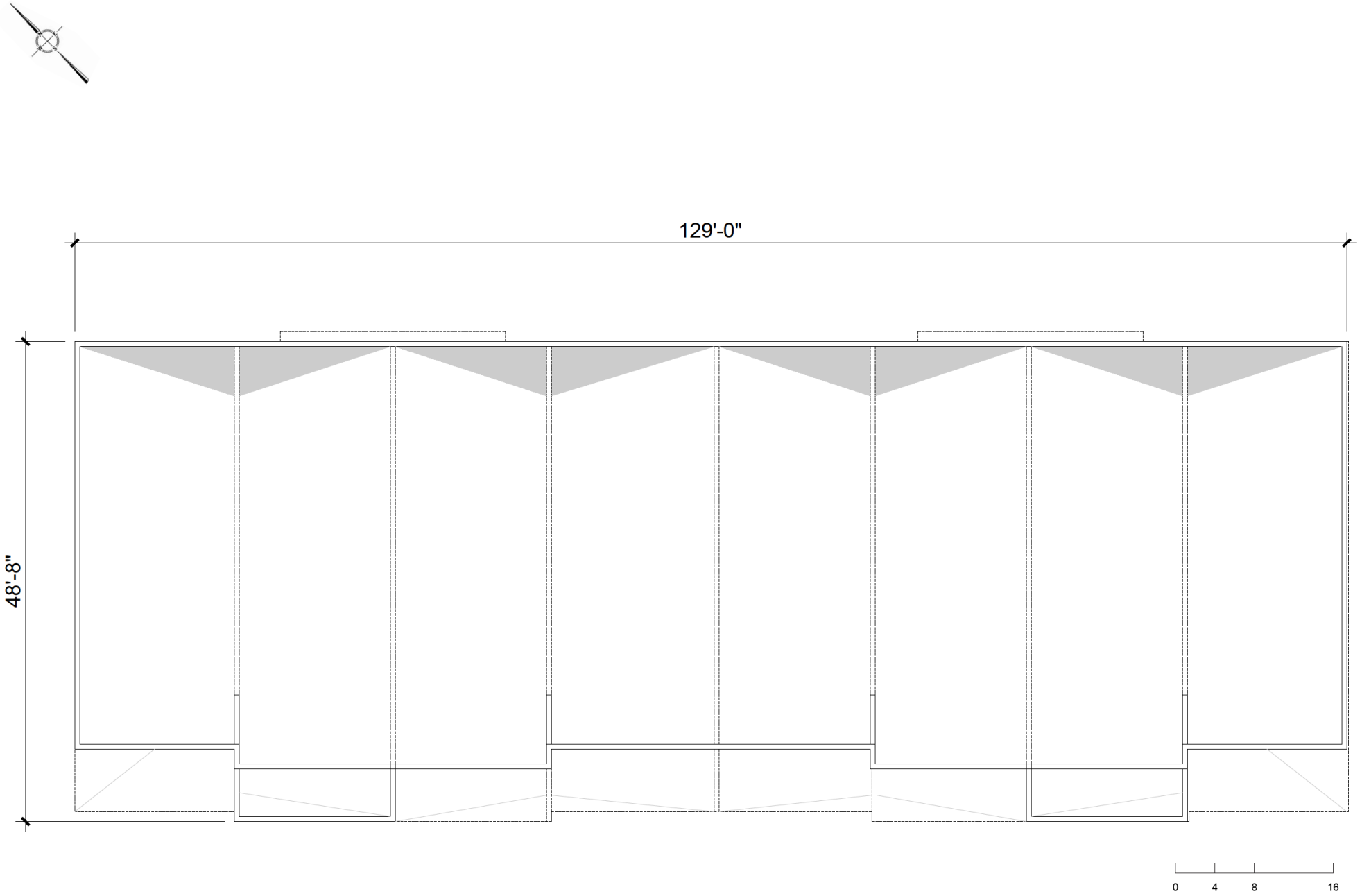


Source: KTGY Architecture + Planning, July 2021

Floor Plan - Condos - Third Floor

905 N. Capitol Residential
Initial Study

Figure
5i



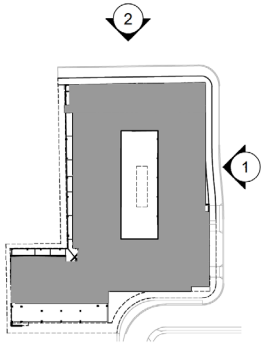
Source: KTGY Architecture + Planning, July 2021

Floor Plan - Condos - Roof

905 N. Capitol Residential
Initial Study

Figure
5j

2. North Capitol Avenue Elevation



Material Legend
1. Stucco
2. Cementitious Panel
3. Cementitious Siding
4. Vinyl Window
5. Storefront Window
6. Metal Railing
7. Egress and Garage Screening

1. Penitencia Creek Road Elevation

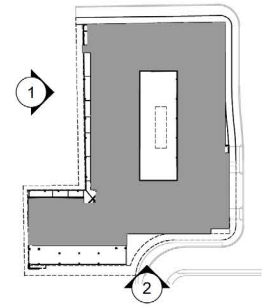
Source: KTGY Architecture + Planning, July 2021

Conceptual Elevations - Apartments - North & East

905 N. Capitol Residential
Initial Study

Figure
6a

2. South Elevation



Material Legend
1. Stucco
2. Cementitious Panel
3. Cementitious Siding
4. Vinyl Window
5. Storefront Window
6. Metal Railing
7. Egress and Garage Screening

1. West Elevation

Source: KTGY Architecture + Planning, July 2021

Conceptual Elevations - Apartments - South & West

905 N. Capitol Residential
Initial Study

Figure
6b

MATERIAL LEGEND:

1. ROOF - FLAT WITH PARAPET
2. STUCCO
3. METAL RAILING
4. VINYL WINDOW
5. UNIT ADDRESS
6. ENTRY DOOR
7. GARAGE DOOR
8. DECORATIVE INSET SIDING AT TRIM
9. DECORATIVE LIGHT FIXTURE
10. HORIZONTAL LAP SIDING

Right Elevation

Rear Elevation

Left Elevation

Front Elevation

Source: KTGY Architecture + Planning, July 2021

Conceptual Elevations - Condos

905 N. Capitol Residential
Initial Study

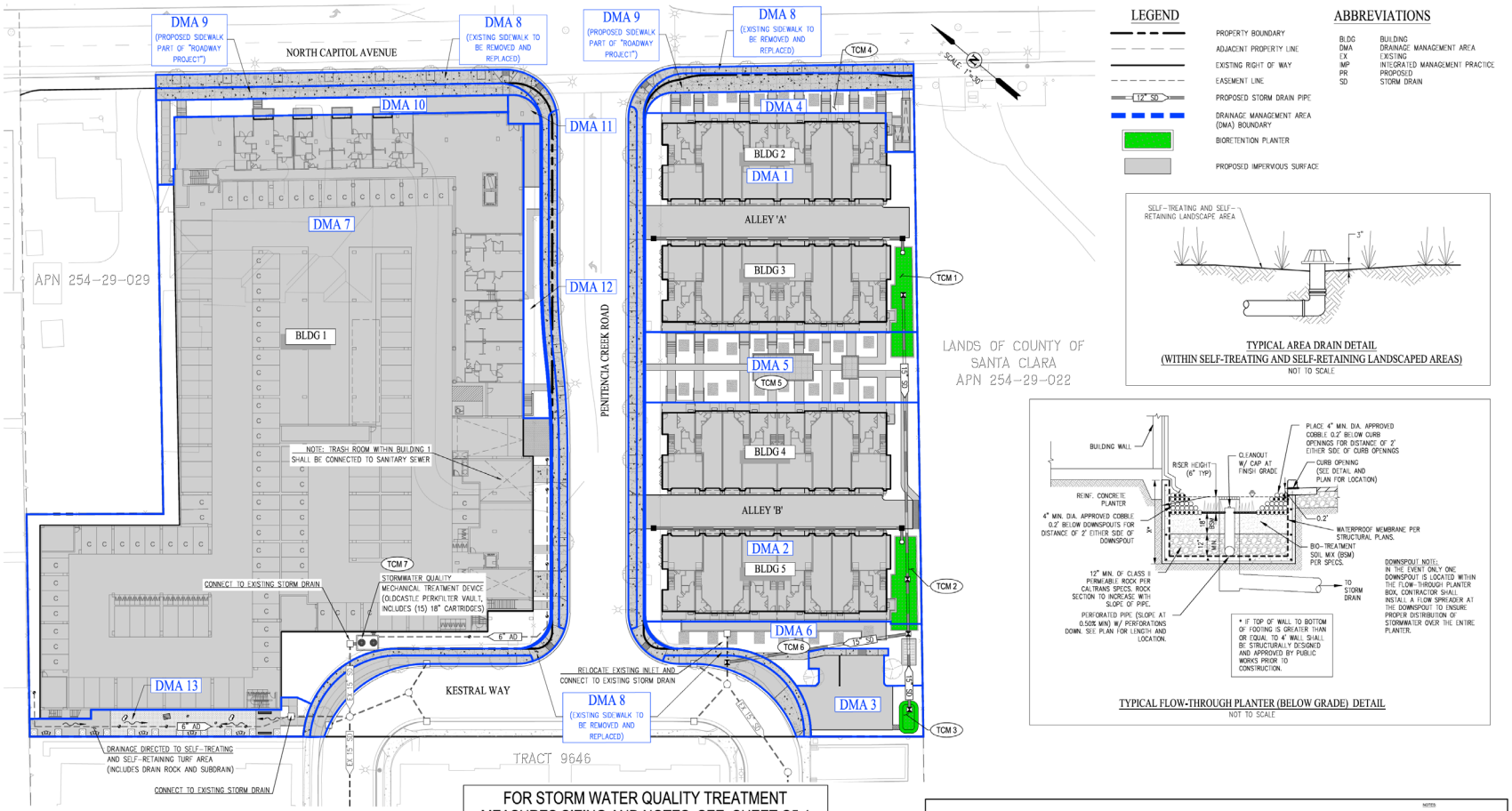
Figure
6c

Source: KTGY Architecture + Planning, July 2021

Conceptual Elevations - Rendering of the Apartment Building

905 N. Capitol Residential
Initial Study

Figure
6d



LEGEND

- PROPERTY BOUNDARY
- ADJACENT PROPERTY LINE
- EXISTING RIGHT OF WAY
- EASEMENT LINE
- 12" SD — PROPOSED STORM DRAIN PIPE
- DRAINAGE MANAGEMENT AREA (DMA) BOUNDARY
- BIORETENTION PLANTER
- PROPOSED IMPERVIOUS SURFACE

ABBREVIATIONS

BLDG	BUILDING
DMA	DRAINAGE MANAGEMENT AREA
EX	EXISTING
IMP	INTEGRATED MANAGEMENT PRACTICE
PR	PROPOSED
SD	STORM DRAIN

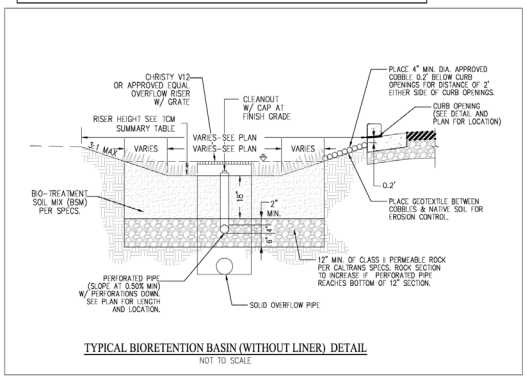
TYPICAL AREA DRAIN DETAIL
(WITHIN SELF-TREATING AND SELF-RETAINING LANDSCAPED AREAS)
NOT TO SCALE

TYPICAL FLOW-THROUGH PLANTER (BELOW GRADE) DETAIL
NOT TO SCALE

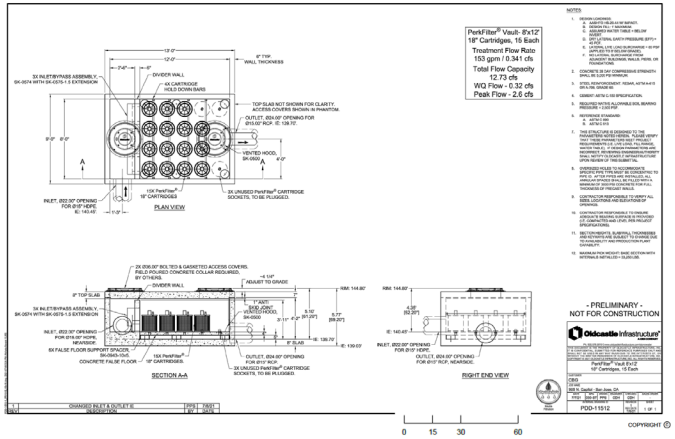
STORMWATER QUALITY NOTES:

1. ALL TREATMENT MEASURES AND TECHNICAL REQUIREMENTS FOR THIS PROJECT ARE BASED UPON THE SANTA CLARA VALLEY URBAN RUNOFF POLLUTION PREVENTION PROGRAM (SCVURPPP) C.3 STORMWATER HANDBOOK DATED APRIL 2016.
2. THIS PROJECT IS A CATEGORY C SPECIAL PROJECT AND SUBJECT TO 90% LID TREATMENT REDUCTION CREDIT. MEDIA FILTRATION WILL BE USED TO TREAT A MAXIMUM OF APPROXIMATELY 56% OF THE SITE.
   - DISTANCE TO TRANSIT HUB (BERRYESSA STATION – VTA): <1/4 MILE (50% REDUCTION)
   - DENSITY >100 DU/AC (383 DU / 3.465 AC = 110.5 DU/AC) (30% REDUCTION)
   - LESS THAN 10% SURFACE PARKING (10% REDUCTION)
   - PROPOSED AREA TREATED BY NON-LID MEASURES = 82,115 SF (56%)
3. REQUIRED SURFACE AREA OF THE BIORETENTION TREATMENT AREA IS EQUAL TO 4% OF THE CONTRIBUTING IMPERVIOUS SURFACE AREA. THIS CALCULATION IS BASED UPON THE UNIFORM INTENSITY METHOD ASSUMING RAINFALL INTENSITY OF 0.2 INCHES/HR AND A BIORETENTION SOIL MIX WITH A 5 INCHES/HR INFILTRATION RATE.
4. REQUIRED SURFACE AREA OF LANDSCAPE WITHIN SELF-RETAINING AREAS IS EQUAL TO 50% OF THE TRIBUTARY IMPERVIOUS SURFACE.
5. ALL STORMWATER TREATMENT MEASURES AND SIZING SHOWN ON THIS EXHIBIT AREA PRELIMINARY AND SUBJECT TO CHANGE PENDING FINAL DESIGN.
6. THE HOA/PROPERTY OWNER IS RESPONSIBLE FOR THE MAINTENANCE AND COST ASSOCIATED WITH ALL STORMWATER TREATMENT FACILITIES.
7. ALL PLANTS PROPOSED FOR THE BIORETENTION AREAS WILL BE CONSISTENT WITH THE RECOMMENDED PLANTS FROM TABLE D-1 IN APPENDIX D OF THE SCVURPPP C.3 HANDBOOK.
8. SITE AREA BASED ON THE NET AREA (3.4± AC).
9. GROSS SITE AREA (3.7± AC) INCLUDING OFFSITE MAINTENANCE AND ROADWAY PROJECT AREAS.
10. NET SITE AREA (3.4± AC).
11. FLOOD ZONE: AO (PANEL 06085C0088J): SPECIAL FLOOD HAZARD AREAS, DEPTH = 2 FEET
12. MEDIA FILTER UNITS SHALL BE APPROVED WASHING GUID AND T.A.P.E. CERTIFIED IN ACCORDANCE WITH THE SCVURPPP C.3 HANDBOOK. UNITS SHALL BE PER THE APPROVED LIST PROVIDED BY THE CITY OF SAN JOSE ENVIRONMENTAL SERVICES DIVISION.

FOR STORM WATER QUALITY TREATMENT MEASURES SIZING AND NOTES SEE SHEET C5.4



TYPICAL BIORETENTION BASIN (WITHOUT LINER) DETAIL
NOT TO SCALE

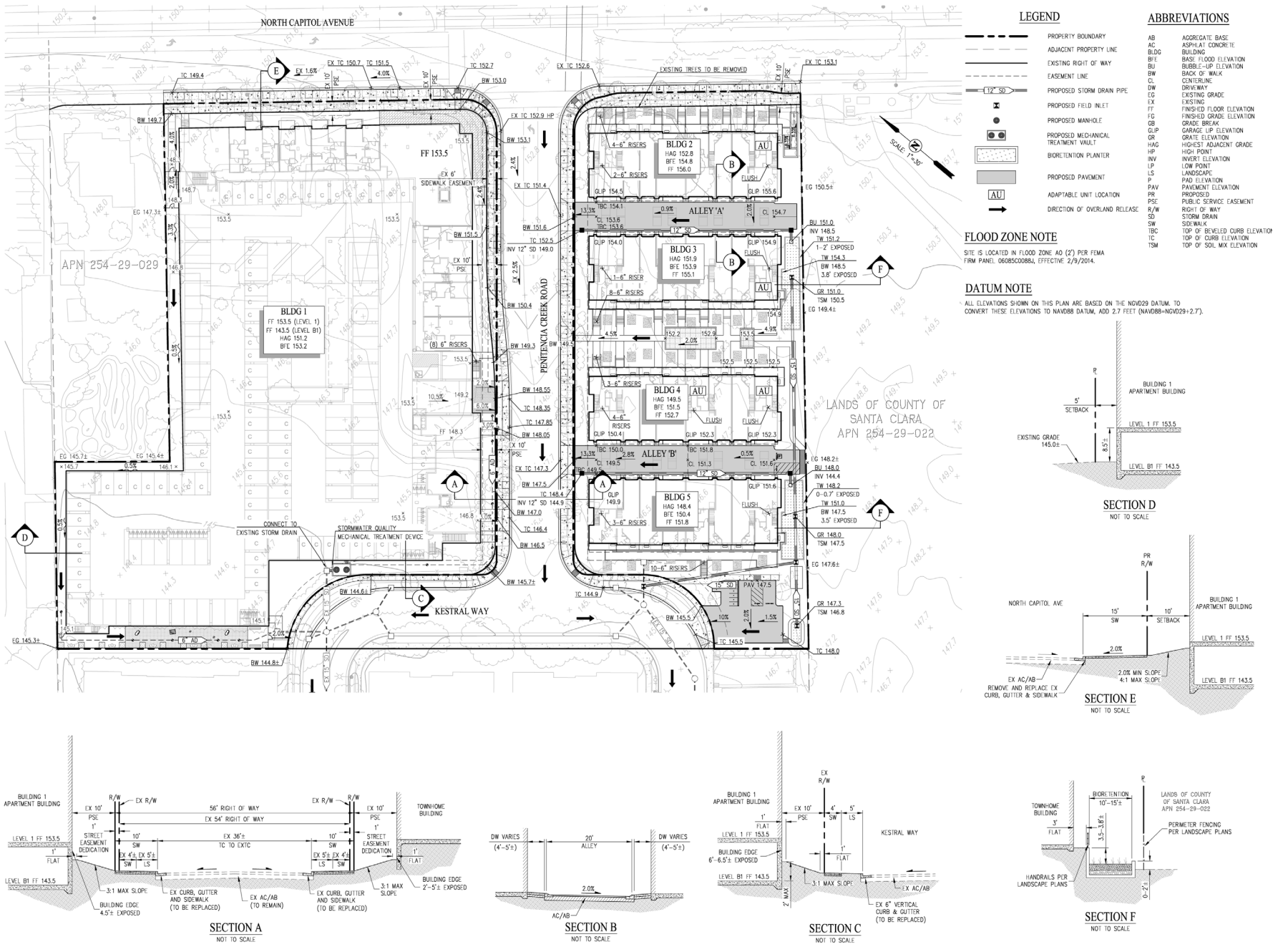


Source: KTGY Architecture + Planning, July 2021

Stormwater Management Plan

905 N. Capitol Residential Initial Study

Figure 7



LEGEND

- PROPERTY BOUNDARY
- ADJACENT PROPERTY LINE
- EXISTING RIGHT OF WAY
- EASEMENT LINE
- PROPOSED STORM DRAIN PIPE (12" SD)
- PROPOSED FIELD INLET
- PROPOSED MANHOLE
- PROPOSED MECHANICAL TREATMENT VAULT
- BIORETENTION PLANTER
- PROPOSED PAVEMENT
- ADAPTABLE UNIT LOCATION (AU)
- DIRECTION OF OVERLAND RELEASE

ABBREVIATIONS

AB	AGGREGATE BASE
AC	ASPHLAT CONCRETE
BLDG	BUILDING
BFE	BASE FLOOD ELEVATION
BU	BUBBLE-UP ELEVATION
BW	BACK OF WALK
CL	CENTERLINE
DW	DRIVEWAY
EG	EXISTING GRADE
EX	EXISTING
FF	FINISHED FLOOR ELEVATION
FG	FINISHED GRADE ELEVATION
GB	GRADE BREAK
GLIP	GARAGE LIP ELEVATION
GR	GRATE ELEVATION
HAG	HIGHEST ADJACENT GRADE
HP	HIGH POINT
INV	INVERT ELEVATION
LP	LOW POINT
LS	LANDSCAPE
P	PAD ELEVATION
PAV	PAVEMENT ELEVATION
PR	PROPOSED
PSE	PUBLIC SERVICE EASEMENT
R/W	RIGHT OF WAY
SD	STORM DRAIN
SW	SIDEWALK
TBC	TOP OF BEVELED CURB ELEVATION
TC	TOP OF CURB ELEVATION
TSM	TOP OF SOIL MIX ELEVATION

FLOOD ZONE NOTE

SITE IS LOCATED IN FLOOD ZONE AO (2') PER FEMA FIRM PANEL 06085C0088J, EFFECTIVE 2/9/2014.

DATUM NOTE

ALL ELEVATIONS SHOWN ON THIS PLAN ARE BASED ON THE NGVD29 DATUM. TO CONVERT THESE ELEVATIONS TO NAVD88 DATUM, ADD 2.7 FEET (NAVD88=NGVD29+2.7').

SECTION D
NOT TO SCALE

SECTION E
NOT TO SCALE

SECTION A
NOT TO SCALE

SECTION B
NOT TO SCALE

SECTION C
NOT TO SCALE

SECTION F
NOT TO SCALE

Source: KTGY Architecture + Planning, July 2021

Grading and Drainage Plan

905 N. Capitol Residential
Initial Study

Figure
8

PLANT LIST

BOTANICAL NAME	COMMON NAME	SIZE	SPACING
TREES			
ACER MIYABEI 'MORTON'	STATE STREET MAPLE	24" BOX	AS SHOWN
ACER PALMATUM 'SANGO-KAKU'	CORAL BARK MAPLE	24" BOX	AS SHOWN
ACER RUBRUM 'NEW WORLD'	NEW WORLD MAPLE	24" BOX	AS SHOWN
ARBUTUS X 'MARINA'	STRAWBERRY TREE	24" BOX	AS SHOWN
BAMBUSA MULTIPLEX 'ALPHONSE KARR'	ALPHONSE KARR BAMBOO	24" BOX	AS SHOWN
ERIOBOTRYA DEFLEXA	BRONZE LOQUAT	24" BOX	AS SHOWN
GINKGO BILOBA 'AUTUMN GOLD'	MAIDENHAIR TREE	24" BOX	AS SHOWN
JUNIPERUS CHINENSIS 'TORULOSA'	HOLLYWOOD JUNIPER	24" BOX	AS SHOWN
MAACKIA AMURENSIS	AMUR MAACKIA	24" BOX	AS SHOWN
PLATANUS ACERIFOLIA 'COLUMBIA'	LONDON PLANE TREE	24" BOX	AS SHOWN
PODOCARPUS ELONGATUS 'MONMAL'	ICEE BLUE® YELLOW-WOOD	24" BOX	AS SHOWN
QUERCUS ROBUR 'FASTIGIATA'	ENGLISH OAK	24" BOX	AS SHOWN
ROBINIA X AMBIGUA 'PURPLE ROBE'	PURPLE ROBE LOCUST	24" BOX	AS SHOWN
TILIA TOMENTOSA	SILVER LINDEN	24" BOX	AS SHOWN
ULMUS 'FRONTIER'	FRONTIER ELM	24" BOX	AS SHOWN
ZELKOVA SERRATA 'JFS-KW1'	CITY SPRITE ZELKOVA	24" BOX	AS SHOWN
SHRUBS			
AEONIUM ARBOREUM 'ZWARTKOP'	BLACK ROSE AEONIUM	5 GAL.	24" O.C.
AGAVE ATTENUATA	FOX TAIL AGAVE	5 GAL.	24" O.C.
ARBUTUS UNEDO 'COMPACTA'	DWARF STRAWBERRY TREE	5 GAL.	48" O.C.
ARCTOSTAPHYLOS EDMUNDSII 'CARMEL SUR'	LITTLE SUR MANZANITA	1 GAL.	24" O.C.
ASPARAGUS DENSIFLORUS	SPRENGERS ASPARAGUS FERN	5 GAL.	24" O.C.
CALLISTEMON 'LITTLE JOHN'	BOTTLE BRUSH	5 GAL.	36" O.C.
CAMELLIA SASANQUA 'JEAN MAY'	JEAN MAY CAMELLIA	5 GAL.	48" O.C.
CISTUS 'DORIS HIBBERSON'	DORIS HIBBERSON ROCKROSE	5 GAL.	36" O.C.
DIETES GRANDIFLORA	FORTNIGHT LILY	5 GAL.	36" O.C.
ESCALLONIA 'COMPAKTA'	COMPACT ESCALLONIA	5 GAL.	48" O.C.
ESCALLONIA X EXONIENSIS 'FRADESII'	FRADESII ESCALLONIA	5 GAL.	48" O.C.
HELICTOTRICHON SEMPERVIRENS	BLUE OAT GRASS	1 GAL.	12" O.C.
HEMEROCALLIS 'BITSY'	BITSY DAYLILY	1 GAL.	24" O.C.
HEMEROCALLIS 'BLACKEYED STELLA'	'BLACKEYED STELLA' DAYLILY	1 GAL.	24" O.C.
LOROPETALUM CHINENSE 'MONAZ'	RAZZLEBERRY® FRINGE FLOWER	5 GAL.	42" O.C.
LIGUSTRUM JAPONICUM 'TEXANUM'	PRIVET	15 GAL.	48" O.C.
MYRICA CALIFORNICA	PACIFIC WAX MYRTLE	5 GAL.	60" O.C.
NANDINA DOMESTICA 'COMPACTA'	HEAVENLY BAMBOO	5 GAL.	36" O.C.
NASSELLA TENUISSIMA	MEXICAN FEATHER GRASS	5 GAL.	24" O.C.
PHORMIUM 'APRICOT QUEEN'	NEW ZEALAND FLAX	5 GAL.	48" O.C.
PHORMIUM 'SHIRAZ'	NEW ZEALAND FLAX	5 GAL.	36" O.C.
PHORMIUM 'SURFER'	NEW ZEALAND FLAX	5 GAL.	60" O.C.
PHORMIUM 'JACK SPRATT'	NEW ZEALAND FLAX	1 GAL.	18" O.C.
PHORMIUM 'TOM THUMB'	NEW ZEALAND FLAX	1 GAL.	24" O.C.
PHORMIUM 'WINGS OF GOLD'	NEW ZEALAND FLAX	5 GAL.	30" O.C.
PHORMIUM 'YELLOW WAVE'	NEW ZEALAND FLAX	5 GAL.	72" O.C.
PITTOSPORUM T. 'MARJORIE CHANNON'	CHANNON PITTOSPORUM	5 GAL.	60" O.C.
PITTOSPORUM TOBIRA 'VARIEGATUM'	TOBIRA	5 GAL.	60" O.C.
POLYSTICHUM MUNITUM	SWORD FERN	5 GAL.	36" O.C.
PRUNUS LAUROCERASUS 'ZABELIANA'	ZABELS LAUREL	5 GAL.	84" O.C.
RHAMNUS CALIFORNICA 'SEA VIEW'	COFFEEBERRY	5 GAL.	36" O.C.
RHAPHIOLEPIS INDICA 'CLARA'	CLARA INDIAN HAWTHORNE	5 GAL.	48" O.C.
RHAPHIOLEPIS 'MAJESTIC BEAUTY'	INDIAN HAWTHORNE	15 GAL.	84" O.C.
ROSA KNOCKOUT 'MEIDILAND'	FLORAL CARPET ROSE	5 GAL.	36" O.C.
ROSA KNOCKOUT 'PINK'	KNOCKOUT ROSE	5 GAL.	36" O.C.
SALVIA LEUCANTHA 'SANTA BARBARA'	DWARF SANTA BARBARA SALVIA	1 GAL.	24" O.C.
SOLLYA HETEROPHYLLA	BLUEBELL CREEPER	5 GAL.	24" O.C.
TIBOUCHINA URVILLEANA	PRINCESS FLOWER	15 GAL.	72" O.C.
VIBURNUM TINUS 'SPRING BOUQUET'	LAURUSTINUS	5 GAL.	60" O.C.
WESTRINGIA FRUTICOSA 'MORNING LIGHT'	COASTAL ROSEMARY	5 GAL.	36" O.C.
XYLOSMA CONGESTUM COMPACTA	COMPACT SHINY XYLOSMA	5 GAL.	36" O.C.
GROUNDCOVER			
SEASONAL COLOR	COLOR PLANTING	4" POTS	9" O.C.
ARCTOSTAPHYLOS UVA-URSI 'POINT REYES'	POINT REYES BEARBERRY	1 GAL.	18" O.C.
AGAPANTHUS 'TINKERBELL'	DWARF AGAPANTHUS	1 GAL.	18" O.C.
CAREX OSHIMENSIS 'EVEREST'	BERKELEY SEDGE	1 GAL.	18" O.C.
CAREX PHYLLOCEPHALA 'SPARKLER'	SPARKLER PALM SEDGE	1 GAL.	18" O.C.
CEANOTHUS GRISEUS HORIZONTALIS	YANKEE POINT CEANOTHUS	1 GAL.	18" O.C.
COPROSMA KIRKII 'VARIEGATA'	COPROSMA	1 GAL.	18" O.C.
COTONEASTER DAMMERI 'LOWFAST'	BEARBERRY COTONEASTER	1 GAL.	18" O.C.
FESTUCA GLAUCA 'ELIJAH BLUE'	ELIJAH BLUE FESCUE	1 GAL.	24" O.C.
LANTANA MONTEVIDENSIS	LANTANA	1 GAL.	24" O.C.
LIRIOPE 'SILVERY SUNPROOF'	LILY TURF	1 GAL.	24 O.C.
LOTUS MACULATUS 'NGF'	TRAILING LOTUS	1 GAL.	24" O.C.
MYOPORUM PARVIFOLIUM	CREEPING BOOBIALLA	1 GAL.	18" O.C.
OPHIOPOGON NIGRESCENS	BLACK MONDO 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	8" O.C.
SEDUM DRAGONS BLOOD	DRAGONS BLOOD	4" POT	8" O.C.
SENECIO MANDRALISCAE	SENECIO	4" POT	12" O.C.
VERBENA HOMESTEAD 'PURPLE'	VERBENA	4" POT	12" O.C.
LAWN			
FESTUCA ARUNDINACEA	TALL FESCUE	SOD	N/A
BIO-RETENTION			
CAREX BARBARAE	SANTA BARBARA SEDGE	1 GAL.	18" O.C.
CAREX PANSA	DUNE SEDGE	1 GAL.	18" O.C.
CHONDROPETALUM TECTORUM	SMALL CAPE RUSH	1 GAL.	24" O.C.
JUNCUS PATENS	CALIF. GREY RUSH	1 GAL.	24" O.C.
LIPPIA NODIFLORA	KURAPAI	1 GAL.	18" O.C.
STIPA PULCHRA	PURPLE NEEDLEGRASS	1 GAL.	24" O.C.

NOTE: ALL BIO-RETENTION PLANTS ARE CLASSIFIED AS BASIN TYPE PLANTING ZONE PER C.3 STORMWATER HANDBOOK, APPENDIX D, SECTION D.3 'PLANTS FOR STORMWATER MEASURES'

NOTE:

1. 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 LOCATION WILL BE DETERMINED BY PUBLIC WORKS AT THE IMPLEMENTATION STAGE ON THE PUBLIC IMPROVEMENT PLANS. THE INSTALLATION OR REMOVAL OF THE STREET TREES REQUIRES A PERMIT FROM THE DEPARTMENT OF TRANSPORTATION. THE CITY ARBORIST WILL SPECIFY THE SPECIES.

2. PROJECT WILL NOT LOCATE TREES WITHIN THE BASIN OR BANK PLANTING ZONES OF BIORETENTION AREAS, BUT RATHER ON THE UPLAND PLANTING ZONES PER APPENDIX D OF THE SCVURPPP C.3 STORMWATER HANDBOOK. TREES WILL ALSO NOT BE LOCATED DIRECTLY IN LINE WITH OR NEXT TO STORMWATER INLETS (CURB OPENINGS, BUBBLE BOX EMITTERS, ETC.) AND WILL OFFSET OR RELOCATE TREES WHERE NECESSARY OURSIDE OF THE BIORETENTION AREA BASIN AND BANK PLANTING ZONES TO MAXIMIZE RUNOFF DISPERSAL THROUGHOUT BIORETENTION AREAS.

3. PLACE 3" OF COMPOSTED, NON-FLOATABLE MULCH IN AREAS BETWEEN STORMWATER PLANTINGS AND SIDE SLOPES.

DESIGN & OPEN SPACE REQUIREMENTS
ALL MECHANICAL EQUIPMENT SHALL BE SCREENED.

0 10 20 40

Source: GWH Landscape Architects, January 2022

Landscape Plan - Apartments

905 N. Capitol Residential
Initial Study

Figure
9a

PLANT LIST

BOTANICAL NAME	COMMON NAME	SIZE	SPACING
TREES			
ACER MIYABEI 'MORTON'	STATE STREET MAPLE	24" BOX	AS SHOWN
ACER PALMATUM 'SANGO-KAKU'	CORAL BARK MAPLE	24" BOX	AS SHOWN
ACER RUBRUM 'NEW WORLD'	NEW WORLD MAPLE	24" BOX	AS SHOWN
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BAMBUSA MULTIPLEX 'ALPHONSE KARR'	ALPHONSE KARR BAMBOO	24" BOX	AS SHOWN
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GINKGO BILOBA 'AUTUMN GOLD'	MAIDENHAIR TREE	24" BOX	AS SHOWN
JUNIPERUS CHINENSIS 'TORULOSA'	HOLLYWOOD JUNIPER	24" BOX	AS SHOWN
MAACKIA AMURENSIS 'MAACNIFICENT'	MAACKIA	24" BOX	AS SHOWN
OLEA EUROPAEA 'SWAN HILL'	SWAN HILL OLIVE	24" BOX	AS SHOWN
PLATANUS A. COLUMBIA	LONDON PLANE TREE	24" BOX	AS SHOWN
PODOCARPUS ELONGATUS 'ICEE BLUE'	ICEE BLUE PODOCARPUS	24" BOX	AS SHOWN
QUERCUS ROBUR 'FASTIGIATA'	ENGLISH OAK	24" BOX	AS SHOWN
ROBINIA IDAHOENSIS 'PURPLE ROBE'	IDAHO LOCUST	24" BOX	AS SHOWN
TILIA TORMENTOSA	STERLING SILVER LINDEN	24" BOX	AS SHOWN
ULMUS 'FRONTIER'	FRONTIER ELM	24" BOX	AS SHOWN
ZELKOVA SERRATA 'CITY SPRITE'	CITY SPRITE ZELKOVA	24" BOX	AS SHOWN
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ARCHOSTAPHYLOS EDMUNDSII	LITTLE SUR MANZANITA	1 GAL.	24" O.C.
CALLISTEMON 'LITTLE JOHN'	BOTTLE BRUSH	5 GAL.	36" O.C.
CISTUS DORIS 'HEBERSON'	DORIS HIEBERSON ROCKROSE	5 GAL.	36" O.C.
CAMELLIA SASANQUA 'JEAN MAY'	SASANQUA CAMELLIA	5 GAL.	48" O.C.
DIETES VEGETA	FORTNIGHT LILY	5 GAL.	36" O.C.
ESCALLONIA 'FRADESII'	FRADESII ESCALLONIA	5 GAL.	48" O.C.
EXCALLONIA RUBRA 'TERRI'	DWARF ESCALLONIA	5 GAL.	48" O.C.
HELICTOTRICHON SEMPERVIRENS	BLUE OAT GRASS	1 GAL.	12" O.C.
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PRUNUS LAUROCERASUS 'ZABELIANA'	ZABEL LAUREL	5 GAL.	84" O.C.
PITTOSPORUM T. 'MARJORIE CHANNON'	TOBIRA	5 GAL.	60" O.C.
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LIRIOPE 'SILVERY SUNPROOF'	LILY TURF	1 GAL.	24 O.C.
LOTUS MACULATUS 'NGF'	TRAILING LOTUS	1 GAL.	24" O.C.
MYOPORUM PARVIFOLIUM	CREEPING BOOBIALLA	1 GAL.	18" O.C.
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ROSMARINUS 'IRENE'	ROSEMARY	5 GAL.	24" O.C.
SEDUM DASPHYLLUM 'MAJOR'	TRAILING SEDUM	4" POT	8" O.C.
SEDUM DRAGONS BLOOD	DRAGONS BLOOD	4" POT	8" O.C.
SENECIO MANDRALISCAE	SENECIO	4" POT	12" O.C.
VERBENA 'HOMESTEAD PURPLE'	VERBENA	4" POT	12" O.C.
LAWN			
FESTUCA SPP.	FESCUE	SOD	N/A
BIO-RETENTION			
CAREX PANSA	DUNE SEDGE	1 GAL.	18" O.C.
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0 8 16 32

Source: GWH Landscape Architects, July 2021

Landscape Plan - Apartments - Courtyards

905 N. Capitol Residential
Initial Study

Figure
9b

DESIGN & OPEN SPACE REQUIREMENTS

ALL MECHANICAL EQUIPMENT SHALL BE SCREENED.

PLANT LIST

BOTANICAL NAME	COMMON NAME	SIZE	SPACING
TREES			
ACER MIYABEI 'MORTON'	STATE STREET MAPLE	24" BOX	AS SHOWN
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ROBINIA X AMBIGUA 'PURPLE ROBE'	PURPLE ROBE LOCUST	24" BO	AS SHOWN
TILIA TOMENTOSA	SILVER LINDEN	24" BO	AS SHOWN
ULMUS 'FRONTIER'	FRONTIER ELM	24" BO	AS SHOWN
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ARCTOSTAPHYLOS EDMUNDSII 'CARMEL SUR	LITTLE SUR MANZANITA	1 GAL.	24" O.C.
ASPARAGUS DENSIFLORUS	SPRENGER'S ASPARAGUS FERN	5 GAL.	24" O.C.
CALLISTEMON 'LITTLE JOHN'	BOTTLE BRUSH	5 GAL.	36" O.C.
CAMELLIA SASANQUA 'JEAN MAY'	JEAN MAY CAMELLIA	5 GAL.	48" O.C.
CISTUS 'DORIS HIBBERSON'	DORIS H BBERSON ROCKROSE	5 GAL.	36" O.C.
DIETES GRANDIFLORA	FORTNIGHT LILY	5 GAL.	36" O.C.
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ESCALLONIA X EXONIENSIS 'FRADESII'	FRADESII ESCALLONIA	5 GAL.	48" O.C.
HELICTOTRICHON SEMPERVIRENS	BLUE OAT GRASS	1 GAL.	12" O.C.
HEMEROCALLIS 'BITSY'	BITSY DAYLILY	1 GAL.	24" O.C.
HEMEROCALLIS 'BLACKEYED STELLA'	'BLACKEYED STELLA' DAYLILY	1 GAL.	24" O.C.
LOROPETALUM CHINENSE 'MONRAZ'	RAZZLEBERRY® FRINGE FLOWER	5 GAL.	42" O.C.
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PHORMIUM 'TOM THUMB'	NEW ZEALAND FLAX	1 GAL.	24" O.C.
PHORMIUM 'WINGS OF GOLD'	NEW ZEALAND FLAX	5 GAL.	30" O.C.
PHORMIUM 'YELLOW WAVE'	NEW ZEALAND FLAX	5 GAL.	72" O.C.
PITTOSPORUM T. 'MARJORIE CHANNON'	CHANNON PITTOSPORUM	5 GAL.	60" O.C.
PITTOSPORUM TOBIRA 'VARIEGATUM'	TOBIRA	5 GAL.	60" O.C.
POLYSTICHUM MUNITUM	SWORD FERN	5 GAL.	36" O.C.
PRUNUS LAUROCERASUS 'ZABELIANA'	ZABELS LAUREL	5 GAL.	84" O.C.
RHAMNUS CALIFORNICA 'SEA VIEW'	COFFEEBERRY	5 GAL.	36" O.C.
RHAPHIOLEPIS INDICA 'CLARA'	CLARA INDIAN HAWTHORNE	5 GAL.	48" O.C.
RHAPHIOLEPIS 'MAJESTIC BEAUTY'	INDIAN HAWTHORNE	15 GAL.	84" O.C.
ROSA KNOCKOUT 'MEIDILAND'	FLORAL CARPET ROSE	5 GAL.	36" O.C.
ROSA KNOCKOUT 'PINK'	KNOCKOUT ROSE	5 GAL.	36" O.C.
SALVIA LEUCANTHA 'SANTA BARBARA'	DWARF SANTA BARBARA SALVIA	1 GAL.	24" O.C.
SOLLYA HETEROPHYLLA	BLUEBELL CREEPER	5 GAL.	24" O.C.
TIBOUCHINA URVILLEANA	PRINCESS FLOWER	15 GAL.	72" O.C.
VIBURNUM TINUS 'SPRING BOUQUET'	LAURUSTINUS	5 GAL.	60" O.C.
WESTRINGIA FRUTICOSA 'MORNING LIGHT'	COASTAL ROSEMARY	5 GAL.	36" O.C.
XYLOSMA CONGESTUM COMPACTA	COMPACT SHINY XYLOSMA	5 GAL.	36" O.C.
GROUNDCOVER			
SEASONAL COLOR	COLOR PLANTING	4" POTS	9" O.C.
ARCTOSTAPHYLOS UVA-URSI 'POINT REYES'	POINT REYES BEARBERRY	1 GAL.	18" O.C.
AGAPANTHUS 'TINKERBELL'	DWARF AGAPANTHUS	1 GAL.	18" O.C.
CAREX OSHIMENSIS 'EVEREST'	BERKELEY SEDGE	1 GAL.	18" O.C.
CAREX PHYLLOCEPHALA 'SPARKLER'	SPARKLER PALM SEDGE	1 GAL.	18" O.C.
CEANOTHUS GRISEUS HORIZONTALIS	YANKEE POINT CEANOTHUS	1 GAL.	18" O.C.
COPROSMA KIRKII 'VARIEGATA'	COPROSMA	1 GAL.	18" O.C.
COTONEASTER DAMMERI 'LOWFAST'	BEARBERRY COTONEASTER	1 GAL.	18" O.C.
FESTUCA GLAUCA 'ELIJAH BLUE'	ELIJAH BLUE FESCUE	1 GAL.	24" O.C.
LANTANA MO `TEVIDENSIS	LANTANA	1 GAL.	24" O.C.
LIRIOPE 'SILVERY SUNPROOF'	LILY TURF	1 GAL.	24" O.C.
LOTUS MACULATUS 'NGP'	TRAILING LOTUS	1 GAL.	24" O.C.
MYOPORUM PARVIFOLIUM	CREEPING BOOBIALLA	1 GAL.	18" O.C.
OPHIOPOGON NIGRESCENS	BLACK MONDO 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	8" O.C.
SEDUM DRAGON'S BLOOD	DRAGON'S BLOOD	4" POT	8" O.C.
SENECIO MANDRALISCAE	SENECIO	4" POT	12" O.C.
VERBENA HOMESTEAD 'PURPLE'	VERBENA	4" POT	12" O.C.
LAWN			
FESTUCA ARUNDINACEA	TALL FESCUE	SOD	N/A
BIO-RETENTION			
CAREX BARBARAE	SANTA BARBARA SEDGE	1 GAL.	18" O.C.
CAREX PANSA	DUNE SEDGE	1 GAL.	18" O.C.
CHONDROPETALUM TECTORUM	SMALL CAPE RUSH	1 GAL.	24" O.C.
JUNCUS PATENS	CALIF. GREY RUSH	1 GAL.	24" O.C.
LIPPIA NODIFLORA	KURAPAI	1 GAL.	18" O.C.
STIPA PULCHRA	PURPLE NEEDLEGRASS	1 GAL.	24" O.C.

NOTE: ALL BIO-RETENTION PLANTS ARE CLASSIFIED AS BASIN TYPE PLANTING ZONE PER C.3 STORMWATER HANDBOOK, APPENDIX D, SECTION D.3 'PLANTS FOR STORMWATER MEASURES'

NOTE:

1. 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 LOCATION WILL BE DETERMINED BY PUBLIC WORKS AT THE IMPLEMENTATION STAGE ON THE PUBLIC IMPROVEMENT PLANS. THE INSTALLATION OR REMOVAL OF THE STREET TREES REQUIRES A PERMIT FROM THE DEPARTMENT OF TRANSPORTATION. THE CITY ARBORIST WILL SPECIFY THE SPECIES.

2. PROJECT WILL NOT LOCATE TREES WITHIN THE BASIN OR BANK PLANTING ZONES OF BIORETENTION AREAS, BUT RATHER ON THE UPLAND PLANTING ZONES PER APPENDIX D OF THE SCVURPPP C.3 STORMWATER HANDBOOK. TREES WILL ALSO NOT BE LOCATED DIRECTLY IN LINE WITH OR NEXT TO STORMWATER INLETS (CURB OPENINGS, BUBBLE BOX EMITTERS, ETC.) AND WILL OFFSET OR RELOCATE TREES WHERE NECESSARY OURSIDE OF THE BIORETENTION AREA BASIN AND BANK PLANTING ZONES TO MAXIMIZE RUNOFF DISPERSAL THROUGHOUT BIORETENTION AREAS.

3. PLACE 3" OF COMPOSTED, NON-FLOATABLE MULCH IN AREAS BETWEEN STORMWATER PLANTINGS AND SIDE SLOPES.

0 10 20 40

Source: GWH Landscape Architects, January 2022

Landscape Plan - Townhomes

905 N. Capitol Residential
Initial Study

Figure
9c

Photo #1: Southwest facing view of northern project parcel.
Source: Google - February 2021

Photo #2: Northwest facing view of northern project parcel.
Source: Google February 2021

Photo #3: Southwest facing view of southern project parcel.
Source: ENGEO - December 2020

Photo #4: Northeast facing view of southern project parcel.
Source: ENGEO - December 2020

Site Photos

905 N. Capitol Residential
Initial Study

Figure
10

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Chapter 3. Environmental Evaluation

ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED

The key environmental factors potentially impacted by the project are identified below and discussed within Chapter 3. Environmental Setting and Impacts. Sources used for analysis of environmental effects are cited in the checklist and listed in Chapter 4. References.

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

EVALUATION OF ENVIRONMENTAL IMPACTS

A brief explanation is required for all answers except "No Impact" answers. Answers need to be adequately supported by the information sources cited by the lead agency. A "No Impact" answer is adequately supported if the referenced information sources show that the impact simply does not apply to projects like the one involved (e.g., the project falls outside a fault rupture zone). A "No Impact" answer should be explained where it is based on project-specific factors as well as general standards (e.g., the project will not expose sensitive receptors to pollutants, based on project-specific screening analysis).

The explanation of each issue should identify:

a) The significance criteria or threshold, if any, used to evaluate each question; and
b) The mitigation measure identified, if any, to reduce the impact to less than significance.

All answers must take into account the whole action involved, including offsite as well as onsite, cumulative as well as project-level, indirect as well as direct, and construction as well as operational impacts. Once the lead agency has determined that a particular physical impact may occur, then the checklist answers must indicate whether the impact is potentially significant, less than significant with mitigation, or less than significant.

- A "potentially significant impact" is appropriate if there is substantial evidence that an effect may be significant. If there are one or more "potentially significant impact" entries when the determination is made, an EIR is required.

- A "less than significant with mitigation incorporated" response applies where the incorporation of mitigation measures has reduced an effect from a potentially significant impact to less than significant impact. The lead agency must describe the mitigation measures and briefly explain how they reduce the effect to a less than significant level.

Important Note to the Reader:

In a December 2015 opinion [California Building Industry Association v. Bay Area Air Quality Management District, 62 Cal. 4th 369 (No. S 213478)], the California Supreme Court confirmed that CEQA, with several specific exceptions, is concerned with the impacts of a project on the environment and not the effects that the existing environment may have on a project. Therefore, the evaluation of the significance of project impacts under CEQA in the following sections focuses on impacts of the project on the environment, including whether a project may exacerbate existing environmental hazards.

The City of San José currently has policies that address existing conditions (e.g., air quality, hazards, noise, etc.) that may affect a proposed project, which are also addressed below. This is consistent with one of the primary objectives of CEQA and this document, which is to provide objective information to decision-makers and the public regarding a project as a whole. The CEQA Guidelines and the courts are clear that a CEQA document (e.g., EIR or Initial Study) can include information of interest even if such information is not an "environmental impact" as defined by CEQA.

Therefore, where applicable, in addition to describing the impacts of the project on the environment, this Initial Study discusses "planning considerations" that relate to City policies pertaining to existing conditions. Such examples include, but are not limited to, locating a project near sources of air emissions that can pose a health risk, in a floodplain, in a geologic hazard zone, in a high noise environment, or on/adjacent to sites involving hazardous substances.

ENVIRONMENTAL SETTING AND IMPACTS

The following section describes the environmental setting and identifies the environmental impacts anticipated from implementation of the proposed project. The criteria provided in the CEQA environmental checklist was used to identify potentially significant environmental impacts associated with the project. Sources used for the environmental analysis are cited in the checklist and listed in Chapter 4 of this Initial Study.

A. AESTHETICS

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 the portion of Interstate-680 that starts at the Mission Boulevard exit in Fremont and which stretches to Bernal Avenue. The beginning of this officially designated highway located approximately 11 miles north of the project site near Fremont. In addition, the scenic designated portion of Highway 9 in Saratoga is located about 12.5 miles from the project site. The project site is not located near these designated scenic highways.

Senate Bill 743

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

- The project is a residential, 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 of San José's Outdoor Lighting Policy (City Council Policy 4-3) and City of San José 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.

City's Scenic Corridors Diagram

The City's General Plan defines scenic vistas in the City of San José 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 property is not located along any scenic corridors per the City's Scenic Corridors Diagram. Penitencia Creek Drive is designated as rural scenic corridor east of N. Capitol Avenue, however, the project site is located west of, and outside, this portion of the corridor.

General Plan Policies

Policies in the General Plan have been adopted for the purpose of avoiding or mitigating aesthetic impacts from development projects. The following policies are applicable to the proposed project.

Envision San José 2040 Relevant Aesthetic Policies	
Policy CD-1.1	Require the highest standards of architecture 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

Envision San José 2040 Relevant Aesthetic Policies	
	properties throughout the City. Land use designations in the Land Use/ Transportation Diagram provide an indication of the typical number of stories.

Existing Setting

The project site is located on two parcels within an urbanized area of San José. The larger northern parcel is developed with a single-family residence and driveway, while the smaller southern parcel is vacant. The site is located in a predominantly residential area and transit corridor along N. Capitol Avenue. The project site is bordered by the following land uses:

- North: Residential
- South: Penitencia Creek, public trail
- East: N. Capitol Avenue, light rail, residential, open space, public trail
- West: Residential, I-680

Photographs of the property are presented in Figure 10 and an aerial of the project area is provided in Figure 3. As shown in the photos, the northern parcel contains residential development while the southern parcel is vacant. Both sites contain some landscaping and onsite trees. In addition, offsite street trees front the property.

Impacts and Mitigation

Thresholds per CEQA Checklist

ENVIRONMENTAL IMPACTS		Potentially Significant Issues	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact	Checklist Source(s)
1.	AESTHETICS. Except as provided in Public Resources Code Section 21099, would the project:					
a)	Have a substantial adverse effect on a scenic vista?			X		1, 2
b)	Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?			X		1, 2
c)	In non-urbanized areas, substantially degrade the existing visual character or quality of public views of the site and its surroundings? (Public views are those that are experienced from publicly accessible vantage point). If the project is in an urbanized area, would the project conflict with applicable zoning and other regulations governing scenic quality?			X		1, 2
d)	Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?			X		1, 2

Explanation

a) **Less Than Significant Impact**. The City's General Plan states that the San José contains many scenic resources that include the broad sweep of the Santa Clara Valley, the hills and mountains that frame the Valley floor, the baylands, and the urban skyline itself, particularly high-rise development downtown. The project site is located in an urbanized location in San José.

Some views of scenic vistas towards the Diablo Mountain Range are available from existing, adjacent three-story multi-family residences to the west along Heron Court and Kestrel Way. These views may be partially obstructed by the proposed seven-story apartment building and three-story townhomes. However, these views are not considered pristine due to the presence of existing development between the residences and the viewshed toward the Diablo Range. The City does not have any applicable policies related to preservation of views from private property in the *Transit Residential* designation. Since the City does not have any applicable policies related to impacts to views from private properties, this is not considered to be an impact under CEQA (see case Mira Mar Mobile Community v. City of Oceanside (2004) 119 Cal.App.4th 477).[1] The project, therefore, would have a less than significant impact on a scenic vista.

b) **Less Than Significant Impact**. The project site is not located within a state-designated scenic route or City-designated scenic corridor. As discussed above, the nearest designated scenic is the portion of Interstate-680 beginning at the Mission Boulevard exit in Fremont, California, located about 11 miles north of the project site. In addition, the project site is located about 12.5 miles from the scenic designated portion of Highway 9 in Saratoga. The project site is not visible from this portion of Interstate 680 or any other designated scenic highways and, therefore, would not impact scenic resources within a state-designated scenic highway.

c) **Less Than Significant Impact**. The project would alter the existing visual character of the site and its immediate surroundings by introducing a new seven-story building onto a site that is currently occupied by a one-story residence and vacant land, and construction of three-story in townhomes in four buildings on a vacant site. The building elevations are presented in Figure 6A-6C. In addition, a conceptual rendering of the apartment building is provided on Figure 6D The building heights for the proposed apartment building vary from approximately 82 to 88 feet, while the building heights for the proposed townhomes are approximately 39.6 feet (see Figures 6A – 6C). The project site is bordered by a mix of existing single-family and multi-family residential uses ranging from one to three stories in height to the west and north, and by open space to the south and east. Due to the project site's location in a primarily developed residential area of the City and the proximity to public transit uses, the project site is considered to be located in an urbanized area.

The project would alter the existing public views of the site from N. Capitol Avenue, Penitencia Creek Road and Trail, and other local streets in the vicinity of the project. Other public views, (e.g., from I-680) would be more distant, and the effects from the proposed buildings would be less noticeable. The proposed buildings for the townhomes would be approximately the same height as existing nearby residences to the west. The proposed apartment building would be four stories higher than the existing residences to the west, and six stories higher than the single-family home adjacent to the north. The proposed apartment building will be sited approximately 25 feet from the nearest residences to the west north. None of the proposed buildings are proposed to be stepped-down, as shown in the elevations in Figures 6A – 6C. A rendering of the proposed apartment building from Capitol Avenue is presented in Figure 6D.

The proposed project would be required to 1) conform to the City's Design Guidelines, and 2) undergo design review to ensure the scale and mass are compatible with surrounding

[1] Association of Environmental Professionals, Thresholds of Significance, November 20, 2020. Available at: https://ceqaportal.org/tp/CEQA%20Portal%20Topic%20Paper_Thresholds%20of%20Signifcance_2020%20Update.pdf

development. In addition, the project proposes landscaping to soften the visual effects of development through planting of shrubs and groundcover in outdoor areas and replacement of all trees proposed to be removed as part of the development. By adhering to these requirements, the project would not substantially degrade the existing visual character or quality of the site and its surroundings within this urbanized area.

The proposed project would also meet the criteria of SB 743 because 1) the project would construct a residential mixed-use project, and 2) the project is located within a transit priority area. Consistent with Public Resources Code Section 21099, the project would have a less than significant aesthetics impact.

d) **Less Than Significant Impact**. The existing site current source of light and glare at the project site are generated by streetlights, passing cars and trains, as well as adjacent residences. The project does not propose any major sources of lighting or glare. Outdoor lighting would be provided for access and security. Building entries would be lit using mounted area downlights or sconces, and interstitial spaces between the face of the building and property line would be lit with building mounted wall packs. Site lighting would serve as both functional and accent lighting for the development and would be consistent with the architectural character of the development. All outdoor lighting would conform to the City's Outdoor Lighting policies and would be shielded to direct light downwards to ensure that lighting does not spill over onto nearby residential properties, consistent with City standards. In addition, the project does not propose to introduce materials into the design that would create substantial glare. The project would have a less than significant impact related to lighting and glare.

Conclusion: The project would have a less than significant impact on aesthetics.

B. AGRICULTURAL AND FORESTRY RESOURCES

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.

General Plan Policies

Policies in the General Plan have been adopted for the purpose of avoiding or mitigating agricultural impacts from development projects. The following policies are applicable to the proposed project.

Envision San José 2040 Relevant Agricultural Resources Policies	
Policy LU-12.3	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:

Envision San José 2040 Relevant Agricultural Resources Policies	
	• Limit residential uses in agricultural areas to those which are incidental to agriculture. • Restrict and discourage subdivision of agricultural lands. Encourage contractual protection for agricultural lands, such as Williamson Act contracts, agricultural conservation easements, and transfers of development rights. • Prohibit land uses within or adjacent to agricultural lands that would compromise the viability of these lands for agricultural uses. • Strictly maintain the Urban Growth Boundary in accordance with other goals and policies in this Plan.
Policy LU-12.4	Preserve agricultural lands and prime soils in non-urban areas in order to retain the aquifer recharge capacity of these lands.

Existing Setting

CEQA requires the evaluation of agricultural and forest/timber resources where they are present. The developed infill project site does not contain any agricultural and forest/timber resources.

In California, agricultural land is given consideration under CEQA. According to Public Resources Code §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 "Urban and Built-Up Land" on the 2016 Santa Clara County Important Farmland Map (California Department of Conservation).

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

Impacts and Mitigation

Thresholds per CEQA Checklist

ENVIRONMENTAL IMPACTS	Potentially Significant Issues	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact	Checklist Source(s)
2. AGRICULTURAL AND FORESTRY RESOURCES. In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Department of Conservation as an optional model to use in assessing impacts on agriculture and farmland. In determining whether impacts to forest resources, including timberland, are significant environmental effects, lead agencies may refer to information compiled by the California Department of Forestry and Fire Protection regarding the state's inventory of forest land, including the Forest and Range Assessment Project and the Forest Legacy Assessment project; and forest carbon measurement methodology provided in Forest Protocols adopted by the California Air Resources Board. Would the project:					
a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?				X	4
b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?				X	2

ENVIRONMENTAL IMPACTS	Potentially Significant Issues	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact	Checklist Source(s)
c) Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code section 12220(g)), timberland (as defined by Public Resources Code section 4526), or timberland zoned Timberland Production (as defined by Government Code section 51104(g))?				X	2
d) Result in the loss of forest land or conversion of forest land to non-forest use?				X	2
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?				X	2

Explanation

a) **No Impact**. The project site is an infill property and designated as Urban and Built-Up Land on the Important Farmlands Map for Santa Clara County and does not contain any prime farmland, unique farmland, or farmland of statewide importance. The project would not affect agricultural land.

b) **No Impact**. The project is proposed on a developed infill property, is not zoned for agricultural use, and does not contain lands under Williamson Act contract; therefore, no conflicts with agricultural uses would occur.

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

d) **No Impact**. 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.

e) **No Impact**. As per the discussion above, 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 this infill property.

Conclusion: The project would have no impact on agricultural and forest resources.

C. AIR QUALITY

An air quality assessment was prepared for the project by Illingworth & Rodkin, Inc. (September 2021). This report is included as Appendix A.

Regulatory Framework

Federal

Federal Clean Air Act and United States Environmental Protection Agency

The Federal Clean Air Act (CAA) authorized the establishment of federal air quality standards and set deadlines for their attainment. The CAA 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 CAA and other air quality-related legislation. The CAA 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 Federal Clean Air Act. 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 O_3 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 PM_{10}. At the State level, the Bay Area is considered nonattainment for ozone, PM_{10} and $PM_{2.5}$.

State

California Clean Air Act

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

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, which are summarized in Table 1 in the impact discussion below.

2017 Bay Area Clean Air Plan

The 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 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.

General Plan Policies

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

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.

Envision San José 2040 Relevant Air Quality Policies	
Policy MS-11.5	Encourage the use of pollution absorbing trees and vegetation in buffer areas between substantial sources of TACs and sensitive land uses.
Policy MS-13.1	Include dust, 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.
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.

Existing Setting

Air Pollutants and Contaminants

Multiple federal and state standards govern air pollution to regulate and mitigate health impacts. At the federal level, there are six criteria pollutants for NAAQS have been established: carbon monoxide (CO), lead (Pb), nitrogen dioxide (NO_2), ozone (O_3), suspended particulate matter (PM: $PM_{2.5}$ and PM_{10}), and sulfur dioxide (SO_2). California sets standards similar to the NAAQS as California Ambient Air Quality Standards (CAAQS). Note that California includes pollutants or contaminants 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. Carbon monoxide 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 unhealthful 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 NO_2. Aside from its contribution to ozone formation, NO_2 also contribute to other pollution problems, including a high concentration of fine particulate matter, poor visibility, and acid deposition. NO_2 may be visible as a coloring component on high pollution days, especially in conjunction with high ozone levels. NO_2 decreases lung function and may reduce resistance to infection. On January 22, 2010, the U.S. EPA strengthened the health-based NAAQS for NO_2.

Sulfur Dioxide. Sulfur dioxide is a colorless, irritating gas formed primarily from the incomplete combustion of fuels containing sulfur. Industrial facilities also contribute to gaseous SO_2 levels in the region. SO_2 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 (PM_{10}). $PM_{2.5}$ 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 PM_{10} and $PM_{2.5}$. These small particles can be directly emitted into the atmosphere as by-products of fuel combustion, through abrasions, 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 is a metal found naturally in the environment as well as in manufactured products. The major sources of lead emissions have historically been mobile and industrial. As a result of the phase-out of leaded gasoline, metal processing is currently the primary source of lead emissions. The highest levels of lead in the air are generally found near lead smelters. Other stationary sources are waste incinerators, utilities, and lead-acid battery manufacturers. Over 20 years ago, mobile sources were the main contributor to ambient lead concentrations in the air. In the early 1970s, the U.S. EPA established national regulations to gradually reduce the lead 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 lead from gasoline, emissions of lead from the transportation sector and lead levels 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 (PM_{10}) and fine particulate matter ($PM_{2.5}$). Elevated concentrations of PM_{10} 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 the project would introduce. These sources include railroads, highways, busy surface streets, and stationary sources identified by BAAQMD.

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.

Air Quality Setting

The project is located in Santa Clara County, which is part of the San Francisco Bay Area Air Basin. The Air Basin 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 the BAAQMD. Air quality conditions in the San Francisco Bay Area have improved significantly since the 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 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 flows 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 PM_{10} 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 CCAA divides districts into moderate, serious, and severe air pollution categories, with increasingly stringent control requirements mandated for each category.

Existing Air Pollutant Levels. BAAQMD monitors air pollution at various sites within the Bay Area. The closest air monitoring station (158 Jackson Street) that monitored O_3, CO, NO, NO_2, PM_{10}, and $PM_{2.5}$ over the past five years (2015 through 2019) is in the City of San José, approximately 3.5 miles north of the project site. The data shows that the project area has exceeded the state and/or federal O3, PM_{10}, and $PM_{2.5}$ ambient air quality standards during the past few years. The most recent time-period available illustrating air quality trends collected by BAAQMD and CARB is presented in Appendix A. Ozone standards (including 1-hr concentration and 8-hr concentration) were exceeded for 1 to 4 days annually between 2015 and 2019. Measured 24-hour PM_{10} concentrations were exceeded for 4 to 6 days between 2017 and 2019, and $PM_{2.5}$ concentrations were exceeded for 6 to 15 days in 2017 and 2018. As a note, these levels were influenced by smoke from wildfires.

Sensitive Receptors

The 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 receptors to the project site are in the adjacent single-family residences to the west. Additional residents are located north and east of the site. In addition, the project would introduce new sensitive residential receptors in the form of new residents.

Impacts and Mitigation

Thresholds per CEQA Checklist

ENVIRONMENTAL IMPACTS	Potentially Significant Issues	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact	Checklist Source(s)
3. AIR QUALITY. Where available, the significance criteria established by the applicable air quality management district or air pollution control district may be relied upon to make the following determinations. Would the project:					
a) Conflict with or obstruct implementation of the applicable air quality plan?			X		2, 5, 6, 7
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?			X		2, 5, 7
c) Expose sensitive receptors to substantial pollutant concentrations?		X			2, 5, 7
d) Result in other emissions (such as those leading to odors adversely affecting a substantial number of people?			X		2, 5, 7

The air quality assessment was prepared using information reflective of pre-COVID conditions. Impacts to air quality that use traffic conditions were addressed in two ways:

1. The air quality analysis predicted emissions of air pollutants from traffic using project trip generation rates. These traffic generation rates are based on pre-COVID conditions as the models were developed prior to the pandemic.

2. The health risk assessment of construction activities is not expected to be different for during-COVID or pre-COVID conditions. However, the assessment includes cumulative impacts that include traffic conditions. As discussed above, the traffic conditions used in the analysis are reflective of pre-COVID conditions.

Explanation

a) **Less Than Significant Impact**. Using the BAAQMD's methodology, a determination of consistency with the 2017 CAP should 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 1.

As summarized in the "Project Consistency" column of Table 1, the project would not conflict with the 2017 CAP's goal to attain air quality standards and would not result in exceedances of BAAQMD 2017 thresholds for criteria air pollutants as described in b) below. Therefore, the project would have a less than significant impact on clean air planning efforts.

Table 1 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 consistent with City's Zoning Ordinance standards. Additionally, the project would construct new 6' wide sidewalks along the Pentitencia Creek Road, N. Capitol Avenue, and Kestral Way project frontages for pedestrian access. The project also includes a TDM program to reduce provided automobile parking by up to 30%. The TDM program would provide additional incentives to residents to use alternative forms of transportation, including car-share services and subsidized transit passes for residents. Therefore, the project is consistent with this measure.
Energy Control Measures		
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), Private Sector Green Building Policy (Council Policy 6-32) and the City's Green Building Ordinance, which would increase building efficiency over standard construction. The project would also enroll into the City of San José Clean Energy program. Therefore, the project is consistent with this control measure.
Building Control Measures		
Green Buildings	Collaborate with partners such as KyotoUSA to identify energy-related improvements and opportunities for onsite 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	The project would be required to comply with CALGreen and the City's Green Building Policy (Council Policy 8-13), Private Sector Green Building Policy (Council Policy 6-32) the City's Green Building Ordinance, and the most recent California Building Code which would increase building efficiency over standard construction. Therefore, the project is consistent with this control measure.

Table 1 2017 CAP Applicable Control Measures		
Control Measures	**Description**	**Project Consistency**
	for energy-related projects in the buildings sector. Engage with additional partners to target reducing emissions from specific types of buildings.	
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 vehicle parking in a basement parking garage (for the apartment building) and individual vehicle garages (for townhomes). 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 Management 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		
Urban Tree Planting	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 for local plans, and CEQA review.	Consistent with the City's tree replacement requirements, the project would plant 130 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.

b) **Less Than Significant Impact**. The San Francisco Bay Area is considered a non-attainment area for ground-level ozone and $PM_{2.5}$ under both the Federal Clean Air Act and the California Clean Air Act. The area is also considered non-attainment for PM_{10} under the California Clean Air Act, but not the federal act. The area has attained both State and federal ambient air quality standards for carbon monoxide.

The City of San José uses the thresholds of significance established by the BAAQMD to assess air quality impacts of proposed development. The BAAQMD CEQA Guidelines include screening levels and thresholds for evaluating air quality impacts in the San Francisco Bay

Area Air Basin. As part of an effort to attain and maintain ambient air quality standards for ozone and PM_{10}, 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), PM_{10}, and $PM_{2.5}$ and apply to both construction period and operational period impacts. The applicable thresholds are presented below in Table 2.

Table 2
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, $PM_{2.5}$ (exhaust)	54	54	10
PM_{10} (exhaust)	82	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	Not Applicable	
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		
Greenhouse Gas Emissions (Land Use Projects)			
GHG Annual Emissions	1,100 metric tons or 4.6 metric tons per service population		

Notes: ROG = reactive organic gases, NOx = nitrogen oxides, PM_{10} = course particulate matter or particulates with an aerodynamic diameter of 10 micrometers (µm) or less, and $PM_{2.5}$ = fine particulate matter or particulates with an aerodynamic diameter of 2.5µm or less; GHG = greenhouse gas; ppm = parts per million; µg/m^3 = micrograms per cubic meter

The air quality assessment for the project (Appendix A) used the California Emissions Estimator Model (CalEEMod) Version 2020.4.0 to estimate air pollutant emissions from construction and operation of the project at buildout.[2]

[2] CalEEMod quantifies ozone precursors, criteria pollutants, and greenhouse gas emissions from the construction and operation of new land use development and linear projects in California.

Operational Emissions

Operational air emissions from the project would be generated primarily from vehicles driven by future residents. The project does not include a backup generator. Evaporative emissions from architectural coatings and maintenance products are typical emissions from these types of uses (e.g., paints, stains). CalEEMod was used to estimate emissions from operation of the proposed project at buildout. Inputs for this modeling scenario included project components along with the vehicle trip rate generation rates used in the traffic study, with the results of the modeling are presented in Table 3. As shown in Table 3, operational emissions would not exceed the BAAQMD significance thresholds, representing a less than significant impact.

Table 3
Operational Emissions

Scenario	ROG	NOx	PM_{10}	$PM_{2.5}$
2025 Project Operational Emissions *(tons/year)*	2.61 tons	0.86 tons	1.35 tons	0.36 tons
BAAQMD Thresholds (tons /year)	*10 tons*	*10 tons*	*15 tons*	*10 tons*
Exceed Threshold?	***No***	***No***	***No***	***No***
2025 Project Operational Emissions *(lbs/day)*[1]	14.32 lbs.	4.7 lbs.	7.39 lbs.	1.95 lbs.
BAAQMD Thresholds (pounds/day)	*54* lbs.	*54* lbs.	*82* lbs.	*54* lbs.
Exceed Threshold?	***No***	***No***	***No***	***No***

[1] Assumes 365-day operation

Construction Emissions

CalEEMod computes annual emissions for construction based on the project type, size and acreage. The model provides emission estimates for both on-site and off-site construction activities. On-site activities are primarily made up of construction equipment emissions (e.g., from tractors, backhoes, etc.), while offsite activity includes worker, hauling, and vendor traffic. The construction build-out scenario, including equipment list and schedule, were based on information provided by the project applicant for the apartment building, and based on CalEEMod defaults based on type and size for the townhome component. CalEEMod defaults tend to be conservative for a project of this size and type, with site acreage being the most important input to CalEEMod for generating construction default parameters.

The project land use types and size, and anticipated construction schedule were input to CalEEMod, as follows:

- 350 dwelling units entered as "Apartment Mid Rise" on a 2.12-acre site[3]
- 364 parking spaces entered as "Enclosed Parking with Elevator"
- 32 dwelling units entered as "Condo/Townhome" on a 2-acre site
- 64 parking spaces entered as "Enclosed Parking Spaces"
- 7 parking spaces entered as "Parking Lot"

[3] The project was updated to remove one unit and add 3,000 square feet of commercial office space since preparation of the air quality assessment. The air quality consultant confirmed that these minor changes these minor changes do not affect the conclusions of the assessment (James Reyff, Illingworth & Rodkin, pers comm. November 2021.)

The construction schedule assumed that the earliest possible start date would be September 2022 for both components of the project. The proposed multi-family residential structure would be built out over a period of approximately 25 months, or 542 construction workdays. The proposed townhomes would be built out over a period of approximately 13 months, or 286 construction workdays. The earliest year of full operation for the entire project is assumed to be 2025.

Average daily emissions were annualized for each year of construction by dividing the total annual construction emissions by the number of active workdays during that year. Table 4 shows annualized average daily construction emissions of ROG, NO_X, PM_{10} exhaust, and $PM_{2.5}$ exhaust during construction of the entire project. As indicated in Table 4, predicted annualized project construction emissions for the entire project would not exceed the BAAQMD significance thresholds during any year of construction.

Table 4
Construction Period Emissions

Year	ROG	NOx	PM_{10} Exhaust	$PM_{2.5}$ Exhaust
Construction Emissions Per Year (Tons)				
2022	0.13	1.04	0.05	0.04
2023	0.97	1.89	0.10	0.08
2024	2.24	0.84	0.05	0.04
Average Daily Construction Emissions Per Year (pounds/day)				
2022 (87 construction workdays)	2.91	23.80	1.21	1.00
2023 (261 construction workdays)	7.43	14.51	0.78	0.61
2024 (194 construction workdays)	23.14	8.68	0.50	0.38
BAAQMD Thresholds (pounds per day)	*54* lbs./day	*54* lbs./day	*82* lbs./day	*54* lbs./day
Exceed Threshold?	No	No	No	No

Construction activities, particularly during site preparation and grading, would temporarily generate fugitive dust in the form of PM_{10} and $PM_{2.5}$. Sources of fugitive dust would include disturbed soils at the construction site and trucks carrying uncovered loads of soil. Unless properly controlled, vehicles leaving the site would deposit mud on local streets, which could be an additional source of airborne dust after it dries.

Although construction period emissions would not exceed the BAAQMD significance thresholds, the BAAQMD CEQA Air Quality Guidelines require implementation of best management practices. During any construction period ground disturbance, the applicant shall ensure that the project contractor implement measures to control dust and exhaust. Implementation of the measures recommended by BAAQMD and listed below as standard permit conditions would reduce the air quality impacts associated with grading and new construction to a less than significant level. Additional measures are identified to reduce construction equipment exhaust emissions. The contractor shall implement the following best management practices that are required of all projects:

Standard Permit Conditions

- 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.
- Replant vegetation in disturbed areas as quickly as possible.
- Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
- Minimize idling times either by shutting off equipment when not in use, or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations). Provide clear signage for construction workers at all access points.
- Maintain and property tune construction equipment in accordance with manufacturer's specifications. Check all equipment by a certified mechanic and record a determination of running in proper condition prior to operation.
- Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints.

In addition to the BAAQMD-recommended best management practices listed above as standard permit conditions, implementation of the mitigation measure in c) below would include construction equipment exhaust control measures to reduce construction particulate matter impacts. As the project would not result in emissions that exceed the BAAQMD thresholds, it would not contribute substantially to existing or projected violations of air quality standards.

c) **Less Than Significant with Mitigation.** 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. This project would introduce new sources of TACs during

construction (i.e., on-site construction and truck hauling emissions) and operation (i.e., mobile sources and stationary sources).

Project construction activity would generate dust and equipment exhaust that would affect nearby sensitive receptors. The project would not include the installation of any emergency generators powered by a diesel engine but would generate some traffic consisting of mostly light-duty gasoline-powered vehicles, which would produce TAC and air pollutant emissions.

Project impacts to existing sensitive receptors were addressed for temporary construction activities and long-term operational conditions. There are also several sources of existing TACs and localized air pollutants in the vicinity of the project, such as N. Capitol Avenue and Interstate 680 traffic. The impact of the existing sources of TAC was also assessed in terms of the cumulative risk which includes the project contribution, as well as the risk on the new sensitive receptors introduced by the project.

Community Health Risk Impacts Associated with Construction

Construction equipment and associated heavy-duty truck traffic generates 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 issues 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 $PM_{2.5}$.[4] This assessment included dispersion modeling to predict the offsite and onsite concentrations resulting from project construction, so that lifetime cancer risks and non-cancer health effects could be evaluated. The project would introduce new sensitive receptors in the form of residents. In addition, the closest sensitive receptors to the project site are in the adjacent single-family residences to the west. There are additional residences north, south, east, and west of the site.

Sensitive receptors are considered the maximally exposed individuals (MEI) and are shown in Figure 11. The maximum DPM and $PM_{2.5}$ concentrations from project construction were located on the first floor (5 feet above ground) at the single-family home southeast of the project site. The MEI is greatly influenced by daytime wind conditions, with prevailing northwest winds in the project area and therefore, is not always the nearest direct sensitive receptor.

In order to be conservative, the modeled sensitive receptors include all receptor groups including infants and children. Table 5 summarizes the maximum cancer risks, $PM_{2.5}$ concentrations, and health hazard indexes for project related construction activities affecting the construction MEIs. As shown in Table 5, the unmitigated maximum cancer risks from project construction activities at the MEI location would exceed the cancer risk single-source

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

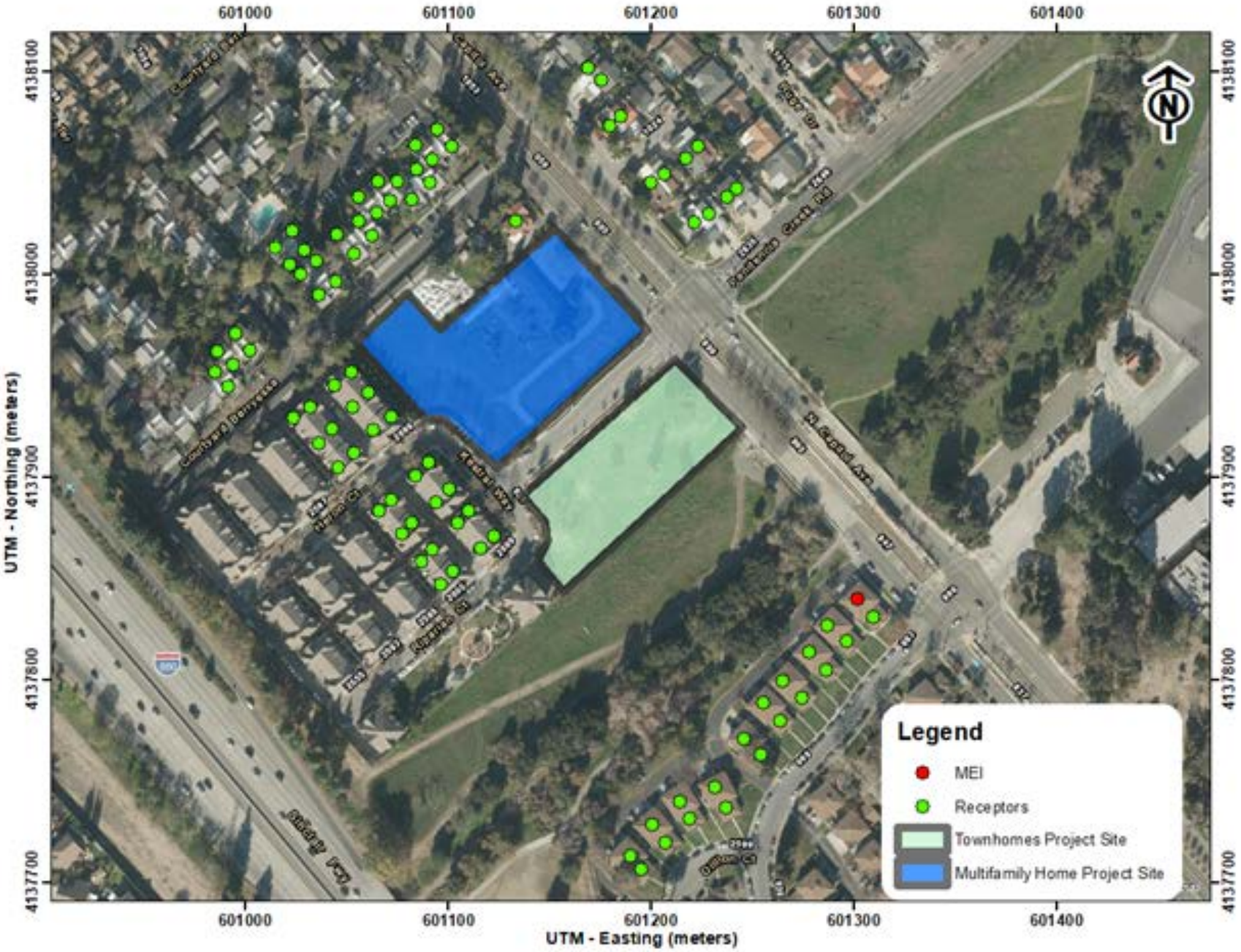
significance threshold of less than 10 in one million. The non-cancerous hazards (i.e., $PM_{2.5}$ and HI) from construction activities would not exceed the single-source significance threshold.

Cumulative Community Health Risk at Construction MEI

The cumulative impacts of TAC emissions from construction of the project and traffic on North Capitol Avenue and Interstate-680 (I-680) on the construction MEI are summarized in Table 5. The construction MEI is represented by the residential MEI identified above. As shown in Table 5, the combined cancer risk and hazard risk values, which includes unmitigated and mitigated, would not exceed the cumulative thresholds.

Table 5
Impacts from Individual and Combined Sources at Construction MEI

Source	Cancer Risk (per million)	Annual $PM_{2.5}$ ($\mu g/m^3$)	Hazard Index
Project Impacts			
Project Construction			
Unmitigated	**23.86 (infant)**	0.11	0.02
Mitigated	5.38 (infant)	0.03	<0.01
BAAQMD Single-Source Threshold	***10***	***0.3***	***1.0***
Exceed Threshold?			
Unmitigated	***Yes***	*No*	*No*
Mitigated	*No*	*No*	*No*
Cumulative Sources			
North Capitol Avenue, ADT 24,300	4.60	0.26	<0.01
Interstate 680, ADT 191,760	8.21	0.16	<0.01
Combined Sources			
Unmitigated	36.67	0.53	<0.04
Mitigated	18.19	0.45	<0.03
BAAQMD Cumulative Source Threshold	***100***	***0.8***	***10.0***
Exceed Threshold?			
Unmitigated	*No*	*No*	*No*
Mitigated	*No*	*No*	*No*



Source: Illingworth & Rodkin, September 2021

Location of Nearby Sensitive Receptors and Maximally Exposed Individual

905 N. Capitol Residential Initial Study

Figure 11

Impact AQ-1: Project construction would result in an infant cancer risk of 23.86 in one million at the maximally exposed individual (MEI), which exceeds the BAAQMD's cancer risk significance threshold of 10 in one million.

Mitigation Measures

MM AQ-1 Prior to the issuance of any demolition, grading, or building permits (whichever occurs first), 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 site for more than two continuous days or 20 hours total shall meet U.S. EPA Tier 4 emission standards for particulate matter (PM_{10} 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 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).

- Use of electrical or non-diesel fueled equipment.

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 (whichever occurs earliest).

CalEEMod was used to compute emissions associated with this mitigation measure assuming that all equipment met U.S. EPA Tier 4 interim engines standards and BAAQMD best management practices for construction were included. With these implemented, the project's construction cancer risk impact, assuming infant exposure, would be reduced by 78 percent to 5.38 chances per million. A plan that reduces DPM emissions by 60 percent would reduce cancer risk to about 9.5 chances per million. As a result, the project's construction cancer risk would be reduced below the BAAQMD's single-source threshold for increased cancer risk.

d) **Less Than Significant Impact**. The proposed project is a mixed-use development consisting of multi-family residences, single-family townhomes, and 3,000 square feet of commercial office space. The proposed project would not create other emissions including new sources of odor. 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. This represents a temporary impact and implementation of abatement measures for construction period emissions identified in c) above would further assure that this impact is less than significant.

Non-CEQA Effects

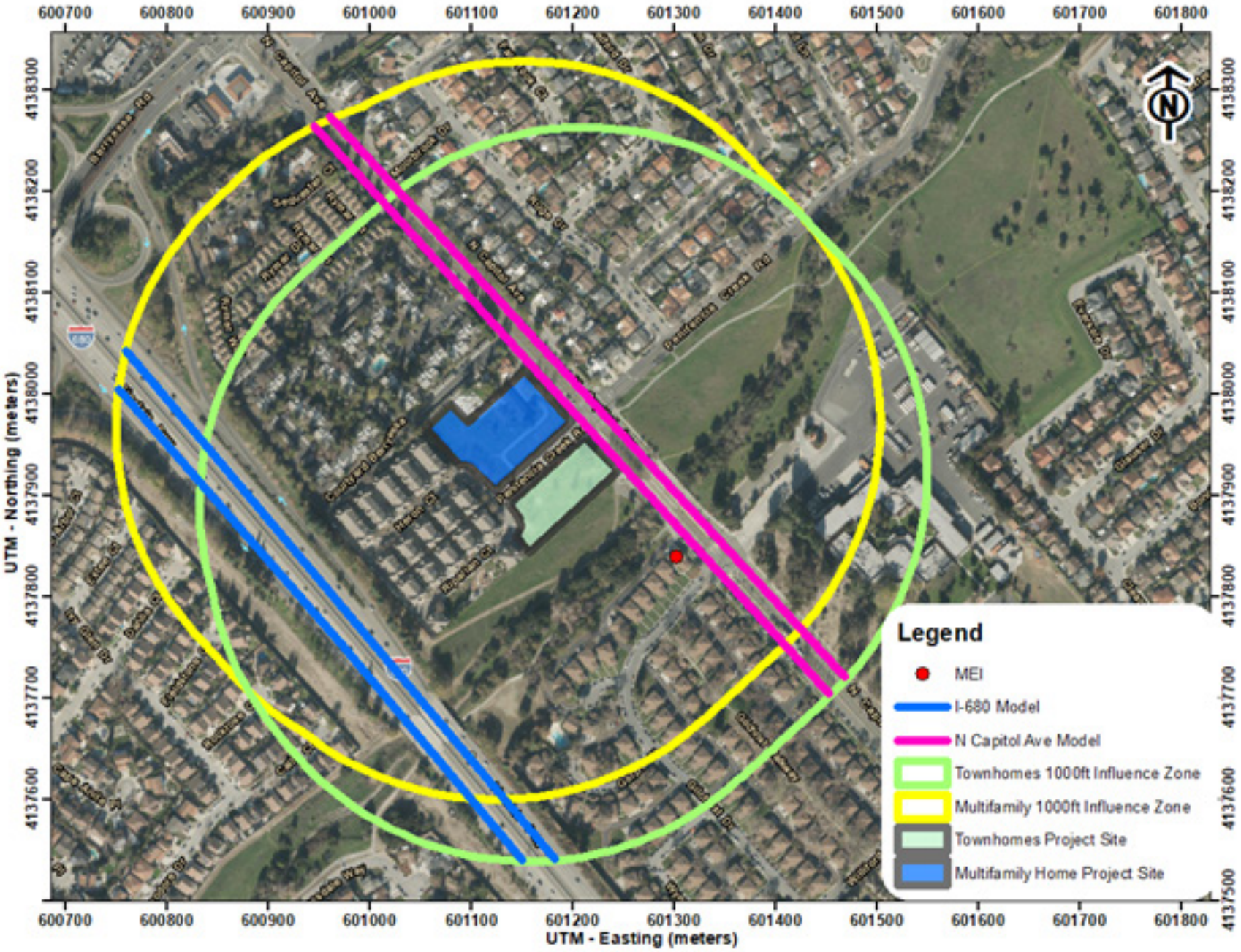
The project would introduce new residents that are sensitive receptors. In December 2015, the California Supreme Court issued an opinion in the California Building Industry Association vs. Bay Area Air Quality Management District (CBIA vs. BAAQMD) case that CEQA is primarily concerned with the impacts 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.

However, 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 to future residents and users of the project. The project proposes new sensitive receptors (residential occupants) in the proximity of nearby potential TAC sources, as shown in Figure 12. Though not necessarily a CEQA issue, 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 the City's General Plan Policy MS-11.1. The types of uses proposed by the project (residential) would not create a substantial source of localized TACs.

Community health risk assessments typically consider all substantial sources of TACs that can affect sensitive receptors located within 1,000 feet of a project site. These sources can include freeways or highways, busy surface streets, and stationary sources identified by BAAQMD. In order for the project to be consistent with General Plan Policy MS-11.1, MS-11.4, and MS-11.5, the following measures will be required as a condition of the Conditional Use Permit to reduce exposure to TAC emissions and avoid significant risks to health and safety. TAC sources in the project area are shown in Figure 12.

A review of the project area indicates that traffic on North Capitol Avenue and I-680 has an average daily traffic (ADT) of over 10,000 vehicles, which are considered sources of TACs. All other roadways within the area are assumed to have an ADT that is less than 10,000 vehicles. A review of BAAQMD's stationary source geographic information systems (GIS) map tool identified no stationary sources with the potential to affect the project site and MEI. This project would not introduce any new TAC sources, such as generators.

Roadway Sources. To assess potential health impacts at the project site from traffic on I-680, the health risk (potential cancer risks) impacts were computed using modeled TAC and $PM_{2.5}$ concentrations from traffic. The maximum modeled TAC and $PM_{2.5}$ concentrations from both I-680 and N. Capitol Avenue are shown in Figure 13. TAC and $PM_{2.5}$ concentrations from traffic on I-680 and N. Capitol Avenue at the project site will decrease with distance from the respective roadways and with increasing height (floor levels).

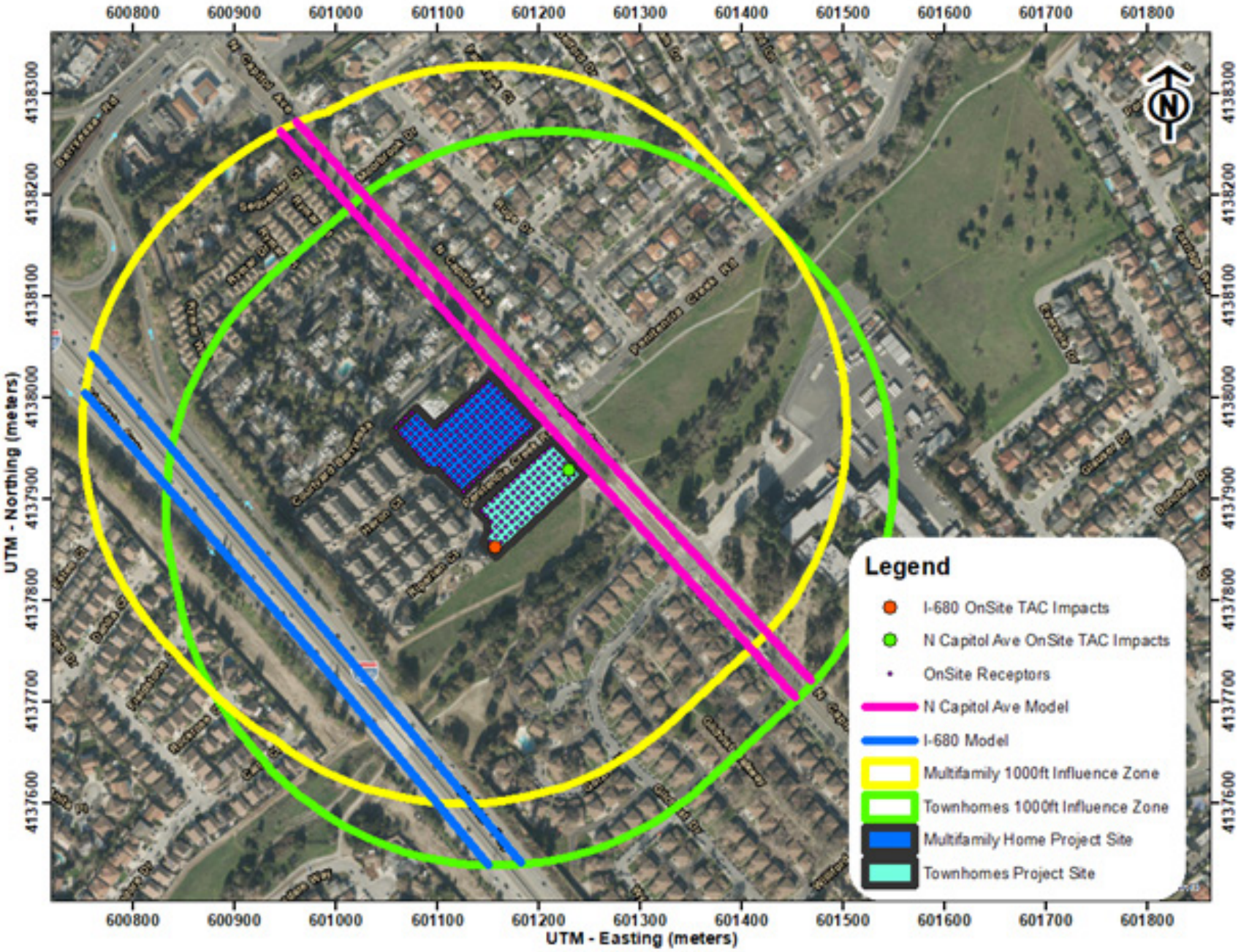


Source: Illingworth & Rodkin, September 2021

Nearby TAC and $PM_{2.5}$ Sources

905 N. Capitol Residential
Initial Study

Figure
12



Source: Illingworth & Rodkin, September 2021

Project Site and Location of Maximum TAC Impacts

905 N. Capitol Residential Initial Study

Figure 13

Community risk impacts from the existing TAC sources upon the project site are reported in Table 6. 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 cancer risk, annual $PM_{2.5}$ concentrations, and HI from the nearby sources do not exceed their single-source or cumulative-source thresholds.

Table 6
Community Risk Impact to Proposed Project Residents

Source	Cancer Risk (per million)	Annual $PM_{2.5}$ ($\mu g/m^3$)	Hazard Index
North Capitol Avenue, ADT 24,300	2.88	0.24	<0.01
Interstate 680, ADT 197,400	9.54	0.29	<0.01
BAAQMD Single-Source Threshold	***10***	***0.3***	***1.0***
Exceed Threshold?	*No*	*No*	*No*
Cumulative Total	12.42	0.53	<0.02
BAAQMD Cumulative Source Threshold	***100***	***0.8***	***10.0***
Exceed Threshold?	*No*	*No*	*No*

Community risk impacts from the existing TAC sources upon the project site are reported in Table 6. 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 cancer risk, annual $PM_{2.5}$ concentrations, and HI from the nearby sources do not exceed their single-source or cumulative-source thresholds.

Conclusion: The project would have a less than significant impact on air quality with implementation of identified mitigation measures, permit conditions, and applicable General Plan Policies.

D. BIOLOGICAL RESOURCES

An arborist report was prepared to document the existing trees within and adjacent to the project site by HortScience/Bartlett Consulting (September 2021), and is contained in Appendix B. In addition, a biological resources memorandum was prepared to address the potential biological resources on and adjacent to the project site by Johnson Marigot Consulting, LLC (December 2021), and is contained in Appendix C. The conclusions and recommendations of these reports are discussed in the following section.

Regulatory Framework

Federal and State

Special-Status Species

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

In addition to species listed under state and federal Endangered Species Acts, Section 15380(b) and (c) of the CEQA Guidelines provided that all potential rare or sensitive species, or habitats capable of supporting rare species, are considered for environmental review per the CEQA Guidelines. These may include plant species of concern in California listed by the California Native Plant Society and CDFW listed "Species of Special Concern."

Migratory Bird and Birds of Prey Protection

The federal Migratory Bird Treaty Act (MBTA) prohibits killing, possessing, or trading in migratory birds except in accordance with regulations prescribed by the Secretary of the Interior. This act encompasses whole birds, parts of birds, and bird nests and eggs. Construction disturbances during the breeding season could result in the incidental loss of fertile eggs or nestlings, or otherwise lead to nest abandonment, a violation of the MBTA. Additionally, nesting birds are considered special-status species are protected by the USFWS. The CDFW also protects migratory and nesting birds under California Fish and Game Code Sections 3503, 3503.5, and 3800. The CDFW defines taking as causing abandonment and/or loss of reproductive efforts through disturbance.

Sensitive Habitats

Wetland and riparian habitats are considered sensitive habitats under CEQA. They are also afforded protection under applicable federal, state, and local regulations, and are generally subject to regulation, protection, or consideration by the US Army Corps of Engineers (USACE), Regional Water Quality

Control Board (RWQCB), CDFW, and /or the USFWS under provisions of the federal Clean Water Act (e.g., Sections 303, 304, 404) and State of California Porter-Cologne Water Quality Control Act.

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, Santa Clara Valley Water District, Santa Clara Valley Transportation Authority, U.S. Fish and Wildlife Service, and California Department of Fish and Wildlife. 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: Urban-Suburban
- Land Cover Fee Zone: Urban Areas (No Land Cover Fee)

In addition, the HCP indicates that nitrogen deposition has damaging effects on many of the serpentine plants in the HCP area, including the host plants that support the Bay checkerspot butterfly. Because serpentine soils tend to be nutrient poor and nitrogen deposition artificially fertilizes serpentine soils, nitrogen deposition facilitates the spread of invasive plant species. Nitrogen tends to be efficiently recycled by the plants and microbes in infertile soils such as those derived from serpentine, so that fertilization impacts could persist for years and result in cumulative habitat degradation. All major remaining populations of the butterfly and many of the sensitive serpentine plant populations occur in areas subject to air pollution from vehicle exhaust and other sources throughout the Bay Area, including the project site. The displacement of native serpentine plant species and subsequent decline of several federally-listed species, including the butterfly and its larval host plants, has been documented on Coyote Ridge in central Santa Clara County.

City of San José Tree Ordinance

The City of San José'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 of San José 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.

General Plan Policies

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

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-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.
Policy ER-5.2	Require that development projects incorporate measures to avoid impacts to nesting migratory birds.
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

Envision San José 2040 Relevant Biological Resource Policies	
	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: 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.

Existing Setting

The project property consists of one residential structure and vegetated vacant land on the northern parcel and undeveloped vegetated land on the southern parcel. Review of historical records indicates that the property has been utilized with row crops or orchards dating to circa 1939 to approximately the late 1970s. The residential building was built between 1968 and 1974. Due to the disturbed nature of the site, it is considered to have a relatively low habitat value. The southern parcel is located approximately 200 feet from Penitencia Creek. Both sites contain some landscaping and onsite trees. In addition, offsite street trees front the property.

A tree survey was completed for the project by HortScience/Bartlett Consulting (September 2021), and is contained in Appendix B. The results of the tree survey are presented below in Table 7 below. A tree location map is provided in Appendix B.

Table 7
Tree Survey Results

No.[1]	Species	Scientific Name	Trunk Diameter (inches)	Condition (0 = dead 5= excellent)	Proposed Action
76	**Olive**	***Olea europaea***	**13, 12**	**2**	**Remove**
77	**Arroyo willow**	***Salix sp.***	**14, 13, 10, 7**	**3**	**Remove**
78	Coyote brush	*Baccharis pilularis*	3, 3, 2, 2, 1, 1	3	Remove
79	**Coast live oak**	***Quercus agrifolia***	**27**	**4**	**Remove**
80	**Coast live oak**	***Quercus agrifolia***	**36**	**4**	**Remove**
81	Japanese privet	*Ligustrum japonicum*	3, 3, 1	2	Remove
82	**Olive**	***Olea europaea***	**11, 9**	**2**	**Remove**
83	**Coast redwood**	***Sequoia sempervirens***	**17**	**3**	**Remove**
84*	**London plane**	***Platanus x hispanica***	**16**	**4**	**Preserve**
85	**Mulberry**	***Morus sp.***	**23**	**3**	**Remove**
86	**Weeping bottle brush**	***Melaleuca viminalis***	**9, 8, 6**	**2**	**Remove**

Table 7 Tree Survey Results					
No.[1]	**Species**	**Scientific Name**	**Trunk Diameter (inches)**	**Condition (0 = dead 5= excellent)**	**Proposed Action**
87	Weeping bottle brush	*Melaleuca viminalis*	8	3	Remove
88	**Persimmon**	***Diospyros kaki***	**10, 7, 7**	**3**	**Remove**
89	**Avocado**	***Persea americana***	**17, 15, 13, 13, 10**	**3**	**Remove**
90	Olive	*Olea europaea*	2, 2, 2, 1, 1	4	Remove
91	**Tangerine**	***Citrus reticulata***	**4, 4, 3, 3, 3, 2, 2, 1**	**3**	**Remove**
92	**Pomegranate**	***Punica granatum***	**4, 4, 4, 3, 3, 3, 3, 2, 2, 1**	**3**	**Remove**
93	Grapefruit	*Citrus x paradisi*	1, 1, 1, 1, 1, 1	2	Remove
94	Tangerine	*Citrus reticulata*	1. 1. 1. 1. 1	3	Remove
95	Orange	*Citrus sinensis*	3, 3, 2, 2, 1, 1	2	Remove
96	Weeping bottle brush	*Melaleuca viminalis*	4, 2, 1	2	Remove
97	**Marina madrone**	***Arbutus 'Marina***	**7, 6, 4, 3**	**3**	**Remove**
98	**Pomegranate**	***Punica granatum***	**9, 9, 7**	**3**	**Remove**
99	**Apricot**	***Prunus armeniaca***	**8, 7, 7, 3**	**3**	**Remove**
100	Peach	*Prunus persica*	5, 4, 3	2	Remove
101	Cherry	*Prunus avium*	1, 1	3	Remove
102	Cherry	*Prunus avium*	2, 1, 1, 1, 1	1	Remove
103	Deodar cedar	*Cedrus deodara*	2	3	Remove
104	**Coast live oak**	***Quercus agrifolia***	**6, 6, 5, 5, 5, 4, 3, 3, 3, 2, 2, 2**	**3**	**Remove**
105	Coast live oak	*Quercus agrifolia*	5	3	Remove
106	Olive	*Olea europaea*	2, 1	3	Remove
107	Coast redwood	*Sequoia sempervirens*	8	4	Remove
108	Coast redwood	*Sequoia sempervirens*	3	0	Remove
109	Coast redwood	*Sequoia sempervirens*	5	3	Remove
110	Coast redwood	*Sequoia sempervirens*	5	3	Remove
111	Coast redwood	*Sequoia sempervirens*	7	3	Remove
112	Coast redwood	*Sequoia sempervirens*	11	3	Remove
113	Coast redwood	*Sequoia sempervirens*	8	3	Remove
114	Coast redwood	*Sequoia sempervirens*	8	3	Remove
115	Coast redwood	*Sequoia sempervirens*	8	3	Remove
116	Coast redwood	*Sequoia sempervirens*	8	3	Remove
117	Coast redwood	*Sequoia sempervirens*	5	3	Remove
118^	**Purpleleaf plum**	***Prunus cerasifera***	**12 est.**	**3**	**Preserve**
119^	**Coast redwood**	***Sequoia sempervirens***	**18**	**3**	**Preserve**
120^	**Coast redwood**	***Sequoia sempervirens***	**19**	**3**	**Preserve**
121^	**Pomegranate**	***Punica granatum***	**5, 5, 4, 4, 3**	**3**	**Remove**
122^	**California Pepper**	***Schinus mole***	**6, 5, 3, 3**	**3**	**Remove**
123^	**Loquat**	***Eriobotrya japonica***	**12, 10, 6, 5**	**3**	**Remove**
124^	**Norfolk Island pine**	***Araucaria heterophylla***	**14, 12**	**3**	**Remove**
125*	**London plane**	***Platanus x hispanica***	**17**	**4**	**Remove**
126*	**London plane**	***Platanus x hispanica***	**16**	**4**	**Remove**
127*	**London plane**	***Platanus x hispanica***	**15**	**4**	**Preserve**
128*	**London plane**	***Platanus x hispanica***	**17**	**4**	**Preserve**
129	Oregon ash	*Fraxinus latifolia*	3, 2, 1, 1	2	Remove
130*	Sawleaf zeikova	*Zelkova serrata*	8	3	Preserve

Table 7 Tree Survey Results					
No.[1]	**Species**	**Scientific Name**	**Trunk Diameter (inches)**	**Condition (0 = dead 5= excellent)**	**Proposed Action**
131*	London plane	*Platanus x hispanica*	10	3	Preserve
132*	London plane	*Platanus x hispanica*	10	3	Preserve
133*	**London plane**	***Platanus x hispanica***	**15**	**3**	**Preserve**
134*	Callery pear	*Pyrus calleryana*	10	3	Remove
135*	**London plane**	***Platanus x hispanica***	**12**	**4**	**Preserve**
136*	London plane	*Platanus x hispanica*	11	4	Preserve
137*	London plane	*Platanus x hispanica*	10	4	Preserve
138*	London plane	*Platanus x hispanica*	10	4	Remove
139*	Callery pear	*Pyrus calleryana*	9	2	Remove
140*	Callery pear	*Pyrus calleryana*	4	3	Remove
141*	Callery pear	*Pyrus calleryana*	6	3	Remove
142*	Callery pear	*Pyrus calleryana*	6	3	Remove
143*	Callery pear	*Pyrus calleryana*	5	2	Remove
144*	Callery pear	*Pyrus calleryana*	3	2	Remove
145^	Purpleleaf plum	*Prunus cerasifera*	6	3	Preserve
146^	Fern pine	*Afrocarpus gracilior*	6	4	Preserve
147^	Fern pine	*Afrocarpus gracilior*	6	4	Preserve
148^	Fern pine	*Afrocarpus gracilior*	6	4	Preserve
149^	Fern pine	*Afrocarpus gracilior*	5	4	Preserve
150^	Fern pine	*Afrocarpus gracilior*	5	4	Preserve
151^	Fern pine	*Afrocarpus gracilior*	6	4	Preserve
152^	Fern pine	*Afrocarpus gracilior*	7	4	Preserve
153^	Fern pine	*Afrocarpus gracilior*	7	4	Preserve
154^	Fern pine	*Afrocarpus gracilior*	5	4	Preserve
155^	Purpleleaf plum	*Prunus cerasifera*	5, 4	4	Preserve

Ordinance size trees are shown in **bold**.
[1]Tree numbering in the arborist report starts at #76 due to the availability of numbered tree tags at the time of the survey.
*Indicates street tree.
^Indicates off-site tree
Source: HortScience/Bartlett Consulting, Arborist Report, September 2021

A biological constraints analysis was completed for the project by Johnson Marigot Consulting, LLC (December 2021), and is contained in Appendix C. The constraints analysis includes a discussion of habitat types present on the property, proximity to the Penitencia Creek riparian corridor, and special-status species with the potential to occur on the project site. Habitat types within the project site consist of ruderal/disturbed and anthropogenic/ornamental land cover types. The southernmost border of the project site is located between 120 and 150 feet from the Penitencia Creek riparian corridor. A habitat map, special-species map, and Penitencia Creek riparian map are provided in Appendix C.

Impacts and Mitigation

Thresholds per CEQA Checklist

ENVIRONMENTAL IMPACTS	Potentially Significant Issues	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact	Checklist Source(s)
4. BIOLOGICAL RESOURCES. Would the project:					
a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?		X			1, 2, 20
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 US Fish and Wildlife Service?			X		1, 2
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?			X		1, 2
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?			X		1, 2
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?			X		1, 2, 8
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?			X		1, 2, 9, 10

Explanation

a) **Less Than Significant with Mitigation Incorporated**. The project site contains mature trees which may provide nesting habitat for migratory birds, including raptors (birds of prey) (see additional discussion under e below). Mature trees on the project site, as well as the existing single-family residence, may also provide suitable roosting habitat for bat species. In addition, there are mature street trees adjacent to the project site. Raptors and their nests are protected under the Migratory Bird Treaty Act of 1918 and California Fish and Game Code Sections 3503 and 3503.5. These species could be disturbed during tree removal and construction activities.

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

Mitigation Measures

MM BIO-1 The project applicant shall schedule demolition and construction activities to avoid the nesting season. The nesting season for most birds, including most raptors in the San Francisco Bay area, extends from February 1st through August 31st (inclusive).

If demolition and construction cannot be scheduled to occur between September 1st and January 31st (inclusive and as amended), pre-construction surveys for nesting birds shall be completed by a qualified ornithologist or biologist to ensure that no nests shall be disturbed during project implementation. This 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 1st through April 30th, inclusive) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May 1st through August 31st, inclusive). During this survey, the qualified ornithologist/biologist shall inspect all trees and other possible nesting habitats immediately adjacent to the construction areas for nests.

If an active nest is found sufficiently close to work areas to be disturbed by construction, the qualified ornithologist/biologist, in consultation with the California Department of Fish and Wildlife, shall determine the extent of a construction free buffer zone to be established around the nest, typically 250 feet, to ensure that raptor or migratory bird nests shall not be disturbed during project construction.

Prior to 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: Construction activities associated with the project could result in the disturbance of maternal roosting of bats.

Mitigation Measures

MM BIO-2 If project construction is planned during the bat reproductive season (May 1 through September 15, inclusive), the project applicant shall retain a qualified bat specialist or wildlife biologist to conduct site surveys to characterize bat utilization within and 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:

- If it is determined that bats are not present adjacent to the site, no additional mitigation is required.

- If it is determined that bats are utilizing the trees adjacent to the site and may be impacted by the proposed 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, no bats or bat signs are observed in the course of the pre-construction surveys, construction may proceed. If bats and/or bat signs are observed during the pre-construction surveys, the qualified bat specialist or wildlife biologist shall determine if disturbance will jeopardize the roost (i.e., maternity, foraging, day, or night).

- If a single bat and/or only adult bats are roosting, removal of trees, buildings, or other suitable habitat may proceed after the bats have been safely excluded from the roost. Exclusion techniques shall be determined by the qualified bat specialist or wildlife biologist and would depend on the 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 or 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.

- Prior to any tree removal, or approval of any grading or demolition permits (whichever occurs first), the qualified bat specialist or 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.

With implementation of the identified mitigation measures, the project's impact to nesting birds and raptors, as well as roosting bats, would be less than significant.

b) **Less Than Significant Impact**. The project is located on disturbed property and does not contain any sensitive natural communities (see Appendix C). Penitencia Creek is located about 200 feet to the south of the southern townhome parcel. 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. The southern property boundary of the proposed townhome development is located between 120 and 150 feet from the top of the bank of the riparian corridor; as a result, the project is outside the City's 100-foot riparian setback requirement. The project would comply with relevant requirements of the City's Riparian Corridor Protection and Bird-Safe Design Policy. Based on this discussion, the project would have a less than significant impact on riparian habitat or other sensitive natural communities.

c) **Less Than Significant Impact**. The project property does not contain any state or federally protected wetlands. See also discussion b) above.

d) **Less Than Significant Impact**. The project is proposed in an urbanized setting surrounded by existing development on most sides and has not been found to contain any native resident or wildlife species. The nearest project property line is approximately 120 to 150 feet from the top of the bank of the riparian corridor of Penitencia Creek and outside the City's 100-foot riparian setback. However, tree removal or other construction activities could potentially disrupt nesting raptors or roosting bats. With the implementation of MMs BIO-1 and BIO-2, the project would reduce these potential impacts to less than significant. Therefore, the proposed 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.

e) **Less Than Significant Impact**. A tree survey was completed for the project (HortScience/Bartlett Consulting, September 2021) and is contained in Appendix B. The results of the tree survey are presented above in Table 7.

Of the 20 street trees, seven exceed 38 inches in circumference (12 inches in diameter) and are protected by the City's Tree Protection Ordinance. There are no designated heritage trees on the site. The project proposes to remove 56 trees (see Table 7). The City requires replacement of all removed trees in accordance with the replacement ratios presented below. Street tree removal and replacement must be conducted in consultation with the City's Department of Transportation.

As a part of the development approval, the project will implement the following standard permit conditions to mitigate for impacts to trees. The project, therefore, would not conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance.

Standard Permit Conditions

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

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
x:x = tree replacement to tree loss ratio Note: Trees greater than or equal to 12-inch diameter shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees. For multi-family residential, commercial and industrial properties, a permit is required for removal of trees of any size. A 24-inch box tree = two 15-gallon trees				

  - To compensate for the 56 trees to be removed, the following tree replacement will be implemented: 14 trees replaced at a 1:1 ratio, ten trees at a 2:1 ratio, 15 trees at a 3:1 ratio, six trees at a 4:1 ratio, and five trees replaced at a 5:1 ratio. The total

minimum number of replacement trees required to be planted would be 130 trees, which will be planted onsite.

- In the event that a project site does not have sufficient area to accommodate the required tree replacement, one or more of the following may be implemented, to the satisfaction of the Director of Planning, Building and Code Enforcement. 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. As demonstrated in Figure 9, all 106 proposed tree plantings would be 24-inch box size, which counts for 212 replacement trees.

  - Pay Off-Site Tree Replacement Fee(s) to the City, prior to the issuance of grading 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 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 applicant to prevent disturbances during the full length of the construction period that could potentially disrupt the habitat or trees.

With implementation of this standard permit condition, the project would comply with the local policies or ordinances protecting biological resources, resulting in a less than significant impact.

f) **Less Than Significant Impact**. The project is located within the SCVHP plan area and is considered a Covered Activity. The project is located on land designated by the SCVHP as Urban-Suburban. The nitrogen deposition fee applies to all projects that create new vehicle trips. A nitrogen deposition fee will be required for each new vehicle trip generated by the project, at the time of development. The project would implement the following standard permit condition in accordance with the SCVHP.

Standard Permit Condition

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

With implementation of this standard permit condition, the project would comply with the SCVHP, resulting in a less than significant impact.

Conclusion: The project would have a less than significant impact on biological resources with implementation of identified mitigation measures and permit conditions.

E. CULTURAL RESOURCES

This section is based on a Historic Resources Assessment prepared for the project by Treanor HL (March 28, 2022). A copy of this report is provided in Appendix D. In addition, a Historical/Archaeological Literature Review and Assessment was prepared by Charles Mikulik Archaeological Consulting (CMAC) for the project (June 2021). *This report may discuss locations of specific archaeological sites and is confidential. For this reason, it is not included in this Initial Study. Qualified personnel, however, may request a copy of the report from the City's Planning Division.*

Regulatory Framework

Federal

National Register of Historic Places

The National Register of Historic Places (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 NRHP 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:

1. are associated with events that have made a significant contribution to the broad pattern of our history; or

2. are associated with the lives of persons significant to our past; or

3. 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

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

State

California Environmental Quality Act and California Register of Historical Resources

The California Environmental Quality Act (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 (Public Resources Code, 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 Public Resources Code, Section 21084.1 and CEQA Guidelines Section 15064.5 (a) and (b)].

The California Register of Historical Resources (CRHR) was created to identify resources deemed worthy of preservation and was modeled closely after the NRHP. The criteria are nearly identical to those of the NRHP, which includes resources of local, State, and regional and/or national levels of significance. Under California Code of Regulation Section 4852(b) and Public Resources Code 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:

1. 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 United States.

2. It is associated with the lives of persons important to local, California, or national history.

3. 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.

4. 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 identified in a local historical resources inventory may be eligible for listing in the CRHR and are presumed to be historical resources for the purposes of CEQA unless a preponderance of evidence indicates otherwise (Public Resources Code, Section 5024.1g; California Code of Regulations, Title 14, Section 4850).

California Code of Regulations Section 4852(c) addresses the issue of "integrity," which is necessary for eligibility for the CRHR. 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 CRHR 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.

Archaeological Resources and Human Remains

Archaeological sites are protected by policies and regulations under the California Public Resources Code, California Code of Regulations (Title 14 Section 1427), and California Health and Safety Code. California Public Resources Code 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 the County of 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 Native American Heritage Commission (NAHC) and a "most likely descendant" must also be notified.

Local

Historic Preservation Ordinance

Under the City of San José Historic Preservation Ordinance (Chapter 13.48 of the Municipal Code), preservation of historically or architecturally worthy structures and neighborhoods that impart a distinct aspect to the City of San José and that serve as visible reminders of the historical and cultural heritage of the City of San José, the State, and the nation is promoted. This is encouraged in order to 1) stabilize neighborhoods and areas of the city; 2) enhance, preserve and increase property values; 3) carry out the goals and policies of the City's General Plan; 4) increase cultural, economic, and aesthetic benefits to the City and its residents; 5) preserve, continue, and encourage the development of the City to reflect its historical, architectural, cultural, and aesthetic value or traditions; 6) protect and enhance the City's cultural and aesthetic heritage; and 7) promote and encourage continued private ownership and utilization of such structures.

The landmark designation process requires that findings be made that proposed landmarks have special historical, architectural, cultural, aesthetic, or engineering interest or value of an historical nature, and that designation as a landmark conforms to the goals and polices of the General Plan.

General Plan Policies

Policies in the 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 below.

Envision San José 2040 Relevant Cultural Resource Policies	
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-13.6	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-13.15	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 LU-14.1	Preserve the integrity and enhance the fabric of areas or neighborhoods with a cohesive historic character as a means to maintain a connection between the various structures in the area.
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

Envision San José 2040 Relevant Cultural Resource Policies	
	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.

City of San José Historic Resources Inventory

The Historic Resources Inventory (HRI) is a list of citywide historic resources identified and/or evaluated in surveys (including Contributing Structures and Structures of Merit), properties listed in the NRHP and CRHR, and properties that have been designated as City Landmarks, City Landmark Historic Districts and Conservation Areas in accordance with the City of San José's Historic Preservation Ordinance (Chapter 13.48 of the Municipal Code). For a historic resource to qualify as a City Landmark or City Landmark Historic District, it must have "special historical, architectural, cultural, aesthetic or engineering interest or value of an historic nature" and be one of the following resource types:

1. An individual structure or portion thereof;
2. An integrated group of structures on a single lot;
3. A site, or portion thereof; or
4. Any combination thereof.

In addition, the designation must conform to the goals and polices of the General Plan.

Existing Setting

Archaeologic Resources

A Historical/Archaeological Literature Review and Assessment was completed for the project site by CMAC (June 2021). On June 15, 2021, CMAC conducted a records search at the Northwest Information Center of the California Historical Resources Information System, an adjunct to Sonoma State University. The purpose of this record search was to obtain and review previous cultural resource records, cultural resource studies, and any additional documentation pertaining to historic properties located within a half-mile extent of the project site.

All recorded archaeological sites within ½ mile, and all other cultural resources and studies within and adjacent to the project site were reviewed. Additional research was conducted using available database files, CMAC's library and a search of applicable historic-era maps and aerial imagery.

No Native American archaeological sites have been recorded within approximately ½ mile radius from the project site. No archaeological sites are recorded for the project site. In 1999, Basin Research Associates and architectural historian Ward Hill carried out a study to identify and evaluate

archaeological and architectural resources for the City of San José as part of the larger Capitol Light Rail Project. A total of 21 buildings predating 1954 were examined, however, no Native American/prehistoric or historic-era archaeological resources were noted during this survey. In 2000, an additional study was performed for the San José Housing Element Project. This study reviewed 12 potential housing locations and their proximity to archaeological and historical resources. One of these sites was included in the project area, which had no formal recorded archaeological sites. The project site was not surveyed as part of this study, due to a posted "no trespassing" sign.

The findings of the archaeological review indicate that there is a low to moderate sensitivity for historic-era archaeological deposits, and a low to moderate sensitivity for buried pre-contact archaeological deposits within the project area.

Historic Resources

Historic records for the project area date to the late 19th century, when the Berryessa district was widely used as farmland and other agricultural uses. Residential development of the area occurred in the late 1960s. Based on aerial photographs, the orchard farms on and surrounding the project site were cleared between 1968 and 1969. In 2004, the project site was incorporated into the City of San José. The parcel was split into three parcels and the southwest 5.2-acre parcel was sold and developed into the Creekside Station Townhouse development, completed in 2006. The remaining two parcels comprise the project site.

The project site consists of two parcels, one of which contains a one-story ranch-style single-family residence constructed in 1969 and a corrugated metal and plywood shed, while the other parcel is undeveloped. The single-family residence is a wood-frame building clad in multiple materials, including vertical clapboard, rough-faced stone, and stucco. The structure has a cross-hipped roof with wood shingles and includes a two-car garage. This building is not listed in the 2020 BERD or the San José Historic Resources Inventory, nor does there appear to be any documentation on file at the NWIC. Records indicate that the single-family residence is typical of mid-20th century ranch-style dwellings and does not display a particular architectural style that can be associated with a group of people during a particular period in history. In addition, no person of historical significance is known to be associated with the property, nor is the property linked specifically to any significant historical events. Based on the findings of the historical evaluation contained in Appendix D, the property is not associated with any persons, eras or events that have contributed to local, regional, state, or national history in a significant way.

The historic evaluation included a reconnaissance survey of 13 properties within 200 feet of the project site. The assessment noted that none of the surveyed properties were identified as historic resources on the City's Historic Resources Inventory. No historic-era resources or properties are listed on federal, state, or local inventories within the area. The project site does not appear to be eligible for listing in the National Register of Historic Places or California Register of Historical Resources based on the results of the historic assessment (see Appendix D).

Impacts and Mitigation

Thresholds per CEQA Checklist

ENVIRONMENTAL IMPACTS	Potentially Significant Issues	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact	Checklist Source(s)
5. CULTURAL RESOURCES. Would the project:					
a) Cause a substantial adverse change in the significance of a historical resource pursuant to §15064.5?			X		1, 2, 18
b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to §15064.5?		X			1, 2, 12
c) Disturb any human remains, including those interred outside of dedicated cemeteries?			X		1, 2

Explanation

a) **Less Than Significant Impact.** The site contains a single-family residence that was constructed in 1969. Although the building is over 50 years old, it is not considered historically significant and lacks distinctive architectural features based on the historic assessment (Appendix D). In addition, the historic assessment did not identify any listed historical resources in the immediate vicinity of the project site. The project site is not associated with any significant events or persons throughout history, and the architectural style of the existing single-family home is not considered to be an exemplary representative of ranch-style architecture. The historic assessment concluded that the existing single-family residence does not possess sufficient historical significance for listing on the NRHR or CRHR. In addition, the existing single-family residence does not appear to be eligible individually as a City of San José Landmark as it does not meet the associated significance criteria. The project, therefore, would have a less than significant impact on historic resources.

b) **Less Than Significant with Mitigation Incorporated**. Based on the archaeological literature review prepared for the project, no archaeological sites have been identified in the project area. The project site has a low to moderate sensitivity for historic-era archaeological deposits, and a low to moderate sensitivity for buried pre-contact archaeological deposits within the project area. However, Native American archaeological sites have been recorded adjacent to major creeks and tributaries. The project involves the construction of a seven-story building, which would require foundations below the known soil profiles of 94 inches. As a result, it is possible that older soils with archaeological remains may be encountered during construction.

Impact CR-1: The project may impact archaeological deposits during excavation and construction activities. This impact would be reduced to a less than significant level with the following mitigation.

Mitigation Measures

MM CR-1.1 **Cultural Sensitivity Training.** Prior to issuance of any grading permit, the project applicant shall be required to conduct a Cultural Awareness Training for construction personnel. The training shall be facilitated by a qualified 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-1.2 **Monitoring Plan.** Prior to issuance of any demolition, grading, or building permits (whichever occurs first), a qualified archeologist, in 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, shall prepare a monitoring plan for all earthmoving activities. The Plan shall be submitted to the Director of the Planning, Building, and Code Enforcement or the Director's designee for review. The plan shall include, but is not limited to, the following:

- Monitoring schedules
- Contact information
- Recommendation for monitoring methods
- Timing of reporting finds

MM CR-1.3 **Monitoring Plan. Sub-Surface Monitoring.** A qualified archeologist in collaboration with a Native American monitor, registered with the Native American Heritage Commission for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3, shall also be present during applicable earthmoving activities in accordance with in the Monitoring Plan in MM CR-1.2. These could include but not are not limited to, trenching, initial or full grading, lifting of foundation, boring on site, or major landscaping.

MM CR-1.4 **Evaluation.** The project applicant shall notify the Director of the City of San José Department of Planning, Building, and Code Enforcement or Director's designee of any finds during the grading or other construction activities. Any historic or prehistoric material identified in the project area during the during excavation activities shall be evaluated for eligibility for listing in the California Register of Historic Resources as determined by the California Office of Historic Preservation. Data recovery methods may include, but are not limited to, backhoe trenching, shovel test units, hand augering, and hand-excavation. The techniques used for data recovery shall follow the protocols identified in the approved treatment plan. Data recovery shall include excavation and exposure of features, field documentation, and recordation. All

documentation and recordation shall be submitted to the Northwest Information Center and Native American Heritage Commission (NAHC) Sacred Land Files, and/or equivalent prior to the issuance of an occupancy permit. A copy of the evaluation shall be submitted to the City of San Jose Department of Planning, Building, and Code Enforcement or the Director's designee.

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

Standard Permit Conditions

- If prehistoric or historic resources are encountered during excavation and/or grading of the site, all activity within a 50-foot radius of the find shall be stopped, the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee and the City's Historic Preservation Officer shall be notified, and a qualified archaeologist in consultation with a Native American representative registered with the Native American Commission for the City of San Jose and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3 shall examine the find. The archaeologist 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.

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

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

c) **Less Than Significant Impact**. Though unlikely, human remains may be encountered during construction activities. Standard permit conditions are identified in b) above to avoid impacts associated with disturbance to human remains, including those interred outside of dedicated cemeteries.

Conclusion: The project would have a less than significant impact on cultural resources with implementation of mitigation measures and standard permit conditions.

F. ENERGY

Regulatory Framework

Many federal, State, and local statutes and policies address energy conservation. At the federal level, energy standards set by the U.S. Environmental Protection Agency (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 Senate Bill (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.

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.[5]

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.

Local

Council Policy 6-32 Private Sector Green Building Policy

At the local level, the City of San José sets green building standards for municipal development. All projects are required to submit a Leadership in Energy and Environmental Design (LEED),[6]

[5] CEC. 2016 Building Energy Efficiency Standards for Residential and Nonresidential Buildings. 2013. Accessed September 20, 2018. http://www.energy.ca.gov/2015publications/CEC-400-2015-037/CEC-400-2015-037-CMF.pdf.
[6] 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.

GreenPoint,[7] 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 of San José. 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 8 below.

Table 8
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
Commercial/Industrial – Tier 2 (25,000 square feet or greater)	LEED Silver
Residential – Tier 1 (Less than 10 units)	GreenPoint or LEED Checklist
Residential – Tier 2 (10 units or greater)	GreenPoint Rated 50 points or LEED Certified
High Rise Residential (75 feet or higher)	LEED Certified

Source: City of San José. Private Sector Green Building Policy: Policy Number 6-32. October 7, 2008. https://www.sanjoseca.gov/DocumentCenter/Home/View/363

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 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 California Green Building Standards Code (CalGreen) that 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

[7] 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.

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 California Green Building Standards Code and California Building Energy Efficiency Standards 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 charging stations. The Reach Code goes into effect on January 1, 2020 and affects all new construction.

San José Clean Energy

San José Clean Energy (SJCE) is an electricity supplier operated by the City's Community Energy Department. Since launching in February 2019, SJCE has provided City businesses and residents with access to cheaper and cleaner energy sources. SJCE serves as an alternative to traditionally privatized energy sources by being a community-governed organization. Oversight for SJCE activities is provided by City Council in cooperation with a Community Advisory Commission.

General Plan Policies

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

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).

Envision San José 2040 Relevant Energy Policies	
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.

Existing Setting

San José Clean Energy (SJCE) is the electricity provider for residents and businesses in the City of San José. 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 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 expected that the project would be enrolled in and receive energy from the SJCE program.

PG&E also furnishes natural gas for residential, commercial, industrial, and municipal uses. In 2018, natural gas facilities provided 15 percent of PG&E's electricity delivered to retail customers; nuclear plants provided 34 percent; hydroelectric operations provided 13 percent; renewable energy facilities including solar, geothermal, and biomass provided 39 percent, and two percent was unspecified.[8]

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

[8] PG&E, Delivering low-emission energy. Available at: https://www.pge.com/en_US/about-pge/environment/what-we-are-doing/clean-energy-solutions/clean-energy-solutions.page

percent (3,175 trillion 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 2018 was consumed primarily by the commercial sector (77 percent), followed by the residential sector consuming 23 percent. In 2018, a total of approximately 16,668 gigawatt hours (GWh) of electricity was consumed in Santa Clara County.[9] SJCE is the electricity provider for residents and businesses in the City of San José. 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 form entirely renewable sources.

Natural Gas

PG&E provides natural gas services within the City of San José. 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.[10] 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 2018, Santa Clara County used approximately 3.5 percent of the state's total consumption of natural gas.[11]

Fuel for Motor Vehicles

In 2018, 15.5 billion gallons of gasoline were sold in California.[12] The average fuel economy for light-duty vehicles (autos, pickups, vans, and sport utility vehicles) in the United States has steadily increased from about 13.1 miles per gallon (mpg) in the mid-1970s to 24.9 mpg in 2019.[13] 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.[14] [15]

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[9] California Energy Commission. Energy Consumption Data Management System. "Electricity Consumption by County." http://ecdms.energy.ca.gov/elecbycounty.aspx.
[10] California Gas and Electric Utilities. 2019 *California Gas Report.* https://www.socalgas.com/regulatory/documents/cgr/2019_CGR_Supplement_7-1-19.pdf.
[11] California Energy Commission. "Natural Gas Consumption by County." http://ecdms.energy.ca.gov/gasbycounty.aspx.
[12] California Department of Tax and Fee Administration. "Net Taxable Gasoline Gallons." https://www.cdtfa.ca.gov/dataportal/dataset.htm?url=VehicleTaxableFuelDist.
[13] United States Environmental Protection Agency. "Highlights of the Automotive Trends Report, Available at: https://www.epa.gov/automotive-trends/highlights-automotive-trends-eport#:~:text=Preliminary%20data%20suggest%20improvements%20in,0.8%20mpg%20to%2025.7%20mpg
[14] United States Department of Energy. *Energy Independence & Security Act of 2007.* http://www.afdc.energy.gov/laws/eisa.
[15] Public Law 110–140—December 19, 2007. *Energy Independence & Security Act of 2007.* http://www.gpo.gov/fdsys/pkg/PLAW-110publ140/pdf/PLAW-110publ140.pdf.

Impacts and Mitigation

Thresholds per CEQA Checklist

ENVIRONMENTAL IMPACTS	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact	Checklist Source(s)
6. ENERGY. Would the project:					
a) Result in potentially significant environmental impact due to wasteful, inefficient, or unnecessary consumption of energy resources, during project construction or operation?			X		1, 2, 7
b) Conflict with or obstruct a state or local plan for renewable energy or energy efficiency?			X		1, 2

Explanation

a) **Less Than Significant Impact**. Energy use consumed by the proposed project was estimated in the Air Quality & Greenhouse Gas Assessment prepared by Illingworth & Rodkin (Appendix A). This included natural gas and electricity consumption for the proposed mixed-use development. 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 25 months for the proposed multi-family apartment building, and 13 months for the proposed townhomes. The project would require demolition, site preparation, grading, site construction, paving, and architectural coating. The construction phase would require energy for the manufacture and transportation of building materials, preparation of the site (e.g., excavation, and grading), and the actual construction of the buildings. 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 in order to avoid excess monetary costs. That is because equipment and fuel are not typically used wastefully due to the added expense associated with renting, maintaining, and fueling of construction equipment. Therefore, the opportunities for future efficiency gains during construction are limited. The proposed project does, however, include several measures that would improve the efficiency of the construction process. Implementation of the BAAQMD BMPs detailed as standard permit conditions in *Section C. 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.

Operational Impacts

As described previously, PG&E's (the electricity provider to the project site) 2015 electricity mix was 30 percent renewable. Operation of the proposed project would consume energy, in the form of electricity and natural gas, primarily for building heating and cooling, lighting, cooking, and water heating. The City of San José passed an ordinance in December 2020 that prohibits the use of natural gas infrastructure in new buildings. This ordinance applies to any new construction (with the exception of hospitals, restaurants, etc.) starting 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 9 summarizes the estimated energy use of the proposed project.

Table 9
Estimated Annual Energy Use of Proposed Project (2030)

Proposed Project	Electricity Use (kWh)	Natural Gas Use[1] (kBtu)
Apartments – High Rise	1,351,414	0
Condo/Townhouse	155,315	0
Enclosed Parking Structure	134,400	0
Enclosed Parking with Elevator	768,367	0
Parking Lot	980	0

Source: Illingworth & Rodkin, Inc., *Air Quality & Greenhouse Gas Assessment*, Attachment 2, Sections 5.2 and 5.3, pages 167-168, September 2021.
[1] All project natural gas use was set to zero and assigned to electricity use in CalEEMod in accordance with Climate Smart San José.

The energy use increase is a conservative estimate, because these estimates for energy use do not take into account the efficiency measures incorporated into the project. In addition, the project would be built to the 2019 California Building Code 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, 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 of San José

Transportation-Related Energy-Use

The proposed project would result in an increase in traffic to the project site of approximately 1,718 net new daily vehicle trips (Appendix J). The total annual vehicle-miles-traveled (VMT) for the project is approximately 3,507,139 assuming an average trip length of 7.85 per resident (refer to *Section Q. Transportation*). Using the U.S. EPA's estimated average fuel economy of 23.2 miles per gallon (mpg), the project would result in the consumption of approximately

151,169 gallons of gasoline per year.[16] In addition, the project is in close proximity to major transit services and is served by VTA's orange light rail train (LRT) route (Alum Rock to Mountain View) (refer to *Section Q. Transportation*). Pentitencia Creek LRT station is located about 500 feet from the project site, which offers LRT access, and which is served by VTA express bus route 104. Therefore, implementation of the proposed project would not result in a substantial increase on automobile-related energy use.

The proposed project would be required to build to the State's CALGreen code, which includes insulation and design provisions to minimize wasteful energy consumption. Although the proposed project does not include on-site renewable energy resources, the proposed building would be built to align with LEED standards, consistent with San José Council Policy 6-32.

The proposed project would provide bicycle parking consistent with the requirements of the City of San José Municipal Code. The inclusion of bicycle parking and proximity to transit would incentivize the use of alternative methods of transportation to and from the site. Based on the project's alignment with measures required for LEED Certification, the proposed project would comply with existing State energy standards.

Based on the discussion above, the project would not result in potentially significant environmental impact due to wasteful, inefficient, or unnecessary consumption of energy resources during project construction or operation.

b) **Less Than Significant Impact**. Operation of the proposed project would consume energy for building heating and cooling, lighting, cooking, and water heating. Energy would also be consumed during vehicle trips generated by residential occupants. Although the project would increase the project site's energy use, the proposed development would be completed in compliance 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.

Conclusion: The project would have less than significant impacts related to energy use.

[16] Association of Bay Area Governments. April 2017. *Plan Bay Area 2040 Draft Environmental Impact Report*. Table 2.1-6. 1,718 daily trips (X 260 weekdays) = 446,680 yearly trips (X 7.85 miles) = 2,292,721 annual VMT ÷ 23.2 mpg = 151,169 gallons/year

G GEOLOGY AND SOILS

A Preliminary Geotechnical investigation for the property was prepared in December 20, 2018, and a peer review was completed in December 23, 2020. The reports are provided in Appendix E.

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 (SHMA) directs the California Geological Survey to identify and map areas prone to various earthquake-related hazards, including liquefaction, landslides, and amplified ground shaking. The SHMA 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 2019 California Building Standards Code (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 California Building Standards Code 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 change 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 17.10 – 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.

Municipal Code Chapter 17.40 – Dangerous Building Code

Chapter 17.40 of the City's municipal code regulates dangerous buildings, defined as "any building or structure or portion thereof which creates an endangerment to the life, limb, health, property, safety or welfare of the occupants of the building or members of the public." Dangerous buildings are considered

to be "public nuisances" and the City Manager has the power to restrict such buildings from use or occupancy and to initiate abatement procedures.

General Plan Policies

Policies in the 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 below.

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.
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.

Existing Setting

The project property is an essentially flat lot with an elevation of approximately 146 feet above mean sea level (Google Earth, September 2021). Regionally, the topographic slope is to the north, towards

San Francisco Bay. The project site consists of two parcels, one of which is currently occupied by a single-family residence that would be demolished as part of the project.

The project site is located 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 is located in the seismically-active San Francisco Bay Area region. Major active fault systems in the area are the San Andreas, Calaveras, Hayward, and Monte Vista-Shannon. Surface fault rupture tends to occur along existing fault traces. 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. In addition, the Santa Clara County Fault Rupture Hazard Zones map does not identify any fault hazard zones in the project area.

The site is located within an area zoned by the State of California as having potential for seismically induced liquefaction hazards.[17] However, the site is not located within an area zoned in the Santa Clara County Geologic Hazard Zone maps as a Liquefaction Hazard Zone.[18] 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.

As discussed above, a preliminary geotechnical investigation for the property was prepared in December 20, 2018 by Rockridge Geotechnical, Inc., and a peer review was completed in December 23, 2020 by ENGEO (see Appendix E for both reports). Rockridge's geotechnical investigation evaluated the subsurface conditions of the project site through review of available background information and performance of seven cone penetration tests (CPTs). Rockridge's report also contained an engineering analysis to develop conclusions for site suitability, appropriate foundation types, and construction considerations. The preliminary geotechnical investigation concluded that there were no major geotechnical issues that would preclude development of the site.

ENGEO's peer review evaluated the conclusions of the original geotechnical report to identify any data gaps and to provide recommendations for future geotechnical investigations. ENGEO generally agreed with the recommendations of the original report but recommended the following: 1) some additional testing to document updates to the latest building code, 2) additional sampling for expansive soils, and design recommendations for foundation types (see Appendix E for full discussion of the recommendations of the geotechnical investigation and peer review).

[17] California Geological Service, EQ Zapp: California Earthquake Hazards Zone Application, 2019.
[18] Santa Clara County, Santa Clara County Geologic Hazard Zones, 2012.

Impacts and Mitigation

Thresholds per CEQA Checklist

ENVIRONMENTAL IMPACTS		Potentially Significant Issues	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact	Checklist Source(s)
7.	GEOLOGY AND SOILS. Would the project:					
a)	Directly or indirectly cause potential substantial adverse effects, including the risk of loss, injury, or death involving:					
i)	Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.				X	1, 2, 21, 22
ii)	Strong seismic ground shaking?			X		1, 2, 21, 22
iii)	Seismic-related ground failure, including liquefaction?			X		1, 2, 21, 22
iv)	Landslides?				X	1, 2, 21, 22
b)	Result in substantial soil erosion or the loss of topsoil?			X		1, 2
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?			X		1, 2, 21, 22
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?			X		1, 2, 21, 22
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?				X	1, 2
f)	Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?			X		1, 2, 3

Explanation

ai) **No Impact**. The site is not located within a State of California Earthquake Fault Hazard Zone and no known active faults cross the site. The risk of ground rupture within the site is considered low. The project site is not mapped within an Alquist-Priolo Earthquake Fault Zone. Based on Appendix E, the preliminary investigation also concluded that the project will not have major geotechnical issues as the project site has potential presence of moderately expansive near-surface clay and would provide adequate foundation support for the proposed structures. Furthermore, the project will be designed and developed in accordance with the California Building Code guidelines to avoid or minimize potential direct or indirect damage from seismic shaking on the project site as described below.

aii) **Less Than Significant Impact**. Due to its location in a seismically active region, the proposed structures would 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. Seismic impacts will 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.

aiii) **Less Than Significant Impact**. As described above, the project site may be subject to strong ground shaking in the event of a major earthquake. A geotechnical analysis would be required prior to construction to identify potential geotechnical hazards and provide recommendations to minimize these hazards. The project will be designed and constructed in accordance with a design-level geotechnical investigation as a standard permit condition.

Standard Permit Condition

- 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 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.

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

b) **Less Than Significant Impact**. Development of the project would involve the excavation of approximately 23,000 cubic yards (CY) of material, which could result in a temporary increase in erosion. The project will implement the standard measures identified in *Section J. Hydrology and Water Quality* section of this Initial Study as well as the standard permit conditions below to minimize erosion.

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 California Building Code, as adopted by the City of San José. A grading permit from the San José Department of Public Works shall be obtained prior to the issuance of a Public Works clearance. These standard practices would ensure that the future building on the site is designed to properly account for soils-related hazards on the site.

c) **Less Than Significant Impact**. 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. A geotechnical analysis would be prepared to provide recommendations to minimize these hazards as described in aiii) above. This would reduce any potentially significant geotechnical impacts to a less than significant level.

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

e) **No Impact**. The project does not propose any septic systems. The proposed project would connect to the City's existing sanitary sewer system. Any existing septic systems on the site will be removed in accordance with all regulatory requirements.

f) **Less Than Significant Impact**. The project site is located in an area mapped as "high sensitivity at depth" in the 2040 General Plan EIR.[19] The project proposes grading that could potentially disturb paleontological resources. Consistent with General Plan Policy ER-10.3, the following standard permit condition would be implemented by the project to avoid or minimize impacts to paleontological resources during construction. No other unique geological features are found on the site.

Standard Permit Condition

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

Conclusion: The project would have a less than significant impact on geology and soils with implementation of identified standard permit conditions.

[19] Figure 3.11-1 "Paleontologic Sensitivity of City of San Jose Geologic Units," from the *Draft Program Environmental Impact Report (PEIR) for the Envision San José 2040 General Plan*, June 2011.

H. GREENHOUSE GAS EMISSIONS

Regulatory Framework

Federal

The Federal Clean Air Act (CAA), 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

Assembly Bill (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.[20]

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 CO_2e 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 CO_2e. Two GHG emissions reduction measures currently enacted that were not previously included in the 2008 Scoping Plan baseline inventory were included, further reducing the baseline inventory to 507 MMT of CO_2e. Thus, an estimated reduction of 80 MMT of CO_2e is necessary to reduce statewide emissions to meet the AB 32 target by 2020.

Senate Bill 1368

Senate Bill (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 greenhouse gas 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

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

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 CO_2 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 greenhouse gas 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 Renewables Portfolio Standard (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 (RTPs) 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 (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 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 sets California on course to achieving carbon-free emissions from the electric power production sector by 2045. SB100 also increases the required emissions reduction generated by retail sales to 60% by 2030, an increase in 10% compared to previous goals. B-55-18 establishes 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 2).

2017 Bay Area Clean Air Plan

The 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 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 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 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 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 11/17/2020. The 2030 GHG Reduction Strategy went into effect on 12/17/2020.

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 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 of San José's 2030 GHG Reduction Strategy represents San José's qualified climate action plan in compliance with CEQA.

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).
- San José Clean Energy (SJCE) will provide 100-percent carbon-free base power by 2021.
- One gigawatt of solar power will be installed in San José by 2040.
- 61 percent of passenger vehicles will be powered by electricity by 2030.

The California Energy Commission (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.[21] 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 electric vehicle service equipment (EVSE) installation for all development types.

General Plan Policies

In addition to the above, policies in the General Plan have been adopted for the purpose of avoiding or mitigating greenhouse gas emissions impacts from development projects. Policies applicable to the project are presented below.

[21] City of San José Transportation and Environmental Committee, *Building Reach Code for New Construction Memorandum,* August 2019.

Envision San José 2040 Relevant Greenhouse Gas Reduction Policies	
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.
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-3.3	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 and to facilitate interaction between community members and to strengthen the sense of community.

Existing Setting

Various gases in the earth's atmosphere, classified as atmospheric greenhouse gases (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. Greenhouse gases, 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 (CO_2), methane (CH_4), ozone (O_3), water vapor, nitrous oxide (N_2O), 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.[22],[23] ,[24] The City of San José also has the transportation sector as the largest emitter of GHG emission, but followed by residential and commercial development.[25]

The U.S. EPA reported that in 2018, total gross nationwide GHG emissions were 6,676.6 million metric tons (MMT) carbon dioxide equivalent (CO_2e).[26] These emissions were lower than peak levels of 7,416 MMT that were emitted in 2007. CARB updates the statewide GHG emission inventory on an annual basis where the latest inventory includes 2000 through 2017 emissions.[27] In 2017, GHG emissions from statewide emitting activities were 424 MMT. The 2017 emissions have decreased by 14 percent since peak levels in 2004 and are 7 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 10.7 MT per person in 2017. The most recent Bay Area emission inventory was computed for the year 2011.[28] The Bay Area GHG emission were 87 MMT. As a point of comparison, statewide emissions were about 444 MMT in 2011. According to San José's GHGRS, the City's emissions were 5.71 MMT.

The project site consists of two parcels, one of which is developed with an existing single-family residence. The existing GHG emissions at the site would be from vehicles traveling to and from the site, as well as energy usage from natural gas and electricity.

[22] EPA, https://www.epa.gov/ghgemissions/inventory-us-greenhouse-gas-emissions-and-sinks
[23] CARB, https://ww2.arb.ca.gov/ghg-inventory-data
[24] BAAQMD. Available at: https://www.baaqmd.gov/~/media/Files/Planning%20and%20Research/Emission%20Inventory/BY2011_GHGSummary.ashx?la=en&la=en
[25] City of San José, 2011. *Greenhouse Gas Reduction Strategy for the City of San José*. https://www.sanjoseca.gov/your-government/department-directory/planning-building-code-enforcement/planning-division/environmental-planning/greenhouse-gas-reduction-strategy
[26] United States Environmental Protection Agency, 2020. *Inventory of U.S. Greenhouse Gas Emissions and Sinks 1990-2019*. Web: https://www.epa.gov/ghgemissions/inventory-us-greenhouse-gas-emissions-and-sinks
[27] CARB. 2021. *2019 Edition, California Greenhouse Gas Emission Inventory: 2000 – 2019*.
[28] BAAQMD. 2015. *Bay Area Emissions Inventory Summary Report: Greenhouse Gases Base Year 2011*. Web: http://www.baaqmd.gov/~/media/files/planning-and-research/emission-inventory/by2011_ghgsummary.pdf.

Impacts and Mitigation

Thresholds per CEQA Checklist

ENVIRONMENTAL IMPACTS		Potentially Significant Issues	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact	Checklist Source(s)
8.	GREENHOUSE GAS EMISSIONS. Would the project:					
a)	Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?			X		1, 3
b)	Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases?			X		1, 3

Explanation

a) **Less Than Significant Impact**. Development of the project would generate GHG emissions. GHG emissions associated with development would occur over the short-term from construction activities, consisting primarily of emissions from equipment exhaust and worker and vendor trips. Per Appendix A, the metric tons of carbon dioxide equivalent ($MTCO_2e$) from construction is estimated to be 126.32 $MTCO_2e$ for 2022, 229.34 $MTCO_2e$ for 2023, and 122.59 $MTCO_2e$ for 2024. Long-term operational emissions would also be generated from vehicular traffic, energy and water use, and solid waste disposal. 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.

The project is subject to the GHG reduction strategies identified in the City's 2030 GHG Reduction Strategy Compliance Checklist. 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 GHG Reduction Strategy Compliance Checklist for the project is contained in Appendix F. The proposed project is consistent with the Land Use/Transportation Diagram designation of *Transit Residential*. Pedestrian facilities are already in place in the vicinity of the proposed project. In addition, the proposed project would include the construction of Class IV bicycle lanes along both sides of N. Capitol Avenue between Penitencia Creek Road and Gilchrist Drive, and a new crosswalk at the southern leg of the N. Capitol Avenue/Penitencia Creek Road intersection. The GHG Reduction Strategies to be incorporated into the proposed project include the following:

- Implementation of green building measures through construction techniques and architectural design
- Incorporation of energy conservation measures
- Enrollment into the San Jose Clean Energy program
- Incorporation of bicycle storage and related facilities
- Incorporation of water-efficient landscaping
- Incorporation of appropriate landscaping species
- Providing an area for future installation of solar panels and/or solar ready facilities

With implementation of GHG reduction strategies, future development would have a less than significant impact related to GHG emissions.

b) **Less Than Significant Impact**. The City's 2030 GHG Reduction Strategy Compliance Checklist has been completed for the project, as presented in Appendix F. In fulfillment of GHG Reduction Strategy #1, the project plans to enroll in the SJCE program. In addition, the project would include all electrical infrastructure and would not utilize natural gas in fulfillment of GHG Reduction Strategy #2. The project includes a designated rooftop space on the proposed apartment building for installation of solar panels, in compliance with GHG Reduction Strategy #3. The project would participate in the City's Zero Waste Strategic plan per GHG Reduction Strategy #5. The project would utilize water efficient landscaping species and equipment consistent with GHG Reduction Strategy #7. Finally, the project would be consistent with the existing General Plan land use diagram, would be required to provide pedestrian and bicycle facilities consistent with the Municipal Code, and would comply with green building ordinances and all applicable energy efficiency measures. 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.

Conclusion: The project would have a less than significant impact related to GHG emissions.

I. HAZARDS AND HAZARDOUS MATERIALS

ENGEO, Inc completed a Phase I Environmental Site Assessment to evaluate potential Recognized Environmental Concerns (RECs) at the project site (December 23, 2020). This report is contained in Appendix G. The intent of the Phase I Environmental Site Assessment is to assess Recognized Environmental Conditions (RECs) associated with the property. In addition, findings of previous soil assessments performed for the project site were reviewed. ENGEO also performed two Phase II Environmental Site Assessments for the project site (March 2021 and August 2021) to evaluate potential impacts from past agricultural use of the property and to characterize soils. All three of ENGEO's reports are contained in Appendix G.

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 ($50\mu g/m^3$) 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 implemented by Unified Program Agencies (UPAs) at the local government levels. UPAs 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 (LOP) entity, implementing State as well as local policies.

Santa Clara Department of Environmental Health

The County of Santa Clara Department of Environmental Health reviews California Accidental Release Prevention (CalARP) risk management plans as the Certified Unified Program Agency (CUPA) for the City. The CalARP Program aims to prevent accidental releases of regulated hazardous materials that represent a potential hazard beyond property 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 Risk Management Plan (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.

General Plan Policies

Policies in the 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 General Plan presented below.

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-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.

Envision San José 2040 Relevant Hazardous Material Policies	
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.

Existing Setting

The existing property consists of two parcels, one of which (APN 254-290-026) is developed with a single-family residence and paved driveway. The second parcel (APN 254-290-028) is vacant vegetated land.

Previous Investigations

Previous investigations conducted at the project site are summarized below (copies of these investigations are provided in Appendix G):

- March 2003 Phase I Environmental Site Assessment (AEI Consultants): AEI conducted a Phase I Environmental Site Assessment for the property in March 2003. AEI identified the following REC:

- The property was historically used for agricultural purposes, including the cultivation of row crops and orchard trees. Based on the duration of agricultural uses and near-surface tendencies of constituents of concern, AEI performed a soil investigation to determine the extent of any potential pesticide impacts in shallow soil. Four composite soil samples were analyzed for chlorinated pesticides and polychlorinated biphenyls (PCBs). The investigation identified two pesticides in the near-surface soil, DDE and DDT. Their respective concentrations were compared to preliminary remediation goals (PRGs) and the total threshold limit concentrations (TTLCs). Concentrations of DDE and DDT detected indicated that the soil would not be considered hazardous for waste characterization purposes. The maximum concentration of each constituent detected was below their respective residential preliminary remediation goals (PRGs) for shallow soil. AEI recommended no further investigations for the site.

- November 2018 Draft Phase I Environmental Site Assessment Report (Arcadis): Arcadis completed a Phase I Environmental Site Assessment on the Property in November 2018. Arcadis did not identify any RECs, Controlled Recognized Environmental Conditions (CRECs), or Historical Recognized Environmental Conditions (HRECs) for the site. The report identified the following two items as "other environmental conditions:

  - Historical Agricultural Use of the Property: Based on the historical use of the property and surrounding properties as an orchard from 1939 to 1970 and later as a chili farm from at least 1971 through the early 1990s, agricultural chemicals such as pesticides, herbicides, and fertilizers likely were historically used. In addition, arsenic and lead-containing chemicals were commonly used on orchards. Information regarding historical use, storage, or application rates was not available. A concurrent Phase II environmental site assessment was conducted by Arcadis in November 2018 to assess current site conditions. Ten soil samples were collected at the site and analyzed for petroleum hydrocarbons, metals, pesticides, and organochlorine pesticides (OCPs). Detected constituents were compared to the San Francisco Regional Water Quality Control Board's (SFRWQCB) Environmental Screening Levels (ESLs). Most constituents were below their applicable ESLs with the exception of lead, which slightly exceeded the residential ESL for direct exposure in one of the ten samples analyzed. Based on these results, the previous property use as an orchard and chili farm is considered another environmental condition.

  - Current and Historical Septic Systems: The site was developed with a residence on the vacant parcel from at least 1939 through 1970. A second residence was constructed at the site in the early 1970s. According to the San José Department of Transportation (DOT), sanitary sewer service was provided in the area along N. Capitol Avenue as of 2004. Given the construction date of the residences at the property, both residences were likely serviced by a septic tank system. No information was available regarding the removal of the septic system during demolition of the vacant parcel residence. The historical use and potential presence of septic systems at the property was an "other environmental condition."

- Summary of Soil Analytical Results (Arcadis): Arcadis performed a Phase II environmental site assessment on the Property in November 2018. Arcadis collected 10 soil samples from across the Property and analyzed them discretely for CAM-17 metals, total petroleum hydrocarbons (TPH), and OCPs. One sample, SS-9, exhibited a concentration of lead at 80.8 milligrams per kilograms

(mg/kg), which is just above the SFRWQCB ESL[29] of 80 mg/kg. All other lead levels were below 80 mg/kg. Additionally, all other metals detected were below their respective residential ESLs or within typical background concentrations. Various OCPs such as, DDT, DDE, and DDT were detected but were below their respective residential ESLs. TPH as gasoline, diesel, and motor oil were detected but were below their respective residential ESLs.

A statistical evaluation was conducted on the data set for lead for the property. A 95 percent upper confidence level (UCL) concentration was calculated for lead concentrations following the methods established by the United States Environmental Protection Agency (USEPA). A 95 percent UCL represents a threshold concentration with the following characteristic: the true mean concentration of the analyte within the study area has a 95 percent probability of being less than or equal to the UCL concentration. The analysis was performed using USEPA's ProUCL Version 5.1 software. The UCL was calculated to be 40.9 mg/kg, which is below the residential ESL of 80 mg/kg. Therefore, it is ENGEO's opinion based on the collective data that lead levels at the property do not pose an unacceptable risk under a residential use scenario.

Records Review

ENGEO's 2020 investigation was based on a review of relevant property records, historical record sources, and environmental record sources. ENGEO also commissioned Environmental Data Resources, Inc. (EDR) to conduct additional review of relevant environmental record sources for the project site. Table 10 shows the agencies that were contacted pertaining to possible past development and/or activity at the site.

Table 10
Regulatory Agency Records

Name of Agency	Records Reviewed
City of San José Building and Planning Departments	Did not receive a response before the completion of the Phase I report
Santa Clara County Community Development	A permit for electrical upgrades was reviewed.
City of San José Fire Department	Did not receive a response before the completion of the Phase I report
Santa Clara County Department of Environmental Health	A representative informed ENGEO that no records were available for review.
Santa Clara County Fire Department	Did not receive a response before the completion of the Phase I report
Santa Clara County Assessor's Office	ENGEO reviewed the Santa Clara County Assessor's website and confirmed the Property's address and APNs.
California State Water Resources Control Board	The California State Water Resources Control Board (SWRCB) online database, GeoTracker, was reviewed for files relating to the Property. There were no listings for the Property in the GeoTracker database
Department of Toxic Substances Control	We reviewed the EnviroStor Database maintained by the Department of Toxic Substances Control (DTSC) to identify any ongoing environmental site assessment and remedial activities associated with the Property. There were no records for the Property listed in the EnviroStor Database.

[29] San Francisco Regional Water Quality Control Board's Environmental Screening Levels, Direct Exposure Human Health Risk Levels (Table S-1), Residential Shallow Soil Exposure, January 2019 (Rev. 2)

Site Reconnaissance

ENGEO conducted a reconnaissance of the Property on December 15, 2020. The site reconnaissance did not reveal any significant amount of environmental contaminants on the project site. Small quantities of paints, cleaners, and gasoline canisters were observed within the garage and interior of the residence. Minor staining was observed in the garage and underground basement at the time of site reconnaissance. The minor staining was on competent concrete flooring and was not indicative of a significant spill or leak. An asbestos, lead, and PCB-containing building material survey was not conducted as part of the assessment. Given the age of the existing structures, it is conceivable that asbestos, lead, and PCB-containing materials may exist within the structures.

Summary of 2020 Phase I Assessment

The Phase I 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 site was completed to review site use and current conditions to check for the storage, use, production, or disposal of hazardous or potentially hazardous materials and to conduct written/oral interviews with persons knowledgeable about current and past site use.

Arcadis and AEI previously conducted soil assessments at the Property. During AEI's soil assessment, no levels of pesticides above applicable screening levels were identified. The report provided did not include the laboratory data, figures, or data tables. The Arcadis report did not identify any pesticides above applicable screening levels; however, it did identify one sample with a concentration of lead (80.8 milligrams per kilograms) slightly above the residential screening level for lead (80 mg/kg) (for additional information refer to Section 2.0). ENGEO conducted a statistical analysis of the soil data and concluded that lead in soil is not a concern.

The site reconnaissance and records review did not find documentation or physical evidence of 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 property 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 site.

The 2020 Phase I Assessment revealed no evidence of RECs in connection with the site, and the property was found suitable for residential land use. However, the Phase I did recommend preparation and implementation of self-directed Soil Management Plan (SMP) to establish guidelines to address any soil excavations and removal during the construction process and provide protocols to address any unknown and unexpected issues (e.g., sumps, tanks, stained soils) that could be encountered in the field during development activities.

Summary of Phase II Assessments

Review of historical records indicates that the property had been cultivated with row crops or orchards dating to at least 1939 until around the late 1970s. The structures located on the site were built between 1968 and 1974. ENGEO performed a Phase II Environmental Site Assessment for the project site, including both the apartment and townhome parcels, to evaluate potential impacts from past agricultural use of the property and to characterize soils for off-haul (see Appendix G).

Field sampling activities associated with the Phase II ESAs were performed on January 29 and February 1, 2021. For the townhomes parcel, four borings were advanced to a depth of approximately two feet below ground surface (bgs), For the apartment building site, a total of ten borings were advanced to a depth of approximately five feet bgs around the perimeter of the existing structures to evaluate potential impacts due to lead-based paint and herbicides. Two of the ten borings were installed inside the greenhouse. Three soil samples were collected from each of the borings, at depths of one, three, and five feet below ground surface. The laboratory was instructed to hold the deepest samples pending results of the shallow samples. Samples collected from borings around the perimeter of the structures and from the base of the greenhouse were analyzed for the following constituents:

- Organochlorine pesticides (OCPs)
- Total arsenic and lead
- Asbestos for the samples collected at the base of the greenhouse

In addition, nine borings were advanced to a depth of approximately five feet below ground surface to characterize the soil for off-haul.

Based on the review of the laboratory test results, a slightly elevated concertation of DDE was detected in one shallow soil sample collected from the base of the greenhouse. Benzo(a)pyrene was detected in one shallow sample, slightly exceeding its corresponding residential screening level.

Cumulative DDD/DDE/DDT was detected at concentrations exceeding the Total Threshold Limit Concentration (TTLC) established by Title 22 of the California Code of Regulations of 1 mg/kg in a total of six shallow soil samples collected across the site; however, the upper confidence level (UCL) concentration was calculated to be 0.642 mg/kg. Based on the Phase II results, the shallow soil at the site would likely not be considered Class I hazardous material as an aggregate. The soil analytical reports should be provided to the receiving facility prior to off-haul; however, no other recommendations were identified.

Impacts and Mitigation

Thresholds per CEQA Checklist

ENVIRONMENTAL IMPACTS	Potentially Significant Issues	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact	Checklist Source(s)
9. HAZARDS AND HAZARDOUS MATERIALS. Would the project:					
a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?			X		1, 2, 12, 17
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?		X			1, 2, 12, 17
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?				X	1, 2, 12, 17

ENVIRONMENTAL IMPACTS	Potentially Significant Issues	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact	Checklist Source(s)
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?			X		1, 2, 12, 17
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard or excessive noise for people residing or working in the project area?			X		1, 2
f) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?			X		1, 2
g) Expose people or structures, either directly or indirectly, to a significant risk of loss, injury or death involving wildland fires				X	1, 2

Explanation

a) **Less Than Significant Impact**. The proposed residential development would not involve the routine transport, use, or disposal of hazardous materials. Residential uses may apply small quantities of miscellaneous household cleaning supplies and other chemicals. These materials would be stored and used in accordance with the manufacturer's specifications.

The project would use fuels, lubricants, paints, and solvents during construction activities. The project would prepare and implement a Storm Water Pollution Prevention Plan and appropriate best management practices to minimize the impact on water quality from release of hazardous materials during construction. In addition, the applicant proposes to implement standard protection measures for the temporary onsite storage of fuel and other hazardous materials used during construction.

b) **Less Than Significant with Mitigation Incorporated**. Based on the findings of the Phase I assessment, no RECs, no historical RECs, and no controlled RECs were identified for the project site. This assessment has revealed no evidence of RECs in connection with the site and found that the property is suitable for residential land use. However, the Phase I did recommend preparation and implementation of self-directed Site Management Plan to address any unknown and unexpected issues that may be encountered during construction.

Impact HAZ-1: The Phase I recommended preparation and implementation of self-directed Soil Site Management Plan to address any unknown and unexpected issues that may be encountered during construction; thus, the proposed project could potentially result in a significant hazard to the public or the environment from hazardous materials release if unknown and unexpected issues are encountered during construction.

Mitigation Measures

MM HAZ-1 Prior to issuance of any grading permits or earthmoving activities, the project applicant shall retain a qualified environmental consultant and prepare a Site

Management Plan (SMP) to guide activities during demolition, excavation, and initial construction to ensure that potentially contaminated soils are identified, characterized, removed, and disposed of properly. The purpose of the SMP is to establish appropriate management practices for handling impacted soil, any potential offsite impacts from the underground storage tank (UST) identified in the adjoining property and/or other unknown materials (e.g., sumps, tanks, stained soils, etc.) that may be encountered during construction activities. The SMP shall provide the protocols for sampling of in-place soil to facilitate the profiling of the soil for appropriate off-site disposal or reuse, and for construction worker safety, dust mitigation during construction and potential exposure of contaminated soil to future users of the site. The SMP shall also include a health and safety plan and protocols for reporting contamination to a regulatory agency and obtaining regulatory oversight. The SMP shall be submitted to City of San José Department of Planning, Building, and Code Enforcement or the Director's designee and the Supervising Environmental Compliance Officer in the City of San José's Environmental Services Department.

If contaminant levels identified on the project site do not exceed applicable environmental screening levels (ESLs) for construction workers and residential users, as published by the Regional Water Quality Control Board, the SMP would only need to be submitted to the City prior to construction earthwork activities. If contaminants are identified at concentrations exceeding applicable ESLs, the applicant must obtain regulatory oversight from the Santa Clara County Department of Environmental Health's (SCCDEH) Site Cleanup Program, the DTSC or Regional Water Quality Control Board. The SMP and planned remedial measures shall be reviewed and approved by the regulatory oversight agency.

Though unlikely, it is possible that ground-disturbing activities could result in the accidental discovery of previously undocumented site contaminants that may trigger additional oversight and coordination with local and state regulatory agencies. If contaminants are identified, work in the immediate area of the contamination source shall immediately cease and SCCDEH the City shall be notified of the new contamination source, as per the requirements outlined in the approved SMP for the project.

Asbestos & Lead Based Paint in Demolished Buildings

Development of the project would require the demolition of existing buildings on the northern parcel. Due to their age, these structures likely contain asbestos building materials and/or lead-based paint. Demolition conducted in conformance with federal, state and local regulations will avoid significant exposure of construction workers and/or the public to asbestos and lead-based paint. As a part of the development permit approval, the project will conform to the following standard permit conditions.

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 asbestos-containing materials (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 Title 8, California Code of Regulations (CCR), Section 1532.1, including employee training, employee air monitoring, and dust control. Any debris or soil containing lead-based paint or coatings shall be disposed of at landfills that meet acceptance criteria for the type of lead being disposed.

- All potentially friable asbestos containing materials (ACMs) shall be removed in accordance with National Emission Standards for Air Pollution (NESHAP) guidelines prior to demolition or renovation activities that may disturb ACMs. All demolition activities shall be undertaken in accordance with Cal/OSHA standards contained in Title 8, CCR, Section 1529, to protect workers from asbestos exposure.

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

- Materials containing more than one-percent asbestos are also subject to Bay Area Air Quality Management District (BAAQMD) regulations. Removal of materials containing more than one-percent asbestos shall be completed in accordance with BAAQMD requirements and notifications.

With implementation of the mitigation measure and standard permit conditions above, the project would have a less than significant impact related to the release of hazardous materials into the environment.

c) **No Impact**. No schools are located within ¼ mile of the project site and therefore, there is no potential for hazardous impacts from the project to any schools.

d) **Less Than Significant Impact**. The project is not located on property that is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 (i.e., Cortese List).

e) **Less Than Significant Impact**. The Norman Y. Mineta San José International Airport is located approximately 3.6 miles southwest of the project site. The project is not located within the Santa Clara County Airport Land Use Commission's adopted Comprehensive Land Use Plan for the airport.

f) **Less Than Significant Impact**. The proposed residential development would not interfere with any adopted emergency or evacuation plans. 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.

g) **No Impact**. The project would not expose people or structures 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 T. Wildfire* of this Initial Study.

Conclusion: The project would have a less than significant impact related to hazards and hazardous materials with the incorporation of mitigation measures.

J. HYDROLOGY AND WATER QUALITY

Schaaf & Wheeler completed a Floodplain Design Criteria Memorandum to describe floodplain characteristics of the project site. This report is contained in Appendix H.

Regulatory Framework

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

Federal and State

Clean Water Act – Section 404

The Clean Water Act (CWA) establishes the basic structure for regulating discharges of pollutants into the waters of the United States (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 US 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

FEMA established the National Flood Insurance Program (NFIP) 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 (SFHA). An SFHA is an area that would be inundated by the one-percent annual chance flood, which is also referred to as the base flood or 100-year flood.

Porter-Cologne Water Quality Act

The Porter-Cologne Act delegates authority to the SWRCB to establish regional water quality control boards. 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 USACE. 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 site is stabilized. The project would require CGP coverage based on area of land disturbed (3.5 acres).

Statewide Construction General Permit

The SWRCB has implemented a NPDES General Construction Permit for the State of California (CGP). 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.

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 of San José 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 of San José 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 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.

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

The City of San José's Policy 6-29 implements the stormwater treatment requirements of Provision C.3 of the Municipal Regional Stormwater NPDES Permit. The City of San José's Policy 6-29 requires all new development and redevelopment projects to implement post-construction BMPs and Treatment Control Measures (TCMs). This policy also establishes specific design standards for post-construction TCM 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)

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

General Plan Policies

Policies in the 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 below.

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.

Envision San José 2040 Relevant Hydrology and Water Quality Policies	
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 onsite.
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.

Existing Setting

The project site is essentially flat and lies at an elevation of about 146 feet above mean sea level (Google Earth, September 2021). The 3.5-acre site is partially developed, with a single-family residence located on the larger 2.12-acre lot, while the smaller 1.35-acre lot is currently vacant. The current runoff from the site is directed into existing inlets that discharge to the City's drainage system.

The project site does not contain any natural drainages or waterways. The nearest waterway is Penitencia Creek, located about 200 feet south the townhome site. The property is located in a Federal Emergency Management Agency (FEMA) effective special flood hazard area (SFHA) AO(2), characterized by an average of two feet of shallow flooding.[30] The floodplain is a result of spills mapped from Upper Penitencia Creek based on the effective flood insurance rate map (FIRM) 06085C0088J. The map, although dated February 19, 2014, is based on a 1980's analysis.

A newer floodplain study was completed by Schaaf & Wheeler on behalf of Valley Water in 2019 as part of a FEMA Cooperating Technical Partnership. This analysis has been under review by FEMA and a date has not been set for its adoption. In the draft 2019 analysis the site is not located in a SFHA (see Appendix H). Since the draft map is not yet effective, the project must design to the approved effective map. Therefore, based on the City Municipal Code Section 17.08.620, the project must elevate residential finish floors to the highest adjacent natural grade around the perimeter of the structure, plus the depth of flooding. Schaaf & Wheeler prepared a Floodplain Design Criteria Memorandum for the proposed project (September 28, 2021) and the discussion is available below.

[30] Schaaf & Wheeler, 905 N Capitol Floodplain Design Criteria Memorandum, September 28, 2021. See also Appendix H.

The City owns and maintains the storm drainage system in the project area. The drainage lines that serve the project site drain into Penitencia Creek, located approximately 200 feet south of the site. No over-land release of stormwater drains directly into any water body from the project site.

The project site is not located within the inundation area for any dams, based on the "California Dam Breach Inundation Maps" map provided by the California Department of Water Resources.[31]

Impacts and Mitigation

Thresholds per CEQA Checklist

ENVIRONMENTAL IMPACTS	Potentially Significant Issues	Potentially Significant Unless Mitigation Incorporated	Less Than Significant Impact	No Impact	Checklist Source(s)
10. HYDROLOGY AND WATER QUALITY. Would the project:					
a) Violate any water quality standards or waste discharge requirements or otherwise substantially degrade surface or ground water quality?			X		1, 2
b) Substantially decrease groundwater supplies or interfere substantially with groundwater recharge such that the project may impede sustainable groundwater management of the basin?			X		1, 2
c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river or through the addition of impervious surfaces, in a manner which would:					
i) Result in substantial erosion or siltation on- or off-site;			X		1, 2
ii) Substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or offsite;			X		1, 2
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			X		1, 2
iv) Impede or redirect flood flows?			X		1, 2, 18
d) In flood hazard, tsunami, or seiche zones, risk release of pollutants due to project inundation?			X		1, 2, 18
e) Conflict with or obstruct implementation of a water quality control plan or sustainable groundwater management plan?			X		1, 2

Explanation

a) **Less Than Significant Impact**. The City's National Pollutant Discharge Elimination System (NPDES) Municipal Permit, urban runoff policies, and the Municipal Code are the primary means of enforcing water quality measures through the grading and building permit process. All construction/demolition projects must comply with the City of San José's Grading Ordinance, which requires the use of erosion and sediment controls to protect water quality while the site is under construction. The project is subject to Municipal Code Section 20.100.470, which requires the project to incorporate BMPs to control the discharge of storm

[31] https://fmds.water.ca.gov/webgis/?appid=dam_prototype_v2

water pollutants including sediments associated with construction activities including erosion, as outlined in the standard permit conditions in item ci) below. The project is located in an urban environment and operation of the residential project would not utilize materials that would significantly harm the water quality in the area. Furthermore, the project would comply with applicable regulations and laws to ensure proper discharge into the City's stormwater and sanitary infrastructure, would not violate any water quality standards or waste discharge requirements, or degrade surface or groundwater quality.

b) **Less Than Significant Impact**. The project site is located within the Recharge Area of the Santa Clara Valley Basin where groundwater occurs under unconfined conditions.[32] The site is not, however, located within or adjacent to a SCVWD groundwater recharge facility. The project proposes excavation to construct the below-grade parking for the proposed apartment building. According to the records search conducted by ENGEO for the Phase I Assessment, groundwater depth in the project area is approximately 58 feet below surface. Historical records show groundwater level between 50 and 70 feet. Groundwater was not encountered during soil borings on the site. The project would require excavation of 10 feet depth to construct the proposed basement level parking. The project does not propose any wells or groundwater pumping. Thus, the project would not decrease groundwater supplies or interfere substantially with groundwater recharge.

ci) **Less Than Significant Impact**. Construction of the project would require grading activities that could result in a temporary increase in erosion affecting the quality of storm water runoff. This increase in erosion is expected to be minimal, due to the small size and flatness of the site. The City's implementation requirements to protect water quality are described below.

Construction Impacts

Prior to the commencement of any clearing, grading or excavation, the project is required to comply with the State Water Resources Control Board's National Pollutant Discharge Elimination System (NPDES) General Construction Activities Permit, to the satisfaction of the Director of Public Works. The project applicant is required to develop, implement, and maintain a Storm Water Pollution Prevention Plan (SWPPP) to control the discharge of stormwater pollutants including sediments associated with construction activities. Additionally, the project applicant is required to file a Notice of Intent (NOI) with the State Water Resource Control Board (SWRCB) to comply with the General Permit and prepare a SWPPP that includes measures that would be included in the project to minimize and control construction and post-construction runoff. The SWPPP shall be posted at the project site and will be updated to reflect current site conditions.

The project shall incorporate Best Management Practices (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*[33], 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 project applicant may be required to submit an Erosion

[32] Santa Clara Valley Water District. *Sustainable Groundwater Management*. Accessed July 2021. https://www.valleywater.org/your-water/where-your-water-comes-from/groundwater/groundwater-management.
[33] Bay Area Stormwater Management Agencies Association.

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. .

All projects in the City, including the proposed project are required to comply with the City of San José Grading Ordinance, including erosion and dust control during site preparation, as well as the City of San José Zoning Ordinance requirements for keeping adjacent streets free of dirt and mud during construction. The following specific BMPs are required to be implemented by all projects in the City as standard permit conditions to prevent stormwater pollution and minimize potential sedimentation during construction.

The project would increase impervious surfaces on the site and slightly modify the drainage pattern on the site. Consistent with the regulations and policies described above, the project will follow all standard permit conditions. The following measures are based on RWQCB BMPs and have been included in the project to reduce construction and development-related water quality impacts. These BMPs would be implemented prior to and during earthmoving activities onsite and would continue until the construction is complete and during the post-construction period as appropriate.

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 site shall be filled with rock to knock mud from truck tires prior to entering City streets. A tire wash system may also be employed at the request of the City.
- The project applicant shall comply with the City of San José Grading Ordinance, including implementing erosion and dust control during site preparation and with the

City of San José Zoning Ordinance requirements for keeping adjacent streets free of dirt and mud during construction.

Post-Construction Impacts

The project is required to 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. For Council Policy 6-29 Post-Construction Urban Runoff Management, the project will be required to implement BMPs, which includes site design measures, source controls, and numerically-sized LID stormwater treatment measures to minimize stormwater pollutant discharges. The project site is not located in a Hydromodification Management (HM) area. However, 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), will be included in the project design, to the satisfaction of the Director of Planning, Building and Code Enforcement.

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 8-14. The project would not result in substantial erosion or siltation on or off site by complying with the State's Construction Stormwater Permit and the City's Grading Ordinance.

cii) **Less Than Significant Impact**. The project would increase the amount of impervious area on the project site compared to existing developed conditions. The project would implement a stormwater control plan to manage runoff from the site. Runoff will be collected in a storm drain system and conveyed within a proposed storm drain system prior to entering into the City's storm drainage system.

Existing storm drain inlets are located within N. Capitol Avenue and Kestral Way along the project frontage. No other existing storm drain systems are currently present along project frontages. The existing storm drain inlets would be preserved as part of the project. New 12" and 15" storm drain laterals would be built and connect to the existing storm drainage system in Krestral Way. As a result, the proposed project would have a less than significant impact associated with flooding on- or off-site due to increased surface runoff.

ciii) **Less Than Significant Impact**. The project proposes to connect to the City's existing storm drainage system. 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 ci) above.

civ) **Less Than Significant Impact**. The project site is located in a FEMA effective special flood SFHA AO(2); characterized by an average of two feet of shallow flooding. The floodplain is a result of spills mapped from Upper Penitencia Creek based on the effective flood insurance rate map. A newer floodplain study was completed by Schaaf & Wheeler on behalf of Valley Water in 2019 but a date has not been set for its adoption as the new effective map. In the draft analysis the site is not located in an SFHA. Since the draft map is not yet effective, the project must design to the effective map.

Schaaf & Wheeler prepared a Floodplain Design Criteria Memorandum for the proposed project (September 28, 2021) to describe the floodplain characteristics at the project site and provide a basis for selecting a highest adjacent grade upon which floodplain design criteria is applied. This memo is limited to the podium structure portion of the project, as only the apartment building has a basement level that needs to be elevated and floodproofed (see Appendix H).

The site grades are generally around elevations 144-148 feet with the exception of the east corner, which slopes steeply to the intersection of N. Capitol Avenue and Penitencia Creek Road. As a result, the definition of highest adjacent grade and associated minimum finish floor elevation is highly sensitive to the structure location relative to the eastern slope. Setting the structure's highest adjacent grade (HAG) based on the corner slope will result in a very conservative finish floor elevation for the entire podium, which may impact total structure height and ADA accessibility.

The average elevation of the ground beneath the leasing office in the eastern corner is 148.5 feet, therefore the average elevation of the effective AO(2) flood would be 150.5 feet. The structure finish floor should be above this elevation. If a highest adjacent grade of 150 is identified, the minimum finish floor elevation of 152 feet would be conservatively above the highest anticipated flood elevation at the structure. The elevation 150 contour wraps the high side of the structure as shown in Appendix H. As recommended by Schaaf & Wheeler and consistent with conditions of approval during City's review, the proposed development would be designed to be sited above the two-foot flood elevation, with an HAG of 150 feet, as recommended by Schaaf & Wheeler. Furthermore, consistent with the City's recommendations and review, these conditions for the design to be consistent with flood zone shall be reviewed prior to grading and building permits issuance.

The City's restrictions for Flood Zone AO include limiting the use of basements for residential structures for purposes beyond parking, storage, and building access. Use of the proposed basement included in the apartment building would primarily be limited to these uses. However, the basement would also include utilities for the apartment building. Construction of the proposed development would include dry-proofing the structures and elevation of all levels two-feet above the highest adjacent grade, including the basement level. Upon completion, the structure would be evaluated by a registered professional engineer or surveyor for certification, which would bring the proposed project into compliance with City and FEMA regulations. In addition, the project would be required to comply with all of the City's requirements for Special Flood Hazard Area Regulations (City Code Section 17.08.620). The project would comply with all applicable FEMA and City requirements so as not to significantly impede or redirect flood flows.

The project would be subject to permit conditions, to be confirmed based on consultation with the City Department of Public Works. These permit conditions are expected to include elevation of the lowest floor to two feet or more above the existing HAG for the apartment building and three feet or more for the townhomes, providing flood vent openings for all enclosures below the depth of flooding, elevating building utility systems above the HAG, use of flood resistant construction materials, and acquisition of Elevation Certificates (FEMA Form 086-0-33) for each proposed structure, based on construction drawings.

d) **Less Than Significant Impact**. As described above in c) above, the project is located within a 100-year floodplain and flood hazard zone and would be required to comply with all applicable federal and state regulations, including the City's requirements for Special Flood Hazard Area Regulations. This includes raising the proposed developments to a HAG of 150 in order to be above the two-foot floodplain. However, the project site is not located in an area subject to significant seiche or tsunami risk. In addition, the project is not located in the inundation area of any dams. This represents a less than significant impact.

e) **Less Than Significant Impact**. The project consists of development on an approximately 3.5 gross acre site. As described above, grading and construction activities could result in a temporary increase in erosion affecting the quality of storm water runoff. However, construction and operation of the project would not result in significant water quality or groundwater quality impacts since the proposed project would be required to comply with the City of San José Grading Ordinance and implement standard BMPs during construction. Therefore, the project would not result in impacts that would conflict with or obstruct implementation of a water quality control plan or sustainable groundwater management plan.

Conclusion: The project would have a less than significant impact on hydrology and water quality with implementation of identified standard permit conditions.

K. LAND USE AND PLANNING

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 D, Biological Resources, the HCP was developed through a partnership between Santa Clara County, the Cities of San José, Morgan Hill, and Gilroy, Santa Clara Valley Water District, Santa Clara Valley Transportation Authority, U.S. Fish and Wildlife Service, and California Department of Fish and Wildlife. 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.

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

As discussed in Section D, Biological Resources, the City's Riparian Corridor Policy Study analyzed streams and riparian corridors in the City of San José 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.

San José Municipal Code Chapter 20.190 – Affordable Housing Density Bonuses and Incentives

Chapter 20.190 of the City's Municipal Code provides density bonuses for eligible residential development projects within City limits. This section largely contains the mechanism for enforcing the density bonuses mandated at the State level (see discussion of AB 1763, above). This section mandates that density bonuses are ineligible for sites where dwelling units were demolished within the last five years. This section also sets out development standards for affordable units, including requiring concurrent construction with market rate units in the same development and various design standards to ensure that affordable units are constructed in a uniform manner compared to market-rate units constructed as part of the same development.

General Plan Designation

The project site is designated *Transit Residential* in the City's Envision San José 2040 General Plan Land Use/Transportation Diagram.

General Plan Policies

Policies in the 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 below.

Envision San José 2040 Relevant Land Use and Planning 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-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-1.2	Create safe, attractive, and accessible pedestrian connections between developments and to adjacent public streets to minimize vehicular miles traveled.
Policy LU-1.6	With new development or expansion and improvement of existing development or uses, incorporate measures to comply with current Federal, State, and local standards.
Policy LU-9.3	Integrate housing development with our City's transportation system, including transit, roads, and bicycle and pedestrian facilities.
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 LU-10.3	Develop residentially- and mixed-use-designated lands adjacent to major transit facilities at high densities to reduce motor vehicle travel by encouraging the use of public transit.
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

Existing Setting

The project site is designated *Transit Residential* in the City's Envision San José 2040 General Plan Land Use/Transportation Diagram. The property is currently zoned RM – Multiple Residence. The *Transit Residential* designation supports residential development with an allowable density of up to 250 du/ac and an FAR of 2.0 to 12.0 at heights of five to 25 stories. The RM Zoning District is intended to support construction, use and occupancy of higher density residential development and higher density residential-commercial mixed-use development. The site consists of two lots, the larger of which is developed with a single-family residence.

The project is located in a neighborhood of predominantly residential uses along a transit corridor. A light rail system operated by Valley Transit Authority is located on N. Capitol Avenue in the vicinity of the project. Penitencia Creek Trail is located to the south of the project site. Land uses surrounding the site are listed below and are identified in the aerial photo in Figure 3.

- North: Residential
- South: Penitencia Creek, public trail
- East: N. Capitol Avenue, light rail, residential, open space, public trail
- West: Residential, I-680

The project is located about 4.1 miles east of the Norman Y. Mineta San José International Airport. The project site is located outside the Santa Clara County Airport Land Use Commission's adopted Airport Influence Area for the airport. This is further described in *Section H. Hazards and Hazardous Materials* of this Initial Study.

Impacts and Mitigation

Thresholds per CEQA Checklist

ENVIRONMENTAL IMPACTS		Potentially Significant Issues	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact	Checklist Source(s)
11.	LAND USE AND PLANNING. Would the project:					
a)	Physically divide an established community?				X	1, 2
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?			X		1, 3, 18

Explanation

a) **No Impact**. The project site is located in an urbanized area surrounded primarily by residential development, as well as open space and a creek to the south. The project site is surrounded by N. Capitol Avenue to the east and is bisected by Penitencia Creek Road. Emergency vehicle access would be provided via Penitencia Creek Road and the new proposed alleys associated with the townhome component of the project. Access to and from N. Capitol Avenue would not be affected by the project.

While the project proposes to construct a seven-story apartment building that would be higher than the immediately adjacent properties, the project be consistent in use with its surrounding (i.e. residential) and would not necessitate new roadways or major physical factors that would physically divide a community. The project would be subject to further review for development permits to ensure compliance with design standards.

b) **Less Than Significant Impact**. The project site carries a zoning designation of RM – Multiple Residence District. The RM Zoning District is intended to support construction, use and occupancy of higher density residential development and higher density residential-commercial mixed-use development. Development supported by this district includes a variety of residential development types, as well as schools, residential care facilities, and publicly operated facilities such as libraries, parks, and community centers.

The project site is designated *Transit Residential* in the General Plan, which supports high density residential development of up to 250 DU/AC acre, with an FAR of 2.0 to 12.0 and at heights of five to 25 stories. The project would be consistent with the *Transit Residential* designation. The project proposes an infill residential development with 345 apartment units in a seven-story building and 32 three-story residential townhome on an approximately 3.5-gross acre site. The project proposes a density of approximately 109 DU/AC and an FAR of 2.35.

In terms of physical impacts on the environment, this IS 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. The project's compliance with the City's riparian corridor policy is discussed under impacts b) and d) in *Section D. Biological Resources*. 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.

Conclusion: The project would have a less than significant impact on land use and planning.

L. MINERAL RESOURCES

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.

Existing Setting

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.

Impacts and Mitigation

Thresholds per CEQA Checklist

ENVIRONMENTAL IMPACTS	Potentially Significant Issues	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact	Checklist Source(s)
12. MINERAL RESOURCES. Would the project:					
a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?				X	1, 2
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?				X	1, 2

Explanation

a), b) **No Impact**. The project site is located 6.5 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.

Conclusion: The project will have no impact on mineral resources.

M. NOISE & VIBRATION

A noise and vibration assessment has been prepared for the project by Illingworth & Rodkin, Inc. (March 28, 2022), which is contained in Appendix I. The following discussion summarizes the results of this assessment.

Regulatory Setting

Federal

Federal Highway Administration Roadway Construction Noise Model

The Federal Highway Administration (FHWA) Roadway Construction Noise Model (RNCM) is the national model for prediction of noise generated by construction projects. Since construction frequently occurs near residences and businesses, the FHWA developed the RNCM in an effort to control and monitor construction noise to avoid impacts on surrounding communities and neighborhoods. The RNCM 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 2019 California Building Code (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,[34] that project building materials and assemblies need to comply with based on the noise environment.

Local

San José General Plan Noise Compatibility Guidelines

The City's 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 General Plan utilizes the DNL descriptor and identifies interior and exterior noise standards for residential uses. The General Plan include the following criteria for land use compatibility and acceptable exterior noise levels in the City based on land use types.

General Plan

The City's 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 General Plan utilizes the DNL descriptor and identifies interior and exterior noise standards for residential uses.

[34] 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.

The General Plan include the following criteria for land use compatibility and acceptable exterior noise levels in the City based on land use types.

EXTERIOR NOISE EXPOSURE (DNL IN DECIBELS DBA) FROM GENERAL PLAN TABLE EC-1: Land Use Compatibility Guidelines for Community Noise in San José						
Land Use Category	**Exterior DNL Value In Decibels**					
	55	**60**	**65**	**70**	**75**	**80**
1. Residential, Hotels and Motels, Hospitals and Residential Care						
2. Outdoor Sports and Recreation, Neighborhood Parks and Playgrounds						
3. Schools, Libraries, Museums, Meeting Halls, and Churches						
4. Office Buildings, Business Commercial, and Professional Offices						
5. Sports Arenas, Outdoor Spectator Sports						
6. Public and Quasi-Public Auditoriums, Concert Halls, and Amphitheaters						
	Normally Acceptable: Specified land use is satisfactory, based upon the assumption that any buildings involved are of normal conventional construction, without any special noise insulation requirements.					
	Conditionally Acceptable: Specified land use may be permitted only after detailed analysis of the noise reduction requirements and noise mitigation features included in the design.					
	Unacceptable: New construction or development should generally not be undertaken because mitigation is usually not feasible to comply with noise element policies. (Development will only be considered when technically feasible mitigation is identified that is also compatible with relevant design guidelines.)					

Additionally, policies in the General Plan have been adopted for the purpose of avoiding or mitigating noise and vibration impacts from development projects. Policies applicable to the project are presented below.

Envision San José 2040 Relevant Noise and Vibration Policies	
Policy EC-1.1	Locate new development in areas where noise levels are appropriate for the proposed uses. Consider federal, state and City noise standards and guidelines as a part of new development review. Applicable standards and guidelines for land uses in San José include: Interior Noise Levels • The City's standard for interior noise levels in residences, hotels, motels, residential care facilities, and hospitals is 45 dBA DNL. Include appropriate site and building design, building construction and noise attenuation techniques in new development to meet this standard. For sites with exterior noise levels of 60 dBA DNL or more, an acoustical analysis following protocols in the City-adopted California Building Code is required to demonstrate that development projects can meet this standard. The acoustical analysis shall base required noise attenuation techniques on expected *Envision General Plan* traffic volumes to ensure land use compatibility and General Plan consistency over the life of this plan. Exterior Noise Levels • The City's acceptable exterior noise level objective is 60 dBA DNL or less for residential and most institutional land uses (refer to Table EC-1 in the General

Envision San José 2040 Relevant Noise and Vibration Policies	
	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.
Policy EC-1.2	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: • Cause the DNL at noise sensitive receptors to increase by five dBA DNL or more where the noise levels would remain "Normally Acceptable"; or • Cause the DNL at noise sensitive receptors to increase by three dBA DNL or more where noise levels would equal or exceed the "Normally Acceptable" level.
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	Require construction operations within San José to use best available noise suppression devices and techniques and limit construction hours near residential uses per the City's Municipal Code. The City considers significant construction noise impacts to occur if a project located within 500 feet of residential uses or 200 feet of commercial or office uses would: • Involve substantial noise generating activities (such as building demolition, grading, excavation, pile driving, use of impact equipment, or building framing) continuing for more than 12 months. For such large or complex projects, a construction noise logistics plan that specifies hours of construction, noise and vibration minimization measures, posting or notification of construction schedules, and designation of a noise disturbance coordinator who would respond to neighborhood complaints will be required to be in place prior to the start of construction and implemented during construction to reduce noise impacts on neighboring residents and other uses.
Policy EC-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.

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 the table below at any property line, except upon issuance and in compliance with a Special Use permit or Conditional Use Permit as provided in Chapter 20.100.

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

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. No construction activities are permitted on the weekends at sites within 500 feet of a residence.

Existing Setting

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 City's Envision San José 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). The 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.

Existing Noise Environment

The project site is located at 905 North Capitol Avenue in the City of San José. The project site is surrounded by existing residential uses to the north, to the west, and to the east, opposite North Capitol Avenue. South of the project site is undeveloped land.

The noise environment at the site and in the surrounding area results primarily from vehicular traffic along nearby I-680 and North Capitol Avenue, as well as light rail train pass-bys along the VTA rail

line. Occasional aircraft flyovers associated with San José International Airport have some contribution to the noise environment, as well.

The baseline for the noise analysis was established using field measurements taken on the dates specified below, post-shelter-in-place COVID restrictions. Current conditions are expected to be reflective of pre-pandemic conditions.

A noise monitoring survey consisting of two long-term (LT-1 and LT-2) and one short-term (ST-1) noise measurements was made at the project site between Tuesday, August 17, 2021, and Thursday, August 19, 2021. All measurement locations are shown in Figure 14.

Long-term noise measurement LT-1 was made approximately 65 feet west of the centerline of North Capitol Avenue. Hourly average noise levels at LT-1 typically ranged from 69 to 74 dBA L_{eq} during daytime hours (7:00 a.m. and 10:00 p.m.) and from 59 to 67 dBA L_{eq} during nighttime hours (10:00 p.m. and 7:00 a.m.). The day-night average noise level on Wednesday, August 18, 2021, was 73 dBA DNL. The daily trend in noise levels at LT-1 is shown in Figures A1 through A3 of Appendix I. Note that light rail service was suspended at the time of the noise survey. The VTA lines were inactive at the time of the measurements due to the VTA shooting incident in May 2021. Therefore, train pass-bys were not a measured noise source in the data collected for this project. The measurements made for this project were compared to similar roadways, which contain both vehicular traffic and trains. Since levels were similar, the dominating noise source at the project site is concluded to be vehicular traffic.

Based on the data measured on site and the comparison made to similar roadways that included train noise, hourly and daily average noise levels measured at LT-1 would be dominated by vehicular traffic along North Capitol Avenue and would not be expected to increase by more than 1 dBA with the inclusion of VTA trains.

LT-2 was made at the rear of the project site, approximately 25 feet northeast of the centerline of Kestral Way. Hourly average noise levels at LT-2 typically ranged from 51 to 63 dBA L_{eq} during daytime hours and from 43 to 56 dBA L_{eq} during nighttime hours. The day-night average noise levels on Wednesday, August 18, 2021, was 60 dBA DNL. The daily trend in noise levels at LT-2 is shown in Figures A4 through A6 of Appendix I.

Short-term noise measurement was made on Tuesday, August 17, 2021, at 10:10 a.m. in a 10-minute interval; this time period represents typical daytime activity. As shown in Figure 1, ST-1 was made from the sidewalk along Kestral Way. Results of the measurements are summarized in Table 11. Typical traffic noise levels from nearby Interstate 680 (I-680) ranged from 50 to 58 dBA, with no local traffic occurring within this 10-minute interval. Jet flyovers were about 55 to 63 dBA at ST-1, and general aviation generated levels of 56 dBA. The 10-minute L_{eq} measured at ST-1 was 55 dBA.

Table 11
Summary of Short-Term Noise Measurement Data

Noise Measurement Location (Date, Time)	L_{max}	$L_{(1)}$	$L_{(10)}$	$L_{(50)}$	$L_{(90)}$	$L_{eq(10\text{-}min)}$
ST-1: ~20 feet south of the centerline of Kestral Way (8/17/2021, 10:10-10:20 a.m.)	63	61	58	54	52	55

Source: Illingworth & Rodkin, September 2021

Noise Measurement Locations

905 N. Capitol Residential
Initial Study

Figure
14

Existing Vibration Environment

Vibration measurements could not be conducted at the time of the noise and vibration study since trains were inactive when noise measurements were made for this project due to the VTA shooting incident. However, VTA vibration levels have been previously measured at other sites in the San José area, and this data is used in this analysis to credibly represent vibration levels expected at the site after VTA service resumes.

Observed and recorded vibration measurements of individual train activity near the San José Diridon Station were conducted on Friday, February 23, 2018.[35] The instrumentation used to conduct the measurements included a Roland model R-05 solid state recorder and seismic grade, low noise accelerometers firmly fixed to the ground. This system was capable of accurately measuring very low vibration levels. Vibration levels at location V-1 were measured at ground level and were set back at a distance of 30 feet from the nearest light rail (VTA) track. Levels at V-2 were made at distances of 60 feet from the nearest light rail (VTA) track.

A total of twenty-three (23) individual light rail train pass-bys (VTA) were observed and recorded at the two locations within the plan area (V-1 and V-2). All measurements were made in the corner parking lot of 214 Dupont Street in San José. While the ground material may vary from the proposed project site, levels should be within approximately 1 dB. Vibration levels were measured in the vertical axis because ground vibration is typically most dominant on this axis. Vibration levels measured at each measurement position during train pass-by events can be seen in Appendix I (Figures A7 and A8 of Appendix I).

Impacts and Mitigation

Thresholds per CEQA Checklist

ENVIRONMENTAL IMPACTS	Potentially Significant Issues	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact	Checklist Source(s)
13. NOISE. Would the project result in					
a) Generation of a substantial temporary or permanent increase in ambient noise levels in the vicinity of the project in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?		X			14
b) Generation of excessive groundborne vibration or groundborne noise levels?		X			14
c) For a project located within the vicinity of a private airstrip or an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?			X		14

[35] Illingworth & Rodkin, Inc., "Dupont Street General Plan Amendment Project Environmental Noise and Vibration Report," March, 2018. The Diridon Station data included similar VTA trains, and the vibration levels would adequately represent vibration levels at the project site.

Explanation

Significance Criteria

The following criteria were used to evaluate the significance of environmental noise resulting from the project:

- A significant noise impact would be identified if the project would generate a substantial temporary or permanent noise level increase over ambient noise levels at existing noise-sensitive receptors surrounding the project site and that would exceed applicable noise standards presented in the General Plan or Municipal Code at existing noise-sensitive receptors surrounding the project site.

    - A significant noise impact would be identified if construction-related noise would temporarily increase ambient noise levels at sensitive receptors. The City of San José considers large or complex projects involving substantial noise-generating activities and lasting more than 12 months significant when within 500 feet of residential land uses or within 200 feet of commercial land uses or offices.

    - A significant permanent noise level increase would occur if project-generated traffic would result in: a) a noise level increase of 5 dBA DNL or greater, with a future noise level of less than 60 dBA DNL, or b) a noise level increase of 3 dBA DNL or greater, with a future noise level of 60 dBA DNL or greater.

    - A significant noise impact would be identified if the project would expose persons to or generate noise levels that would exceed applicable noise standards presented in the General Plan.

- A significant impact would be identified if the construction of the project would generate excessive vibration levels surrounding receptors. Groundborne vibration levels exceeding 0.2 in/sec PPV would have the potential to result in cosmetic damage to normal buildings. For sensitive historic structures, a continuous vibration limit of 0.08 in/sec PPV is used to determine the impact significance.

- A significant noise impact would be identified if the project would expose people residing or working in the project area to excessive aircraft noise levels.

a) **Less Than Significant with Mitigation**. The following addresses the temporary and permanent increase in ambient noise levels in the vicinity of the project in excess of applicable standards. The noise and vibration effects associated with the project are described below based on the results of the noise and vibration study (see Appendix I).[36]

[36] The project was updated to remove one unit and add 3,000 square feet of commercial office space since preparation of the noise/vibration assessment. The noise consultant confirmed that these minor changes do not affect the conclusions of the assessment (Carrie Janello, Illingworth & Rodkin, pers comm. November 2021.)

Project-Generated Noise Impacts During Operations

According to Policy EC-1.2 of the City's 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 City's 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 proposed 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.

The traffic study included peak hour turning movements for the existing traffic volumes and project trips at three intersections in the vicinity of the project site. The peak hour project trips were added to the existing traffic volumes to establish the existing plus project traffic scenario. By comparing the existing plus project traffic scenario to the existing scenario, the project would result in a noise level increase of 1 dBA DNL or less along all roadway segments included in the traffic study. The project would not result in a permanent noise increase of 3 dBA DNL or more at noise-sensitive receptors in the project vicinity. This is a less-than-significant impact.

Project-Generated Noise Impacts During Construction

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.

Policy EC-1.7 of the City's 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 7:00 a.m. and 7:00 p.m. Monday through Friday when construction occurs within 500 feet of a residential land use. Further, the City considers significant construction noise impacts to occur if a project that is located within 500 feet of residential uses or 200 feet of commercial or office uses would involve substantial noise-generating activities (such as building demolition, grading, excavation, pile driving, use of impact equipment, or building framing) continuing for more than 12 months.

Project construction will occur from 7:00 a.m. to 10:00 p.m. While no construction is expected to occur during nighttime hours, a permit from the City would be required to operate outside the allowable hours since the project site is located within 500 feet of residences and within 200 feet of commercial or office uses.

Existing residences located along North Capitol Avenue would have existing ambient noise levels represented by LT-1 of the monitoring survey, which ranged from 69 to 74 dBA L_{eq} during daytime hours. The existing residences to the west of the project site and set back from the roadway by 465 feet or more would have ambient noise levels represented by LT-2, which ranged from 51 to 63 dBA L_{eq} during daytime hours.

Construction activities generate considerable amounts of noise, especially during earth-moving activities when heavy equipment is used. The construction of the proposed project would involve demolition, excavation, trenching, and building construction. The hauling of excavated materials and construction materials would generate truck trips on local roadways, as well. For the proposed project, pile driving, which generates excessive noise levels, is not expected.

Construction activities for individual projects are typically carried out in phases. During each phase of construction, there would be a different mix of equipment operating, and noise levels would vary by phase and vary within phases, based on the amount of equipment in operation and the location at which the equipment is operating. The typical range of maximum instantaneous noise levels for the proposed project would be 70 to 90 dBA L_{max} at a distance of 50 feet (see Appendix I, Table 7) from the equipment. Table 12 shows the hourly average noise level ranges, by construction phase, typical for various types of projects. Hourly average noise levels generated by construction are about 72 to 88 dBA L_{eq} for residential buildings, measured at a distance of 50 feet from the center of a busy construction site. Construction-generated noise levels drop off at a rate of about 6 dBA per doubling of the distance between the source and receptor. Shielding by buildings or terrain often result in lower construction noise levels at distant receptors.

Construction of the multi-family building and the townhomes will start in early September 2022 and continue through the end of September 2024, and construction activities would be concurrent for both residential developments. Detailed lists of equipment expected to be used during each phase of both developments was provided for this analysis and are summarized in Tables 13 and 14. Federal Highway Administration's (FHWA's) Roadway Construction Noise Model (RCNM) was used to calculate the hourly average noise levels for each phase of construction, assuming every piece of equipment would operate simultaneously, which would represent the worst-case scenario. This construction noise model includes representative sound levels for the most common types of construction equipment and the approximate usage factors of such equipment that were developed based on an extensive database of information gathered during the construction of the Central Artery/Tunnel Project in Boston, Massachusetts (CA/T Project or "Big Dig"). The usage factors represent the percentage of time that the equipment would be operating at full power.

For each phase, the worst-case hourly average noise levels were estimated at the property line of each surrounding land use. Multiple pieces of equipment used simultaneously would add together creating a collective noise source. While every piece of equipment per phase would likely be scattered throughout the site, the noise-sensitive receptors surrounding the site would be subject to the collective noise source generated by all equipment operating at once.

The noise level estimates are also shown in Tables 13 and 14. Noise levels in Tables 13 and 14 do not assume reductions due to intervening buildings or existing barriers. Noise levels during the overlapping phases are summarized in Table 14 only for the residences to the east and west of the project site. Since the residences to the north would be directly impacted by construction

of the multi-family residential building and residences to the south by construction of the townhomes, the nearest source would dominate the noise exposure. However, residences to the east and west would be exposed to the combination of construction from both developments.

As shown in Tables 13 and 14, existing noise levels at the surrounding uses would potentially be exceeded by 5 dBA L_{eq} or more at various times throughout construction. Considering that project construction would last for a period of more than one year and considering that the project site is within 500 feet of existing residences and within 200 feet of existing commercial uses, Policy EC-1.7 of the City's General Plan would consider this temporary construction impact to be significant.

Table 12
Typical Ranges of Construction Noise Levels at 50 Feet, L_{eq} (dBA)

	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: U.S.E.P.A., Legal Compilation on Noise, Vol. 1, p. 2-104, 1973.

Table 13
Estimated Construction Noise Levels for the Multi-Family Building at Nearby Land Uses

Phase of Construction	Time Duration	Construction Equipment (Quantity)	Calculated Hourly Average Noise Levels, L_{eq} (dBA)							
			Ambient Noise Levels = 51 to 63 dBA L_{eq}		Ambient Noise Levels = 69 to 74 dBA L_{eq}					
			West Res. (215ft)		North Res. (110ft)		East Res. (290ft)		South Res. (645ft)	
			Level, dBA	Exceeds Ambient by 5 dBA or more?	Level, dBA	Exceeds Ambient by 5 dBA or more?	Level, dBA	Exceeds Ambient by 5 dBA or more?	Level, dBA	Exceeds Ambient by 5 dBA or more?
Demolition	9/1/2022-9/21/2022	Concrete/Industrial Saw (1) Excavator (1) Rubber-Tired Dozer (1) Tractor/Loader/Backhoe (1)	73	Yes	79	Yes	71	No	64	No
Site Preparation	9/21/2022-9/28/2022	Grader (1) Rubber-Tired Dozer (1) Tractor/Loader/Backhoe (1)	72	Yes	78	No	69	No	62	No
Shoring/ Excavation	9/28/2022-11/28/2022	Excavator (1) Tractor/Loader/Backhoe (2) Bore/Drill Rig (1)	72	Yes	77	No	69	No	62	No
Trenching/ Foundation	11/28/2022-12/28/2022	Tractor/Loader/Backhoe (2) Excavator (1)	71	Yes	77	No	69	No	62	No
Building – Exterior	12/28/2022-1/28/2024	Crane (1) Forklift (2) Welder (1)	63	No	69	No	61	No	54	No
Building – Interior/ Architectural Coating	11/28/2024-7/28/2024	Air Compressor (5) Aerial Lift (1)	68-70[a]	Yes	74-75[a]	No	66-67[a]	No	59-60[a]	No
Paving	7/28/2024-9/28/2024	Paver (1) Paving Equipment (1) Roller (1) Tractor/Loader/Backhoe (1)	72	Yes	78	No	70	No	63	No

[a] Range of noise levels reflect the building – interior/architectural coating phase and when overlapping with the building – exterior phase.

Table 14
Estimated Construction Noise Levels for Townhomes at Nearby Land Uses

Phase of Construction	Time Duration	Construction Equipment (Quantity)	Calculated Hourly Average Noise Levels, L_{eq} (dBA)							
			Ambient Noise Levels = 51 to 63 dBA L_{eq}		Ambient Noise Levels = 69 to 74 dBA L_{eq}					
			West Res. (215ft)		North Res. (370ft)		East Res. (350ft)		South Res. (385ft)	
			Level, dBA	Exceeds Ambient by 5 dBA or more?	Level, dBA	Exceeds Ambient by 5 dBA or more?	Level, dBA	Exceeds Ambient by 5 dBA or more?	Level, dBA	Exceeds Ambient by 5 dBA or more?
Demolition	9/1/2022-9/28/2022	Concrete/Industrial Saw (1) Rubber-Tired Dozer (1) Tractor/Loader/Backhoe (3)	75-77[a]	Yes	70	No	70-74[a]	No	70	No
Site Preparation	9/29/2022-10/3/2022	Grader (1) Rubber-Tired Dozer (1) Tractor/Loader/Backhoe (1)	72-75[a]	Yes	67	No	68-72[a]	No	67	No
Grading/ Excavation	10/4/2022-10/25/2022	Grader (1) Rubber-Tired Dozer (1) Tractor/Loader/Backhoe (2)	73-75[a]	Yes	69	No	69-73[a]	No	68	No
Trenching/ Foundation	10/26/2022-11/2/2022	Tractor/Loader/Backhoe (1) Excavator (1)	69-74[a]	Yes	64	No	65-71[a]	No	64	No
Building – Exterior	11/3/2022-9/5/2023	Crane (1) Forklift (2) Generator Set (1) Tractor/Loader/Backhoe (1) Welder (3)	71-74[a]	Yes	66	No	67-72[a]	No	66	No
Building – Interior/ Architectural Coating	9/6/2023-9/19/2023	Air Compressor (1)	61-65[a]	No	56	No	57-63[a]	No	56	No
Paving	9/20/2023-10/3/2023	Cement & Mortar Mixer (1) Paver (1) Paving Equipment (1) Roller (2) Tractor/Loader/Backhoe (1)	73-74[a]	Yes	68	No	69-71[a]	No	68	No

a Range of noise levels reflect the construction of the townhomes only and when combined with the construction of the multi-family residential building.

As shown in Tables 13 and 14, ambient levels at the surrounding uses would potentially be exceeded by 5 dBA L_{eq} or more at various times throughout construction. Project construction is expected to last for a period of approximately 25 months. Since project construction would last for a period of more than one year and considering that 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 significant in accordance with Policy EC-1.7 of the City's General Plan.

Impact NSE-1: Ambient levels at the surrounding sensitive uses would potentially be exceeded by 5 dBA Leq or more at various times throughout construction. Project construction is expected to last for a period of approximately 25 months. Since project construction would last for a period of more than one year and is within 500 feet of existing residential uses and within 200 feet of existing commercial uses, this temporary construction impact would be considered significant in accordance with General Plan Policy EC-1.7.

Mitigation Measures

MM NSE 1 **Construction Noise Logistics Plan.** Prior to the issuance of any grading or building 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 proposed project shall include, but are not limited to, 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).
- Construct temporary noise barriers, where feasible, to screen mobile and stationary construction equipment. The temporary noise barrier fences provide noise reduction if the noise barrier interrupts the line-of-sight between the noise source and receiver and if the barrier is constructed in a manner that eliminates any cracks or gaps.

- 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.

- Construction staging areas shall be established at locations that would create the greatest distance between the construction-related noise source and noise-sensitive receptors nearest the project site during all project construction.

- A temporary noise control blanket barrier shall be erected, if necessary, along building facades facing construction sites. This mitigation would only be necessary if conflicts occurred which were irresolvable by proper scheduling.

- If impact pile driving is proposed, foundation pile holes shall be predrilled to minimize the number of impacts required to seat the pile. Pre-drilling foundation pile holes is a standard construction noise control technique. Pre-drilling reduces the number of blows required to seat the pile.

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

- The project applicant shall prepare a detailed construction schedule for major noise-generating construction activities. The construction plan shall identify a procedure for coordination with adjacent residential land uses so that construction activities can be scheduled to minimize noise disturbance.

- 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.

Project-Generated Noise Impacts During Operation

While the City's Noise Element does not include thresholds for residential buildings, the City's Municipal Code has noise limits of 55 dBA at receiving residential uses and 60 dBA at receiving commercial uses. Exceeding these limits would not be considered a significant impact under CEQA; however, it is recommended that these limits be considered for design features in the proposed building.

The traffic study included peak hour turning movements for the existing traffic volumes and project trips at three intersections in the vicinity of the project site. The peak hour project trips were added to the existing traffic volumes to establish the existing plus project traffic scenario. By comparing the existing plus project traffic scenario to the existing scenario, the project would result in a noise level increase of less than 1 dBA DNL along all roadway segments included in the traffic study. The project would not result in a permanent noise increase of 3 dBA DNL or more at noise-sensitive receptors in the project vicinity.

The site plan shows heat pumps located on the rooftop of the multi-family residential building. Specification sheets were provided for units expected to be used for the proposed project and was used for the analysis. According to the manufacturer, an individual heat pump would generate noise levels up to 58 dBA at 5 feet. The heat pumps located on the rooftop of the multi-family building would be clustered together, with several units operating simultaneously at any given time. Assuming up to 10 units would be operating continuously for a 24-hour period, the combined noise level of all 10 would be 68 dBA at 5 feet. The nearest residence would be approximately 60 feet from the location of the nearest operational heat pumps. Since the pumps would be set back a minimum distance of 25 feet from the edge of the roof, the building façade would provide partial shielding for the mechanical equipment units. Assuming worst-case conditions, which would not include shielding from the building, noise levels from the mechanical equipment would be up to 46 dBA L_{eq} and up to 53 dBA DNL at the nearest residential property. Any shielding effects by the building would reduce noise levels further. This would meet the City's Municipal Code thresholds.

In addition to the heat pumps located on the rooftop, exhaust fans located within the parking structure of the multi-family residential building would have outlets located on level 1 in the southwestern corner of the proposed building. When operating at full speed, noise levels would be up to 76 dBA at a distance of 5 feet and up to 65 dBA at 5 feet when operating at 35% speed; however, the fans in the proposed building would almost always run at 20% speed, which would generate noise levels even lower. The nearest residential property line would be approximately 50 feet from the location of the exhaust fan outlet. According to the site plan, the outlet would be facing south, which would indicate a minimum 5 dBA reduction due to the building façade. Assuming worst-case conditions, 24-hour continuous operation of the fan at full speed would generate noise levels below 40 dBA L_{eq} and below 46 dBA DNL during typical operations of 20% speed and noise levels up to 51 dBA L_{eq} and 57 dBA DNL when operating at full speed. Since operations would typically occur at 20% speed, this would be a less than significant impact.

The roof plan of the townhomes shows mechanical equipment located in the attic, as well as roof vents and solar panels on the rooftop. Solar panels would not generate measurable noise levels. Therefore, the dominating mechanical noise would be the heating pumps, which would consist of the same units used at the multi-family building. Assuming worst case conditions, the heat pumps would cycle on and off continuously over a 24-hour period. Assuming all eight units would be running simultaneously at any given time, hourly average noise levels would be up to 67 dBA L_{eq} at a distance of 5 feet. The nearest residential property line would be approximately 85 feet from the location of the mechanical equipment in the townhome buildings. While being located in the attic would provide at least partial shielding, under worst-case conditions of no assumed attenuation, noise levels from the mechanical equipment would be up to 42 dBA L_{eq} and 49 dBA DNL at the nearest residential property plane. This would be a less than significant impact.

Cumulative Impacts

Cumulative noise impacts would include either cumulative traffic noise increases under future conditions or temporary construction noise from cumulative construction projects. A significant cumulative traffic noise increase would occur if two criteria are met: 1) if the cumulative traffic noise level increase was 3 dBA DNL or greater for future levels exceeding 60 dBA DNL or was 5 dBA DNL or greater for future levels at or below 60 dBA DNL; and 2) if the project would make a "cumulatively considerable" contribution to the overall traffic noise increase. A "cumulatively considerable" contribution would be defined as an increase of 1 dBA DNL or more attributable solely to the proposed project.

When the background and background plus project volumes were compared to the existing volumes, a noise level increase of 1 dBA DNL or less was calculated along every roadway segment, with and without the project. Therefore, cumulative traffic noise increases would occur due to the proposed project.

Based on a review of the City's website,[37] there are no planned or approved projects located within 1,000 feet of the proposed project site. Therefore, no cumulative construction impacts would occur in the project vicinity.

With incorporation of the mitigation measure and permit conditions above, temporary construction impacts would be less than significant.

b) **Less Than Significant with Mitigation Incorporated**. The construction of the project may generate perceptible vibration when heavy equipment or impact tools (e.g., jackhammers, hoe rams) are used. Construction activities would include demolition, site preparation work, foundation work, and new building framing and finishing. Pile driving equipment, which can cause excessive vibration, is not expected to be required for the proposed project.

According to the City's Historic Resource Inventory,[38] historical structures are located at 681 North Capitol Avenue and 1171 North Capitol Avenue, both of which are more than 1,500 feet from the project site. No other historical buildings are located in the vicinity of the project site.

[37] https://csj.maps.arcgis.com/apps/Shortlist/index.html?appid=c4051ffa5efb4f4dbf8b6d8ec29cfabd
[38] www.sanjoseca.gov/your-government/departments/planning-building-code-enforcement/planning-division/historic-preservation/historic-resources-inventory

According to Policy EC-2.3 of the City of San José 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. The vibration limits contained in this policy are conservative and designed to provide the ultimate level of protection for existing buildings in San José. As discussed in detail below, vibration levels exceeding these thresholds would be capable of cosmetically damaging adjacent buildings. Cosmetic damage (also known as threshold damage) is defined as hairline cracking in plaster, the opening of old cracks, the loosening of paint or the dislodging of loose objects. Minor damage is defined as hairline cracking in masonry or the loosening of plaster. Major structural damage is defined as wide cracking or the shifting of foundation or bearing walls.

Table 15 presents typical vibration levels that could be expected from construction equipment at a distance of 25 feet. Project construction activities, such as drilling, the use of jackhammers, rock drills and other high-power or vibratory tools, and rolling stock equipment (tracked vehicles, compactors, etc.), may generate substantial vibration in the immediate vicinity. Jackhammers typically generate vibration levels of 0.035 in/sec PPV, and drilling typically generates vibration levels of 0.09 in/sec PPV at a distance of 25 feet.

Vibration levels would vary depending on soil conditions, construction methods, and equipment used. Table 15 also summarizes the distances to the 0.08 in/sec PPV threshold for historical buildings and to the 0.2 in/sec PPV threshold for all other buildings. Since no historical buildings are located within 60 feet of the site, the 0.08 in/sec PPV threshold would not be exceeded at any historical buildings during project construction and is not discussed further.

Table 15
Vibration Source Levels for Construction Equipment

Equipment		PPV at 25 feet. (in/sec)	Minimum Distance to Meet 0.08 in/sec PPV (feet)	Minimum Distance to Meet 0.2 in/sec PPV (feet)
Clam shovel drop		0.202	59	26
Hydromill (slurry wall)	in soil	0.008	4	2
	in rock	0.017	7	3
Vibratory Roller		0.210	61	27
Hoe Ram		0.089	28	13
Large bulldozer		0.089	28	13
Caisson drilling		0.089	28	13
Loaded trucks		0.076	24	11
Jackhammer		0.035	12	6
Small bulldozer		0.003	2	<1

Source: Transit Noise and Vibration Impact Assessment Manual, Federal Transit Administration, Office of Planning and Environment, U.S. Department of Transportation, September 2018, as modified by Illingworth & Rodkin, Inc., August 2021.

Heavy vibration-generating construction equipment, such as vibratory rollers or clam shovel drops, would have the potential to produce vibration levels up to 0.278 in/sec PPV at residential buildings adjoining the project site. At all other structures in the project vicinity, construction would not generate vibration levels exceeding 0.03 in/sec PPV. At these locations, and in other

surrounding areas where vibration would not be expected to cause cosmetic damage, vibration levels may still be perceptible. However, as with any type of construction, this would be anticipated and would not be considered significant, given the intermittent and short duration of the phases that have the highest potential of producing vibration (use of jackhammers and other high-power tools). By use of administrative controls, such as notifying neighbors of scheduled construction activities and scheduling construction activities with the highest potential to produce perceptible vibration during hours with the least potential to affect nearby businesses, perceptible vibration can be kept to a minimum.

Construction activities would potentially generate vibration levels up to 0.27 in/sec PPV at the nearest single-family residences adjoining the project site to the west and to the north. A study completed by the US Bureau of Mines analyzed the effects of blast-induced vibration on buildings in USBM RI 8507.[39] The findings of this study have been applied to buildings effected by construction-generated vibrations.[40] Threshold damage, which is described as cosmetic damage in this report, would entail hairline cracking in plaster, the opening of old cracks, the loosening of paint or the dislodging of loose objects. Minor damage would include hairline cracking in masonry or the loosening of plaster, and major structural damage would include wide cracking or shifting of foundation or bearing walls. Maximum vibration levels of 0.2 in/sec PPV or lower would result in virtually no measurable damage. With maximum vibration levels of 0.3 in/sec PPV, there would be less than 5% chance of threshold or cosmetic damage, with no minor or major damage would be expected at the buildings immediately adjoining the project site.

Heavy vibration-generating construction equipment, such as vibratory rollers or clam shovel drops, would have the potential to produce vibration levels up to 0.278 in/sec PPV at residential buildings adjoining the project site, as shown in Table 16. At all other structures in the project vicinity, construction would not generate vibration levels exceeding 0.03 in/sec PPV. At these locations, and in other surrounding areas where vibration would not be expected to cause cosmetic damage, vibration levels may still be perceptible. However, as with any type of construction, this would not be considered significant given the intermittent and short duration of the phases that have the highest potential of producing vibration (use of jackhammers and other high-power tools). By use of administrative controls, such as notifying neighbors of scheduled construction activities and scheduling construction activities with the highest potential to produce perceptible vibration during hours with the least potential to affect nearby businesses, perceptible vibration can be kept to a minimum.

In summary, the construction of the project would potentially generate vibration levels exceeding the General Plan threshold of 0.2 in/sec PPV at non-historical properties in the project vicinity. This represents a potentially significant impact.

[39] Siskind, D.E., M.S. Stagg, J.W. Kopp, and C.H. Dowding, Structure Response and Damage Produced by Ground Vibration form Surface Mine Blasting, RI 8507, Bureau of Mines Report of Investigations, U.S. Department of the Interior Bureau of Mines, Washington, D.C., 1980.
[40] Dowding, C.H., Construction Vibrations, Prentice Hall, Upper Saddle River, 1996.

Table 16 Vibration Levels at Nearby Buildings					
Equipment		**PPV (in/sec)**			
		West Residences (20ft)	**North Residences (25ft)**	**East Residences (130ft)**	**South Residences (310ft)**
Clam shovel drop		**0.258**	**0.202**	0.033	0.013
Hydromill (slurry wall)	in soil	0.010	0.008	0.001	0.001
	in rock	0.022	0.017	0.003	0.001
Vibratory Roller		**0.268**	**0.210**	0.034	0.013
Hoe Ram		0.114	0.089	0.015	0.006
Large bulldozer		0.114	0.089	0.015	0.006
Caisson drilling		0.114	0.089	0.015	0.006
Loaded trucks		0.097	0.076	0.012	0.005
Jackhammer		0.045	0.035	0.006	0.002
Small bulldozer		0.004	0.003	0.0005	0.0002

Impact NSE-2: Construction of the project would generate vibration levels exceeding the General Plan threshold 0.2 in/sec PPV or more at buildings of normal conventional construction located within 25 feet of the project site.

Mitigation Measures

MM NSE 2 **Construction Vibration Monitoring, Treatment, and Reporting Plan**. Prior to the issuance of any grading permits, the project applicant shall implement a construction vibration monitoring plan to document conditions prior to, during, and after vibration generating construction activities. All plan tasks shall be undertaken under the direction of a licensed Professional Structural Engineer in the State of California and be in accordance with industry-accepted standard methods. The construction vibration monitoring plan shall include, but not be limited to, the following measures:

- The report shall include a description of measurement methods, equipment used, calibration certificates, and graphics as required to clearly identify vibration-monitoring locations.

- A list of all heavy construction equipment to be used for this project and the anticipated time duration of using the equipment that is known to produce high vibration levels (clam shovel drops, vibratory rollers, hoe rams, large bulldozers, caisson drillings, loaded trucks, jackhammers, etc.) shall be submitted to the Director of Planning or Director's designee of the Department of Planning, Building, and Code Enforcement by the contractor. This list shall be used to identify equipment and activities that would potentially generate substantial vibration and to define the level of effort required for continuous vibration monitoring. Phase demolition, earth-moving, and ground impacting operations so as not to occur during the same time period.

- Prohibit the use of heavy vibration-generating construction equipment within 30 feet of adjacent buildings.

- Use a smaller vibratory roller, such as the Caterpillar model CP433E vibratory compactor, when compacting materials within 30 feet of adjacent buildings. Only use the static compaction mode when compacting materials within 15 feet of buildings.

- Document conditions at all structures located within 30 feet of construction prior to, during, and after vibration generating construction activities with the agreement of property owners. All plan tasks shall be undertaken under the direction of a licensed Professional Structural Engineer in the State of California and be in accordance with industry-accepted standard methods. Specifically:

    - Vibration limits shall be applied to vibration-sensitive structures located within 30 feet of all construction activities identified as sources of high vibration levels.

    - Performance of a photo survey, elevation survey, and crack monitoring survey for each structure of normal construction within 30 feet of all construction activities identified as sources of high vibration levels. Surveys shall be performed prior to any construction activity, in regular intervals during construction, and after project completion of vibration generating construction activities, and shall include internal and external crack monitoring in the structures, settlement, and distress, and shall document the condition of the foundations, walls and other structural elements in the interior and exterior of said structures.

- Avoid dropping heavy equipment and use alternative methods for breaking up existing pavement, such as a pavement grinder, instead of dropping heavy objects, within 30 feet of adjacent buildings.

- The contractor shall alert heavy equipment operators to the close proximity of the adjacent structures so they can exercise extra care.

- Designate a person responsible for registering and investigating claims of excessive vibration. The contact information of such person shall be clearly posted on the construction site.

- Develop a vibration monitoring and construction contingency plan to identify structures where monitoring would be conducted, set up a vibration monitoring schedule, define structure-specific vibration limits, and address the need to conduct photo, elevation, and crack surveys to document before and after construction conditions. Construction contingencies shall be identified for when vibration levels approached the limits.

- At a minimum, vibration monitoring shall be conducted during demolition and excavation activities.

- Conduct a post-construction survey on structures where either monitoring has indicated high vibration levels or complaints of damage has been made. Make appropriate repairs or compensation where damage has occurred as a result of construction activities.

Implementation of this mitigation measure would reduce the vibration impact to a less than significant level.

c) **Less Than Significant Impact**. Norman Y. Mineta San José International Airport is a public-use airport located approximately 3.6 miles southwest of the project site. The project site lies well outside of the 60 dBA CNEL 2027 noise contour of the airport, according to the Norman Y. Mineta San José International Airport Master Plan Update Project[41] report (February 2010). Assuming standard construction materials for aircraft noise below 60 dBA DNL, the future interior noise levels resulting from aircraft would below 45 dBA DNL. As a result, the proposed project would not be subjected to significant amounts of noise from aircraft landing or taking from the airport and would be compatible with the City's interior noise standards for aircraft noise. This represents a less than significant impact.

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 (*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 ambient noise on future users or residents of the project would not be considered an impact under CEQA. However, General Plan Policy EC-1.1 requires that existing ambient noise levels be analyzed for new residences, hotels, motels, residential care facilities, hospitals, and other institutional facilities, and that noise attenuation be incorporated into the project in order to reduce interior and exterior noise levels to acceptable limits.

The exterior noise threshold established in the City's General Plan for new residential projects is 60 dBA DNL at usable outdoor activity areas, excluding balconies and porches. For commercial uses, the City's "normally acceptable" threshold for outdoor activity areas is 65 dBA DNL. The City requires that interior noise levels be maintained at 45 dBA DNL or less for residential land uses, and the Cal Green Code applies to the non-residential components of the proposed mixed-use project.

The future noise environment at the site would continue to result primarily from vehicular traffic along nearby I-680 and North Capitol Avenue. According to the *Envision San José 2040 General Plan Comprehensive Update EIR*,[42] the traffic noise level increase along North Capitol Avenue at the project site would be up to 1 dBA DNL by the year 2035. Additionally, the traffic study provided for the proposed project included peak hour traffic volumes, which would not result in an additional traffic

[41] City of San José, "Norman Y. Mineta San José International Airport Master Plan Update Project: Twelfth Addendum to the Environmental Impact Report," City of San José Public Project File No. PP 10-024, May 2018.
[42] *Envision San José 2040 General Plan Comprehensive Update EIR*, State Clearinghouse Number 2009072096, File number PP09-011, June 2011.

noise increase at the project site. The number of daily light rail trains along N. Capitol Avenue is not expected to change substantially under future conditions.

Future Exterior Noise Environment

Residential Uses. According to the site plan, two courtyards and a roof deck would be located at the multi-family residential building. Private balconies, decks, and front yards would not be considered outdoor use areas subject to the exterior noise thresholds. Therefore, the townhomes would not have any proposed outdoor use areas subject to the City's thresholds.

The central courtyard in the multi-family residential building would be completely surrounded by the building. The future exterior noise levels at this outdoor use area would be below 60 dBA DNL. The courtyard located at the rear of the multi-family building would be shielded from traffic noise and light rail train noise along North Capitol Avenue by the proposed buildings and shielded from traffic noise along I-680 by existing residential buildings to the west. Future exterior noise levels at this outdoor use area would be below 60 dBA DNL.

The level 7 roof deck is located at the northwest corner of the multi-family building, and the center of this area would be set back approximately 365 feet from the centerline of North Capitol Avenue and the train tracks. At this distance, future exterior noise levels at this outdoor use area would be below 60 dBA DNL.

Open Space. The site plan shows common use open space to the south of the townhomes that would be subject to the City's 65 dBA DNL exterior noise threshold.

The center of the nearest open space would be set back approximately 120 feet from the centerline of North Capitol Avenue and the light rail train tracks. At this distance and assuming partial shielding from the project buildings, the future exterior noise levels would be 69 dBA DNL. Relocating this outdoor use area to a location shielded by proposed on-site buildings would reduce exterior noise levels; however, based on the current site plan, relocating the open space would not be optimal. Since this space is intended to be open, constructing a sound wall or berm surrounding the open space would negatively impact the aesthetic appeal and would not be recommended for this project. While future exterior noise levels would exceed the normally acceptable threshold, the noise levels would fall within the conditionally acceptable range. Therefore, it is recommended that the City allow the open space under the conditionally acceptable noise level threshold.

With greater setbacks of 185 feet or more, the other open space areas would have future exterior noise levels at or below 65 dBA DNL.

The City's normally acceptable threshold for residential uses would be below the City's normally acceptable threshold at the center of all courtyards and roof decks. No additional noise controls are recommended for these outdoor areas.

Future Interior Noise Environment

The State of California and the City of San José requires that interior noise levels be maintained at 45 dBA DNL or less for residential land uses and that all non-residential land uses follow the requirements of the Cal Green Code.

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.

The eastern façade of the multi-family residential building and the eastern façades of the townhomes nearest to North Capitol Avenue would be set back approximately 80 to 85 feet from the centerline of the roadway and train tracks. At these distances, the units facing North Capitol Avenue would be exposed to future exterior noise levels up to 73 dBA DNL. Assuming windows to be partially open, future interior noise levels in these units would be up to 58 dBA DNL.

Units located on the northern and southern façades of the multi-family building would have at least partial line-of-sight to the North Capitol Avenue, with setbacks of approximately 85 to 400 feet from the centerline. Units located along these façades would be exposed to future exterior noise levels ranging from 62 to 73 dBA DNL. Assuming windows to be partially open, future interior noise levels in these units would range from 47 to 58 dBA DNL.

Units located on the western façade and surrounding the interior courtyard of the multi-family building would be shielded from North Capitol Avenue. These units would be exposed to future exterior noise levels at or below 60 dBA DNL. Assuming windows to be partially open, future interior noise levels in these units would be at or below 45 dBA DNL.

While the townhome units located in the first row would have direct line-of-sight to North Capitol Avenue, the second, third, and fourth rows would have at least partial shielding due to the intervening buildings; however, the corner units would have partial exposure to the traffic noise. The corner units with some direct exposure would have setbacks up to 370 feet from the centerline of the roadway. These corner townhome units in each building would be exposed to future exterior noise levels ranging from 62 to 73 dBA DNL. Assuming windows to be partially open, future interior noise levels in these units would range from 47 to 58 dBA DNL.

To meet the interior noise requirements set forth by the City of San José of 45 dBA DNL, implementation of noise insulation features would be required.

Condition of Approval

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

- Provide a suitable form of forced-air mechanical ventilation, as determined by the local building official, 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.

- Preliminary calculations indicate that residential units along the eastern building façade of the multi-family residential building and the first row of townhomes would require windows and doors with a minimum rating of 31 to 35 STC with adequate forced-air mechanical ventilation to meet the interior noise threshold of 45 dBA DNL.

- Preliminary calculations indicate that residential units within 260 feet of the centerline of North Capitol Avenue located along the northern and southern building façades of the multi-family residential building would require windows and doors with a minimum rating of 28 to 31 STC with adequate forced-air mechanical ventilation to meet the interior noise threshold of 45 dBA DNL. All remaining units located along these building façades would require adequate forced-air mechanical ventilation to meet the interior noise threshold of 45 dBA DNL.

- Preliminary calculations indicate that corner townhome units located in the second and third row buildings set back from North Capitol Avenue would require windows and doors with a minimum rating of 28 to 31 STC with adequate forced-air mechanical ventilation to meet the interior noise threshold of 45 dBA DNL. All remaining corner townhomes would require adequate forced-air mechanical ventilation to meet the interior noise threshold of 45 dBA DNL.

- Interior Noise Standard for Residential Development. 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.

The implementation of these noise insulation features would reduce interior noise levels to 45 dBA DNL or less at residential uses.

Conclusion: The project would have a less than significant impact related to noise and vibration with incorporation of identified mitigation measures and standard permit conditions.

N. POPULATION AND HOUSING

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.[43] The City of San José Housing Element and related land use policies were last updated in January 2015.

Regional and Local

Plan Bay Area 2040

Plan Bay Area 2040 is a long-range transportation, land-use, and housing plan intended support a growing economy, provide more housing and transportation choices, and reduce transportation related pollution and greenhouse gas (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 (PDAs).[44]

The Association of Bay Area Governments (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 Metropolitan Transportation Commission (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).

General Plan

Policies in the 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 below.

[43] California Department of Housing and Community Development. "Regional Housing Needs Allocation and Housing Elements" Accessed April 27, 2018. http://hcd.ca.gov/community-development/housingelement/index.shtml
[44] Association of Bay Area Governments and Metropolitan Transportation Commission. "Project Mapper." http://projectmapper.planbayarea.org/

Envision San José 2040 Relevant Population and Housing Policies	
Policy CD-1.9	Give the greatest priority to developing high-quality pedestrian facilities in areas that will most promote transit use and bicycle and pedestrian activity. In pedestrian oriented areas such as Downtown, 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 facade and pedestrian access to buildings

Existing Setting

Based on information from the Department of Finance, the City of San José's population was estimated to be 1,029,782 in January 2021 and had an estimated total of 37,442 housing units, with an average of 3.14 persons per household. [45] ABAG projects that the City's population will reach 1,445,000 with 472,000 households by 2040.

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). The General Plan EIR concluded that the potential for direct growth inducing impacts from buildout of the 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.

Impacts and Mitigation

Thresholds per CEQA Checklist

ENVIRONMENTAL IMPACTS	Potentially Significant Issues	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact	Checklist Source(s)
14. POPULATION AND HOUSING. Would the project:					
a) Induce substantial unplanned population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?			X		1, 2
b) Displace substantial numbers of existing people or housing, necessitating the construction of replacement housing elsewhere?			X		1, 2

[45] California Department of Finance. "E-5 Population and Housing Estimates for Cities, Counties, and the State— January 1, 2011-2021." January 2021. Accessed July 2021. http://www.dof.ca.gov/Forecasting/Demographics/Estimates/E-5/

Explanation

a) **Less Than Significant Impact**. The project proposes up to 382 residential units with total future population at the proposed project site estimated at 1,203 individuals (based on 3.14 persons per household). The development is proposed to accommodate the growing demand for housing within San José. The development is consistent with the project site's General Plan land use designation and, therefore, would not add growth beyond what was anticipated from buildout of the General Plan.

b) **Less Than Significant Impact**. The project consists of the development of residential on an infill site that contains one single-family residence and an adjacent vacant site. The existing single-family residence would be demolished to make way for the proposed development of 382 multi-family residential units on the lot. The proposed demolition of the existing single-family residence would not constitute a substantial amount of reduced housing availability when combined with the 345 multi-family residential units and 32 townhomes proposed for development on the site. The project would not displace a substantial amount existing housing or require the construction of replacement housing.

Conclusion: The project would have a less than significant impact on population and housing.

O. PUBLIC SERVICES

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 and a Park Impact Ordinance, consistent with the Quimby Act.

Local

Parkland Dedication Ordinance and Park Impact Ordinance

The City of San José has adopted the Parkland Dedication Ordinance (PDO, Municipal Code Chapter 19.38) and Park Impact Ordinance (PIO, Municipal Code Chapter 14.25), requiring new residential development to either dedicate sufficient land to serve new residents or pay fees to offset the increased costs of providing new park facilities for new development. Under the PDO and PIO, a project can satisfy half of its total parkland obligation by providing private recreational facilities onsite. 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. The acreage of parkland required is based on the minimum acreage dedication formula outlined in the PDO.

General Plan Policies

Policies in the 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 below.

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

Envision San José 2040 Relevant Public Service Policies	
	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 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-1.12	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 ¾ 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, community gardens, community centers, etc.) within a 3-mile radius of the residential development that generates the PDO/PIO funds.

Existing Setting

Fire Protection: Fire protection services are provided to the project site by the San José Fire Department (SJFD). The closest fire station to the project site is Station #34, located about 1.65 miles southwest of the site at 1634 Las Plumas Avenue.

Police Protection: Police protection services are provided to the project site by the San José Police Department (SJPD) headquartered at 201 West Mission Street. 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.

Parks: The nearest park to the project site is Commodore Park, located within walking distance less than 0.5 miles southwest of the site. In addition, there is open space associated with Penitencia Creek to the south of the project site. The City of San José has adopted the Parkland Dedication Ordinance and Park Impact Ordinance, 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.

Schools: Schools in the project area are located within the Berryessa Union School District and the East Side Union High School District and are presented below.

Schools in Project Area		
Elementary	**Middle**	**High**
Summerdale Elementary 1100 Summerdale Drive San José, CA 95132	Piedmont Middle School 955 Piedmont Road San José, CA 95132	Independence High School 617 N. Jackson Avenue San José, CA 95133

State law (Government Code §65996) identifies the payment of school impact fees as an acceptable method of offsetting a project's impact on school facilities. In San José, developers can either negotiate directly with the affected school district or make a payment per square foot of multi-family units and new commercial uses, prior to issuance of a building permit. The school district is responsible for implementing the specific methods for mitigating school impacts under the Government Code.

Libraries: The San José Public Library System consists of one main library and 24 branch libraries. The nearest branches to the project site are the Berryessa Branch Library, about 1.17 miles northeast of the site, and Educational Park Branch Library, about 1.20 miles south of the site.

Impacts and Mitigation

Thresholds per CEQA Checklist

ENVIRONMENTAL IMPACTS	Potentially Significant Issues	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact	Checklist Source(s)
15. PUBLIC SERVICES. Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:					
a) Fire protection?			X		1, 2
b) Police protection?			X		1, 2
c) Schools?			X		1, 2
d) Parks?			X		1, 2
e) Other public facilities?			X		1, 2

Explanation

a) **Less Than Significant Impact**. The project proposes to redevelop the site, which would intensify the use of the 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, however, is currently served by the SJFD and the amount of proposed development represents a small fraction of the total growth identified in the General Plan. 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 proposed 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. Therefore, the proposed mixed-use development would not significantly impact fire protection services or require the construction of new or remodeled facilities.

b) **Less Than Significant Impact**. The project proposes to redevelop the site, which would intensify the use of the 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 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 fire facilities. In addition, the proposed 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.

c) **Less Than Significant Impact**. The proposed residential development would generate additional new students. The project would be subject to school impact fee to accommodate the incremental demand on school services, including the state-mandated school district impact fee, to compensate for any impacts to school services.

d) **Less Than Significant Impact**. The proposed residential development would generate some additional park users. While future of the site may utilize nearby parks, they are unlikely to place a major physical burden on these facilities. The City's Parkland Dedication Ordinance and Park Impact Ordinance 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.

e) **Less Than Significant Impact.** The proposed residential development could have an incremental increase in the demand for other public services, including library services. However, the General Plan FEIR concluded that development allowed under the General Plan would be adequately served by existing and planned library facilities. This represents a less than significant impact.

Conclusion: The project would have a less than significant impact on public services.

P. RECREATION

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 8th, 2015 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 8th, 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 of San José has adopted the Parkland Dedication Ordinance and Park Impact Ordinance, 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. See *Section O. Public Services* for additional discussion.

Activate SJ Strategic Plan

The Activate SJ Strategic Plan was developed by the City of San José 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 Envision San José 2040 General Plan. The Activate SJ Strategic Plan will be updated at five-year intervals. 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.

General Plan Policies

Policies in the General Plan have been adopted for the purpose of avoiding or mitigating recreation impacts from development projects. Policies applicable to the proposed project are presented below.

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.

Existing Setting

The City of San José owns and maintains approximately 3,502 acres of parkland, including neighborhood parks, community parks, and regional parks, for a total of 206 public parks. The City has 50 community centers and over 61 miles of trails. The City's Department of Parks, Recreation, and Neighborhood Services is responsible for development, operation, and maintenance of all City park facilities.

The nearest park to the project site is Commodore Park, located within walking distance less than 0.5 miles southwest of the site. The City of San José has adopted the Parkland Dedication Ordinance and Park Impact Ordinance, 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.

Impacts and Mitigation

Thresholds per CEQA Checklist

ENVIRONMENTAL IMPACTS	Potentially Significant Issues	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact	Checklist Source(s)
16. RECREATION. Would the project:					
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?			X		1, 2
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?			X		1, 2

Explanation

a), b) **Less Than Significant Impact**. The project proposes up to 382 residential units with total future population at the proposed project site estimated at 1203 individuals (based on 3.14 persons per household). This would incrementally increase the demands on nearby recreational facilities. The City of San José has adopted the Parkland Dedication Ordinance and Park Impact Ordinance, 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 (see Section O, Public Services). The project would be required to comply with the City's park ordinances, which would offset impacts to park/recreation facilities.

Conclusion: The project would have a less than significant impact on recreational facilities.

Q. TRANSPORTATION

The following discussion is based on a transportation analysis prepared for the project by Hexagon Transportation Consultants (February 10, 2022). This study is contained in Appendix J. The transportation analysis was conducted to determine the potential transportation impacts related of the project based on the standards and methodologies set forth by the City of San José and included an evaluation of vehicle miles traveled (VMT) and a local transportation analysis (LTA).

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 vehicle miles traveled 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 level of service 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 be considered to have a less than significant transportation impact based on OPR guidance.

Regional and Local

Final Plan Bay Area 2040

The Metropolitan Transportation Commission (MTC) and the Association of Bay Area Governments (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 Senate Bill 375, Steinberg), which requires each of the state's 18 metropolitan areas – including the Bay Area – to reduce greenhouse gas 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 (CMA) 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 Envision San José 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 level of service (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.[46] 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 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 Local Transportation Analysis (LTA) to analyze non-CEQA transportation issues, including local transportation operations, intersection level of service, 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 a have a less than significant VMT impact. Under Policy 5-1, the screening criteria are as follows:

[46] The new policy took effect on March 29, 2018.

1. Small Infill Projects,
2. Local-Serving Retail,
3. Local-Serving Public Facilities,
4. Transit Supportive Projects in Planned Growth Areas with Low VMT and High-Quality Transit,
5. Restricted Affordable, Transit Supportive Residential Projects in Planned Growth Areas with High Quality Transit, and
6. Transportation Projects that reduce or do not increase VMT.

General Plan Policies

Policies in the General Plan have been adopted for the purpose of avoiding or mitigating transportation impacts from development projects. Policies applicable to the proposed project are presented below.

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. • 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% 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. • 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.

Envision San José 2040 Relevant Transportation Policies	
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	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. • 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.
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-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.

Existing Setting

Existing Roadway Network

Regional access to the project site is provided via I-680. Local access to the project site is provided via N. Capitol Avenue, Berryessa Road, Penitencia Creek Road, and Mabury Road. These facilities are shown in Figure 15 and described below.

I-680 is a north-south freeway that begins at US 101 in San José, where I-280 transitions to I-680, and ends at I-80 in Solano County. I-680 provides access to the project site via the Berryessa Road interchange. The section of I-680 in the project vicinity is an eight-lane freeway, with four mixed-flow lanes in both directions.

N. Capitol Avenue is a north-south four-lane Grand Boulevard with an LRT line within the center median in the study area. As defined by the Envision San José 2040 General Plan, Grand Boulevards are major transportation corridors that serve as primary routes for LRT, busses, and other public transit vehicles. Although Grand Boulevards accommodate all modes of travel, priority is given to public transit vehicles. N. Capitol Avenue provides direct access to the project site. It has striped bike lanes on both sides of the street and has a posted speed limit of 40 mph. N. Capitol Avenue provides sidewalks on both sides of the street with pedestrian signal heads and push buttons at all signalized intersections. To the north, N. Capitol Avenue transitions into Great Mall Parkway north of Montague Expressway in the City of Milpitas. To the south, N. Capitol Avenue becomes S. Capitol Avenue south of Alum Rock Avenue and then terminates at Capitol Expressway.

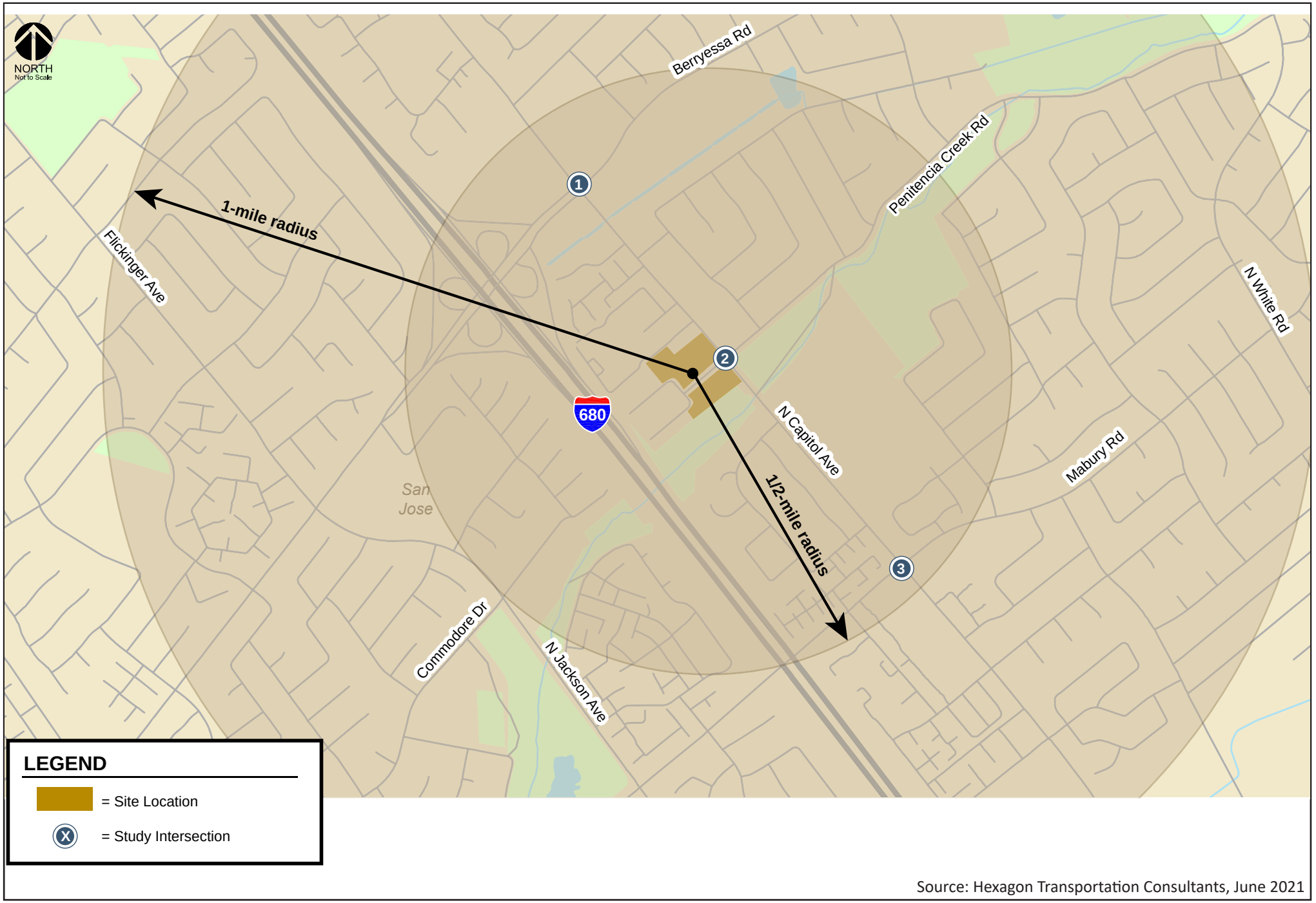
Berryessa Road is an east-west City Connector Street that begins where it transitions from Suncrest Avenue at its intersection with Piedmont Road. Berryessa Road is six lanes in the vicinity of the project site and narrows to four lanes west of King Road where it becomes Hedding Street after crossing over US 101. Berryessa Road has a posted speed limit of 40 mph and contains striped bike lanes on both sides of the street. There are sidewalks on both sides of the street, except for the segment between Jackson Avenue and I-680 where there are no sidewalks on the south side of the street. Berryessa Road provides access to the project site via N. Capitol Avenue.

Penitencia Creek Road is a two-lane Local Connector Street with a two-way left-turn lane and striped bike lanes on both sides of the street. It extends from N. Capitol Avenue east to where it terminates at Alum Rock Avenue in the east foothills. Penitencia Creek Road has a sidewalk along the north side of the street and a paved multi-use trail along the south side of the street between N. Capitol Avenue and Viceroy Way. East of Viceroy Way, Penitencia Creek Road has a sidewalk along the south side of the street and a paved multi-use trail along the north side of the street. Penitencia Creek Road has a posted speed limit of 35 mph and provides direct access to the project site.

Mabury Road is a two- to four-lane City Connector Street with striped bike lanes along much of its length. Mabury Road runs from Oakland Road in the west to Gridley Road in the east, where it changes designation to San Marino Road. Within the study area, Mabury Road provides sidewalks on both sides of the street with pedestrian signal heads and push buttons at all signalized intersections. Mabury Road has a posted speed limit of 40 mph west of N. Capitol Avenue and 35 mph east of N. Capitol Avenue.

Existing Pedestrian, Bicycle and Transit Facilities

Pedestrian Facilities. Sidewalks are found along all previously described local roadways in the study area. The existing network of sidewalks provides good 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. ADA compliant curb ramps are provided at all the signalized intersections along N. Capitol Avenue, although not all the curb ramps at the N. Capitol Avenue/Penitencia Creek Road and N. Capitol Avenue/Gilchrist Drive intersections meet current ADA standards.



Source: Hexagon Transportation Consultants, June 2021

Roadway Network and Study Intersections

905 N. Capitol Residential
Initial Study

Figure
15

Bicycle Facilities. Bicycle facilities are divided into three classes of relative significance. 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.

There are a number of roadways in the project study area that have Class II bike lanes. Striped bike lanes currently exist on the following roadways:

- Capitol Avenue
- Jackson Avenue
- Berryessa Road
- Penitencia Creek Road
- Mabury Road

The Penitencia Creek multi-use trail system (Class I bikeway) runs alongside Penitencia Creek and separates bicyclists from motor vehicle traffic. Access to the 4-mile multi-use trail is provided via N. Capitol Avenue, a short walk from the project site. This trail system provides access to Penitencia Creek Park and Alum Rock Park.

Public Transit Services. Existing transit services near the project site are provided by the Santa Clara Valley Transportation Authority (VTA). The Penitencia Creek LRT Station is conveniently located a short distance (about 500 feet) from the project site and is served by Light Rail Transit (LRT) and VTA express bus route 104.

The VTA currently operates the 42.2-mile light rail line system extending from south San José through downtown to the northern areas of San José, Santa Clara, Milpitas, Mountain View and Sunnyvale. The service operates nearly 24 hours a day with 15-minute headways during much of the day. The Penitencia Creek LRT Station is served by the Mountain View-Alum Rock LRT Line (Orange Line).

Express bus route 104 stops adjacent to the Penitencia Creek LRT station and provides limited service: two buses during the morning commute and two buses during the evening commute. Local bus route 61 operates along Berryessa Road with stops located approximately ¼-mile north of the project site. Route 61 provides service between Good Samaritan Hospital and the Piedmont Road/Sierra Road intersection with 20-minute headways during the weekday AM and PM peak commute hours. Local bus route 70 operates along Flickinger Avenue and along Berryessa Road west of Flickinger Avenue with stops located about ¾-mile west of the project site. Route 70 provides service between the Milpitas BART station and Eastridge Mall with 20-minute headways during the weekday AM and PM peak commute periods of the day.

Impacts and Mitigation

Thresholds per CEQA Checklist

ENVIRONMENTAL IMPACTS		Potentially Significant Issues	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact	Checklist Source(s)
17.	TRANSPORTATION. Would the project:					
a)	Conflict with program plan, ordinance or policy addressing the circulation system, including transit, roadway, bicycle and pedestrian facilities?			X		1, 2, 15
b)	Would the project conflict or be inconsistent with CEQA Guidelines Section 15064.3, subdivision (b)?		X			1, 2, 15
c)	Substantially increase hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?			X		1, 2, 15
d)	Result in inadequate emergency access?			X		1, 2, 15

Explanation

a) **Less Than Significant Impact**. The results of the transportation study related to bicycle, pedestrian, and transit facilities are summarized below. Roadway operations are described as part of the LTA for the project described later in this section.

Bicycle, Pedestrian, and Transit Facilities

Bike and Pedestrian Facilities. The project would reconstruct the existing sidewalks and curbs on N. Capitol Avenue, Penitencia Creek Road, and Kestral Way along the entire project frontages. There would be a 15-foot attached sidewalk with tree wells on N. Capitol Avenue and a 10-foot attached sidewalk with tree wells on Penitencia Creek Road. The new sidewalk on Kestral Way would be 5 feet wide, consistent with the existing sidewalk on Kestral Way. The project would also include new standard ADA compliant curb ramps with truncated domes added to the northwest and southwest corners of the N. Capitol Avenue/Penitencia Creek Road intersection and to the northeast and southeast corners of the Kestral Way/Penitencia Creek Road intersection (all four project corners). Truncated domes are the standard design requirement for detectable warnings which enable people with visual disabilities to determine the boundary between the sidewalk and the street.

The reconstructed sidewalks would provide pedestrian access to multiple residential entrances around the site, as well as to the amenity space, leasing office, and secure bike room. The bike room would provide 188 bicycle parking spaces.

As mentioned above, the N. Capitol Avenue is designated a Class IV protected bike facility per the City of San José Better Bike Plan 2025. Class IV protected bicycle facility improvements along both sides of N. Capitol Avenue are planned between Penitencia Creek Road and Gilchrist Road. The bicycle facility improvements would help connect the eastern and western ends of the Penitencia Creek Trail network. As part of mitigation measure TR-1 identified below, the project plans to construct the bike access improvements along N. Capitol Avenue.

The project plans to construct a new crosswalk on the south leg of the N. Capitol Avenue/Penitencia Creek Road intersection, including pedestrian signal heads with push buttons and new ADA compliant curb ramps. This improvement would provide a safe connection between the eastern and western ends of the Penitencia Creek Trail. In addition, the project would install all-way stop control and crosswalks (including signage and striping) at the Penitencia Creek Road/Kestral Way intersection.

Safe and direct pedestrian and bicycle access to the three schools in the area is provided via a continuous network of sidewalks and striped bike lanes along the streets in the surrounding area. The project should consider working with the 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 may 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.

Transit Services. The Penitencia Creek LRT Station, located a short walk (about 500 feet) from the project site, is served by frequent LRT trains and VTA express bus route 104. Due to the convenient location of the LRT Station, it is reasonable to assume that some residents would utilize the transit services provided. The City's General Plan identifies a transit commute mode split target of 20 percent or more for the year 2040. This level of transit ridership is a reasonable goal for a high-density residential project such as this that is located within walking distance of an LRT station. It is estimated that the increased transit demand generated by the proposed project could be accommodated by the current available ridership capacities of the transit services in the study area.

In conclusion, based on the discussion above the project would not conflict with any program plan, ordinance, or policy addressing the circulation system, including transit, roadway, bicycle and pedestrian facilities.

b) **Less Than Significant with Mitigation Incorporated**. As described above, City Council Policy 5-1 establishes the thresholds for transportation impacts under CEQA based on VMT. The project would be consistent with CEQA Guidelines Section 15064.3 (b), which calls for evaluation of a project's transportation impacts based on VMT, since this was the metric used for the transportation analysis.

Project VMT Analysis

The project-level impact analysis under CEQA uses the VMT metric to evaluate a project's transportation impacts by comparing against the VMT thresholds of significance as established in the Transportation Analysis Policy. The City of San José's Transportation Analysis Handbook, 2020 includes screening criteria for projects that are expected to result in less-than-significant VMT impacts based on the project description, characteristics and/or location. Although the proposed project includes high-density residential development and is located within walking distance of the Penitencia Creek LRT Station, the residential component of the project does not meet the screening criteria (as described in Chapter 1) because the project is not located within a Planned Growth Area according to the City's General Plan, and the project is located in an area in which the per-capita VMT is greater than the CEQA significance threshold. Therefore, a detailed CEQA transportation analysis (i.e., VMT analysis) was prepared for the residential project. Note that the small amount of office space being proposed does meet the City's criterion for small office infill projects.

The San José VMT Evaluation Tool was used to estimate the residential project VMT based on the project location (APN), type of development, project description, and proposed trip reduction measures. The threshold of significance for residential uses (see Table 1 in Chapter 1) is used for the VMT analysis. The VMT threshold for residential uses is the existing citywide average daily VMT level (11.91 per capita) minus 15 percent, or 10.12 daily VMT per capita.

Since the VMT generated by the project would exceed the threshold of significance for residential uses in the area, the project would result in a significant transportation impact on VMT, and mitigation measures are required. Based on the four VMT reduction strategy tiers included in the VMT Evaluation Tool, the transportation study recommends that the project implement bike access improvements, pedestrian network improvements, and traffic calming, as well as provide an on-site car sharing program and a voluntary travel behavior change program to mitigate the significant VMT impact. These measures are described below.

Impact TR-1: The project daily VMT generated by the project would be 10.86 per capita, which exceeds the residential threshold of 10.12 daily VMT per capita. Since the VMT generated by the project would exceed the threshold of significance for residential uses in the area, the project would result in a significant transportation impact on VMT. The project proposes a Transportation Demand Management (TDM) program that will include the measures below.

Mitigation Measures

MM TR-1.1 Prior to the issuance of any development permits, the project applicant shall prepare plans that illustrate the design of the 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 Class IV protected bike lanes along both sides of N. Capitol Avenue between Penitencia Creek Road and Gilchrist Road per the San Jose Better Bike Plan 2025. These bikeway segments would connect the eastern and western trailheads of the Penitencia Creek Trail along N. Capitol Avenue. Implementation of these improvements would require coordination with the City of San José Department of Parks, Recreation & Neighborhood Services (PRNS).

- Pedestrian Network Improvements. Construct a new crosswalk along the south leg of the N. Capitol Avenue/Penitencia Creek Road intersection, including pedestrian signal heads with push buttons and ADA curb ramps. This would provide an additional connection for Penitencia Creek Trail between the eastern and western trailheads.

- Traffic Calming Measures. Narrow the existing travel lane widths along N. Capitol Avenue between Penitencia Creek Road and Gilchrist Road in conjunction with the construction of Class IV protected bike lanes. The

project shall also install an all-way stop control and crosswalks at the intersection of Penitencia Creek Road and Kestral Way.

Final plans shall be submitted and review at the Public Improvement Plan. Improvements shall be constructed prior to the issuance of the final occupancy permit.

MM TR-1.2 Prior to issuance of any development or occupancy permits for the apartment complex, the project applicant shall implement the following Transportation Demand Management (TDM) Plan for the apartment component:

- Car Sharing Program. Provide subsidized memberships to a car sharing program eligible to 90% of residents.

- Voluntary Travel Behavior Change Program. Provide a travel behavior change program which includes mass communication campaigns and travel feedback programs that encourage use of using transit, walking, and biking. It is expected that 75% of residents will participate.

MM TR-1.3 **On-site TDM Coordinator and Annual Monitoring.** Prior to the issuance of any development or occupancy permits for the apartment complex, the project applicant shall provide a draft TDM plan (including one or more options above) prior to issuance of Planning Permit for review and approval. Prior to clearance for building occupancy, a final TDM Plan shall be submitted and shall include an annual monitoring requirement establishing an average daily trip (ADT) cap of 120 AM peak-hour trips and 146 PM peak-hour trips. The annual monitoring shall be prepared by a qualified traffic engineer and the report must demonstrate the project is within 10% of the ADT cap. If the project is not in conformance with the trip cap, the project must add additional TDM measures to meet the trip cap. A follow up report shall be required within six months of the last approved TDM. If the project is still out of conformance, penalties will be assessed. 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 of San José Planning, Building and Code Enforcement Department or the Director's designee for the life of the project.

In conclusion, based on the City's VMT Evaluation Tool, implementing the multimodal infrastructure improvements and TDM measures described above would lower the project VMT to 10.04 per capita, which would reduce the project impact to a less than significant level (below the City's threshold of 10.12 VMT per capita). The mitigation measures and the resulting reduction in VMT per capita are summarized in Table 17 below.

Table 17 Summary of VMT Mitigation Measures and Resulting VMT per Capita				
Mitigation Measure	**Mitigation Description**	**Vehicle Miles Traveled (VMT)**		
		VMT Per Capita with Single Mitigation Measure	**Residential Threshold (VMT/Capita)**	**Significant VMT Impact?**
1 – Bike Access Improvements (Tier 2)	Per the City of San Jose Better Bike Plan 2025, Class IV protected bicycle facility improvements along N. Capitol Ave are planned between Penitencia Creek Rd and Gilchrist Rd. The bicycle facility improvements would help connect the eastern and western ends of the Penitencia Creek Trail. The project should construct these planned bike access improvements along N. Capitol Ave. Implementation of these improvements would require coordination with the City of San Jose Department of Parks, Recreation & Neighborhood Services (PRNS). These multi-modal infrastructure improvements would promote bicycling, thus reducing drive-alone commute trips. Providing new bicycle facilities that close gaps in existing multi-use trail networks improves bike access and circulation and promotes bicycling as an alternative to driving.	10.84	10.12	YES
2 – Pedestrian Network Improvements (Tier 2)	The project would construct a new crosswalk on the south leg of the N. Capitol Ave/Penitencia Creek Rd intersection, including pedestrian signal heads with push buttons and new ADA compliant curb ramps. This improvement would provide a safe connection between the eastern and western ends of the Penitencia Creek Trail. Adding this 4th crosswalk to the intersection would require signal modifications and re-striping. This improvement would also require California Public Utilities General Order 88-B (CPUCGO88-B) coordination and approval, since the crosswalk would cross the LRT tracks. Providing pedestrian improvements and enhancing off-site pedestrian connections would encourage people to walk instead of drive.	10.64	10.12	YES
3 – Traffic Calming Measures (Tier 2)	Class IV protected bicycle facility improvements along N. Capitol Ave are planned between Penitencia Creek Rd and Gilchrist Rd. As a result of these bicycle improvements, the existing travel lane widths along Capitol Ave would be narrowed. Narrowing travel lane widths results in reduced vehicle speeds. The project should construct these planned bicycle improvements. In addition, the project would install all-way stop control and crosswalks (including signage and striping) at the Penitencia Creek Rd/Kestral Wy intersection. Providing traffic calming measures such as narrowing travel lane widths and adding stop control to intersections creates a safer environment and promotes walking and biking as alternatives to driving. Accordingly, these multi-modal infrastructure improvements would reduce drive-alone commute trips.	10.64	10.12	YES

Table 17 Summary of VMT Mitigation Measures and Resulting VMT per Capita				
Mitigation Measure	**Mitigation Description**	**Vehicle Miles Traveled (VMT)**		
		VMT Per Capita with Single Mitigation Measure	**Residential Threshold (VMT/Capita)**	**Significant VMT Impact?**
4 – Car Sharing Program (Tier 4)	The project would provide subsidized memberships to a car sharing program (e.g., Zipcar, City Carshare) for future residents of the apartments upon request. Dedicated car share parking would also be provided in a preferential on-site location. Car sharing services are a low-cost alternative to car ownership and provide flexibility to those who use other transportation modes for their daily commute but may need to access a car for mid-day errands. Car sharing helps support the use of walking, biking, carpooling, and transit by providing another means for business/day trips or a guaranteed ride home option, allowing for overall reductions in automobile use.	10.80	10.12	YES
5 – Voluntary Travel Behavior Change Program (Tier 4)	The project would provide a program that targets individual attitudes and behaviors 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.	10.53	10.12	YES
VMT Per Capita with Implementation of all 5 Mitigation Measures:		**10.04**	**10.12**	**NO**

Cumulative VMT Analysis

Projects must demonstrate consistency with the Envision San José 2040 General Plan to address cumulative impacts. Consistency with the City's General Plan is based on the project's density, design, and conformance to the General Plan goals and policies. If a project is determined to be inconsistent with the General Plan, a cumulative impact analysis is required as part of the City's Transportation Analysis Handbook.

The project site (both parcels) is designated *Transit Residential* on the Land Use/Transportation Diagram of the Envision San José 2040 General Plan. This is the primary land use designation for high-density mixed-use residential development sites located in close proximity to transit, jobs, amenities and services, and supports development with a density between 50 and 250 dwelling units per acre (du/ac) and a floor area ratio (FAR) from 2.0 to 12.0.

As proposed, the residential project would develop a total of 381 dwelling units on the two parcels that make up the project site. This would result in a combined development density of approximately 110 DU/AC (381 DU / 3.47 AC = 110 DU/AC), which would be consistent with the density of the General Plan land use designation. The project would also include a small amount of office space, which would be consistent with the mixed-use residential and commercial development allowed under the *Transit Residential* land use designation.

Since the project would conform to the current General Plan, a General Plan Amendment (GPA) would not be required. The project would be considered part of the cumulative solution to meet the General Plan's long-range transportation goals and would have a less than significant cumulative impact.

c) **Less Than Significant Impact**. The project would not substantially increase hazards due to a geometric design feature or incompatible uses. During the development review process, vehicle circulation on the project site is reviewed by City staff to assure that the project complies with the City's regulations and policies.

d) **Less Than Significant Impact**. The City of San José Fire Department requires that all portions of the buildings be within 150 feet of a fire department access road and requires a minimum of 6 feet clearance from the property line along all sides of the buildings. The project would meet these emergency vehicle access (EVA) requirements.

Non-CEQA Effects

Senate Bill 743, the revised 2019 CEQA Guidelines, and Council Policy 5-1 promote the reduction of greenhouse gas emissions, the development of multimodal transportation networks, and a diversity of land uses. Due to these requirements, the vehicle miles traveled (VMT) metric promotes those statutory purposes better than level of service 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.

Trip Generation

The project would increase traffic to/from the 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, 10th Edition (2017). Trips that would be generated by the project were estimated using the ITE average trip rates for "Multifamily Housing Mid-Rise" (ITE Land Use 221). This land use category includes apartment, townhouse and condominium developments with a total of at least four dwelling units and that have between three and ten levels. As proposed, both residential developments would be at least 3 stories tall but less than 10 stories tall. Thus, the same trip rates were applied to both the apartments and the townhomes.

After applying the ITE trip rates to the proposed residential project and applying the appropriate trip reductions, the project would generate 1,758 new daily vehicle trips, with 120 new trips occurring during the AM peak hour and 146 new trips occurring during the PM peak hour. Using the inbound/outbound splits contained in the ITE *Trip Generation Manual*, the project would produce 34

new inbound and 86 new outbound trips during the AM peak hour, and 88 new inbound and 58 new outbound trips during the PM peak hour (see Table 18).

Table 18
Project Trip Generation Estimates

Land Use	Size	Daily Rate	Daily Trips	AM Peak Hour				PM Peak Hour			
				Pk-Hr Rate	In	Out	Total	Pk-Hr Rate	In	Out	Total
8 Plex Townhomes (3 Stories)[1]	32 DU	5.44	174	0.36	3	9	12	0.44	9	5	14
Apartments (7 Stories)[2]	345 DU	5.44	1,899	0.36	33	93	126	0.44	94	60	154
Location-Based Vehicle Mode Share (13%)[2]			*(269)*		*(5)*	*(13)*	*(18)*		*(13)*	*(9)*	*(22)*
Project-Specific Trip Reduction (5%)[3]			*(90)*		*(2)*	*(4)*	*(6)*		*(4)*	*(3)*	*(7)*
Net Residential Trips			**1,714**		**29**	**85**	**114**		**86**	**53**	**139**
Ground Floor Office [1]	3,000 SF	16.19	49	1.92	5	1	6	2.45	2	5	7
Location-Based Vehicle Mode Share (9%)[2]			*(4)*		*0*	*0*	*0*		*0*	*0*	*0*
Net Office Trips			**45**		**5**	**1**	**6**		**2**	**5**	**7**
Total Net Project Trips			**1,758**		**34**	**86**	**120**		**88**	**58**	**146**

Notes:
[1] Trip generation based on average rates contained in the *ITE Trip Generation Manual, 10th Edition,* for Multifamily Housing Mid-Use (Land Use 221) located in a General Urban/Suburban setting. Rates are expressed in trips per dwelling unit (DU).
[2] A 13% reduction was applied based on the location-based vehicle mode share percentage outputs (Table 6 of TA Handbook) produced from the San Jose Travel Demand Model for the place type Urban Low Transit.
[3] A 5% reduction was applied based on the external trip adjustments obtained from the City's VMT Evaluation Tool due to the increased residential density from the site as a result of the project.

Intersection LOS Evaluation

An intersection LOS analysis was performed for the following three intersections:

1. N. Capitol Avenue/Berryessa Road
2. N. Capitol Avenue/Penitencia Creek Road
3. N. Capitol Avenue/Mabury Road

The City of San José has defined significant intersection impacts as follows. The project is said to create a significant adverse impact on traffic conditions at a signalized intersection in the City of San José if for either peak hour:

1. The level of service at the intersection degrades form an acceptable LOS D or better under background conditions to an unacceptable LOS E or F under background plus project conditions, or

2. The level of service at the intersection is an unacceptable LOS E or F under background conditions and the addition of project trips cause both the critical-movement delay at the intersection to increase by four (4) or more seconds and the volume-to-capacity ratio (V/C) to increase by one percent (.01) or more.

An exception to rule #2 above applies when the addition of project trips reduces the amount of average delay for critical movements (i.e., the change in average delay for critical movements is negative). In

this case, the threshold of significance is an increase in the critical V/C value by .01 or more. A significant impact by City of San José standards is said to be satisfactorily mitigated when measures are implemented that would restore intersection level of service to background conditions or better.

The results of the analysis show that all but one of the signalized study intersections are currently operating at an acceptable level of service (LOS D or better) during both the AM and PM peak hours of traffic and would continue to do so under background and background plus project conditions (see Table 19). The intersection of N. Capitol Avenue and Berryessa Road is operating at an unacceptable LOS E during the PM peak hour of traffic under existing and background conditions and would continue to do so under background plus project conditions. However, the project would not have an adverse effect on intersection operations according to the City's operational thresholds.

Table 19
Intersection Level of Service Summary

ID	Signalized Intersection	Peak Hour	Count Date	Existing		Background		Background Plus Project			
				Avg. Delay (sec)	LOS	Avg. Delay (sec)	LOS	Avg. Delay (sec)	LOS	Incr. In Crit. Delay (sec)	Incr. In Crit. V/C
1	N. Capitol Av & Berryessa Rd	AM	10/17/15	48.1	D	50.1	D	51.2	D	2.2	0.016
		PM	10/27/15	**55.1**	**E**	**55.8**	**E**	**56.4**	**E**	**0.7**	**0.016**
2	N Capitol Av & Penitencia Creek Rd	AM	04/04/18	28.1	C	28.1	C	32.2	C	2.2	0.042
		PM	04/04/18	23.3	C	23.5	C	24.5	C	1.5	0.027
3	N Capitol Av & Mabury Rd	AM	09/25/18	39.5	D	39.8	D	40.0	D	0.2	0.004
		PM	09/25/18	38.9	D	39.4	D	39.5	D	0.2	0.004

Notes:
Bold indicates a substandard level of service per City of San Jose Standards.

Conclusion: The project would have a less than significant impact on transportation with identified mitigation measures.

R. TRIBAL CULTURAL RESOURCES

Regulatory Framework

State

Assembly Bill 52

Assembly Bill (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 (TCRs). AB 52 requires lead agencies to provide notice of projects to tribes that are traditionally and culturally affiliated with the geographic area if they have requested to be notified. Where a project may have a significant impact on a tribal cultural resource, consultation is required until the parties agree to measures to mitigate or avoid a significant effect on a tribal cultural resource or 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,[47] or
    - Included in a local register of historical resources as defined in Public Resources Code 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 (MND) that either predates AB 52 or that has already complied with AB 52.

The Native American Heritage Commission

The Native American Heritage Commission (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.

[47] 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)).

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.

General Plan

The Envision San José 2040 General Plan includes the following tribal cultural resource policies applicable to the Proposed Project:

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 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.

Environmental Setting

Assembly Bill (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 (TCRs). AB 52 requires lead agencies to provide notice of projects to tribes that are traditionally and culturally affiliated with the geographic area if they have requested to be notified. See additional discussion under "Regulatory Framework" above.

On September 16, 2021, the City sent an Early Notice request for interest to consult on the project. On September 18, 2021, the City received a response to the City's Early Notice Request for AB 52 Consultation from Tamien Nation.

Impacts and Mitigation

Thresholds per CEQA Checklist

ENVIRONMENTAL IMPACTS	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact	Checklist Source(s)
18. TRIBAL CULTURAL RESOURCES. Would the project:					
a) Cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code section 21074 as either a site, feature, place, cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American tribe, and, and that is: i) Listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code Section 5020.1(k), or ii) A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code Section 5024.1. In applying the criteria set forth in subdivision (c) of Public Resource Code Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe.			X		1, 2

a) i, ii **Less Than Significant Impact**. 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. 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 November 5, 2021, the City sent an Early Notice request for interest to consult on the project. On March 2, 2022, the City followed up again with the potential interested tribe and received a response on March 2nd that the Tamien Nation is interested in consulting. The project was discussed at the Tamien Nation and City of San José's virtual monthly meeting on March 10, 2022. At this meeting, Staff presented the proposed project and described its location and requested any 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 measure MM CR-1.3 above. Staff sent an email summary and conclusion of AB 52 consultation on April 13, 2022.

Conclusion: The project would have a less than significant impact on tribal resources.

S. UTILITIES AND SERVICE SYSTEMS

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 (2011)

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 (2014)

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 (2016)

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 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

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 of San José foster a healthier community and achieve its Climate Smart San Jose 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% 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 of San José requires 75 percent diversion of nonhazardous construction and demolition debris for projects that quality under CALGreen, which is more stringent than the state requirement of 65 percent (San José Municipal Code Section 9.10.2480).

San José Zero Waste Strategic Plan/Green Vision

The City's Green Vision provides a comprehensive approach to achieving sustainability through technology and innovation. The Zero Waste Strategic Plan outlines policies to help the City of San José facilitate a healthier community and achieve its Green Vision goals, including 75 percent waste diversion by 2013, which has been achieved, and zero waste by 2022.

Council Policy 8-13 Green Building Policy

Council Policy 8-13 "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.

General Plan Policies

Policies in the General Plan have been adopted for the purpose of avoiding or mitigating utilities and service system impacts from development projects. Policies applicable to the proposed project are presented below.

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.
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.

Envision San José 2040 Relevant Utilities and Service System Policies	
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.

Existing Setting

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 of San José
- Water Service: San Jose Water Company (SJWC)
- Storm Drainage: City of San José
- Solid Waste: Garden City Sanitation (garbage), California Waste Solutions (Recycling), and GreenWaste Recovery (Yard Trimmings)
- Natural Gas & Electricity: San Jose Clean Energy and PG&E

Existing Water Supply System

Water service to the project site is provided by San José Water Company (SJWC). The project applicant would be required to acquire a "will serve" letter from SJWC to assure adequate water is available to serve the proposed residential uses.

Groundwater

SJWC draws water from the Santa Clara Valley Subbasin in the north part of Santa Clara County. The basin is 22 miles long and 15 miles wide with an operational storage capacity estimated to be 350,000 acre-feet. Groundwater is a substantial source of water for SJWC. In 2014, groundwater accounted for about 57 percent of SJW's total potable supply.

Surface Water

SJWC has "pre-1914 surface water rights" to raw water in Los Gatos Creek and local watersheds in the Santa Cruz Mountains. Prior to 1872, appropriative water rights could be acquired by simply taking and beneficially using water. In 1914, the Water Code was adopted, grandfathering in all existing water entitlements to license holders. SJWC filed for a license in 1947, and in 1976 was granted a license allowing it to draw 6,240 acre-feet per year (AFY) from Los Gatos Creek. SJWC has since upgraded the collection and treatment system that draws water from this watershed, which has increased the capacity of this entitlement to approximately 11,200 AFY for an average rain year.

Recycled Water

South Bay Water Recycling (SBWR) has been serving Silicon Valley communities since 1993. In 1997, SJWC entered into a Wholesaler-Retailer Agreement with the City of San José to provide recycled water to SJWC's existing and new customers near SBWR recycling water distribution facilities. In accordance with the terms of this agreement, SJWC allowed SBWR to construct recycled water pipelines in its service area; SJWC would only own the recycled water meters while SBWR would own, operate, and maintain the recycled water distribution system. In 2010, the Wholesaler-

Retailer Agreement was amended to allow SJWC to construct recycled water infrastructure that would be owned, operated, and maintained by SJWC. In 2012, the agreement was again amended to allow SJWC to construct additional recycled water infrastructure.

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 of San José. Wastewater generated on the project site would be discharged to the existing 6-inch vitrified clay pipe (VCP) sanitary sewer line located in Heron Court.

Wastewater treatment service for the project area is provided by the City of San José through the San José-Santa Clara Regional Wastewater Facility (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 RWF treats approximately 110 million gallons per day (mgd) of sewage during dry weather flow, and has a capacity of 167 mgd.[48] The City of San José generates approximately 69.8 mgd of dry weather average flow.[49] Fresh water flow from the RWF is discharged to the South San Francisco Bay or delivered to the South Bay Water Recycling Project for distribution.

Existing Solid Waste Disposal System

Santa Clara County's Integrated Waste Management Plan (IWMP) was approved by the California Integrated Waste Management Board (CIWMB) 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 landfill diversion requirement of 50 percent per year. According to the IWMP, the County has adequate disposal capacity beyond 2030.[50] In 2019, there were approximately 600,000 tons of material generated in San Jose that was disposed in various landfills throughout the State. Newby Island, however, only received approximately 290,000 of that tonnage.

Existing Storm Drainage System

The project site is served by an underground storm drainage line maintained by the City of San José. Runoff from project area is directed to the existing 21-inch reinforced concrete pipe (RCP) storm drainage line located in North Capitol Avenue.

Electricity and Natural Gas

SJCE is the electricity provider for residents and businesses in the City of San José. SJCE sources electricity, and PG&E delivers it to customers using existing PG&E utility lines. SJCE buys its power

[48] City of San José. "San José/Santa Clara Regional Wastewater Facility." https://www.sanjoseca.gov/your-government/environment/water-utilities/regional-wastewater-facility.
[49] City of San José. *Envision San José 2040 General Plan FEIR.* September 2011. Page 648.
[50] Santa Clara County. *Five-Year CIWMP/RAIWMP Review Report.* June 2016.

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 2018, natural gas facilities provided 15 percent of PG&E's electricity delivered to retail customers; nuclear plants provided 34 percent; hydroelectric operations provided 13 percent; renewable energy facilities including solar, geothermal, and biomass provided 39 percent, and two percent was unspecified.[51]

Total energy usage in California was approximately 7,881 trillion 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 Btu) for transportation. This energy is mainly supplied by natural gas, petroleum, nuclear electric power, and hydroelectric power.

Impacts and Mitigation

Thresholds per CEQA Checklist

ENVIRONMENTAL IMPACTS	Potentially Significant Issues	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact	Checklist Source(s)
19. UTILITIES AND SERVICE SYSTEMS. Would the project:					
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?			X		1, 2
b) Have sufficient water supplies available to serve the project and reasonably foreseeable future development during normal, dry and multiple dry years?			X		1, 2
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?			X		1, 2
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?			X		1, 2
e) Comply with federal, state, and local management and reduction statutes and regulations related to solid waste?			X		1, 2

[51] PG&E, Delivering low-emission energy. Available at: https://www.pge.com/en_US/about-pge/environment/what-we-are-doing/clean-energy-solutions/clean-energy-solutions.page

Explanation

a) **Less Than Significant Impact**. The project would incrementally increase demands on utility services. Given the small scale of the project (382 residential units), the increase in utility demand is expected to be minor, since it represents a small fraction of the total growth identified in the City's General Plan (the project does not propose any changes to the land use designations on the site).

Water service to the site would be supplied by the San Jose Water Company (SJWC), a private entity that obtains water from a variety of groundwater and surface water sources. The project applicant would be required to acquire a "will serve" letter from SJWC to assure adequate water is available to serve the proposed mixed uses.

The City of San José owns and maintains the sanitary sewer drain system in the project area. Existing 6" sewer mains extend along Heron Court and Riparian Court in the vicinity of the project. The project proposes to construct new 6" and 9" sanitary sewer mains to serve the proposed townhome development. These new sewer mains would tie into the City's existing sewer mains described above.

As described in *Section J. Hydrology and Water Quality*, the project would not significantly impact storm drainage facilities. While the project would result in an increase in the amount of impervious surfaces on the site; the resulting increase in runoff from the site would be managed and treated in accordance with City policies, which includes implementation of a stormwater control plan.

As described in *Section F. Energy,* the project would have a less than significant impact related to natural gas and electricity use (among other energy sources). 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 this infill project.

For the reasons presented above, the project is not expected to require or result in the relocation or construction of new or expanded water, wastewater treatment, storm water drainage, electric power, natural gas, or telecommunications facilities, the construction or relocation of which could cause significant environmental effects.

b) **Less Than Significant Impact**. As described above, the project applicant would be required to acquire a "will serve" letter from SJWC to assure adequate water is available to serve the proposed mixed uses from existing entitlements and resources (during normal, dry and multiple dry years).

c) **Less Than Significant Impact**. Wastewater from the City of San José is treated at the RWF. The RWF has the capacity to provide tertiary treatment of up to 167 million gallons of wastewater per day (mgd) but is limited to a 120 mgd dry weather effluent flow by the State and Regional Water Quality Control Boards. Based on the General Plan EIR, the City's average dry weather flow is approximately 69.8 million gallons per day and the City's capacity allocation is approximately 108.6 mgd, leaving the City with approximately 38.8 mgd of excess treatment capacity. Given the small scale of the proposed project, it is not expected to exceed

the City's allocated capacity at the RWF; therefore, development of the project would have a less than significant impact on wastewater treatment capacity.

d) **Less Than Significant Impact**. The project would not generate substantial solid waste that would adversely affect any landfills. The City's General Plan EIR concluded that growth identified in the General Plan would not exceed the capacity of existing landfills serving the City of San José. The project does not propose changes to the land use designations on the site and was included in the growth evaluated in the General Plan EIR.

The increase in solid waste generation from development of the project would be avoided through implementation of the City's Zero Waste Strategic Plan, which set a goal of 75 percent waste diversion by 2013 and zero waste by 2022. The Waste Strategic Plan in combination with existing regulations and programs, would ensure that the project would not result in significant impacts on solid waste generation, disposal capacity, or otherwise impair the attainment of solid waste reduction goals. Furthermore, with the implementation of City policies to reduce waste the project would comply with all federal, state, and local statutes and regulations related to solid waste.

e) **Less Than Significant Impact**. Final project design would be required to comply with all federal, State, and local statutes and regulations related to solid waste disposal.

Conclusion: The project would have a less than significant impact on utilities and service systems.

T. WILDFIRE

Regulatory Framework

State

Public Resources Code Section 4201 – 4204

Sections 4201 through 4204 of the California Public Resources Code direct Cal Fire to map Fire Hazard Severity Zones (FHSZ) within State Responsibility Areas (SRA), 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 (LRA). 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

General Plan Policies

Policies in the 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 below.

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.

Existing Setting

The project site, located in an urbanized part of the City, is surrounded by residential and commercial development and is not located within a Very-High Fire Hazard Severity Zone (VHFHSZ) for wildland fires, as designated by the California Department of Forestry and Fire Protection (Cal Fire, Fire Hazard Severity Maps, 2007, 2008).

Impacts and Mitigation

ENVIRONMENTAL IMPACTS		Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact	Checklist Source(s)
20.	WILDFIRE. If located in or near state responsibility areas or lands classified as very high fire hazard severity zones, would the project:					
a)	Substantially impair an adopted emergency response plan or emergency evacuation plan?			X		1, 2, 3
b)	Due to slope, prevailing winds, and other factors, exacerbate wildfire risks, and thereby expose project occupants to, pollutant concentrations from a wildfire or the uncontrolled spread of a wildfire?			X		1, 2, 3, 16
c)	Require the installation or maintenance of associated infrastructure (such as roads, fuel breaks, emergency water sources, power lines or other utilities) that may exacerbate fire risk or that may result in temporary or ongoing impacts to the environment?			X		1, 2, 3, 16
d)	Expose people or structures to significant risks, including downslope or downstream flooding or landslides, as a result of runoff, post-fire slope instability, or drainage changes?			X		1, 2, 3, 16

Explanation

a) **Less Than Significant Impact**. The project would not substantially impair an adopted emergency response plan or emergency evacuation plan. As stated above in *Section J. 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.

b) **Less Than Significant Impact**. 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 Area.

c) **Less Than Significant Impact**. 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.

d) **Less Than Significant Impact**. 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.

Conclusion: The project would result in a less than significant impact related to wildfire.

U. MANDATORY FINDINGS OF SIGNIFICANCE

ENVIRONMENTAL IMPACTS	Potentially Significant Issues	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact	Checklist Source(s)
21. MANDATORY FINDINGS OF SIGNIFICANCE.					
a) Does the project have the potential to substantially degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, substantially reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?		X			1-22
b) Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?		X			1-22
c) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?			X		1-22

Explanation

a) **Less Than Significant with Mitigation Incorporated**. Based on the analysis provided in this Initial Study, the proposed project would not have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory. Mitigation measures and standard permit conditions are identified for potential impacts of the project on special status species (nesting birds) and potential disturbance to cultural resources (buried archaeological resources) to reduce these effects to a less than significant level.

b) **Less Than Significant with Mitigation Incorporated**. Based on the analysis provided in this Initial Study, the proposed project will not significantly contribute to cumulative impacts. As discussed in *Section C. Air Quality* and *Section H. Greenhouse Gas Emissions*, the project would have a less than significant impact related to criteria air pollutants and GHG emissions. As discussed in *Section M. Noise & Vibration*, there are no planned or approved within 1,000 feet of the proposed project site and no cumulative construction impacts would occur in the project vicinity. As discussed in *Section Q. Transportation*, the project would have a less than significant impact related to cumulative VMT. For these reasons, the project would have a less than significant cumulative impact on air quality overall.

The project would result in potential impacts in the following areas: 1) impacts to air quality from TAC emissions during construction, 2) impacts on biological resources during construction from disturbance to nesting birds, 3) potential impacts to buried archaeological resources during excavation, 4) possible hazardous materials effects if unknown and unexpected materials are encountered during construction, 5) noise impacts from construction,

6) vibration impacts to nearby buildings during construction, and 7) transportation VMT impacts. These impacts would be minimized by implementation of identified mitigation measures and standard permit conditions in this document, and would not significantly contribute to cumulative impacts in these areas.

c) **Less Than Significant Impact**. Based on the analysis provided in this Initial Study, the proposed project would not result in environmental effects that would cause substantial adverse effects on human beings, either directly or indirectly, with implementation of identified mitigation measures and standard permit conditions.

Conclusion: The project would have a less than significant impact on the CEQA mandatory findings of significance with the incorporation of mitigation measures, standard permit conditions, and General Plan policies identified in this document.

Chapter 4. References

LEAD AGENCY

City of San José Department of Planning, Building and Code Enforcement
Christopher Burton, Director
Robert Manford, Deputy
David Keyon, Principal Planner
Cassandra Van Der Zweep, Supervisor Environmental Planning Supervisor
Nhu Nguyen, Environmental Project Manager

REPORT PREPARATION

Denise Duffy & Associates, Inc.
Environmental Consultant
Leianne Humble, Senior Planner
Robyn Simpson, Associate Planner
Troy Lawson, Assistant Planner

PERSONS CONTACTED

Zach Anderson The Hanover Company
Casey Divine, Illingworth & Rodkin
Brian Jackson, Hexagon Transportation Consultants
Carrie Janello, Illingworth & Rodkin
Grace Nolan, The Hanover Company
Scott Youdall, The Hanover Company

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2. Project plan and site review
3. 2040 Envision San José General Plan
4. 2014 Santa Clara County Important Farmlands Map
5. BAAQMD 2017 CAP
6. BAAQMD CEQA Guidelines, 2017
7. Air Quality Assessment, 2021
8. Arborist Report, 2021
9. Santa Clara Valley Habitat Plan
10. Santa Clara Valley Habitat Agency Geobrowser
11. Archaeological Review, 2021
12. Phase I Assessment, 2020
13. FEMA FIRM Maps
14. Noise & Vibration Assessment, 2021
15. Transportation Analysis, 2021

16. Cal Fire, Fire Hazard Severity Maps, 2007 & 2008
17. Phase II Assessments, 2021
18. Floodplain Design Criteria Memorandum
19. Historic Resources Assessment, 2021
20. Biological Resources Memorandum, 2021
21. Preliminary Geotechnical Investigation
22. Geotechnical Peer Review