Initial Study

1050 St. Elizabeth Drive Residential Project

Prepared by

CITY OF SAN JOSE

CAPITAL OF SILICON VALLEY

In Consultation with

50 YEARS EST. 1972 DAVID J. POWERS & ASSOCIATES, INC.

ENVIRONMENTAL CONSULTANTS & PLANNERS

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SECTION 1.0 INTRODUCTION AND PURPOSE

1.1 PURPOSE OF THE INITIAL STUDY

The City of San José, as the Lead Agency, has prepared this Initial Study for the 1050 St. Elizabeth Drive Residential Project (project, proposed project) in compliance with the California Environmental Quality Act (CEQA), the CEQA Guidelines (California Code of Regulations §15000 et. seq.) and the regulations and policies of the City of San José, California.

The project includes demolition of the existing senior living facility and associated improvements (paving, landscaping, etc.) on-site and construction of a seven-story apartment building with 206 residential units on a 2.22-acre site located at 1050 St. Elizabeth Drive in the City of San José. This Initial Study evaluates the environmental impacts that might reasonably be anticipated to result from implementation of the proposed project.

1.2 PUBLIC REVIEW PERIOD

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:

Tina Garg
City of San José
Department of Planning, Building & Code Enforcement
200 E. Santa Clara Street, 3rd Floor Tower
San José, CA 95113

1.3 CONSIDERATION OF THE INITIAL STUDY AND PROJECT

Following the conclusion of the public review period, the City will consider the adoption of the Initial Study/Mitigated Negative Declaration (MND) for the project at a regularly scheduled meeting. 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.

1.4 NOTICE OF DETERMINATION

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

SECTION 2.0 PROJECT INFORMATION

2.1 PROJECT TITLE

1050 St. Elizabeth Drive Residential Project (File Numbers H20-049/ER20-270)

2.2 LEAD AGENCY CONTACT

Tina Garg, Supervising Environmental Planner
200 E. Santa Clara Street, 3rd Floor
San José, CA 95113
Phone: (408) 353- 7895
Email: tina.garg@sanjoseca.gov

2.3 PROJECT APPLICANT

KCR Development
19620 Stevens Creek Blvd., Suite 200
Cupertino, CA 95014

2.4 PROJECT LOCATION

The 2.2-acre project site is located at 1050 St. Elizabeth Drive in the Willow Glen neighborhood of San José. The site is bordered by a school (Morgan Autism Center) to the north, a pool and recreation building for the Willowbrook Townhomes to the south, St. Elizabeth Drive and a two-story townhome development (Willowbrook Townhomes) to the west, and the Los Gatos Creek trail and Los Gatos Creek to the east. St. Elizabeth Park and a three-story multi-family apartment development are also located in the project vicinity to the north along McKinley Court, a San José Water Company storage facility is located to the northwest, along Los Gatos Creek. Religious institutional uses are located to the northwest at the southwest corner of McKinley Avenue/St. Elizabeth Drive intersection, and commercial and multi-family residential uses are located to the south and east across Los Gatos Creek from the project site. A trail connection to the Los Gatos Creek trail is located approximately 230 feet south of the project site on St. Elizabeth Street. The Santa Clara Valley Transportation Authority Fruitdale light rail station is located approximately 0.3-mile northwest of the project site. Regional, vicinity, and aerial maps of the project site are included as Figure 2.7-1, Figure 2.7-2, and Figure 2.7-3, respectively.

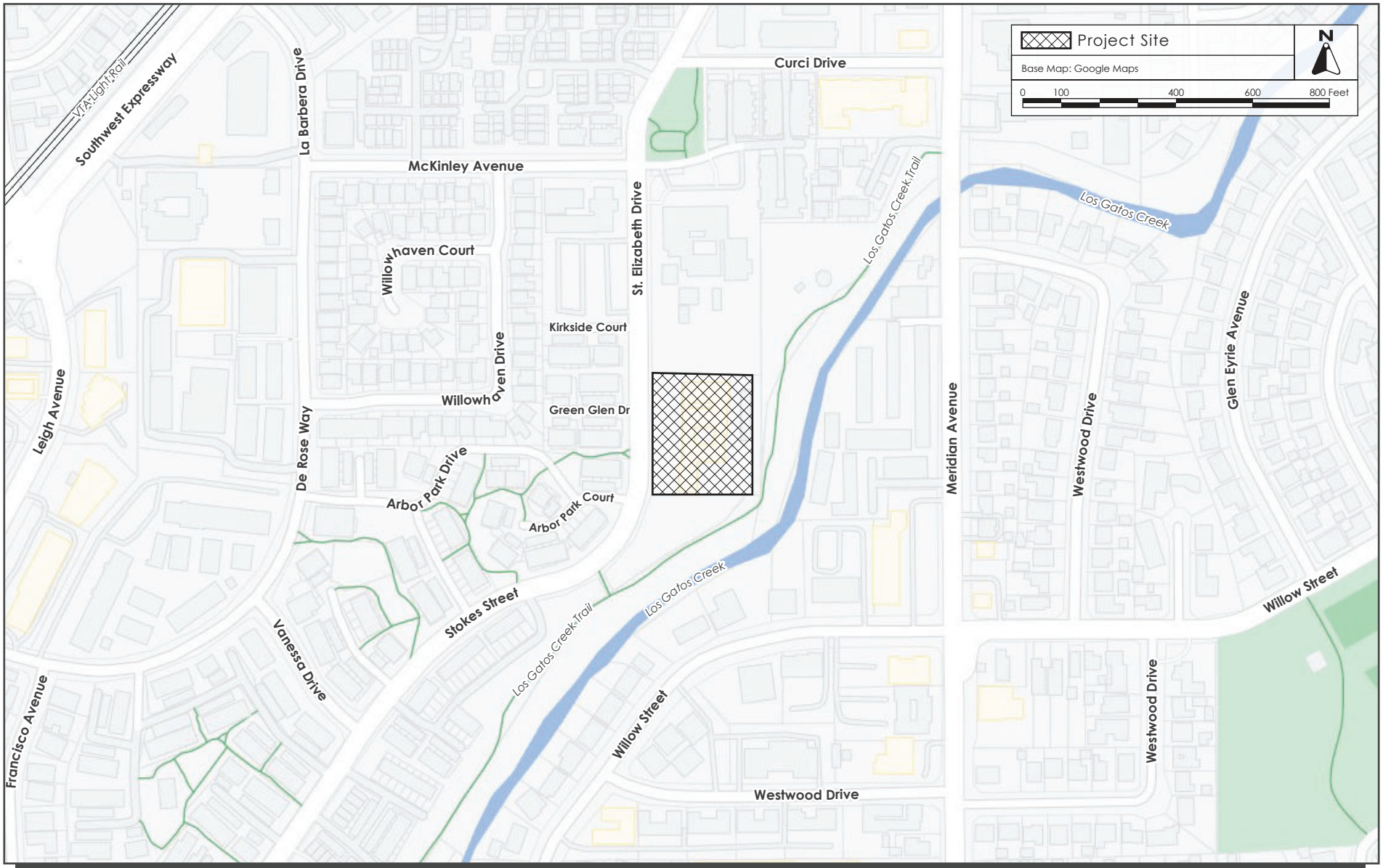
2.5 ASSESSOR'S PARCEL NUMBER

The project site is located on Assessor's Parcel Number (APN): 284-07-018

2.6 GENERAL PLAN DESIGNATION AND ZONING DISTRICT

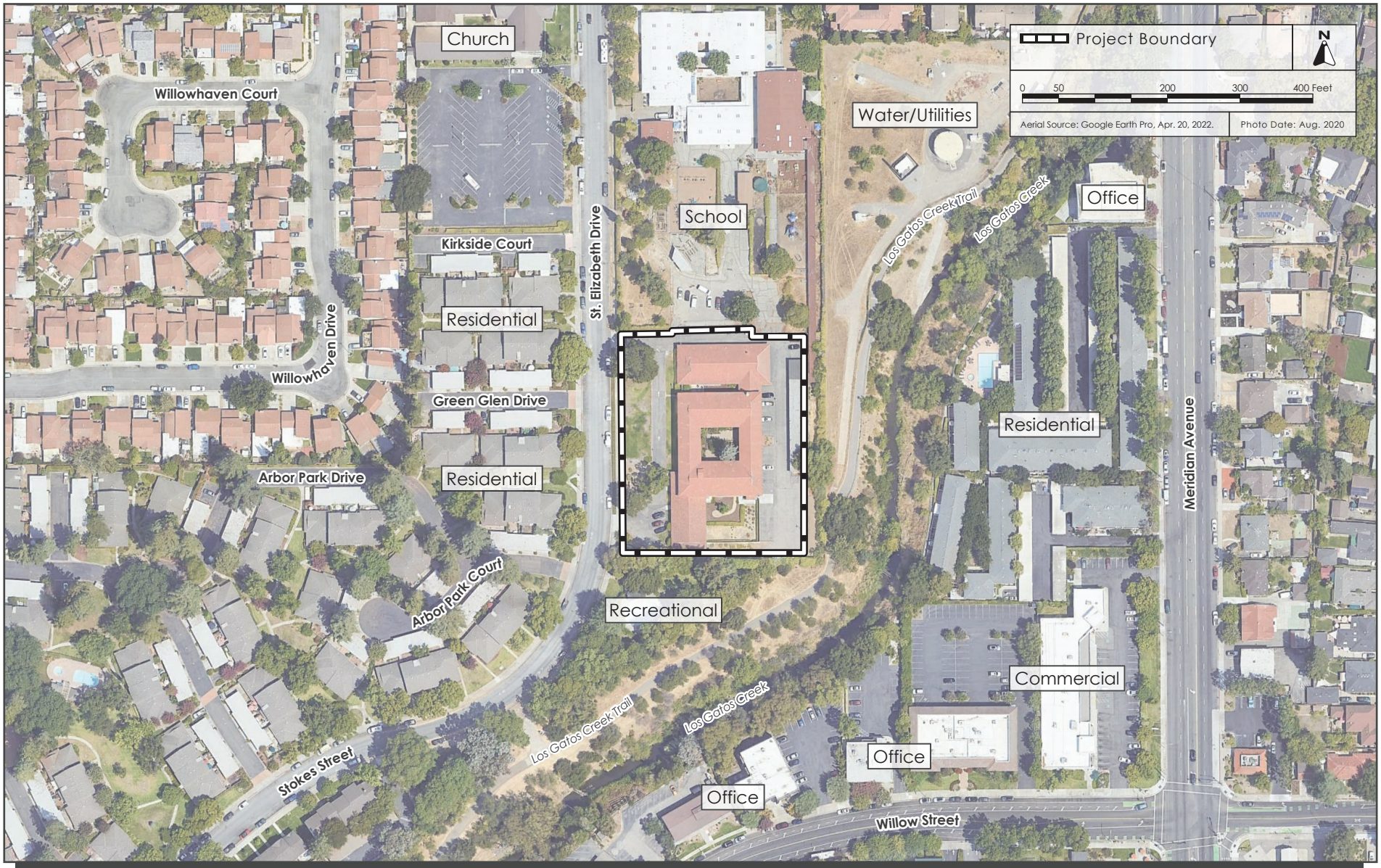
The site is designated Urban Residential in the Envision San José 2040 General Plan (General Plan). The site is zoned R-M – Multiple Residence District. Descriptions of the Urban Residential land use designation and the R-M-Multiple Residence District can be found in Section 4.11 Land Use and Planning

REGIONAL LOCATION MAP | FIGURE 2.6-1



VICINITY MAP

FIGURE 2.6-2



AERIAL PHOTOGRAPH OF THE PROJECT SITE AND SURROUNDING LAND USES | FIGURE 2.6-3

2.7 HABITAT PLAN DESIGNATION

The project site is within an Urban Private Development Area under the Santa Clara Valley Habitat Plan. The project site's land cover type is Urban- Suburban.

2.8 PROJECT-RELATED APPROVALS, AGREEMENTS, AND PERMITS

Implementation of the project would require:

- Site Development Permit
- Demolition Permit
- Grading
- Encroachment Permit
- Exception to Riparian Corridor Protection and Bird Safe Design Council Policy

SECTION 3.0 PROJECT DESCRIPTION

3.1 PROJECT DESCRIPTION

The proposed project would demolish the existing two-story, 28,223-square-foot senior housing facility,[1] parking lot, access roads, carport structure, and landscaping on-site and construct a seven-story multi-family apartment building with 206 residential units above one level of below grade parking and two levels of podium parking. The building would have a maximum height of 87 feet to the top of the building parapet and would include a leasing office, community clubhouse and game room, fitness center, resident lounge, as well as a workshop, pet wash, storage, and media/game rooms for residents. A total of 13,090-square feet of outdoor space would be provided in the form of private decks. The project would also replace the existing six-foot tall chain link fence with a new six-foot tall solid wood fence along the south, east, and north property lines. Refer to Figure 3.1-1 and Figure 3.1-2 for the site plan and elevations.

3.1.1 Site Access, Parking, and Circulation

Vehicular access to the site is currently provided via two full access driveways on St. Elizabeth Drive adjacent to the north and south project boundaries. The existing driveways would be replaced with one new full access driveway along the north project boundary and one one-way exit-only driveway along the south project boundary. Vehicles would enter the parking garage via the north driveway and exit the parking garage via either the north driveway or the south driveway.

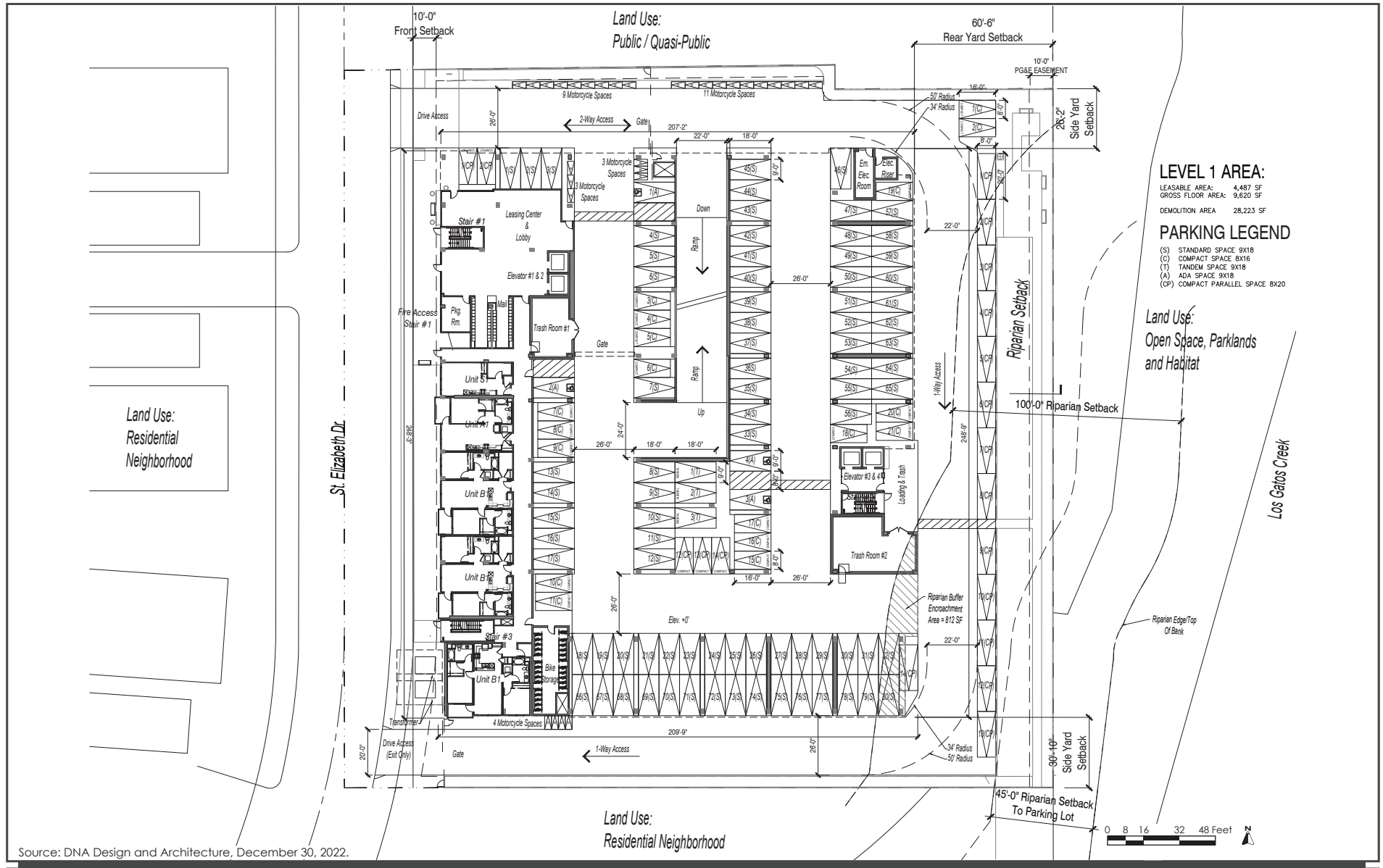
Parking would be provided through a combination of 16 surface parking spaces at the rear of the project site and 295 spaces within one level of below-grade parking and two levels of podium parking for a total of 311 parking spaces. In addition, the project would include a total of 73 bicycle parking spaces within two bike storage rooms on the first floor of the building to meet the City's bicycle parking requirement.

Pedestrian access to the site would be provided via paved pedestrian paths to the three building entrances along the St. Elizabeth frontage and the two driveways. Nine decomposed granite patios are proposed within the site along the eastern project boundary.

3.1.2 Mechanical Equipment

The project would include mechanical equipment for building heating, cooling and ventilation, as well as generators and a fire pump in case of emergency. The project would include one 84 horsepower diesel powered emergency back-up generator located in the northeast corner of the site adjacent to surface parking spaces.

[1] The senior living facility is currently unoccupied. However, because the building could be reoccupied at any time without the need for substantial renovation, the baseline for this analysis was an occupied building.



Source: DNA Design and Architecture, December 30, 2022.

CONCEPTUAL SITE PLAN

FIGURE 3.1-1

NORTH ELEVATION

WEST ELEVATION

Source: DNA Design and Architecture, March 21, 2022.

CONCEPTUAL NORTH AND WEST ELEVATIONS

FIGURE 3.1-2

SOUTH ELEVATION

EAST ELEVATION

Source: DNA Design and Architecture, March 21, 2022.

CONCEPTUAL SOUTH AND EAST ELEVATIONS

FIGURE 3.1-3

3.1.3 Utility Improvements

The project would connect to the existing sanitary sewer and storm drain lines within St. Elizabeth Drive. In addition, bioretention facilities and self-retaining areas to retain stormwater on-site are proposed. The proposed bioretention facilities would be located along the eastern project boundary, adjacent to the surface parking lot and self-retaining areas would be located on the western project frontage between the proposed building and St. Elizabeth Drive.

The existing fire hydrant on St. Elizabeth Drive would be relocated to the southwest corner of the site adjacent to the proposed one-way driveway.

3.1.4 Landscaping

Existing landscaping on the project site consists of natural turf lawn along the St. Elizabeth Drive frontage, as well as ornamental trees and shrubs. Sixteen trees are present on and adjacent to the project site. The proposed development would require removal of eight ordinance size-trees, two non-ordinance size trees, and all other landscaping on-site and plant a total of 38 new trees. Refer to Figure 3.1-4 for the conceptual landscaping plan.

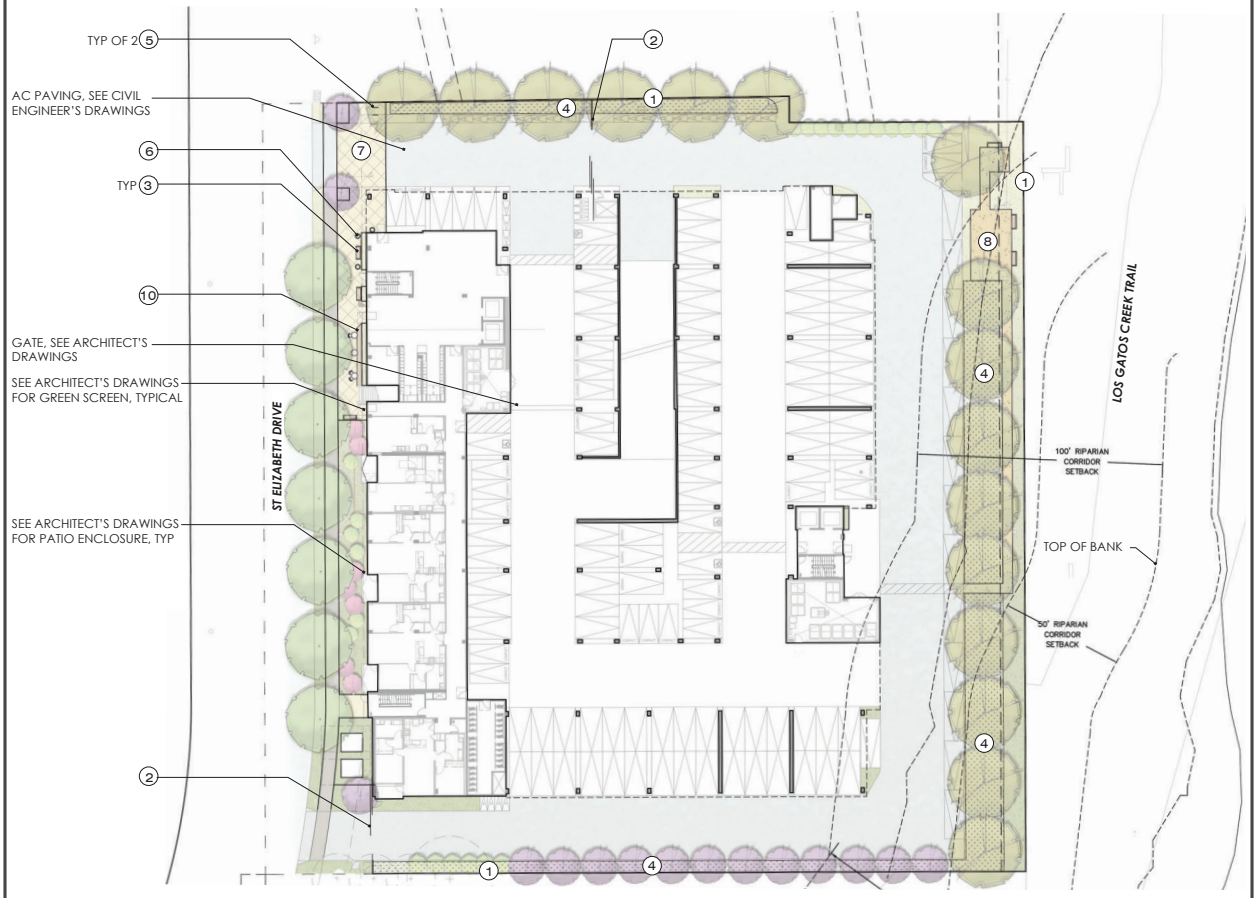
3.1.5 Construction

Construction of the project would be completed in one phase over a period of approximately one year and 10 months. Construction activities would occur between 7:00 AM and 7:00 PM. Monday through Friday. During project construction, the existing building, pavement, landscaping, and improvements on-site would be removed. The existing driveway would be retained during project construction to provide access to the site. The maximum depth of excavation required to construct the proposed project would be 11 feet below ground surface (bgs). Approximately 14,000 cubic yards of soil would be off hauled from the site with implementation of the project. No fill will be imported to the site and pile driving is not proposed.

3.1.6 Green Building Measures

The proposed project would be built to the California Green Building Standards Code (CALGreen) which includes design provisions intended to minimize wasteful energy consumption. In addition, the project would include the following green building measures and design features:

- Rooftop solar photovoltaic panels
- All electric building construction (consistent with Reach Code)
- Direct bicycle and pedestrian access to Los Gatos Creek trail
- Street furniture (benches, bike racks, and planter pots) to enhance the pedestrian environment along St. Elizabeth Drive
- Water efficient landscaping and irrigation systems
- Building designed to achieve Leadership in Engineering and Environmental Design (LEED) Silver standards



LEGEND

1. GOOD NEIGHBOR FENCE
2. VEHICULAR GATE
3. LOOSE BENCH, TYPICAL
4. STORMWATER TREATMENT PLANTER, SEE CIVIL DRAWINGS
5. SHORT-TERM BIKE PARKING, 4 SPACES PROVIDED
6. PLANTER POTS AND BENCH SEATING
7. DECORATIVE CONCRETE PAVING
8. DECOMPOSED GRANITE PATIO AND PET RELIEF AREA
9. STREET TREES IN PLANTING STRIP, TYPICAL
10. BUILT-IN BENCH

Source: DNA Design and Architecture; Jett Landscape Architecture + Design, December 30, 2022.

CONCEPTUAL LANDSCAPING PLAN | FIGURE 3.1-4

SECTION 4.0 ENVIRONMENTAL SETTING, CHECKLIST, AND IMPACT DISCUSSION

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

4.1	Aesthetics	4.12	Mineral Resources
4.2	Agriculture and Forestry Resources	4.13	Noise
4.3	Air Quality	4.14	Population and Housing
4.4	Biological Resources	4.15	Public Services
4.5	Cultural Resources	4.16	Recreation
4.6	Energy	4.17	Transportation
4.7	Geology and Soils	4.18	Tribal Cultural Resources
4.8	Greenhouse Gas Emissions	4.19	Utilities and Service Systems
4.9	Hazards and Hazardous Materials	4.20	Wildfire
4.10	Hydrology and Water Quality	4.21	Mandatory Findings of Significance
4.11	Land Use and Planning		

The discussion for each environmental subject includes the following subsections:

- **Environmental Setting** – This subsection 1) provides a brief overview of relevant plans, policies, and regulations that compose the regulatory framework for the project and 2) describes the existing, physical environmental conditions at the project site and in the surrounding area, as relevant.
- **Impact Discussion** – This subsection 1) includes the recommended checklist questions from Appendix G of the CEQA Guidelines to assess impacts and 2) discusses the project's impact on the environmental subject as related to the checklist questions. For significant impacts, feasible mitigation measures are identified. "Mitigation measures" are measures that will minimize, avoid, or eliminate a significant impact (CEQA Guidelines Section 15370).

4.1 AESTHETICS

4.1.1 Environmental Setting

4.1.1.1 *Regulatory Framework*

State

Senate Bill 743

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

- The project is a residential or mixed-use residential project, and
- The project is located on an infill site within a transit priority area.[2]

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

Scenic Highway Program

The California Scenic Highway Program (Streets and Highway Code, Sections 260 through 263) is managed by the California Department of Transportation (Caltrans). The program is intended to protect and enhance the natural scenic beauty of California highways and adjacent corridors through special conservation treatment. There are no state-designated scenic highways in San José. Interstate 280 from the San Mateo County line to State Route (SR) 17, which includes segments in San José, is an eligible, but not officially designated, State Scenic Highway.[3]

Local

City of San José General Plan

The Envision San José 2040 General Plan includes policies applicable to all development projects in San José. The following policies are specific to visual character and scenic resources and would be

[2] An "infill site" is defined as "a lot located within an urban area that has been previously developed, or on a vacant site where at least 75 percent of the perimeter of the site adjoins, or is separated only by an improved public right-of-way from, parcels that are developed with qualified urban uses." A "transit priority area" is defined as "an area within 0.5 mile of a major transit stop that is existing or planned, if the planned stop is scheduled to be completed within the planning horizon included in a Transportation Improvement Program or applicable regional transportation plan." A "major transit stop" means "a site containing an existing rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods." Source: Office of Planning and Research. "CEQA Review of Housing Projects Technical Advisory." Accessed March 1, 2022. https://opr.ca.gov/docs/20190208-TechAdvisory-Review_of_Housing_Exemptions.pdf.

[3] California Department of Transportation. "Scenic Highways." Accessed March 1, 2022. https://dot.ca.gov/programs/design/lap-landscape-architecture-and-community-livability/lap-liv-i-scenic-highways.

applicable to the proposed project:

Policy	Description
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.
CD-1.8	Create an attractive street presence with pedestrian-scaled buildings and landscaping elements that provide an engaging, safe, and diverse walking environment. Encourage compact, urban design, including use of smaller building footprints, to promote pedestrian activity throughout the City.
CD-1.12	Use building design to reflect both the unique character of a specific site and the context of surrounding development and to support pedestrian movement through the building site by providing convenient means of entry from public streets and transit facilities where applicable, and by designing ground level building frontages to create an attractive pedestrian environment along building frontages. Unless it is appropriate to the site and context, franchise-style architecture is strongly discouraged.
CD-1.13	Use development review to encourage creative, high-quality innovative, and distinctive architecture that helps to create unique, vibrant places that are both desirable urban places to live, work, and play and that lead to competitive advantages over other regions.
CD-1.17	Minimize the footprint and visibility of parking area. Where parking areas are necessary, provide aesthetically pleasing and visually interesting parking garages with clearly identified pedestrian entrances and walkways. Encourage designs that encapsulate parking facilities behind active building space or screen parked vehicles from view from the public realm. Ensure that garage lighting does not impact adjacent uses, and to the extent feasible, avoid impacts of headlights on adjacent land uses.
CD-1.23	Further the Community Forest Goals and Policies in this Plan by requiring new development to plant and maintain trees at appropriate locations on private property 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.

In addition to applicable General Plan policies, development of the project would comply with the following City policies and guidelines, as applicable:

- San José Outdoor Lighting Policy (City Council Policy 4-3, as revised 6/20/2000)
- San José Residential Design Guidelines
- San José Riparian Corridor Protection Policy

4.1.1.2 *Existing Conditions*

The project site is flat and fronts St. Elizabeth Drive. The site is currently developed with a two-story senior housing facility, two driveways, and surface parking and carport behind the residential building. Landscaping consists of a natural turf lawn along the St. Elizabeth Drive frontage as well as trees and shrubs along the project boundaries and building perimeter as shown in Photo 1.

Surrounding Area

The project site is in an area developed with predominantly modern (townhomes to the west across St. Elizabeth Drive constructed in 1980s) (refer to Photo 3) and recently constructed residential buildings (townhomes to the north constructed within the last decade) (refer to Photo 5), as well as a school (Morgan Autism Center constructed in the 1960s) (refer to Photo 2). Surrounding land uses include the Morgan Autism Center to the north, a recreation building and pool for the Willowbrook Townhomes development to the south, St. Elizabeth Drive to the west, and Los Gatos Creek trail to the east. Surrounding development beyond these developments and roadways consists of primarily two- to three-story multi-family residences to the north, one-story commercial uses to the south, across Los Gatos Creek, one-story commercial uses and two-story multi-family residential uses to the east, across Los Gatos Creek, and a two-story townhome development to the west, across St. Elizabeth Drive.

Scenic Views and Resources

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

Scenic Corridors

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

Photo 1: Existing Senior Living Facility and Mature Landscaping.

PHOTO 1

Photo 2: Adjacent One-Story School to the North.

Photo 3: Two-Story Townhomes to the West, Across St. Elizabeth Drive.

Photo 4: Los Gatos Creek Trail Looking Southwest From Southern Project Boundary.

Photo 5: Los Gatos Creek Trail Looking Northeast From Eastern Project Boundary and townhomes to north.

4.1.2 Impact Discussion

	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
Except as provided in Public Resources Code Section 21099, would the project:				
a) Have a substantial adverse effect on a scenic vista?	☐	☐	☐	☒
b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?	☐	☐	☐	☒
c) In non-urbanized areas, substantially degrade the existing visual character or quality of public views of the site and its surroundings?[4] If the project is in an urbanized area, would the project conflict with applicable zoning and other regulations governing scenic quality?	☐	☐	☒	☐
d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?	☐	☐	☒	☐

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

The proposed project would replace an existing senior living facility with a seven-story apartment building on an infill site located within a transit priority area.[5] Pursuant to SB 743 (Public Resources Code section 21099[d][1]) "aesthetic and parking impacts of a residential, mixed-use residential, or employment center on an infill site within a transit priority area shall not be considered significant impacts on the environment;" therefore, the aesthetics impacts of the project would not be significant. Nonetheless, the following discussion is included for informational purposes.

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

[4] Public views are those that are experienced from publicly accessible vantage points.
[5] In accordance with SB 743, "Transit Priority Areas" are defined as "an area within one-half mile of a major transit stop that is existing or planned, if the planned stop is scheduled to be completed within the planning horizon included in a Transportation Improvement Program adopted pursuant to Section 450.322 of Title 23 of the Code of Federal Regulations." Major Transit Stop is defined in Section 21064.3 as "a site containing an existing rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service of 15 minutes or less during the morning and afternoon peak commute periods." The project site is located approximately 0.3-mile southeast of Fruitdale light rail station which is considered a major transit stop pursuant to SB 743.

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

The project site is not located on a State Designated Scenic Highway. The nearest State Designated Scenic Highway to the project site is SR 9, approximately six miles southwest of the site. The site is not visible from SR 9. Because the project site is not located within a state scenic highway, implementation of the project would not damage scenic resources within a State Designated Scenic Highway. **(No Impact)**

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

As discussed under checklist question a. above, the project site is located within a transit priority area and would not conflict with applicable zoning. Pursuant to SB 743 (Public Resources Code section 21099[d][1]) "aesthetic and parking impacts of a residential, mixed-use residential, or employment center on an infill site within a transit priority area shall not be considered significant impacts on the environment;" therefore, the aesthetics impacts of the project would not be significant. Nonetheless, the following discussion is included for informational purposes.

The project site is located in an urbanized area of San José with buildings in the project area ranging from one- to three-stories. The project would replace an existing two-story senior living facility with a seven-story apartment building. As discussed in Section 4.11 Land Use and Urban Planning, the project site has a General Plan land use designation of Urban Residential and is zoned R-M – Multiple Residence District. Consistent with Municipal Code Section 20.85.020 (D), for properties located wholly or partially within a radius of two thousand feet of other existing or planned passenger rail stations, the maximum allowable building height shall not exceed one hundred twenty feet.

The project site is located approximately 0.3-mile southeast of Fruitdale light rail station which is an existing passenger rail station. The proposed apartment building would have a maximum height of 87 feet at the top of the building parapet which is consistent with the height standards established in the Zoning Ordinance.

In accordance with the General Plan policies, on-site parking is provided in the form of a below grade and podium level parking garage and is oriented away from the street. In addition, the project would be oriented to the street.

Photos of the surrounding development are shown in Photos 2 through 4. Figure 3.1-2 and Figure 3.1-3 show conceptual elevations of the proposed project. The proposed project would be reviewed for consistency with the City's Residential Design Guidelines during the Site Development Permit review process.

As noted above, the project would result in less than significant aesthetics impacts pursuant to SB 743 and would not substantially degrade the existing visual character of the site and surrounding

area. **(Less than Significant Impact)**

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

The project site is located in an urban area with existing residential and commercial development and vehicular traffic. The project site is currently developed with a senior living facility, surface parking, and ornamental landscaping. The existing uses result in light and glare from building-mounted security lights, streetlights, and vehicle headlights as vehicles enter and exit the project site. The proposed residential building would include security lights and parking garage lights and would incrementally increase the amount of nighttime lighting on the project site including within the Los Gatos Creek riparian corridor (refer to Section 4.4 Biological Resources, for a discussion of lighting impacts on the Los Gatos Creek riparian corridor). San José City Council Policy 4-3 (Outdoor Lighting on Private Developments) requires private developments to use energy-efficient outdoor lighting that is fully shielded and not directed skyward. All lighting installed by the project would be full cutoff lighting designed in conformance with City Council Policy 4-3. Design and construction of the project in conformance with General Plan design and lighting policies would not create a new source of nighttime light that would adversely affect views and impacts would be less than significant. **(Less than Significant Impact)**

4.2 AGRICULTURE AND FORESTRY RESOURCES

4.2.1 Environmental Setting

4.2.1.1 *Regulatory Framework*

State

Farmland Mapping and Monitoring Program

The California Department of Conservation's Farmland Mapping and Monitoring Program (FMMP) assesses the location, quality, and quantity of agricultural land and conversion of these lands over time. Agricultural land is rated according to soil quality and irrigation status. The best quality land is identified as Prime Farmland. In CEQA analyses, the FMMP classifications and published county maps are used, in part, to identify whether agricultural resources that could be affected are present on-site or in the project area.[6]

California Land Conservation Act

The California Land Conservation Act (Williamson Act) enables local governments to enter into contracts with private landowners to restrict parcels of land to agricultural or related open space uses. In return, landowners receive lower property tax assessments. In CEQA analyses, identification of properties that are under a Williamson Act contract is used to also identify sites that may contain agricultural resources or are zoned for agricultural uses.[7]

Fire and Resource Assessment Program

The California Department of Forestry and Fire Protection (CAL FIRE) identifies forest land, timberland, and lands zoned for timberland production that can (or do) support forestry resources.[8] Programs such as CAL FIRE's Fire and Resource Assessment Program and are used to identify whether forest land, timberland, or timberland production areas that could be affected are located on or adjacent to a project site.[9]

Local

Envision San José 2040 General Plan

The Envision San José 2040 General Plan includes policies applicable to all development projects in San José. No agricultural resources policies apply to the proposed project.

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[6] California Department of Conservation. "Farmland Mapping and Monitoring Program." Accessed April 22, 2022. http://www.conservation.ca.gov/dlrp/fmmp/Pages/Index.aspx.
[7] California Department of Conservation. "Williamson Act." http://www.conservation.ca.gov/dlrp/lca.
[8] Forest Land is land that can support 10 percent native tree cover and allows for management of forest resources (California Public Resources Code Section 12220(g)); Timberland is land not owned by the federal government or designated as experimental forest land that is available for, and capable of, growing trees to produce lumber and other products, including Christmas trees (California Public Resources Code Section 4526); and Timberland Production is land used for growing and harvesting timber and compatible uses (Government Code Section 51104(g)).
[9] California Department of Forestry and Fire Protection. "Fire and Resource Assessment Program." Accessed April 22, 2022. http://frap.fire.ca.gov/.

4.2.1.2 *Existing Conditions*

The Santa Clara County Important Farmland 2016 Map designates the project site as Urban and Built-Up land.[10] Urban Built-Up Land is defined as land occupied by structures with a building density of at least one unit to 1.5 acres, or approximately six structures to a 10-acre parcel. The site is currently developed with a two-story senior housing building, surface parking lot and carport, landscaping, and paved access roads. There is no forest land located on or adjacent to the project site and the site is not subject to a Williamson Act contract.

4.2.2 Impact Discussion

	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
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?	☐	☐	☐	☒
b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?	☐	☐	☐	☒
c) Conflict with existing zoning for, or cause rezoning of, forest land (as defined in 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))?	☐	☐	☐	☒
d) Result in a loss of forest land or conversion of forest land to non-forest use?	☐	☐	☐	☒
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?	☐	☐	☐	☒

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

The project site is not used for agricultural purposes. The site is not designated by the California

[10] California Department of Conservation. "Santa Clara County Important Farmland 2016 Map." Accessed April 19, 2022. https://santaclaralafco.org/sites/default/files/scl16.pdf

Department of Conservation, Farmland Mapping and Monitoring Program as farmland of any type. For these reasons, the project would not result in impacts to agricultural resources. **(No Impact)**

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

The project site is zoned R-M- Multiple Residential and is not subject to a Williamson Act contract. For this reason, the proposed project would not result in a conflict with existing zoning for agricultural use or Williamson Act contract. **(No Impact)**

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

The project site is zoned R-M- Multiple Residential and does not contain forest land or timberland. For this reason, the proposed project would not result in a conflict with or cause rezoning for forest land or timberland. **(No Impact)**

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

Neither the project site, nor any of the properties adjacent to the project site or in the vicinity, are used for forest land or timberland. The proposed project would, therefore, not impact forest land or timberland. **(No Impact)**

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

According to the Santa Clara County Important Farmland 2016 map, the project site and surrounding area are designated as Urban Built-Up Land. There is no designated farm or forest land on the project site or in the surrounding area. For these reasons, the project would not result in conversion of farmland to non-agricultural uses or conversion of forest land to non-forest uses and there would be no impact. **(No Impact)**

4.3 AIR QUALITY

The following discussion is based, in part on an Air Quality Analysis prepared for the project by Illingworth & Rodkin, Inc. in July 2022 (Appendix A).

4.3.1 Environmental Setting

4.3.1.1 *Regulatory Framework*

Criteria Pollutants

Air quality in the Bay Area is assessed related to six common air pollutants (referred to as criteria pollutants), including ground-level ozone (O_3), nitrogen oxides (NO_x), particulate matter (PM), carbon monoxide (CO), sulfur oxides (SO_x), and lead.[11] Criteria pollutants are regulated because they result in health effects. An overview of the sources of criteria pollutants and their associated health are summarized in Table 1.3-1. The most commonly regulated criteria pollutants in the Bay Area are discussed further below.

Table 4.3-1: Health Effects of Air Pollutants

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

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

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

valleys that are downwind of air pollutant sources.

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

Toxic Air Contaminants

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

Diesel exhaust is the predominant TAC in urban air and is estimated to represent about three-quarters of the cancer risk from TACs. Diesel exhaust is a complex mixture of gases, vapors, and fine particles. Medium- and heavy-duty diesel trucks represent the bulk of DPM emissions from California highways. The majority of DPM is small enough to be inhaled into the lungs. Most inhaled particles are subsequently exhaled, but some deposit on the lung surface or are deposited in the deepest regions of the lungs (most susceptible to injury).[12] Chemicals in diesel exhaust, such as benzene and formaldehyde, have been previously identified as TACs by the California Air Resources Board (CARB).

Sensitive Receptors

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

Federal and State

Clean Air Act

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

CARB is the state agency that regulates mobile sources throughout the state and oversees implementation of the state air quality laws and regulations, including the California Clean Air Act.

[12] California Air Resources Board. "Overview: Diesel Exhaust and Health." Accessed July 25, 2022. https://ww2.arb.ca.gov/resources/overview-diesel-exhaust-and-health.

The EPA and the CARB have adopted ambient air quality standards establishing permissible levels of these pollutants to protect public health and the climate. Violations of ambient air quality standards are based on air pollutant monitoring data and are determined for each air pollutant. Attainment status for a pollutant means that a given air district meets the standard set by the EPA and/or CARB.

Risk Reduction Plan

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

Regional and Local

2017 Clean Air Plan

The Bay Area Air Quality Management District (BAAQMD) is the agency primarily responsible for assuring that the federal and state ambient air quality standards are maintained in the San Francisco Bay Area. Regional air quality management districts, such as BAAQMD, must prepare air quality plans specifying how state and federal air quality standards will be met. BAAQMD's most recently adopted plan is the Bay Area 2017 Clean Air Plan (2017 CAP). The 2017 CAP focuses on two related BAAQMD goals: protecting public health and protecting the climate. To protect public health, the 2017 CAP describes how BAAQMD will continue its progress toward attaining state and federal air quality standards and eliminating health risk disparities from exposure to air pollution among Bay Area communities. To protect the climate, the 2017 CAP includes control measures designed to reduce emissions of methane and other super-greenhouse gases (GHGs) that are potent climate pollutants in the near-term, and to decrease emissions of carbon dioxide by reducing fossil fuel combustion.[13]

CEQA Air Quality Guidelines

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

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

Community Air Risk Evaluation Program

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

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

Envision San José 2040 General Plan

The following General Plan policies related to air quality are applicable to proposed projects in San José:

Policy	Description
MS-10.1	Assess projected air emissions from new development in conformance with the Bay Area Air Quality Management District (BAAQMD) CEQA Guidelines and relative to state and federal standards. Identify and implement feasible air emissions reduction measures
MS-10.2	Consider the cumulative air quality impacts from proposed developments for proposed land use designation changes and new development, consistent with the region's Clean Air Plan and State law.
MS-10.3	Promote the expansion and improvement of public transportation services and facilities, where appropriate, to both encourage energy conservation and reduce air pollution.
MS-10.5	In order to reduce vehicle miles traveled and traffic congestion, require new development within 2,000 feet of an existing or planned transit station to encourage the use of public transit and minimize the dependence on the automobile through the application of site design guidelines and transit incentives.
MS-10.7	Encourage regional and statewide air pollutant emission reduction through energy conservation to improve air quality.
MS-10.11	Enforce the City's wood-burning appliance ordinance to limit air pollutant emissions from residential and commercial buildings.
MS-10.13	As a part of City of San José Sustainable City efforts, educate the public about air polluting household consumer products and activities that generate air pollution. Increase public awareness about the alternative products and activities that reduce air pollutant emissions.
MS-11.2	For projects that emit toxic air contaminants, require project proponents to prepare health risk assessments in accordance with BAAQMD-recommended procedures as part of environmental review and employ effective mitigation to reduce possible health risks to a less than significant level. Alternatively, require new projects (such as, but not limited to, industrial, manufacturing, and processing facilities) that are sources of TACs

	to be located an adequate distance from residential areas and other sensitive receptors.
MS-11.4	Encourage the installation of appropriate air filtration at existing schools, residences, and other sensitive receptor uses adversely affected by pollution sources.
MS-11.5	Encourage the use of pollution absorbing trees and vegetation in buffer areas between substantial sources of TACs and sensitive land uses.
MS-11.6	Develop and adopt a comprehensive Community Risk Reduction Plan that includes: baseline inventory of toxic air contaminants (TACs) and particulate matter smaller than 2.5 microns (PM2.5), emissions from all sources, emissions reduction targets, and enforceable emission reduction strategies and performance measures. The Community Risk Reduction Plan will include enforcement and monitoring tools to ensure regular review of progress toward the emission reduction targets, progress reporting to the public and responsible agencies, and periodic updates of the plan, as appropriate.
MS-11.7	Consult with BAAQMD to identify stationary and mobile TAC sources and determine the need for and requirements of a health risk assessment for proposed developments.
MS-11.8	For new projects that generate truck traffic, require signage which reminds drivers that the State truck idling law limits truck idling to five minutes.
MS-13.1	Include dust, particulate matter, and construction equipment exhaust control measures as conditions of approval for subdivision maps, site development and planned development permits, grading permits, and demolition permits. At minimum, conditions shall conform to construction mitigation measures recommended in the current BAAQMD CEQA Guidelines for the relevant project size and type.
MS-13.4	Adopt and periodically update dust, particulate, and exhaust control standard measures for demolition and grading activities to include on project plans as conditions of approval based upon construction mitigation measures in the BAAQMD CEQA Guidelines.

4.3.1.2 *Existing Conditions*

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

Sensitive receptors in the project area include the townhomes to the west, across St. Elizabeth Drive, the Morgan Autism Center adjacent to the north of the project site, and the apartments to the south and east of the project site across Los Gatos Creek.

4.3.2 Impact Discussion

	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
Would the project:				
a) Conflict with or obstruct implementation of the applicable air quality plan?	☐	☐	☒	☐
b) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard?	☐	☐	☒	☐
c) Expose sensitive receptors to substantial pollutant concentrations?	☐	☐	☒	☐
d) Result in other emissions (such as those leading to odors) adversely affecting a substantial number of people?	☐	☐	☐	☒

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

The BAAQMD CEQA Air Quality Guidelines set forth criteria for determining consistency with the 2017 CAP. In general, a project is considered consistent if, a) the plan supports the primary goals of the 2017 CAP; b) it includes relevant control measures; and c) it does not interfere with implementation of 2017 CAP control measures. The project's consistency with the Bay Area 2017 CAP is summarized below in Table 4.3-2.

Table 4.3-2: Applicable Control Measures

Control Measure	Project Consistency with Measure Intent
Stationary Source Measures	
SS30 - Residential Fan Type Furnaces: Reduce NO_X emission limits on new and replacement central furnace installations. Explore potential Air District rulemaking options regarding the sale of fossil fuel-based space and water heating systems for both residential and commercial use.	The City adopted a Reach Code ordinance which prohibits natural gas infrastructure in all new construction. The proposed project would include all electric building construction, consistent with the City's Reach Code. The project is consistent with this measure.
TR9 - 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 proposed project would increase density adjacent to and provide a connection from the project site to the adjacent Los Gatos Creek trail. The project would also include bicycle parking consistent with City requirements. In addition, there are sidewalks and crosswalks along the surrounding roadways to facilitate non-automotive access. The project is consistent with this measure.

Table 4.3-2: Applicable Control Measures	
Control Measure	**Project Consistency with Measure Intent**
TR13 - Parking Policies: Encourage parking policies and programs in local plans, e.g., reduce minimum parking requirements; limit the supply of off-street parking in transit-oriented areas; unbundle the price of parking spaces; support implementation of demand-based pricing in high-traffic areas.	The project proposes parking for the site consistent with City urban design policies and guidelines. Parking for the project would be provided within a below-grade and podium level parking garage and as surface parking lot located at the rear of the site to maintain the pedestrian-oriented nature of the street, which would encourage pedestrian activity. For these reasons, the project is consistent with this measure.
Energy Measures	
EN2 - 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 designed to achieve LEED Silver certification and would be required to comply with the City's Green Building Ordinance and the most recent CALGreen requirements. The project is consistent with this measure. Furthermore, the project would include rooftop solar photovoltaic panels to increase the supply of renewably sourced electricity and offset the project's electricity demand. For these reasons, the project would be consistent with this measure.
Building Measures	
BL1 - 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 California Green Building Standards Code (CALGreen; Title 24) statewide building energy code; develop solutions to improve implementation/enforcement. Work with ABAG's BayREN program to make additional funding available for energy-related projects in the buildings sector. Engage with additional partners to target reducing emissions from specific types of buildings.	As discussed above, the project would achieve LEED Silver certification and would be required to comply with the City's Green Building Ordinance and the most recent CALGreen requirements. The project is consistent with this measure.
BL2 - Decarbonize Buildings: Explore potential Air District rulemaking options regarding the sale of fossil fuel-based space and water heating systems for both residential and commercial use. Explore incentives for property owners to replace their furnace, water heater or natural-gas	As noted above, the City adopted a Reach Code ordinance which prohibits natural gas infrastructure in all new construction. The proposed project would include all electric building construction, consistent with the City's Reach Code. The project is consistent with this

Table 4.3-2: Applicable Control Measures	
Control Measure	**Project Consistency with Measure Intent**
powered appliances with zero-carbon alternatives. Update Air District guidance documents to recommend that commercial and multi-family developments install ground source heat pumps and solar hot water heaters.	measure.
BL4 - 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, as well existing surface lots undergoing resurfacing. Develop and promote adoption of model building code requirements for new construction or reroofing/roofing upgrades for commercial and residential multifamily housing.	The majority of parking proposed by the project would be enclosed within a below-grade or podium level parking structure. The few remaining surface parking spaces proposed by the project would be located adjacent to new landscaping to reduce urban heat island effect within the surface parking. Therefore, the project is consistent with this control measure.
Natural and Working Lands Measures	
NW2 - 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, BAAQMD's technical guidance, best management practices for local plans, and CEQA review.	A total of 12 on-site trees would be removed as a part of the project. The project would be required to comply with the City's tree replacement policy which would result in 38 replacement trees being planted. Therefore, the project is consistent with his control measure.
Waste Management Measures	
WA3 - Green Waste Diversion: Develop model policies to facilitate local adoption of ordinances and programs to reduce the amount of green waste going to landfills.	Organics waste generated by all residential uses is currently collected by the City and sorted at the GreenWaste materials recovery facility to prevent this waste from being deposited at landfills. Food scraps and compostable paper are sent to the Z-Best composing facility to become compost and are used for landscape and median projects throughout the City.
WA4 - Recycling and Waste Reduction: Develop or identify and promote model ordinances on community-wide zero waste goals and recycling of construction and demolition materials in commercial and public construction projects.	The City adopted the Zero Waste Strategic Plan which outlines policies to help the City foster a healthier community and achieve its Green Vision goals, including 75 percent diversion by 2013 and zero waste by 2022. In addition, the project would comply with the City's Construction and Demolition Diversion Program during construction which ensures that at least 75 percent of construction waste generated by the project is recovered and diverted from landfills. Therefore, the project is consistent with this control measure.

Table 4.3-2: Applicable Control Measures	
Control Measure	**Project Consistency with Measure Intent**
Water Measures	
WR2 - 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 includes water efficient landscaping and irrigation systems throughout the site. For this reason, the project would be consistent with this measure.

The project is consistent with the planned growth in the General Plan and the applicable control measures identified above. Therefore, the proposed project would not result in a significant impact related to consistency with the Bay Area 2017 CAP.

As discussed in detail under checklist question b. below, construction and operational period criteria pollutant emissions associated with the project would not exceed the BAAQMD significance thresholds. Since the project would have a less than significant criteria pollutant impact, the project would not result in a cumulatively considerable net increase of any criteria pollutant for which the region is in non-attainment. **(Less than Significant Impact)**

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

Construction Period Emissions – Criteria Pollutants

The California Emissions Estimator model (CalEEMod) Version 2020.4.0 was used to estimate emissions from project construction and operations. The proposed land uses of the project were input into CALEEMod, which included 227,859 square feet entered as "Apartment Mid Rise", 295 parking spaces entered as "Enclosed Parking with Elevator" and 16 parking spaces entered as "Parking Lot". Demolition of the existing buildings and soil export were input into CalEEMod as well. Truck-related emissions were based on vendor trip estimates from CalEEMod and haul trips were estimated using demolition and soil exports. Refer to Appendix A for more information regarding assumptions and CalEEMod inputs. The construction schedule assumes that the project would be built over a period of approximately 22 months, or an estimated 462 construction workdays. Table 4.3-3 shows the estimated daily air emissions from construction of the proposed project.

Table 4.3-3: Construction Period Emissions				
Scenario	**ROG**	**NO_x**	**PM_{10} Exhaust**	**$PM_{2.5}$ Exhaust**
Construction Emissions Per Year (tons)				
2023	0.06	0.36	0.02	0.01
2024-2025*	1.73	0.61	0.04	0.02
Average Daily Construction Emissions Per Year (pounds/day)				
2023 (163 construction workdays)	0.69	4.37	0.25	0.17
2024-2025 (299 construction workdays)	11.55	4.07	0.24	0.15
BAAQMD Thresholds (pounds per day)	*54*	*54*	*82*	*54*
Exceed Threshold?	**No**	**No**	**No**	**No**
*Includes 2025 (only two months of construction) Source: Appendix A				

As shown in Table 4.3-3, construction period criteria pollutant emissions associated with the project would not exceed the BAAQMD significance thresholds. Therefore, the project would not result in a significant impact for construction emissions.

Fugitive Dust

Construction activities associated with the project, particularly during site preparation and grading, would temporarily generate fugitive dust in the form of PM_{10} and $PM_{2.5}$. Sources of fugitive dust would include disturbed soils at the construction site and trucks carrying uncovered loads of soils. 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. The BAAQMD Air Quality Guidelines consider these impacts to be less than significant if best management practices are implemented to reduce the emissions. As described below, construction of the project would include Standard Permit Conditions to reduce this impact to a less than significant level. The City has adopted BAAQMD's basic best management practices for fugitive dust control (PM_{10} and $PM_{2.5}$) from construction activities as Standard Permit Conditions. Implementation of the following Standard Permit Conditions would further reduce fugitive dust emissions from construction activity.

Standard Permit Condition:

- Construction-related Air Quality. The following measures shall be implemented during all phases of construction to control dust and exhaust at the project site:
    - Water active construction areas at least twice daily or as often as needed to control dust emissions.
    - Cover trucks hauling soil, sand, and other loose materials and/or ensure that all trucks hauling such materials maintain at least two feet of freeboard.
    - Remove visible mud or dirt track-out onto adjacent public roads using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.

- Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.).
- Pave new or improved roadways, driveways, and sidewalks as soon as possible.
- Lay building pads as soon as possible after grading unless seeding or soil binders are used.
- All vehicle speeds on unpaved roads shall be limited to 15 mph.
- Replant vegetation in disturbed areas as quickly as possible.
- Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
- Minimize idling times either by shutting off equipment when not in use, or reducing the maximum idling time to five minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations). Provide clear signage for construction workers at all access points.
- Maintain and property tune construction equipment in accordance with manufacturer's specifications. Check all equipment by a certified mechanic and record a determination of running in proper condition prior to operation.
- Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints.

With implementation of the above Standard Permit Conditions, the project would have a less than significant impact with regard to fugitive dust emissions. The project would, therefore, not expose sensitive receptors to pollutant concentrations.

Operational Period Emissions – Criteria Pollutants

Operational period criteria pollutant emissions associated with the project would be generated primarily from vehicles driven by future residents. The earliest the project would be constructed and operational would be 2025. Any emissions associated with build out later than 2025 would be lower due to assumed efficiencies over time.

The BAAQMD CEQA Guidelines include screening criteria to provide lead agencies and project applicants with a conservative indication of whether a project would result in a potentially significant air quality impact. If a project proposes less development than the screening criteria, it can be conservatively assumed the project would not result in a significant air quality impact.

The screening criteria for mid-rise apartments is 494 dwelling units. The proposed project includes construction of a seven-story, 206-unit apartment building, which is below the BAAQMD's screening criteria and would therefore, result in less than significant operational air quality emissions. The impacts would be less than significant. **(Less than Significant Impact)**

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

Toxic Air Contaminants

Construction equipment and associated heavy-duty truck traffic generates diesel exhaust, which is a known TAC. Construction exhaust emissions pose health risks for sensitive receptors such as

surrounding residents and the Morgan Autism Center. The primary community risk impact issues associated with construction emissions are cancer risk and exposure to DPM and $PM_{2.5}$. The health risk assessment of the project (refer to Appendix A) evaluated potential health effects of sensitive receptors at nearby residences and identified a maximally exposed individual (MEI) for construction emissions of DPM and $PM_{2.5}$. The MEI is located on the second floor of a multi-family apartment building east of the project site. The results of the assessment for project construction are summarized in Table 4.3-4 and the location of the MEI is shown in Figure 4.3-1 below.

Table 4.3-4: Project Risk Impacts at the Off-Site MEI and School Receptors

Source	Cancer Risk (per million)	Annual $PM_{2.5}$ ($\mu g/m^3$)	Hazard Index
Project Impacts – Off-Site MEI			
Project Construction (Years 0 -2)	8.04	0.03	0.01
Project Generator (Years 3-30)	0.20	<0.01	<0.01
Total/Maximum Project Impact (Years 0-30)	8.24	0.03	0.01
BAAQMD Single-Source Threshold	*10*	*0.3*	*1.0*
Exceed Threshold?	**No**	**No**	**No**
Most Affected School Receptor – Morgan Autism Center			
Project Construction (Years 0-2)	1.01	0.01	<0.01
Project Generator (Years 3-12)	0.08	<0.01	<0.01
Total/Maximum Project Impact (Years 0 -12)	1.09	0.01	<0.01
BAAQMD Single-Source Threshold	*10*	*0.3*	*1.0*
Exceed Threshold?	**No**	**No**	**No**

Source: Appendix A.

As shown in Table 4.3-4, the construction risk impacts associated with the proposed project would not exceed the BAAQMD single-source thresholds for cancer risk, $PM_{2.5}$ concentrations, or the hazard index at either receptor; therefore, the construction of the project would result in a less than significant impact.

Operational TAC Impacts on Off-Site Sensitive Receptors

Operational emissions from the proposed project would include emissions from vehicle traffic and operation of the emergency back-up generator for maintenance and during power outages. Traffic from residential projects is not typically considered sources of TAC or $PM_{2.5}$ emissions that could adversely affect sensitive receptors. The proposed project would generate traffic associated with residential use that would be distributed over various roadways. These are anticipated to consist of mostly passenger vehicles with a low percentage of diesel trucks that would emit TACs. BAAQMD considers projects generating 10,000 total vehicle trips per day to be a low-impact source of TACs. As discussed in Section 4.17 Transportation, the proposed project would generate 804 daily trips, which is less than 10,000 total vehicle trips per day. Operation of the proposed diesel-powered emergency back-up generator would be considered a source of DPM emissions. However, as shown

Source: Illingworth & Rodkin, Inc., July 19, 2022.

LOCATIONS OF PROJECT CONSTRUCTION AND GENERATOR, OFF-SITE SENSITIVE RECEPTORS AND MAXIMALLY EXPOSED INDIVIDUAL | FIGURE 4.3-1

in Table 4.3-4 above, emissions from the proposed diesel-powered generator would not exceed the BAQMD single-source thresholds. Therefore, the project operations would not expose off-site sensitive receptors to substantial operational TAC concentrations or emissions.

Criteria Pollutant Emissions

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

The proposed project would result in a less than significant operational and construction criteria pollutant impact as discussed previously. Therefore, the project would not expose sensitive receptors to substantial pollutant concentrations. **(Less than Significant Impact)**

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

Construction

Odors are generally considered an annoyance rather than a health hazard. Land uses that have the potential to be sources of odors that generate complaints include, but are not limited to, wastewater treatment plants, landfills, composting operations, and food manufacturing facilities.

The project would redevelop an existing senior living facility with a 206-unit apartment building. Construction of the proposed project would generate localized emissions of diesel exhaust during construction equipment operation and truck activity. These emissions may be noticeable from time to time by adjacent receptors; however, diesel exhaust have highly diffusive properties, and the odors would be localized and temporary. During operations, the proposed residential project would not generate objectionable odors. The project would, therefore, not create objectionable odors that would affect the existing residents near the site. **(No Impact)**

4.3.3 Non-CEQA Effects

Per *California Building Industry Association v. Bay Area Air Quality Management District,* 62 Cal. 4th 369 *(BIA v. BAAQMD)*, effects of the environment on the project are not considered CEQA impacts. The following discussion is included for informational purposes only because the City of

San José has policies that address existing air quality conditions affecting a proposed project.

Pursuant to General Plan policies MS-10.1, MS-11.1, and MS-11.2, a health risk assessment was prepared to ensure sensitive receptors introduced onto the project site are not exposed to substantial TAC emissions. Community health risk assessment typically look at all sources of TACs (including highways, streets, and stationary sources identified by BAAQMD) within 1,000 feet of a project site as discussed below.

Community Risk Impacts

Increased community risk can occur by introducing a new sensitive receptor, including residential uses, in proximity to an existing source of TACs. BAAQMD recommends a 1,000-foot radius for assessing community risks and hazards from TAC mobile and stationary sources. Community risk impacts from the TAC sources upon the project site are summarized in Table 4.3-5 below.

Table 4.3-5: Impacts of Combined Sources to On-Site Sensitive Receptors

Source	Maximum Cancer Risk (per million)	$PM_{2.5}$ Concentration ($\mu g/m_3$)	Hazard Index
Meridian Ave (ADT 31,628)	0.08	0.06	<0.01
San José Water Company (Facility ID #19799, Generator)	0.22	<0.01	-
Willow Glen Center (Facility ID #20373 Generator)	0.10	-	-
Willow Glen Unocal 76 Inc (Facility ID #104038, Gas Dispensing Facility)	0.02	-	<0.01
Cumulative Total	1.32	<0.07	<0.02
BAAQMD Cumulative Source Threshold	*100*	*0.8*	*10.0*
Exceed Threshold?	**No**	**No**	**No**
Source: Appendix A			

As shown in Table 4.3-5 above, all cumulative sources of TACs would be below the single-source and cumulative thresholds for community risks; therefore, new residents associated with the proposed project would not be exposed to substantial pollutant concentrations.

4.4 BIOLOGICAL RESOURCES

The following discussion is based, in part on a Biological Resources Evaluation (BRE) prepared for the project by EMC Planning Group in January 2023 (Appendix B) and an Arborist Report prepared for the project by Hort Science Bartlett Consulting, Inc.in December 2020 (Appendix C).

4.4.1 Environmental Setting

4.4.1.1 *Regulatory Framework*

Federal and State

Endangered Species Act

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

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

Migratory Bird Treaty Act

The federal Migratory Bird Treaty Act (MBTA) prohibits killing, capture, possession, or trade of migratory birds except in accordance with regulations prescribed by the Secretary of the Interior. Hunting and poaching are also prohibited. The taking and killing of birds resulting from an activity is not prohibited by the MBTA when the underlying purpose of that activity is not to take birds.[14] Nesting birds are considered special-status species and are protected by the USFWS. The CDFW also protects migratory and nesting birds under California Fish and Game Code Sections 3503, 3503.5, and 3800. The CDFW defines taking as causing abandonment and/or loss of reproductive efforts through disturbance.

Sensitive Habitat Regulations

Wetland and riparian habitats are considered sensitive habitats under CEQA. They are also afforded protection under applicable federal, state, and local regulations, and are generally subject to

[14] United States Department of the Interior. "Memorandum M-37050. The Migratory Bird Treaty Act Does Not Prohibit Incidental Take." Accessed April 22, 2022. https://www.doi.gov/sites/doi.gov/files/uploads/m-37050.pdf.

regulation by the United States Army Corps of Engineers (USACE), Regional Water Quality Control Board (RWQCB), CDFW, and/or the USFWS under provisions of the federal Clean Water Act (e.g., Sections 303, 304, 404) and State of California Porter-Cologne Water Quality Control Act.

Fish and Game Code Section 1602

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

Regional and Local

Santa Clara Valley Habitat Plan/Natural Community Conservation Plan

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

Envision San José 2040 General Plan

The following General Plan policies related to biological resources are applicable to proposed projects in San José:

Policy	Description
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.
ER-5.2	Require that development projects incorporate measures to avoid impacts to nesting migratory birds.
MS-21.4	Encourage the maintenance of mature trees, especially natives, on public and private property as an integral part of the community forest. Prior to allowing the removal of any mature tree, pursue all reasonable measures to preserve it.
MS-21.5	As part of the development review process, preserve protected trees (as defined by the Municipal Code), and other significant trees. Avoid any adverse effect on the health and longevity of protected or other significant trees through appropriate design measures and construction practices. Special priority should be given to the preservation of native oaks and native sycamores. When tree preservation is not feasible, include appropriate tree replacement, both in number and spread of canopy.
MS-21.6	As a condition of new development, require 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.
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 replacement or alternative mitigation measures in the project to maintain and enhance our Community Forest.

San José Tree Ordinance

The City of San José maintains the urban landscape by controlling the removal of ordinance trees on private property (San José Municipal Code Section 13.32). Ordinance trees are defined as trees exceeding 38 inches in circumference, or approximately 12 inches in diameter, at a height of 4.5 feet above the ground. Ordinance trees are generally mature trees that help beautify the City, slow the erosion of topsoil, minimize flood hazards, minimize the risk of landslides, increase property values, and improve local air quality. A tree removal permit is required from the City of San José for the removal of ordinance trees.

Riparian Corridor and Bird-Safe Building Policy

The City of San José's Riparian Corridor and Bird Safe Building Policy, adopted in September 2016, provides guidance consistent with the goals, policies, and actions of the 2040 General Plan for: 1) protecting, preserving, or restoring riparian habitat; 2) limiting the creation of new impervious surface within Riparian Corridor setbacks to minimize flooding from urban runoff and control erosion; and 3) encouraging bird-safe design in baylands and riparian habitats of lower Coyote Creek, north of State Route 237. It supplements the regulations for riparian corridor protection in the Council-adopted Santa Clara Valley Habitat Plan, the Zoning Code (Title 20 of the San José Municipal Code), and other existing City policies that may provide for riparian protection and bird-safe design. The general guidelines for setbacks and lighting apply to development projects within 300 feet of riparian corridors. Bird-safe design guidance for buildings and structures includes avoidance of large areas of reflective glass, transparent building corners, up-lighting, and spotlights.

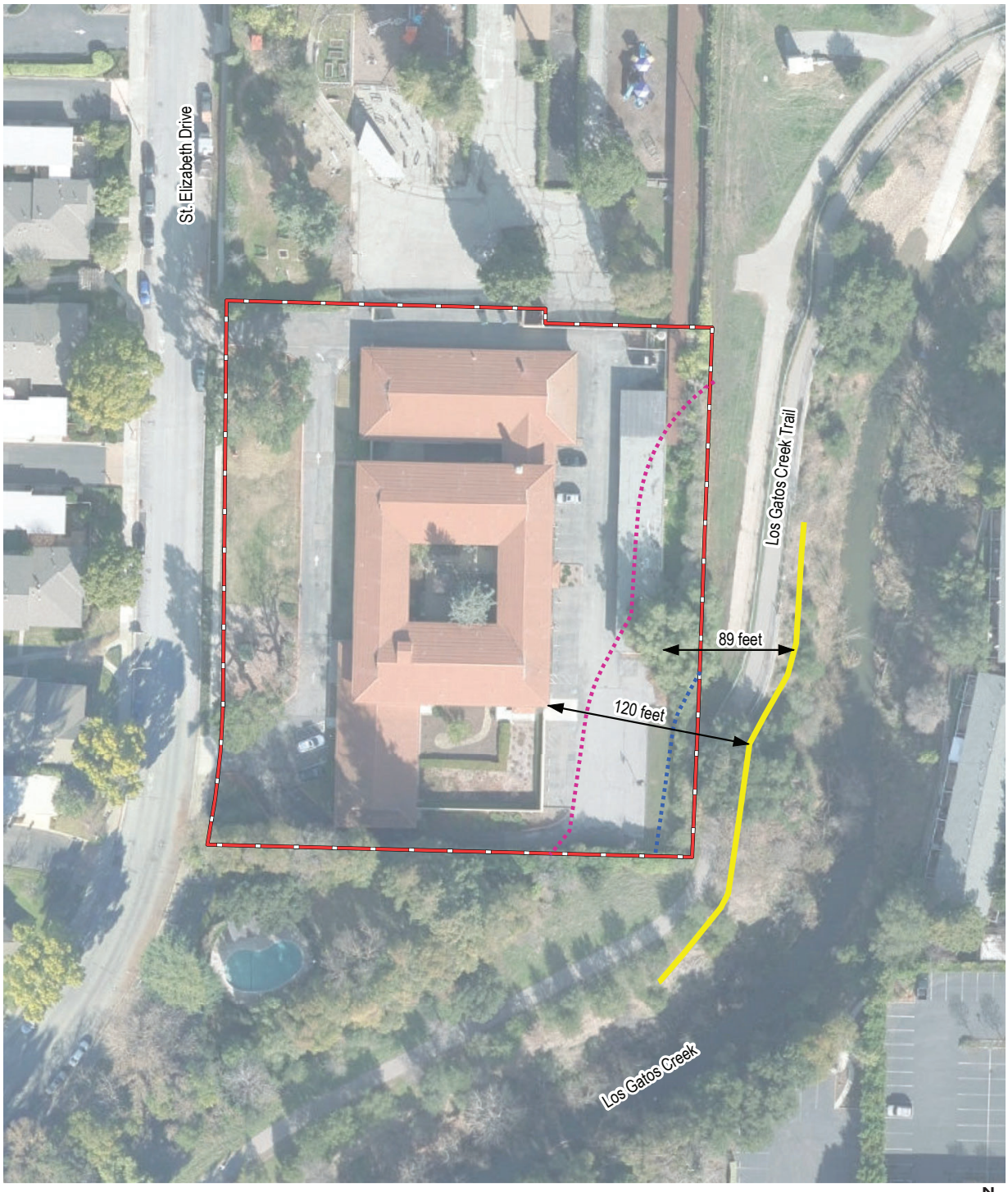
4.4.1.2 *Existing Conditions*

The project site is located in an urban area surrounded by existing residential and commercial development. The project site is located within the Habitat Plan study area of the Santa Clara Valley Habitat Plan and is designated Urban-Suburban land.[15] Urban-Suburban land is comprised of areas where native vegetation has been cleared for residential, commercial, industrial, transportation, or recreational structures, and is defined as areas with one or more structures per 2.5 acres.

As shown in Figure 4.4-1, the project site is located 50 feet west of Los Gatos Creek top of bank and is separated from the creek by Los Gatos Creek trail and an existing six-foot chain-link fence. The segment of Los Gatos Creek adjacent to the project site, the stream is entrenched in a steep ravine with restored native vegetation. The project site is currently developed and includes landscaping with few native species and no sensitive habitats.[16] A reconnaissance level survey of the 2.2-acre project site was conducted in April 2022. Based on this survey, the site was determined to have little potential to support special-status plant or wildlife species, with the exception of migratory birds (which are considered special status species and protected under the Migratory Bird Treaty Act) and

[15] Santa Clara Valley Habitat Agency. "Santa Clara Valley Habitat Agency Geobrowser." Accessed May 24, 2022. http://www.hcpmaps.com/habitat/

[16] E.M.C. Planning Group. *Biological Resources Evaluation, 1050 St. Elizabeth Drive, San Jose, California.* October 6, 2022.



Source: EMC Planning Group, November 21, 2022.

EXISTING SITE LOCATION AND LOS GATOS CREEK CORRIDOR SETBACKS | FIGURE 4.4-1

Townsend's big-eared bat.[17]

Wildlife species observed on-site were limited to common urban-adapted bird species including American crow (Corvus brachyrhynchos), house finch (Haemorhous mexicanus), Anna's hummingbird (Calypte anna), Eurasian collared-dove (Streptopelia decaocto), California towhee (Melozone crissalis), and American robin (Turdus migratorius). Mammal species determined to have potential to utilize the site as habitat include California vole (Microtus californicus), Botta's pocket gopher (Thomomys bottae), striped skunk (Mephitis mephitis), California ground squirrel (Spermophilus beecheyi), and raccoon (Procyon lotor). Reptile species that could potentially utilize the habitat include western fence lizard (Sceloporus occidentalis) and California alligator lizard (Elgaria multicarinata multicarinata).

There are 16 trees located on and adjacent to the project site, including 12 ordinance sized trees. None of the existing trees are native species. Existing trees are summarized in Table 4.4-1.

Table 4.4-1: Summary of On-Site Trees

Tree #	Common Name	Scientific Name	Diameter	Status	Condition
76	Monterey pine	Pinus radiata	45	Ordinance	Low
77	Paradox walnut	Juglans x paradox	30	Ordinance	Low
78	Monterey pine	Pinus radiata	29	Ordinance	Low
79	Lemon	Citrus limon	4,3,3,2,2,2	Ordinance	Low
80	Cherry	Prunus avium	6	Non-Ordinance	Moderate
81	English walnut	Juglans regia	9,8,7	Ordinance	Low
82	Loquat	Eriobotrya japonica	4	Non-Ordinance	Low
83	Orange	Citrus sinensis	3,2,2,2	Non-Ordinance	Low
84	California Pepper	Schinus molle	28,19	Ordinance	Low
85	Tuliptree	Liriodendron tulipfera	21	Ordinance	Low
86	Glossy privet	Ligustrum japonicum	15, 11, 10, 9, 8	Ordinance	Low
87	Glossy privet	Ligustrum japonicum	16, 8	Ordinance	Low
88	Glossy privet	Ligustrum japonicum	18	Ordinance	Low
89	Glossy privet	Ligustrum japonicum	15,7	Ordinance	Low
90	Blue Colorado spruce	Picea pungens	15	Ordinance	Moderate
91	Jacaranda	Jacaranda mimosifolia	6	Non-Ordinance	High

Source: Appendix C

[17] Ibid.

4.4.2 Impact Discussion

	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
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 Wildlife (CDFW) or United States Fish and Wildlife Service (USFWS)?	☐	☒	☐	☐
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 CDFW or USFWS?	☐	☐	☒	☐
c) Have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?	☐	☐	☒	☐
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?	☐	☒	☐	☐
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?	☐	☐	☒	☐
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?	☐	☐	☒	☐

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

Special Status Plants

As discussed in Section 4.4.1.2 Existing Conditions, the project site is currently developed, includes landscaping, and no sensitive habitats. Therefore, the site was determined to have little potential to support special-status plants.[18] Based on the highly urbanized and developed nature of the project

[18] Appendix C

site, natural communities or habitats for special-status plant species are not present and would not be impacted.

Special Status Wildlife

Nesting Birds

As discussed in Appendix C, trees on the project site provide suitable foraging and nesting opportunities for bird species including those protected under the MBTA and Fish and Game Code. Development of the project would require the removal of all trees on the project site resulting in the potential for loss of nests. Construction disturbance during the breeding season, generally February 1-August 31, could result in the incidental loss of fertile eggs or nestlings, or otherwise lead to nest abandonment. Disturbance that direct causes abandonment and/or removal of a nest and site grading that would indirectly disturb a nesting bird on-site or immediately adjacent to the construction zone would constitute a significant impact.

Impact BIO-1: Project construction could directly or indirectly impact nesting birds protected under the Migratory Bird Treaty Act and the California Fish and Game Code.

Mitigation Measures: The following mitigation measures would reduce and/or avoid impacts to nesting birds (if present on or adjacent to the site) to a less than significant level.

MM BIO-1.1: Prior to issuance of any tree removal, grading, demolition, and/or building permit or construction activities, 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).

MM BIO-1.2: If demolition and construction cannot be scheduled between September 1st and January 31st (inclusive), pre-construction surveys for nesting birds shall be completed by a qualified ornithologist 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 ornithologist shall inspect all trees and other possible nesting habitats immediately adjacent to the construction areas for nests.

MM BIO-1.3: If an active nest is found sufficiently close to work areas to be disturbed by construction, the ornithologist 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. The no-disturbance buffer shall remain in place until the biologist determines the nest is no longer active. If construction ceases for two days or more then resumes again during the nesting season, an additional survey shall be necessary to avoid impacts to active bird nests that may be present.

MM BIO-1.4: Prior to any tree removal, or approval of any grading or demolition permits (whichever occurs first), the ornithologist shall submit a report indicating the results of the survey and any designated buffer zones to the satisfaction of the City's Director of Planning or Director's designee of the Department of Planning, Building and Code Enforcement.

With implementation of MM BIO-1.1 through MM BIO-1.4, the project's impact to nesting birds would be reduced to a less than significant level. **(Less than Significant Impact with Mitigation Incorporated)**

Roosting Special-Status Bats

Trees and buildings on and adjacent to the project site could provide roosting habitat for Townsend's big-eared bat, a state-listed species of special concern. Tree removal and construction activities associated with the proposed project could result in disturbance of roost and natal sites occupied by special-status bats on or adjacent to the project site, if present.

Impact BIO-2: Development of the proposed project would result in significant impacts to roosting Townsend's big-eared bats, if present on the site at the time of construction.

Mitigation Measures: The following mitigation measures would reduce and/or avoid impacts to roosting bats (if present on or adjacent to the site) to a less than significant level.

MM BIO-2.1: Prior to issuance of any tree removal, grading, demolition, and/or building permit or construction activities, the project applicant shall schedule demolition and construction activities to avoid the nursery season. The nursery season for Townsend's big-eared bats extends from May 1 through October 1 (inclusive).

MM BIO-2.2: If demolition and construction cannot be scheduled between October 2nd and April 30st (inclusive), the project applicant shall retain a qualified biologist to conduct a habitat assessment for bats and potential roosting sites in trees to be removed and in trees or buildings within 50 feet of the construction. The habitat assessment shall be conducted no more than 14 days prior to tree removal or demolition and construction activities. The habitat assessment shall include a visual inspection of potential roosting features (bats need not be present) and a search for presence of guano within the site, construction access routes, and within a 50-foot buffer around these areas. Cavities, crevices, exfoliating bark, and bark fissures that could provide suitable potential nest or roost habitat for bats shall be surveyed. Assumptions can be made on what species is present due to observed visual characteristics along with habitat use, or the bats can be identified to the species level with the use of a bat echolocation detector such as an "Anabat" unit. Potential roosting features found during the survey shall be flagged or marked.

MM BIO-2.3: If no roosting sites or bats are found, a letter report confirming absence shall be prepared and submitted to the City's Director of Planning or Director's designee of the Department of Planning, Building and Code Enforcement for review and approval and no further mitigation is required.

MM BIO-2.4: If bats or roosting sites are found, a letter report documenting their presence shall be prepared and submitted to the City's Director of Planning or Director's designee of the Department of Planning, Building and Code Enforcement, and bats shall not be disturbed without specific notice to and consultation with the California Department of Fish and Wildlife.

MM BIO-2.5: If bats are found roosting outside of the nursery season (May 1 through October 1, inclusive), California Department of Fish and Wildlife shall be consulted prior to any eviction or other action. If avoidance or postponement is not feasible, a Bat Eviction Plan shall be submitted to California Department of Fish and Wildlife for written approval prior to project implementation. A request to evict bats from a roost shall include details for excluding bats from the roost site and monitoring to ensure that all bats have exited the roost prior to the start of activity and are unable to re-enter the roost until the activity is completed. Any bat eviction shall be timed to avoid lactation and young rearing. If bats are found roosting during the nursery season, they shall be monitored to determine if the roost site is a maternal roost. This could occur by either visual inspection of the roost bat pups, if possible, or by monitoring the roost after the adults leave for the night to listen for bat pups. Because bat pups cannot leave the roost until they are mature enough, eviction of a maternal roost cannot occur during the nursery season. Therefore, if a maternal roost is present, a 50-foot buffer zone (or different size if determined in consultation with the California Department of Fish and Wildlife) shall be established around the roosting site within which no construction activities including tree removal or structure disturbance shall occur until after the nursery season.

With implementation of MM BIO-2.1 through MM BIO-2.5, the project's impact to special status bats would be reduced to a less than significant level. **(Less than Significant Impact with Mitigation Incorporated)**

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

As discussed in Section 4.4.1.2 Existing Conditions, there are no sensitive natural communities on the project site. The project site is located approximately 50 feet west of Los Gatos Creek and is entirely surrounded by urban development.

City policies and regulations, including the General Plan, the Zoning Code, and the City Council-adopted Habitat Plan include measures to limit development adjacent to, and to protect, sensitive riparian resources. Per the City's Riparian Corridor Protection and Bird Safe Design Council Policy

(City Council Policy 6-34) all new buildings in urban areas, new residential buildings, and parking facilities should be situated at least 100 feet from the riparian corridor. Similarly, the City Council-adopted Habitat Plan identifies a minimum 100-foot setback for covered activities adjacent to Los Gatos Creek.

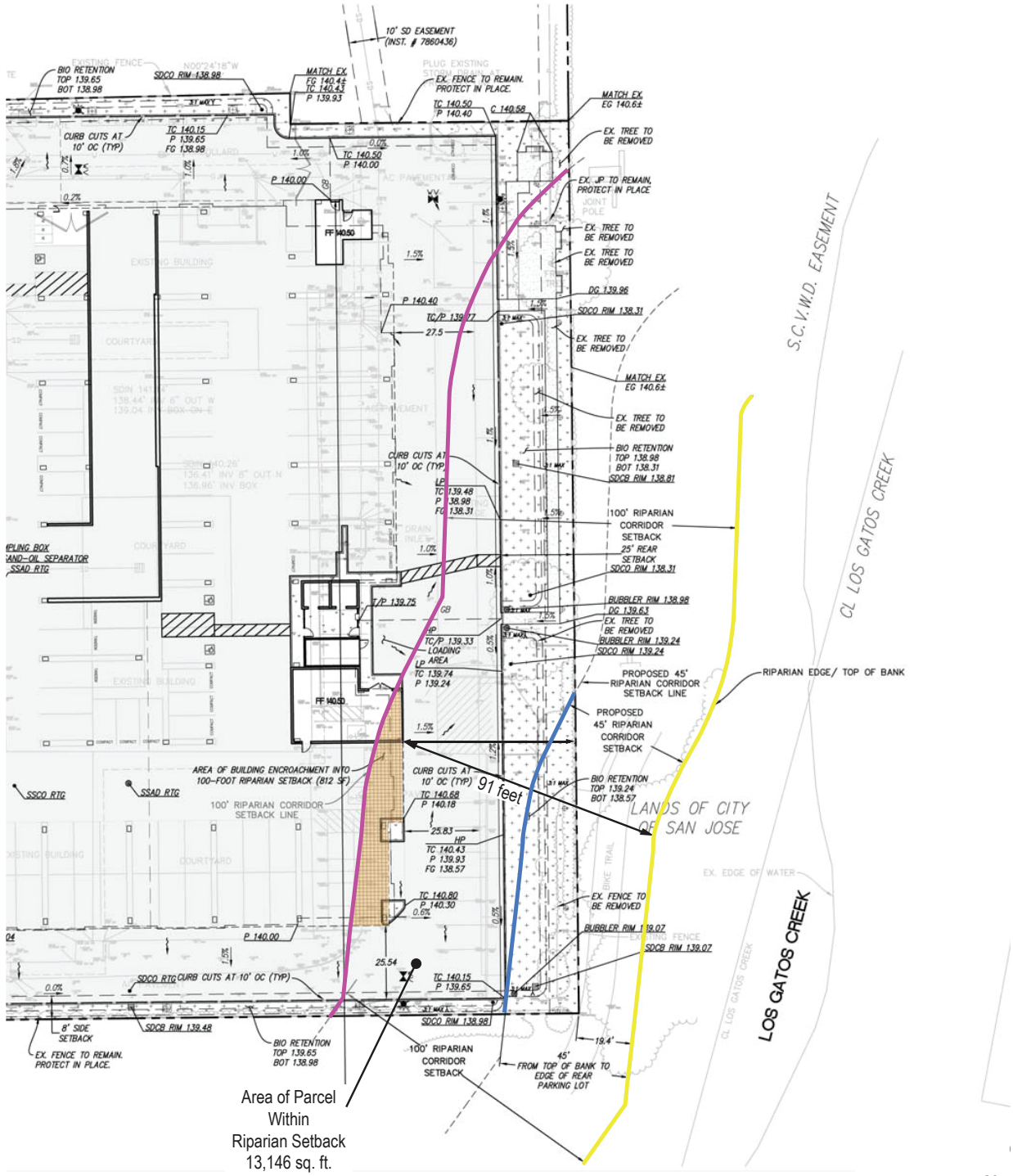
As shown on Figure 2.7-3, the project site is currently developed with an existing two-story building, paved access roads and surface parking areas, carport, and ornamental landscaping. The north, east, and southern project boundaries are marked by an approximately six-foot-tall chain link fence. The existing carport and pavement is located approximately 89 feet from the nearest portion of Los Gatos Creek and the existing two-story building set approximately 120 feet west of the Los Gatos Creek top of bank. Under existing conditions, the area within the 100-foot setback is developed with a 2,531 square foot carport, 5,257 square feet of pavement, and 5,538 square feet of landscaped area.

With implementation of the project, all existing buildings, pavement, and 12 of the existing trees would be removed, and replaced with a new seven-story residential building, access road, surface parking, and driveways, and landscaping. The proposed residential building would be located approximately 91 feet west of the nearest portion of Los Gatos Creek (as measured from the top of bank), with the southeast corner of the building (approximately 812 square feet) extending into the 100-foot setback by 9 feet. Thus, the proposed building would be located 29 feet closer to the creek than the existing building but within the existing development footprint of the site, which represents the baseline condition for analysis under CEQA. In addition to the proposed building, the following improvements would be located within the 100-foot riparian setbacks (refer to Figure 4.4-2):

- Remove and replace existing pavement (net increase of 1,927 square feet of pavement within Riparian setback) and construct 13 new surface parking spaces
- Remove and replace existing perimeter fencing
- Construct nine decomposed granite patios and decomposed granite walkways
- Plant nine new landscaping trees along the project's eastern boundary

These improvements would be considered encroachments into the 100-foot riparian setbacks.

Both the City Council Policy 6-34 and the Habitat Plan allow for exceptions to the identified riparian setbacks in certain circumstances, such as if consultation with the City and a qualified biologist indicates that a smaller or larger setback is more appropriate for consistency with riparian preservation objectives. The project applicant is requesting a reduced setback of 45 feet from Los Gatos Creek top of bank. If the requested setback is granted, the proposed building would be located 91 feet from the top of bank and the proposed pavement would be located approximately 49 feet from the top of bank. Based on the BRE (Appendix B) prepared for the project, the site meets the standards for a reduced setback under the City's Riparian Corridor Protection and Bird Safe Design Council Policy as follows:



Source: EMC Planning Group, January 20, 2023.

PROPOSED PROJECT WITH RELATION TO RIPARIAN SETBACKS | FIGURE 4.4-2

There is no reasonable alternative for the proposed riparian project that avoids or reduces the encroachment into the setback area. The 100-foot setback covers 13,146 square feet of the site, or 14 percent of the total site area. If the 100-foot setback were to be maintained, the building would be reduced by approximately 40,000 square feet and 41 residential units would not be constructed. The loss of 41 units would render the project financially infeasible. Additionally, in order to meet City Fire Code and emergency vehicle access requirements, there is no reasonable alternative location for the proposed access road within the setback.

The reduced setback will not significantly reduce or adversely impact the riparian corridor. As discussed above, the project site is currently developed and does not contain riparian vegetation. The area between the parcel boundary and Los Gatos Creek already includes the Los Gatos Creek trail, a Class I paved bike trail for bicycle and pedestrian use. All proposed development activity would occur within the project site currently developed and would not extend into Los Gatos Creek riparian corridor such that riparian vegetation would be affected by the project. Furthermore, stormwater will continue to be directed away from the creek and held onsite per City code. All surface stormwater will be directed to bioretention or self-retaining landscape areas and would then be discharged to the City's storm drain system within St. Elizabeth Drive. No stormwater is currently or would be directed towards Los Gatos Creek with project implementation. The buffer area within the parcel boundary is currently developed and includes a covered carport, pavement, and landscape vegetation. As previously stated, the carport would be removed, and the project would replace existing non-native plants with a combination of native and climate-adapted plant species. Pre-project conditions would therefore be improved within the riparian setback.

Although the proposed project includes minor grading and replacing paved surfaces within the riparian buffer area, the reduced setback would not significantly reduce or adversely impact the riparian corridor.

The proposed uses are not fundamentally incompatible with riparian habitats. Incompatible land uses are defined the Riparian Corridor Policy Study as, "land uses which typically generate littering and/or dumping; off-road vehicle use; removal of native vegetation; and those uses that create noxious odors, or use, store or create toxic materials (including fertilizers, herbicides and pesticides), or generate high volumes of vehicular traffic." (San Jose 1999). The project site is currently developed with a senior living facility and ornamental landscaping. The existing use involves storage and use of small quantities of household chemicals for cleaning and landscape maintenance. Senior living facility uses do not typically generate litter, noxious odors, involve off-road vehicle use, removal of native vegetation or create toxic materials. The project would redevelop the site with similar residential uses and ornamental landscaping within the same development footprint and would also not generate litter, noxious odors, involve off-road vehicle use, removal of native vegetation or create toxic materials. Therefore, the project would provide a similar land use as the existing use and would not be incompatible with the riparian habitats.

There is no evidence of stream bank erosion or previous attempts to stabilize the stream banks that could be negatively affected by the proposed development within the setback area. Based on the reconnaissance level survey of the site and Los Gatos Creek completed for this project, no evidence of stream bank erosion or previous attempts to stabilize the stream banks

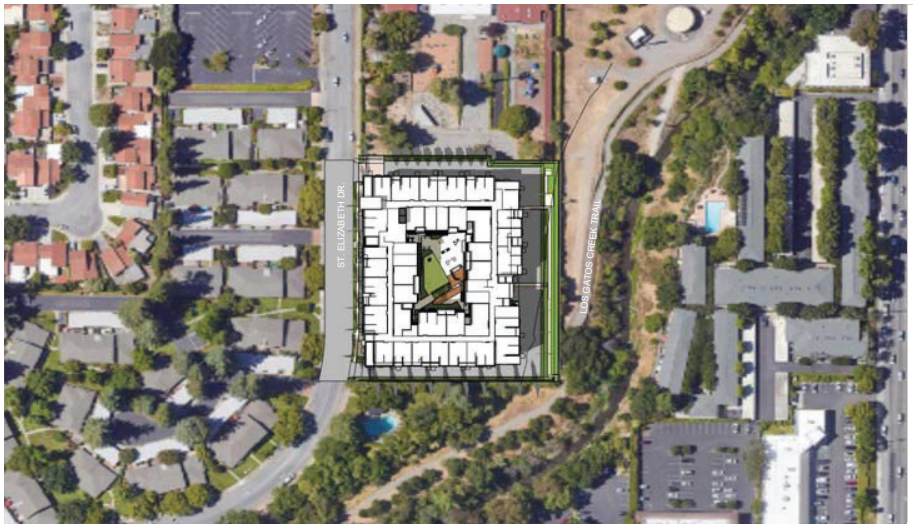
were observed. The project would not involve construction activities adjacent to Los Gatos Creek bank such that it would have a negative effect on stream bank stability. Therefore, the proposed project that would not have a negative effect on stream bank erosion.

The granting of the exception will not be detrimental or injurious to adjacent and/or downstream properties. For the reasons discussed above, granting of the exception will allow for uses similar to what are currently occurring and will not be detrimental or injurious to adjacent and/or downstream properties.

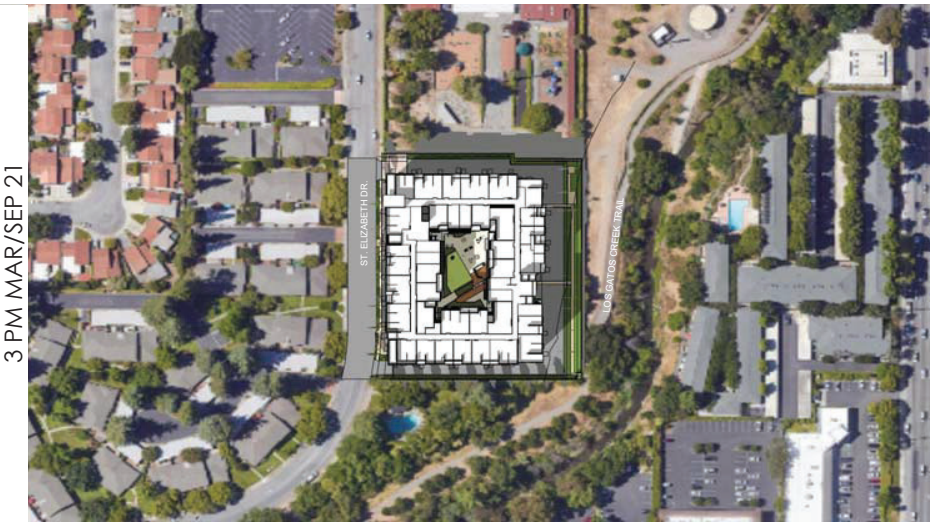
The BRE concluded that all areas on the project site that fall within the 100-foot setback are currently developed with structures, paved parking and/or non-native landscape vegetation. The project would result in similar uses such as an access road, surface parking spaces, and native and climate sensitive landscaping within the setback areas, but a higher density development within the same footprint, and would, therefore, not encroach closer to the creek than the baseline conditions. As discussed in checklist question d. below, the project would incorporate bird-safe design elements to reduce impacts to birds within the riparian corridor. In addition, a shadow study was completed for the proposed project showing the extent of possible shading for the equinoxes and solstices on June 21st, September 21st, March 21st, and December 21st. As shown on Figure 4.4-3, shadows from the proposed seven-story building would not shade riparian vegetation within the Los Gatos Creek riparian corridor except on winter solstice. Therefore, it is anticipated that there would be some impacts from shading after 4 pm during the winter months, when the sun is at its lowest. These impacts would be temporary (one to two hours per day from December through January) and would occur when most riparian species are dormant. Shading of the riparian corridor is not anticipated when the sun is higher in spring and summer, the typical growing season. Shading impacts as a result of the proposed project would therefore be minimal and not considered a significant impact.

Furthermore, as discussed in Section 3.1 Aesthetics, existing lighting on the project site consists of building-mounted security lighting streetlights, and headlights from vehicles on surrounding roadways and entering the existing site. Due to the high existing levels of lighting on-site, implementation of the project would result in an incremental increase in nighttime lighting on the project site. In addition, all proposed lighting would be shielded, directing light downward and away from the riparian corridor, consistent with the City's Riparian Corridor Policy. For these reasons, these improvements would not substantially degrade the ecological function and value of the creek/riparian corridor and the proposed project (including the setback exception) would not result in a substantial adverse effect on any riparian habitat or other sensitive natural community.[19] The project requests an exception to the City and Habitat Plan riparian corridor setback requirements to allow for the proposed improvements within the riparian corridor setbacks. **(Less than Significant Impact)**

[19] E.M.C. Planning Group. *Biological Resources Evaluation, 1050 St. Elizabeth Drive, San Jose, California.* October 6, 2022.



SUMMER SOLSTICE 3PM



EQUINOX 3PM

WINTER SOLSTICE 3PM

WINTER SOLSTICE 4PM

Source: Design and Architecture, 2022.

SHADE AND SHADOW IMPACTS ON LOS GATOS CREEK | FIGURE 4.4-3

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

The project site is developed with an existing senior living facility, surface parking, and landscaping. There are no wetlands on the project site. The nearest wetlands are Los Gatos Creek, approximately 50 feet south and east of the site. The project would involve redevelopment of the project site and would not involve any work within Los Gatos Creek. For this reason, development of the proposed project would not result in a substantial adverse effect on state or federally protected wetlands. **(Less than Significant Impact)**

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

The project site is adjacent to Los Gatos Creek; however, it is separated by a chain link fence under existing conditions. There is currently no direct access from the site to the trail. The proposed project would be developed within the same development footprint and would include replacement of the existing fence with a new six-foot tall solid wood fence. The site itself does not support a watercourse or provide habitat that facilitates the movement of any native resident or migratory fish or wildlife species with the exception of Townsend's big-eared bat.

In addition, the site is surrounded by urban development that further discourages wildlife movement. Therefore, the site has limited potential to serve as a migratory corridor for wildlife and the project would not result in an impact to native resident or migratory species with implementation of MM BIO-1.1 through MM BIO-1.5 and MM BIO-2.1 through MM BIO-2.5.

Avian Collisions with New Buildings

As shown in Figure 3.1-2 and Figure 3.1-3, the majority of the proposed building facades are composed of opaque wall panels broken up by smaller windows with no extensive glazing. However, design elements such as the proposed courtyard could increase potential for bird collisions. Birds may be attracted to the landscaping in the courtyard, increasing potential for collision with glazing on the building facades as they attempt to exit the courtyard. Some birds using the site are expected to collide with the proposed building, resulting in injury or death, an unfortunate situation for virtually all buildings to some degree. However, the number and frequency of collisions would be low due to the predominantly opaque nature of the building facades. In addition, as noted in Section 4.4.1 Environmental Setting, bird species observed within the project area are urban adapted species that are widespread through urban and suburban land uses in the San Francisco Bay Area and have a high regional population.[20] Furthermore, according to the BRE, the project would be consistent with the bird-safe design guidelines included in the City's Riparian Corridor Protection and Bird Safe Design Council Policy because it would not include mirrors or large areas of reflective glass, transparent glass skyways, walkways, or entryways, free-standing glass walls, transparent building corners, up-

[20] E.M.C. Planning Group. *Biological Resources Evaluation, 1050 St. Elizabeth Drive, San Jose, California.* October 6, 2022.

lighting, or spotlights.[21] Therefore, any bird collisions resulting from the proposed project would represent a very small portion of the regional populations and would not represent a substantial portion of any species. For these reasons, the project would not substantially interfere with movement of native species due to avian collision with the new building. **(Less than Significant Impact)**

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

The City of San José maintains the urban landscape by controlling the removal of ordinance trees on private property (San José Municipal Code Section 13.32). Ordinance trees are defined as trees exceeding 38 inches in circumference, or approximately 12 inches in diameter, at a height of 4.5 feet above the ground. Ordinance trees are generally mature trees that help beautify the City, slow the erosion of topsoil, minimize flood hazards, minimize risk of landslides, increase property values, and improve local air quality.

As discussed above, there are 16 trees located on and adjacent to the project site (including 12 on-site trees and four adjacent to the site to the south). Of the 16 trees, 12 are ordinance sized trees. The project would remove a total of 12 trees on-site, including eight ordinance sized trees. The proposed project would be required to offset the removal of trees from urban forest through compliance with Standard Permit Conditions below.

Standard Permit Condition:

- **Tree Replacement.** A tree removal permit would be required from the City of San José for the removal of ordinance trees. The removed trees would be replaced according to tree replacement ratios required by the City, as provided in Table 4.4-2 below.

Table 4.4-2: Tree Replacement Ratios

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

x:x = tree replacement to tree loss ratio

Note: Trees greater than or equal to 38-inch circumference shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees. For Multi-Family residential, Commercial and Industrial properties, a permit is required for removal of trees of any size. A 38-inch tree equals 12.1 inches in diameter.

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

Single Family and two-dwelling properties may be mitigated at a 1:1 ratio.

[21] Ibid.

Since 12 trees onsite would be removed, seven trees would be replaced at a 4:1 ratio, one trees would be replaced at a 3:1 ratio, and two trees would be replaced at a 1:1 ratio. As mentioned previously, there are no native trees on-site. The total number of replacement trees required to be planted would be 33 trees. The species of trees to be planted would be determined in consultation with the City Arborist and the Department of Planning, Building, and Code Enforcement (PBCE).

In the event the project site does not have sufficient area to accommodate the required tree mitigation, one or more of the following measures will be implemented, to the satisfaction of the Director of PBCE or Director's designee, at the development permit stage. Changes to an approved landscape plan requires issuance of a Permit Adjustment or Permit Amendment:

- The size of a 15-gallon replacement tree may be increased to 24-inch box and count as two replacement trees to be planted on the project site.
- Pay Off-Site Tree Replacement Fee(s) to the City, prior to the issuance of Public Works grading permit(s), in accordance to 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.

As shown in Figure 3.1-4, the project proposes to plant 38 trees on-site and seven street trees adjacent to the project site, consistent with the City's tree replacement ratio.

Furthermore, project construction could result in impacts to the four existing trees to be retained under the proposed project (all of which would be located adjacent to the south of the site). Should construction activities such as grading, trenching, excavation, and use of heavy equipment within the dripline of existing trees could result in damage to or loss of existing trees and failure of preservation.

Impact BIO-3: Use of heavy equipment within the dripline of existing trees during development of the proposed project could result in damage to existing trees and failure of preservation, resulting in significant impacts to existing trees.

Mitigation Measure: The proposed project shall implement the following mitigation measures to reduce and/or avoid impacts to trees to a less than significant level.

MM BIO-3.1: **Tree Preservation.** Prior to issuance of demolition permits on the project, the following measures shall be implemented and marked on all plans to protect the four existing trees to be retained during project construction.

- Establish a Tree Protection Zone around trees to be preserved. As a general guideline, the Tree Protection Zone shall be the property line.
- Route underground services including utilities, sub-drains, water or sewer around the Tree Protection Zone. Where encroachment cannot be avoided, special construction techniques such as hand digging or tunneling under roots shall be employed where necessary to minimize root injury.

- Use only herbicides safe for use around tree and labeled for that use, even below pavement.
- Design irrigation systems so that no trenching will occur within the Tree Protection Zone.
- Install protection at the Tree Protection Zone prior to demolition, grubbing, or grading.
- No entry is permitted into a Tree Protection Zone without permission of the project superintendent.,
- Trees to be preserved may require pruning to clean the crown and to provide clearance. All pruning shall be completed by an International Society of Certified Arborist or Tree Worker and adherence to the latest editions of the American National Standards for tree work (Z133 and A300) and International Society of Arboriculture Best Management Practices, Pruning.
- Any grading, construction, demolition or other work that is expected to encounter roots of trees to be preserved should be monitored by the Consulting Arborist.
- If injury occurs to any tree during construction, it should be evaluated as soon as possible by the Consulting Arborist so that appropriate treatments can be applied.
- Fences are to remain until all site work has been completed. Fences may not be relocated or removed without permission of the project superintendent.
- Construction trailers, traffic and storage areas must remain outside fenced areas at all times.
- No materials, equipment, soil, waste or wash-out water may be deposited, stored, or parked within the Tree Protection Zone (fenced area).
- Any additional tree pruning needed for clearance during construction must be performed by a Consulting arborist and not by construction personnel.
- Any roots damaged during grading or construction shall be exposed to sound tissue and cut cleanly with a saw.

With implementation of MM BIO-3.1, impacts to existing trees from construction activities associated with the proposed project would be reduced to a less than significant level. **(Less than Significant Impact with Mitigation Incorporated)**

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

The project would not be subject to any Habitat Plan land cover fee given the current developed nature of the site and its designation as Urban-Suburban land in the Habitat Plan. Furthermore, the

project would not disturb any new, unimproved, or undisturbed land. Therefore, Condition 11 of the Habitat Plan would not apply to the project.[22]

Nonetheless, all development covered by the Habitat Plan that results in an increase in trip generation above existing site conditions is required to pay a nitrogen deposition fee for cumulative impacts to serpentine plants in the Habitat Plan area. Nitrogen deposition is known to have damaging effects on many of the serpentine plans in the Habitat Plan area, as well as host plants that support the Bay checkerspot butterfly. All major remaining populations of the butterfly and many of the serpentine plant populations occur in areas subject to air pollution from vehicle exhaust and other sources throughout the Bay Area including the project area. Because serpentine soils tend to be nutrient poor, and nitrogen deposition artificially fertilizes serpentine soils, nitrogen deposition facilitates the spread of invasive plant species. The displacement of these species, and subsequent decline of the several federally listed species, including the butterfly and its larval host plants, has been documented on Coyote Ridge in central Santa Clara County (approximately 12.5 miles southeast of the project site).

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. The impacts of nitrogen deposition upon serpentine habitat and the Bay checkerspot butterfly can be correlated to the amount of net new vehicle trips that a project is expected to generate. The nitrogen deposition fees collected under the Habitat Plan for new vehicle trips would be used to purchase and manage conservation land for the Bay checkerspot butterfly and other sensitive species. The project applicant would be required to implement the following Standard Permit Condition to comply with the Habitat Plan.

Standard Permit Conditions:

1. 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 Code Enforcement 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 www.scv-habitatplan.org.

Compliance with the Standard Permit Condition listed above would ensure that the project does not conflict with the provisions of the Habitat Plan. The project would pay applicable nitrogen deposition fees based on the proposed trip generation associated with the proposed uses. **(Less than Significant Impact)**

[22] Santa Clara Valley Habitat Agency. *Santa Clara Valley Habitat Plan Clarification and Interpretation, Subject: Condition 11 – Stream Setback Applicability.* October 13, 2021. Page 3.

4.5 CULTURAL RESOURCES

The following discussion is based, in part on an Archaeological Literature Search and Historic Resources Evaluation prepared for the project by Archaeological Historical Consultants, Inc. in July 2022 (Appendix D). The results of the Archaeological Literature Search are confidential; therefore page 4 of Appendix D has been omitted. A copy of the full Archaeological Literature Search is on file at the City of San José Department of Planning, Building, and Code Enforcement and is available upon request with appropriate credentials.

4.5.1 Environmental Setting

4.5.1.1 *Regulatory Framework*

Federal and State

National Historic Preservation Act

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

California Register of Historical Resources

The California Register of Historical Resources (CRHR) is administered by the State Office of Historic Preservation and encourages protection of resources of architectural, historical, archeological, and cultural significance. The CRHR identifies historic resources for state and local planning purposes and affords protections under CEQA. Under Public Resources Code Section 5024.1(c), a resource may be eligible for listing in the CRHR if it meets any of the NRHP criteria.[23]

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

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

[23] California Office of Historic Preservation. "CEQA Guidelines Section 15064.5(a)(3) and California Office of Historic Preservation Technical Assistance Series #6." Accessed August 31, 2020. http://www.ohp.parks.ca.gov/pages/1069/files/technical%20assistance%20bulletin%206%202011%20update.pdf.

location, 2) design, 3) setting, 4) materials, 5) workmanship, 6) feeling, and 7) association.

California Native American Historical, Cultural, and Sacred Sites Act

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

Public Resources Code Sections 5097 and 5097.98

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

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

Local

Historic Preservation Ordinance

The City of San José Historic Preservation Ordinance (Chapter 13.48 of the Municipal Code) is designed to identify, protect, and encourage the preservation of significant resources and foster civic pride in the City's cultural resources. The Historic Preservation Ordinance requires the City to establish a Historic Landmarks Commission, maintain a Historic Resources Inventory, preserve historic properties using a Landmark Designation process, require Historic Preservation Permits for alterations of properties designated as a Landmark or within a City historic district, and provide financial incentives through a Mills Act Historical Property Contract.

Envision San José 2040 General Plan

Various policies in the City's 2040 General Plan have been adopted for the purpose of reducing or avoiding impacts related to cultural resources. The following are applicable to the project. The following cultural-resources-related General Plan policies are applicable to the project:

Policy	Description
LU-13.8	Require new development alterations and rehabilitation/remodels adjacent to a designated or candidate
LU-13.15	Implement City, state, and federal historic preservation laws, regulations, and codes to

	ensure the adequate protection of historic resources.
LU-14.1	Preserve the integrity and enhance the fabric of areas or neighborhoods with a cohesive historic character area as a means to maintain a connection between the various structures in the area.
LU-14.4	Discourage demolition of any buildings or structures listed on or eligible for the Historic Resources Inventory as a Structure of Merit by pursuing the alternatives of rehabilitation re-use on the subject site and/or relocation of the resource.
LU-14.6	Consider preservation of Structures of Merit and Contributing Structures in Conservation Areas as a key consideration in the development review process. As development proposals are submitted, evaluate the significance of structures, complete non-Historic American Buildings Survey level of documentation, list qualifying structures on the Historic Resources Inventory, and consider the feasibility of incorporating structures into the development proposal, particularly those structures that contribute to the fabric of Conservation areas.
EC-2.3	Require new development to minimize vibration impacts to adjacent uses during demolition and construction. For sensitive historic structures, a vibration limit of 0.08 inches/second (in/sec) PPV (peak particle velocity) will be used to minimize the potential for cosmetic damage to a building. A vibration limit of 0.20 in/sec PPV will be used to minimize the potential for cosmetic damage at buildings of normal conventional construction.
ER-10.1	For proposed development sites that have been identified as archaeologically or paleontologically sensitive, requiring 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 project design.
ER-10.2	Recognizing that Native American human remains may be encountered at unexpected locations, impose a requirement on all development permits and tentative subdivision maps that upon discovery during construction, development activity will cease until professional archaeological examination confirms whether the burial is human. If the remains are determined to be Native American, applicable state laws shall be enforced.
ER-10.3	Ensure that City, State, and Federal historic preservation laws, regulations, and codes are enforced, including laws related to archaeological and paleontological resources to ensure that adequate protection of historic and pre-historic resources.

Historic Preservation Ordinance

The City of San José Historic Preservation Ordinance (Chapter 13.48 of the Municipal Code) is designed to identify, protect, and encourage the preservation of significant resources and foster civic pride in the City's cultural resources. The Historic Preservation Ordinance requires the City to establish a Historic Landmarks Commission, maintain a Historic Preservation Permits for alterations to properties designated as a landmark or within a City historic district, and provide financial incentives through a Mills Act Historic Property Contract.

San José Historic Resources Inventory

Consistent with the City's Historic preservation ordinance, in 1975, the City developed an inventory of historically and architecturally significant structures. The inventory now includes approximately 4,000 properties.

4.5.1.2 *Existing Conditions*

Prehistoric Resources

Native Americans occupied Santa Clara Valley and the greater Bay Area for more than 5,000 years. The exact time period of the Ohlone (originally referred to as Costanoan) migration into the Bay Area is debated by scholars. Dates of the migration range between 3,000 B.C. and 500 A.D. Regardless of the actual time frame of their initial occupation of the Bay Area and, in particular Santa Clara Valley, it is known that the Ohlone had a well-established population of approximately 7,000 to 11,000 people with a territory that ranged from the San Francisco Peninsula and the East Bay, south through the Santa Clara Valley and down to Monterey and San Juan Bautista. The Ohlone people were hunter/gatherers focused on hunting, fishing, and collecting seasonal plant and animal resources, including tidal and marine resources from San Francisco Bay. The customary way of living, or lifeway, of the Costanoan/Ohlone people disappeared by about 1810 due to disruption by introduced diseases, a declining birth rate, and the impact of the California mission system established by the Spanish in the area beginning in 1777.

The literature search completed for the project site did not identify any recorded archaeological resources within 0.25-mile of the project site. No resources were identified on the project site. However, due to the proximity of the project site to Los Gatos Creek (approximately 50 feet east), the project site is sensitive for buried prehistoric Native American resources and has low sensitivity for historic-era archaeological resources.

Historic-Era Resources

Neighborhood and Site Context

The Willow Glen area, along with much of the Santa Clara Valley, was occupied by agricultural operations and supporting businesses in the late 19th and early 20th centuries. In the mid-1840s, the project site and surrounding area was referred to as Rancho Los Coches and was owned by Roberto, a Native American associated with Mission Santa Clara. Between 1847 and 1940, the property was subdivided, resold multiple times, and used for agricultural purposes until the 1960s when it was transferred to Sisters of the Holy Family. The Sister of the Holy family built the St. Elizabeth Day Home and convent on the 4-acre parcel in 1964. The buildings were designed by Richard Paul Fiedler, AIA and Associates, a firm known for almost exclusively designing Catholic buildings in the Bay Area. The St. Elizabeth Convent is the building that currently remains on the project site. The Day Home was situated outside the project site at the southeast corner of McKinley Avenue (now McKinley Court) and St. Elizabeth Drive and served to provide child-care services to working class families. At the time the Day Home and convent were built, St. Elizabeth drive did not exist. In 1973, St. Elizabeth Drive was constructed in its current alignment to provide access to the project site and the residential neighborhood to the west which was developed at the same time. In the early 1990s, in an effort to support the convent financially, 30 of the 40 bedrooms in the convent were converted into residences for senior women. In 2004, the entire building was renovated and converted to the current residential care facility, adult day care center, and senior center.

There are no historic resources adjacent to the project site. The nearest historic resource to the project site is a residence at 1305 Willow Street, approximately 0.4-miles east of the project site.

CRHR Evaluation

The existing two-story former convent constructed on the project site in 1964 was evaluated for historical significance against the CRHR criteria.

Criterion 1

The convent was not a large or important religious institution in San José and was not associated with the significant local themes of the mid-20th century such as suburban development and the growth of the electronics industry. Therefore, the building is not eligible for listing on the CRHR under Criterion 1.

Criterion 2

The Sisters of the Holy Family have always been a small, little-known monastic order, and the convent at 1050 St. Elizabeth Drive was not a significant building within the history of the order; thus, the building is not eligible for listing on the CRHR under Criterion 2.

Criterion 3

The existing two-story building is almost purely utilitarian in aesthetic, with building materials and architectural features chosen for their economy and ornamentation limited to a plain belt of molding at the second-floor level, and a cross pattern in relief on the wall on the south court. For these reasons, the design of the property lacks distinction, and thus is not eligible for listing in the CRHR under Criterion 3.

Overall, the building at 1050 St. Elizabeth Drive does not appear to be an historical resource under CEQA because it does not meet any of the significance criteria of the CRHR.

City of San José City Landmark Evaluation

The existing building on-site was evaluated for historical significance against the City of San José's Landmark Designation criteria. The evaluation of the building against each of the eight criterion is discussed below.

1. Its character, interest or value as part of the local, regional, state or national history, heritage, or culture;

   As previously noted, the convent was not a large or important religious institution in San José and was not associated with the significant local, regional, state or national themes of its time. Therefore, the existing building is not eligible for listing on the City's Historic Resources Inventory as a Candidate City Landmark under criterion 1.

2. Its location as a site of significant historic event;

   No significant events were identified as being associated with the convent, and therefore, the building is not eligible for listing on the City's Historic Resources Inventory as a Candidate City Landmark under criterion 2.

3. Its identification with a person or persons who significantly contributed to the local, regional, state, or national culture and history;

As discussed above, the existing building is not associated with any significant persons, and is therefore, not eligible for listing on the City's Historic Resources Inventory as a Candidate City Landmark under criterion 3.

4. Its exemplification of the cultural, economic, social or historic heritage of the City of San José;

   As previously noted, the convent was not a large or important religious institution in San José and was not associated with the significant local, regional, state or national themes of its time. Therefore, the existing building is not eligible for listing on the City's Historic Resources Inventory as a Candidate City Landmark under criterion 4.

5. Its portrayal of the environment of a group of people in an era of history characterized by a distinctive architectural style;

   The architectural style of the existing building is plain and utilitarian and does not adhere to any specific style, including that of the Roman Catholic Church in San José. For this reason, it is not eligible for listing in the City's Historic Resources Inventory as a Candidate City Landmark criterion 5.

6. Its embodiment of distinguishing characteristics of an architectural type or specimen;

   The architectural style of the existing building is plain, utilitarian and lacks distinction. Additionally, the building design does not adhere to any specific style. For these reasons, it is not eligible for listing in the City's Historic Resources Inventory as a Candidate City Landmark under criterion 6.

7. Its identification as the work of an architect or master builder whose individual work has influenced the development of the City of San José;

   As discussed above, the architectural style of the existing building lacks distinction and the architect was not well known or influential in the City of San José. For these reasons, it is not eligible for listing in the City's Historic Resources Inventory as a Candidate City Landmark under criterion 7.

8. Its embodiment of elements of architectural or engineering design, detail, material or craftsmanship which represents a significant architectural innovation or which is unique.

   As discussed under criterion 6, the architectural style of the existing building lacks distinction. For this reason, it is not eligible for listing in the City's Historic Resources Inventory as a Candidate City Landmark under criterion 8.

In summary, the building at 1050 St Elizabeth is not eligible for listing as a City of San José Landmark on the City's Historic Resources Inventory because it is not identified or associated with persons, eras or events that have contributed to local, regional, state, or national history, heritage or culture, and is not an embodiment of architectural or engineering craftsmanship, or the work of a master builder or architect.

4.5.2 Impact Discussion

	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
Would the project:				
a) Cause a substantial adverse change in the significance of a historical resource pursuant to CEQA Guidelines Section 15064.5?	☐	☐	☒	☐
b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to CEQA Guidelines Section 15064.5?	☐	☒	☐	☐
c) Disturb any human remains, including those interred outside of dedicated cemeteries?	☐	☐	☒	☐

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

The proposed project would demolish the existing two-story senior living facility building and construct a new seven story residential building with landscaping.

As discussed in Section 4.5.1.2 above, there are no historic resources on the project site because the existing building does not meet the significance criteria for listing in the CRHR or the San José Historic Resources Inventory as a Candidate City Landmark. For these reasons, implementation of the proposed project would not result in a significant impact to historic resources. **(Less than Significant Impact)**

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

As noted above, no previously recorded archaeological resources were identified on the project site or adjacent properties; however, the site is located within an archaeologically sensitive area. Therefore, it is possible that cultural resources could be encountered during project grading and excavation. For this reason, impacts to archaeological resources would be potentially significant, but with the implementation of the below mitigation measures, the impacts would be reduced to a less than significant level.

Impact CUL-1: Ground disturbing activities associated with project construction may result in impacts to unrecorded archaeological resources.

Mitigation Measures: Implementation of the mitigation measures below would reduce potential impacts to previously undiscovered archaeological resources to a less than significant level.

MM CUL-1.1: Prior to issuance of any grading permits, the project applicant shall submit evidence to the Director of Planning, Building and Code Enforcement or the

Director's designee that an Archaeological Monitoring Contractor Awareness Training was held prior to ground disturbance. The training shall be facilitated by the project archaeologist in coordination with a Native American representative from a California Native American tribe that has consulted on the project, is registered with the Native American Heritage Commission (NAHC) for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3.

MM CUL-1.2: Prior to the issuance of any grading permits, the project applicant shall engage a qualified archaeological monitor and Native American tribal monitor registered with the NAHC for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 2108.0.3 and that has consulted on the project. The archaeological and tribal monitors shall be present at the project site during all demolition and grading disturbance activities. The project applicant shall submit a copy of the agreement to the Director of Planning, Building and Code Enforcement or the Director's designee.

In addition to the project specific mitigations described above, consistent with City policies, the proposed project construction would be required to implement the Standard Permit Conditions listed below to further minimize impacts to undiscovered cultural resources.

Standard Permit Condition: Implementing the following conditions would reduce impacts of the project on subsurface cultural resources:

- **Subsurface Cultural Resources.** If prehistoric or historic resources are encountered during excavation and/or grading of the site, all activity within a 50-foot radius of the find shall be stopped, the Director of PBCE or the Director's designee and the City's Historic Preservation Officer shall be notified, and a qualified archaeologist in consultation with a consulting Native American Tribe(s) registered with the Native American Heritage Commission for the City of San José that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3, shall examine the find. The archaeologist in consultation with the Tribal representative shall 1) evaluate the find(s) to determine if they meet the definition of a historical or archaeological resource; and (2) make appropriate recommendations regarding the disposition of such finds prior to issuance of building permits. Recommendations could include collection, recordation, and analysis of any significant cultural materials. A report of findings documenting any data recovery shall be submitted to Supervising Environmental Planner and Historic Preservation Officer of the Department of PBCE and the Northwest Information Center (if applicable). Project personnel should not collect or move any cultural materials.

With implementation of the Mitigation Measure CUL-1.1, CUL-1.2, and Standard Permit Conditions detailed above, the proposed project would have a less than significant impact to as yet unrecorded archaeological resources. **(Less than Significant Impact with Mitigation Incorporated)**

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

As noted above, the site is located within a sensitive area for Native American archaeological resources. Because the project is within an archaeologically sensitive area for prehistoric occupation near waterways, it is possible that Native American human remains could be located in the area. Excavation of the site could uncover as yet unrecorded burials which would be a significant impact.

Standard Permit Conditions: Consistent with General Plan policy ER-10.2, the proposed project would be required to comply with the following conditions to ensure human remains would not be disturbed.

- **Human Remains.** If any human remains are found during any field investigations, grading, or other construction activities, all provisions of California Health and Safety Code Sections 7054 and 7050.5 and Public Resources Code Sections 5097.9 through 5097.99, as amended per Assembly Bill 2641, shall be followed. In the event of the discovery of human remains 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 PBCE or the Director's designee and the qualified archaeologist, who shall then notify the Santa Clara County Coroner. The Coroner shall make a determination as to whether the remains are Native American. If the remains are believed to be Native American, the Coroner shall contact the NAHC within 24 hours. The NAHC will then designate a Most Likely Descendant (MLD). The MLD shall 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 the mediation by the NAHC fails to provide measures acceptable to the landowner.

With implementation of the Standard Permit Condition, the proposed project would have a less than significant impact to as yet unrecorded human remains. **(Less than Significant Impact)**

4.6 ENERGY

The following discussion is based, in part on an Air Quality Analysis prepared for the project by Illingworth & Rodkin, Inc. in July 2022 (Appendix A).

4.6.1 Environmental Setting

Federal and State

Energy Star and Fuel Efficiency

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

Renewables Portfolio Standard Program

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

Executive Order B-55-18 To Achieve Carbon Neutrality

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

California Building Standards Code

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

[24] California Building Standards Commission. "California Building Standards Code." Accessed April 27, 2022. https://www.dgs.ca.gov/BSC/Codes#@ViewBag.JumpTo.

issued by city and county governments.[25]

California Green Building Standards Code

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

Advanced Clean Cars Program

CARB adopted the Advanced Clean Cars program in 2012 in coordination with the EPA and National Highway Traffic Safety Administration. The program combines the control of smog-causing pollutants and GHG emissions into a single coordinated set of requirements for vehicle model years 2015 through 2025. The program promotes development of environmentally superior passenger cars and other vehicles, as well as saving the consumer money through fuel savings.[26]

Regional and Local

Climate Smart San José

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

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

Sustainable City Strategy

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

[25] California Energy Commission (CEC). "2019 Building Energy Efficiency Standards." Accessed April 27, 2022. https://www.energy.ca.gov/programs-and-topics/programs/building-energy-efficiency-standards/2019-building-energy-efficiency.
[26] California Air Resources Board. "The Advanced Clean Cars Program." Accessed May 5, 2022. https://www.arb.ca.gov/msprog/acc/acc.htm.

City of San José Reach Building Code

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

Energy and Water Building Performance Ordinance

In December 2018, the City of San José voted to adopt the Energy and Water Building Performance Ordinance consistent with Climate Smart San José. This ordinance requires commercial and multi-family buildings 20,000 square feet and over to track their yearly whole building energy and water usage data with the EPA platform ENERGYSTAR Portfolio Manager and share this data with the City. Implementation of the ordinance will help the City reach GHG emissions reduction and water conservation goals by encouraging efficiency in large commercial and multi-family buildings.

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 Division Deposit Program that fosters recycling of construction and demolition materials (Chapter 9.10).

Envision San José 2040 General Plan

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

Policy	Description
MS-1.1	Demonstrate leadership in the development and implementation of green building policies and practices. Ensure that all projects are consistent with or exceed the City's Green Building Ordinance and City Council Policies as well as State and/or regional policies which require that projects incorporate various green building principles into design and construction.
MS-2.3	Utilize solar orientation, (i.e., building placement), landscaping, design, and construction techniques for new construction to minimize energy consumption.
MS-3.1	Require water-efficient landscaping, which conforms to the State's Model Water Efficient Landscape Ordinance, for all new commercial, institutional, industrial, and developer installed residential development unless for recreation or other area functions.
MS-5.5	Maximize recycling and composting from all residents, businesses, and institutions in the City.

MS-6.5	Reduce the amount of waste disposed in landfills through waste prevention, reuse, and recycling of materials at venues, facilities, and special events.
MS-6.8	Maximize reuse, recycling, and composting citywide.
MS-14.2	Enhance existing neighborhoods by adding a mix of uses that facilitate biking, walking, or transit ridership through improved access to shopping, employment, community services, and gathering places.
MS-14.3	Consistent with the California Public Utilities Commission's California Long Term Energy Efficiency Strategy Plan, as revised and when technological advances make it feasible, require all new residential and commercial construction to be designed for zero net energy use.
MS-14.4	Implement the City's Green Building Policies (see Green Building Section) so that new construction and rehabilitation of existing buildings fully implements industry best practices, including the use of optimized energy systems, selection of materials and resources, water efficiency, sustainable site selection, and passive solar building design and planting of trees and other landscape materials to reduce energy consumption.
MS-17.2	Ensure that development within San José is planned and built in a manner consistent with fiscally and environmentally sustainable use of current and future water supplies by encouraging sustainable development practices, including low-impact development, water-efficient development and green building techniques. Support the location of new development within the vicinity of the recycled water system and promote expansion of the South Bay Water Recycling (SBWR) system to areas planned for new development. Residential development outside of the Urban Service Area can be approved only at minimal levels and only allowed to use non-recycled water at urban intensities. For residential development outside of the Urban Service Area, restrict water usage to well water, rainwater collection, or other similar sustainable practice. Non-residential development may use the same sources and potentially make use of recycled water, provided that its use will not result in conflicts with other 2040 General Plan policies, including geologic or habitat impacts. To maximize the efficient and environmentally beneficial use of water, outside of the Urban Service Area, limit water consumption for new development so that it does not diminish the water supply available for projected development in areas planned for urban uses within San José or other surrounding communities.
MS-18.5	Reduce citywide per capita water consumption by 25% by 2040 from a baseline established using the 2010 Urban Water Management Plans of water retailers in San José.
MS-18.6	Achieve by 2040, 50 million gallons per day of water conservation savings in San José, by reducing water use and increasing water use efficiency.
IN-5.3	Use solid waste reduction techniques, including source reduction, reuse, recycling, source separation, composting, energy recovery and transformation of solid waste to extend the life span of existing landfills and to reduce the need for future landfill facilities and to achieve the City's Zero Waste goals.
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.
TR-1.4	Through the entitlement process for new development, fund needed transportation improvements for all modes, giving first consideration to improvement of bicycling, walking, and transit facilities. Encourage investments that reduce vehicle travel demand.
TR-2.8	Require new development where feasible to provide on-site facilities such as bicycle

	storage and showers, provide connections to existing and planned facilities, dedicate land to expand existing facilities or provide new facilities such as sidewalks and/or bicycle lanes/paths, or share in the cost of improvements.
TR-3.3	As part of the development review process, require that new development along existing and planned transit facilities consist of land uses and development types and intensities that contribute toward ridership. In addition, require that new development is designed to accommodate and to provide direct access to transit facilities.

4.6.1.1 *Existing Conditions*

Total energy usage in California was approximately 6,956.6 trillion British thermal units (Btu) in the year 2020, the most recent year for which this data was available.[27] Out of the 50 states, California is ranked second in total energy consumption and 49th in energy consumption per capita. The breakdown by sector was approximately 21 percent (1,507.7 trillion Btu) for residential uses, 19.6 percent (1,358.3 trillion Btu) for commercial uses, 24.6 percent (1,701.2 trillion Btu) for industrial uses, and 34 percent (2,355.5 trillion Btu) for transportation.[28] This energy is primarily supplied in the form of natural gas, petroleum, nuclear electric power, and hydroelectric power.

Electricity

Electricity in Santa Clara County in 2020 was consumed primarily by the non-residential sector (73 percent), followed by the residential sector consuming 24 percent. In 2020, a total of approximately 16,435 gigawatt hours (GWh) of electricity was consumed in Santa Clara County.[29]

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

Natural Gas

PG&E provides natural gas services within the City of San José. In 2020, approximately two percent of California's natural gas supply came from in-state production, while the remaining supply was imported from other western states and Canada.[30] In 2020 California used 2,144 trillion Btu of

[27] United States Energy Information Administration. "State Profile and Energy Estimates, 2020." Accessed July 5, 2022. https://www.eia.gov/state/?sid=CA#tabs-2.
[28] United States Energy Information Administration. "State Profile and Energy Estimates, 2020." Accessed July 2, 2022. https://www.eia.gov/state/?sid=CA#tabs-2.
[29] California Energy Commission. Energy Consumption Data Management System. "Electricity Consumption by County." Accessed July 5, 2022. http://ecdms.energy.ca.gov/elecbycounty.aspx.
[30] California Gas and Electric Utilities. 2020 *California Gas Report.* Accessed August 2, 2021. https://www.socalgas.com/sites/default/files/2020-10/2020_California_Gas_Report_Joint_Utility_Biennial_Comprehensive_Filing.pdf.

natural gas.[31] In 2020, Santa Clara County used less than one percent of the state's total consumption of natural gas.[32]

Fuel for Motor Vehicles

In 2019, 15.4 billion gallons of gasoline were sold in California.[33] The average fuel economy for light-duty vehicles (autos, pickups, vans, and sport utility vehicles) in the United States has steadily increased from about 13.1 miles per gallon (mpg) in the mid-1970s to 25.4 mpg in 2020.[34] Federal fuel economy standards have changed substantially since the Energy Independence and Security Act was passed in 2007. That standard, which originally mandated a national fuel economy standard of 35 miles per gallon by the year 2020, was updated in April 2022 to require all cars and light duty trucks achieve an overall industry average fuel economy of 49 mpg by model year 2026. [35,36]

Energy Use by Existing Development

The project site is currently developed with a two-story senior living facility, surface parking, and landscaping. Energy use for the existing building includes electricity and natural gas for building hearing and lighting as well as gasoline for vehicles traveling to and from the site. The existing building and parking lot use approximately 154,657 kWH of electricity per year and 335,267 kBtu of natural gas per year. Using the U.S. EPA fuel economy estimates for 2020, the existing buildings on-site consume approximately 9,913 gallons of gasoline per year.[37]

[31] United States Energy Information Administration. "State Profile and Energy Estimates, 2020." Accessed July 5, 2022. https://www.eia.gov/state/?sid=CA#tabs-2.
[32] California Energy Commission. "Natural Gas Consumption by County." Accessed July 5, 2022. http://ecdms.energy.ca.gov/gasbycounty.aspx.
[33] California Department of Tax and Fee Administration. "Net Taxable Gasoline Gallons." Accessed July 25, 2022. https://www.cdtfa.ca.gov/dataportal/dataset.htm?url=VehicleTaxableFuelDist.
[34] United States Environmental Protection Agency. "The 2021 EPA Automotive Trends Report: Greenhouse Gas Emissions, Fuel Economy, and Technology since 1975." November 2021. https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P1010U68.pdf
[35] United States Department of Energy. *Energy Independence & Security Act of 2007.* Accessed May 13, 2022. http://www.afdc.energy.gov/laws/eisa.
[36] United States Department of Transportation. USDOT Announces New Vehicle Fuel Economy Standards for Model Year 2024-2026." Accessed May 13, 2022. https://www.nhtsa.gov/press-releases/usdot-announces-new-vehicle-fuel-economy-standards-model-year-2024-2026
[37] Illingworth & Rodkin. *1050 St. Elizabeth Residential Project Construction Community Risk Assessment.* July 19, 2022.

4.6.2 Impact Discussion

	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
Would the project:				
a) Result in a potentially significant environmental impact due to wasteful, inefficient, or unnecessary consumption of energy resources, during project construction or operation?	☐	☐	☒	☐
b) Conflict with or obstruct a state or local plan for renewable energy or energy efficiency?	☐	☐	☒	☐

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

Construction

Project construction would consume energy during demolition, site preparation, grading, excavation, trenching, and paving; however, the project would not waste or use energy inefficiently. Construction processes are generally designed to be efficient in order to save money. That is, equipment and fuel are not typically used wastefully on the site because of the added expense associated with renting the equipment, as well as maintenance and fuel. Compared to construction in outlying, undeveloped areas, the proposed project would save energy by constructing in an urbanized area that is proximate to roadways, construction supplies, and workers. In addition, construction of the proposed project includes several measures to improve the efficiency of the construction process, including participating in the City's recycling construction and demolition materials program, restricting equipment idling times to five minutes or less, and requiring the project to post signs on-site reminding workers to shut off idling equipment (see Standard Permit Conditions under Air Quality checklist question c).

Operation

Operation of the proposed project would consume energy for multiple purposes, including building heating and cooling, lighting, and appliance use. Energy would also be consumed vehicles (e.g., residents, visitors and building management employees, etc.) traveling to and from the project site. The net increase in energy use resulting from the proposed project compared to existing on-site use is summarized in Table 4.6-1.

Table 4.6-1: Annual Energy Use of Existing and Proposed Development			
	Electricity (kWh)	**Natural Gas (kBtu)**	**Gasoline (gallons)**
Existing Use	154,657	335,267	9,913
Proposed Project	1,378,476	0	69,440
Project Net Increase	1,223,819	(335,267)	59,527

Note: The estimated gasoline demand is based on the estimated VMT of 251,813 for existing uses and 1,763,781 for the project, and the average fuel economy of 25.4 mpg.

kWh = kilowatt per hour

kBtu = kilo-British thermal unit

Source: Illingworth & Rodkin, Inc. *1050 St. Elizabeth Drive Residential Project Construction Community Risk Assessment.* July 19, 2022.

As shown in Table 4.6-1, the project would result in a reduction in natural gas demand and an increase in electricity and gasoline demand compared to existing conditions. The project, however, would not represent a wasteful or inefficient use of energy resources because the project would be required to comply with Title 24 and CALGreen requirements to reduce energy consumption, achieve LEED Silver certification consistent with Council Policy 6-32, be all electric and include rooftop solar photovoltaic panels consistent with the City's Reach Code. For these reasons, the project would not result in a wasteful use of energy or conflict with a state or local plan for renewable energy or energy efficiency and impacts would be less than significant. **(Less than Significant Impact)**

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

The project would be consistent with the policies described in Section 4.6.1.1. In addition, the proposed project would comply with Title 24 and CALGreen and the green building measures listed above including generating renewable energy on-site from rooftop solar panels. For these reasons, the project would not conflict with or obstruct a state or local plan for renewable energy or energy efficiency. **(Less than Significant Impact)**

4.7 GEOLOGY AND SOILS

The following discussion is based, in part on a Geotechnical Investigation prepared for the project by Geo-Engineering Solutions, Inc. in March 2022 (Appendix E).

4.7.1 Environmental Setting

4.7.1.1 *Regulatory Framework*

State

Alquist-Priolo Earthquake Fault Zoning Act

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

Seismic Hazards Mapping Act

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

California Building Standards Code

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

California Division of Occupational Safety and Health Regulations

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

Public Resources Code Section 5097.5

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

Local

Envision San José 2040 General plan

The Envision San José General Plan includes the following policies that are specific to geology and soils and applicable to the proposed project.

Policy	Description
EC-3.1	Design all new or remodeled habitable structures in accordance with the most recent California Building Code and California Fire Code as amended locally and adopted by the City of San José, including provisions regarding lateral forces.
EC-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
EC-4.2	Development in areas subject to soils and geologic hazards, including engineered fill and weak soils and landslide-prone areas, only when the severity of hazards have been evaluated and if shown to be required, appropriate mitigation measures are provided. New development proposed within areas of geologic hazards shall not be endangered by, nor contribute to, the hazardous conditions on the site or on adjacent properties. The City of San José Geologist will review and approve geotechnical and geological investigation reports for projects within these areas as part of the project approval process.
EC-4.4	Require all new development to conform to the City of San José's Geologic Hazard Ordinance.
EC-4.5	Ensure that any development activity that requires grading does not impact adjacent properties, local creeks, and storm drainage systems by designing and building the site to drain properly and minimize erosion. An Erosion Control Plan is required for all private development projects that have 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 new grading occurring between October 15 and April 15.
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.
EC-4.12	Require review and approval of grading plans and erosion control plans (if applicable) prior to issuance of grading permits by the Director of Public Works.
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.

City of San José Policies

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

4.7.1.2 *Existing Conditions*

Regional Geology

The project site is located within the Santa Clara Valley, which is a broad alluvial plane between the Santa Cruz Mountains to the southwest and west, and the Diablo Range to the northeast. The San Andreas Fault system, including the Monte Vista-Shannon Fault, exists within the Santa Cruz Mountains and the Hayward and Calaveras Fault systems exist within the Diablo Range.

On-site Geologic Conditions

Topography and Soils

The topography of the site is relatively flat with the site being approximately 137 feet above mean sea level. The project site is underlain by a layer of stiff to very stiff silty clay in the upper 12 to 22 feet; a layer of very dense silty sand up to 38 feet; a layer of silty clay and clayey silt in up to a depth of 50 feet; a layer of sand and gravelly sand up to approximately 90 feet; and a layer of silty clary and clayey silt up to the maximum depth of 100 feet below existing ground surface. Soils below the ground surface (at a depth of two feet) were tested for plasticity and expansion potential. Based on the results of Appendix E, the soils underneath the project site have a low plasticity and low expansion potential. In addition, the geological unit/deposit type of the underlaying soil is designated Holocene alluvial fan (Qhf2).

Groundwater

Based on the geotechnical study prepared for the project site, groundwater within the vicinity of the project site has been estimated at a depth of approximately 62 feet bgs. Historic high groundwater levels have been documented at 50 feet bgs. Groundwater in the project area flows in a northeasterly direction. Fluctuations in the groundwater level may occur due to seasonal changes, variations in rainfall, underground patterns, and other factors. For the purposes of this analysis, the historic high groundwater level of 50 feet bgs is assumed.[38]

[38] Geo-Engineering Solutions, Inc. *Geotechnical Engineering Study, 1050 St. Elizabeth Drive, San José, CA.* March 30, 2022. P. 7.

Seismic and Seismic-Related Hazards

The San Francisco Bay Area is one of the most seismically active regions in the U.S. The significant earthquakes that occur in the Bay Area are generally associated with the crustal movements along well-defined active fault zones of the San Andreas Fault system, which regionally trend in a northwesterly direction. Faults in the region are capable of generating earthquakes of magnitude 6.7 or higher, and strong to very strong ground shaking is expected to occur at the project site during a major earthquake.

The project area is not located within the Alquist-Priolo Earthquake Fault Zone and no active faults have been mapped on-site; therefore, the risk of rupture is low. Active faults near the project site are shown in Table 4.7-1 and as described in Appendix E.

Table 4.7-1: Active Faults Near the Project Site

Fault	Distance from Site
San Andreas Fault Zone	9.5 miles southwest
Hayward Fault Zone	8.0 miles northeast
Calaveras Fault	4 miles northeast

Liquefaction

Liquefaction occurs when water-saturated soils loose structural integrity due to seismic activity. Soils that are most susceptible to liquefaction are loose to moderately dense, saturated granular soils with poor drainage. The project site is not located within a potential liquefaction hazard zone.[39]

Lateral Spreading

Lateral spreading is a type of ground failure related to liquefaction. It consists of the horizontal displacement of flat-lying alluvial material toward an open area, such as a steep bank of a stream channel. Areas of San José most prone to lateral spreading include lands adjacent to the steep banks of Guadalupe River and Coyote Creek.[40] Although the project site is located approximately 1.6-mile west of the Guadalupe River and approximately 3.25-mile west of the Coyote Creek, the site is 50 feet west of a segment of Los Gatos Creek with steeply sloping banks where there is potential for lateral spreading.

Landslides

Landslides occur when the stability of a slope changes from a stable to an unstable condition. The site is not located within a Santa Clara County Landslide Hazard Zone.[41] The project area is relatively flat and the soils underlaying the project site vary from stiff, very stiff silty clay, and very dense silty sand. These types of soils are less susceptible to liquefaction resulting in landslides. Therefore, the probability of landslides occurring at the site during a seismic event is low.

[39] Ibid. P. 10.
[40] City of San José. *Envision San José 2040 General Plan Draft Program Environmental Impact Report.* Adopted November 1, 2011. As amended on December 14, 2021. P. 504.
[41] County of Santa Clara. "Santa Clara County Geologic Hazards Zones Map". October 25, 2012. Accessed May 9, 2022. https://stgenpln.blob.core.windows.net/document/GEO_GeohazardATLAS.pdf

4.7.2 Impact Discussion

	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
Would the project:				
a) Directly or indirectly cause potential substantial adverse effects, including the risk of loss, injury, or death involving:				
– Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault (refer to Division of Mines and Geology Special Publication 42)?	☐	☐	☒	☐
– Strong seismic ground shaking?	☐	☐	☒	☐
– Seismic-related ground failure, including liquefaction?	☐	☐	☐	☒
– Landslides?	☐	☐	☐	☒
b) Result in substantial soil erosion or the loss of topsoil?	☐	☐	☒	☐
c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction, or collapse?	☐	☐	☒	☐
d) Be located on expansive soil, as defined in the current California Building Code, creating substantial direct or indirect risks to life or property?	☐	☐	☒	☐
e) Have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available for the disposal of wastewater?	☐	☐	☐	☒
f) Directly or indirectly destroy a unique paleontological resource or site or unique geological feature?	☐	☐	☒	☐

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

Fault Rupture

The project site is not located in an Alquist-Priolo Earthquake Fault Zone or a Santa Clara County Fault Rupture Hazard Zone. No known surface expression of active faults is known to cross the site (Appendix E). Fault rupture through the site, therefore, is not anticipated. **(No Impact)**

Seismic Ground Shaking

The project site would be subject to strong seismic ground shaking and seismic-related ground failure, including liquefaction in the event of a large earthquake. Consistent with the City's General Plan and Municipal Code, to avoid and/or minimize potential damage from seismic shaking, the proposed project would be built using standard engineering and seismic safety design techniques. Consistent with these requirements, the following condition shall be implemented to ensure the proposed development is designed to address seismic hazards.

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.

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

Liquefaction

The project site is not located within a liquefaction zone. With implementation of the above Standard Permit Condition, the project would not expose people or structures to substantial adverse effects due to liquefaction. **(No Impact)**

Landslides

As described in Section 4.7.1.2, *Existing Conditions*, the project site is not located in a landslide hazard zone. The project site is relatively flat and is not located in the vicinity of any slope that could

be affected by a landslide. **(No Impact)**

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

The project site is relatively flat and is currently developed with a senior living facility, surface parking, and ornamental landscaping. Construction of the project would involve ground disturbing activities such as excavation of the site, grading, and trenching. Such would increase the potential for erosion from wind or stormwater runoff. As discussed in Section 4.11, Hydrology and Water Quality, the project would not include construction activities within or adjacent to Los Gatos Creek and the project would be required to adhere to the National Pollutant Discharge Elimination System (NPDES) requirements, urban runoff policies, and the Grading Ordinance which ensure that erosion control measures are implemented through the grading and building permit process. Additionally, the project would be required to implement the following Standard Permit Conditions:

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.

Because the project would comply with the state, federal, and local regulations and adhere to the Standard Permit Conditions above, implementation of the proposed project would not result in substantial soil erosion or the loss of topsoil. **(Less than Significant Impact)**

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

The project site is located on relatively flat terrain on the floor of the Santa Clara Valley. There are no unique geologic features on or adjacent to the project site.

Lateral spreading occurs when a liquefied layer of soil is in relatively close proximity to an open, free slope face such as the bank of a creek channel. As noted in Section 4.7.1.2 above, on-site soils include layers of stiff to very stiff silty clay and very dense silty sand which are less susceptible to liquefaction due to their fine-grained content and relative high density.[42] Therefore, on-site soils have low potential for landslide, lateral spreading, or liquefaction.[43] As noted in Section 2.0 Project Description, the project would include excavation to a maximum depth of 11 feet for the proposed one level below-grade parking garage and due to the depth of groundwater on-site (50 feet), construction dewatering is not required. Furthermore, the project would be constructed using standard engineering and seismic safety design techniques and in conformance with the site-specific

[42] Geo-Engineering Solutions, Inc. *Updated Geotechnical Engineering Study 1050 St. Elizabeth Drive, San José CA*. March 30, 2022. P.11.
[43] Ibid.

geotechnical investigation to avoid on- and off-site geologic hazards. The project would comply with following Standard Permit Condition:

Standard Permit Condition:

- 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.

With implementation of the above Standard Permit Condition, the proposed project would not be located on a geologic unit or soil that is unstable, nor would the project become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction, or collapse. **(Less than Significant Impact)**

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

Expansive soils can affect buildings and structures due to fluctuations in volume when becoming saturated. On-site soils have low expansion potential. Nonetheless, the project construction would be completed in accordance with the most recent California Building Code, as set forth in the following Standard Permit Condition identified in checklist question c. above.

In addition to the condition describe above, the recommendations of a design-specific geotechnical investigation would be incorporated into the project and would be reviewed by the City Geologist for confirmation prior to issuance of a grading permit or Public Works Clearance. For these reasons, the proposed project would not create substantial direct or indirect risks to life or property due to the expansive soils underlying the site. **(Less than Significant Impact)**

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

The project does not propose use of a septic tank or other waste-water disposal system. Therefore, there would be no impact. **(No Impact)**

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

The project site has high sensitivity at depth for paleontological resources.[44] As noted in Section

[44] City of San José. *Envision San José 2040 General Plan Draft Program Environmental Impact Report.* Adopted November 1, 2011. As amended on December 14, 2021. Figure 3.11-1. Available at: https://www.sanjoseca.gov/home/showpublisheddocument/22041/636688304350830000

4.7.1.2, *Existing Conditions*, the site is underlain by soil identified as Holocene alluvial fan, which typically have low potential to contain significant paleontological resources. However, as noted in the General Plan EIR, there is potential for older Pleistocene sediments to be present at or near the ground surface, which have a higher potential to contain paleontological resources.[45] Therefore, there is potential for encountering unknown paleontological resources during project grading and excavation (including excavation for the below-grade parking garages). Consistent with General Plan Policy ER-10.3, the project applicant/contractor shall implement the following Standard Permit Condition to reduce or avoid impacts to paleontological resources to a less than significant level.

Standard Permit Condition:

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

Implementation of the Standard Permit Condition discussed above would reduce impacts to paleontological resources to a less than significant level. **(Less than Significant Impact)**

[45] Ibid. P.706.

4.8 GREENHOUSE GAS EMISSIONS

The following discussion is based, in part on an Air Quality Analysis prepared for the project by Illingworth & Rodkin, Inc. in July 2022 (Appendix A) and a Greenhouse Gas Reduction Strategy Compliance Checklist prepared by the project applicant (Appendix F).

4.8.1 Environmental Setting

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

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

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

4.8.1.1 *Regulatory Framework*

State

Assembly Bill 32

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

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

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

Senate Bill 375

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

Consistent with the requirements of SB 375, the Metropolitan Transportation Commission (MTC) partnered with the Association of Bay Area Governments (ABAG), BAAQMD, and the Bay Conservation and Development Commission to prepare the region's Sustainable Communities Strategy (SCS) as part of the Regional Transportation Plan (RTP) process. The SCS is referred to as Plan Bay Area 2050. Plan Bay Area 2050 is a 30-year plan that focuses on implementing 35 measures to improve housing, the economy, transportation, and environment in the Bay Area.

Regional and Local

2017 Clean Air Plan

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

CEQA Air Quality Guidelines

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

Plan Bay Area 2050

In October 2021, the ABAG and MTC adopted Plan Bay Area 2050 which includes 35 strategies for housing, transportation, economic viability and the environment and lays out a vision for policies and investments to make the bay area more affordable, connected, diverse, healthy and economically vibrant. It will take several years for the updated plan to be reflected in the regional and county-wide

transportation models, so land uses and development projections based on Plan Bay Area 2050 are used as the foundation for this analysis.

Climate Smart San José

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

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

Reach Building Code

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

San José 2030 Greenhouse Gas Reduction Strategy

The 2030 Greenhouse Gas Reduction Strategy (GHGRS) is the latest update to the City's GHGRS and is designed to meet statewide GHG reduction targets for 2030 set by Senate Bill 32. As a qualified Climate Action Plan, the 2030 GHGRS allows for tiering and streamlining of GHG analyses under CEQA. The GHGRS identifies General Plan policies and strategies to be implemented by development projects in the areas of green building/energy use, multimodal transportation, water conservation, and solid waste reduction. Projects that comply with the policies and strategies outlined in the 2030 GHGRS, would have less than significant GHG impacts under CEQA.[46]

San José Municipal Code

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

- Green Building Regulations for Private Development (Chapter 17.84)
- Water Efficient Landscape Standards for New and Rehabilitated Landscaping (Chapter 15.10)

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

- Transportation Demand Programs for employees with more than 100 employees (Chapter 11.105)
- Construction and Demolition Diversion Deposit Program (Chapter 9.10)
- Wood Burning Ordinance (Chapter 9.10)

City of San José Private Sector Green Building Policy (6-32)

In October 2008, the City adopted the Private Sector Green Building Policy (6-32) that establishes baseline green building standards for private sector new 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. Future development proposed under the Downtown Strategy 2040 would be subject to this policy.

Envision San José 2040 General Plan

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

Policy	Description
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).
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 system, 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.
CD-3.2	Prioritize pedestrian and bicycle connections to transit, community facilities (including schools), commercial areas, and other areas serving daily needs. Ensure that the design of new facilities can accommodate significant anticipated future increases in bicycle and pedestrian activity.
CD-5.1	Design areas to promote pedestrian and bicycle movement and to facilitate interaction between community members and to strengthen the sense of community.
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.

4.8.1.2 *Existing Conditions*

The project site is currently developed with a two-story senior living facility, associated surface parking and landscaping. The existing senior living facility is currently occupied. GHG emissions are generated by automobiles traveling to/from the site and from lighting, heating, and cooling of the existing building.

4.8.2 Impact Discussion

	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
Would the project:				
a) Generate greenhouse gas (GHG) emissions, either directly or indirectly, that may have a significant impact on the environment?	☐	☐	☒	☐
b) Conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing the emissions of GHGs?	☐	☐	☒	☐

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

Construction Emissions

Construction activities on-site would result in temporary GHG emissions. Construction related GHG emissions vary depending on the level of activity, length of construction period, specific construction operations, types of equipment, and number of personnel. Neither the City of San José nor BAAQMD has established a quantitative threshold or standard for determining whether a project's construction related GHG emissions are significant. Project construction would occur over a period of approximately 22 months and include use of equipment for grading, excavation, trenching, building construction, and landscaping. Project construction would not result in a permanent increase in emissions since construction-related GHG emissions would cease upon completion of the development. **(Less than Significant Impact)**

Operational Emissions

Per CEQA Guidelines Section 15064(b), the determination of whether a project may have a significant effect on the environment calls for careful judgement on the part of the Lead Agency and must be based to the extent possible on scientific and factual data. Since the project is consistent with the General Plan land use designation for the site, planned growth from build out of the General Plan, would be designed to achieve LEED Silver certification (consistent with Council Policy 6-32), and incorporates mandatory GHG reduction measures required by the City (refer to checklist question b for detailed discussion of measures implemented), operation of the project[47] would not interfere with the implementation of SB 32 in 2030 and would have a less than significant GHG emissions impact. **(Less than Significant Impact)**

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

Envision San José 2040 General Plan

[47] Appendix F

The project is consistent with the General Plan policies identified in Section 4.8.1.1 Regulatory Framework to reduce GHG emissions by:

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

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

2030 San José Greenhouse Gas Reduction Strategy

BAAQMD adopted revised CEQA Air Quality Guidelines on June 2, 2010 and then adopted a modified version of the Guidelines in May 2017. In April 2022, BAAQMD adopted new CEQA Thresholds for evaluating the significance of climate impacts from land use projects and plans. The BAAQMD CEQA Air Quality Guidelines include thresholds of significance for GHG emissions. Pursuant to the latest CEQA Air Quality Guidelines and GHG thresholds of significance, a local government may prepare a Qualified GHGRS that is consistent with AB 32 goals. The City of San José adopted the updated 2030 GHGRS in 2020. If a project is consistent with the City's GHGRS, it can be presumed that the project would not have significant GHG emissions under CEQA. The proposed project's consistency with these measures is summarized below (refer to Appendix F for more details).

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

As discussed in Section 4.11 Land Use and Planning, the project is consistent with the General Plan land use designation for the site and planned growth from build out of the General Plan EIR. The proposed project would comply with the City's Green Building Ordinance, and CBC requirements as well as General Plan Action MS-2.11 which requires development to incorporate green building practices through construction, architectural design, and site design techniques. Furthermore, consistent with Council Policy 6-32, the project would be designed to achieve LEED Silver certification. The project would include 52 bicycle parking spaces and provide direct access to the adjacent Los Gatos Creek trail, consistent with General Policies TR-1.1 and TR-2.8 which call for development projects to encourage use of non-automobile transportation modes and provide on-site facilities such as bicycle storage and connections to existing and planned bicycle facilities, respectively. As noted in Section, 3.1 Project Description, the project would include water-efficient landscaping which conforms to the State's Model Water Efficient Landscape Ordinance in accordance with General Plan Policy MS-3.1 and GHGRS Strategy #5. The project would include planting of 38 new trees on-site consistent with the City's tree replacement policy, urban forestry goals and GHGRS Strategy #7.

Furthermore, consistent with the GHG reduction Strategies #1 through #4, the project would be designed to comply with the City's Reach Code ordinance, exclude natural gas infrastructure, and include rooftop solar panels in support of San José Clean Energy and the transition to decarbonize buildings. Consistent with Strategy #5, the project would include recycling and organic waste containers for future residents, diverting waste from landfills. The project is not located within 0.5-mile of a Caltrain Station; however, the project is located within 0.3-mile of Fruitdale Light Rail Station and includes bicycle amenities such as bicycle parking and direct access to the Los Gatos Creek trail, encouraging residents to use bicycles and reduce vehicle miles traveled consistent with Strategy #6. For these reasons, the project would implement all applicable GHG consistency measures intended to reduce GHG emissions.

Climate Smart San José

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

The proposed 206-unit apartment building would increase development density in proximity to existing transit facilities (Fruitdale Light Rail Station) and adjacent to the Los Gatos Creek trail. The project would be designed and constructed in compliance with the City's Green Building Ordinance. In addition, Action MS-2.11 of the General Plan requires new development to incorporate energy conservation and efficiency in site design, architectural design, and construction techniques. Additionally, the project would include drought tolerant plans and water efficient irrigation systems in the proposed landscaping. For these reasons, the project would be consistent with the City's climate action goals as set forth in Climate Smart San José.

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

4.9 HAZARDS AND HAZARDOUS MATERIALS

The following discussion is based, in part on a Phase I Environmental Site Assessment (ESA) prepared for the project by AEI Consultants in June 2022 (Appendix G).

4.9.1 Environmental Setting

4.9.1.1 *Regulatory Framework*

Overview

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

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

Federal and State

Federal Aviation Regulations Part 77

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

Comprehensive Environmental Response, Compensation, and Liability Act

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

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

The law authorizes two kinds of response actions:

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

CERCLA also enabled the revision of the National Contingency Plan. The National Contingency Plan provided the guidelines and procedures needed to respond to releases and threatened releases of hazardous substances, pollutants, or contaminants. The National Contingency Plan also established the National Priorities List. CERCLA was amended by the Superfund Amendments and Reauthorization Act on October 17, 1986.[48]

Resource Conservation and Recovery Act

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

The Federal Hazardous and Solid Waste Amendments are the 1984 amendments to Resource Conservation and Recovery Act that focused on waste minimization, phasing out land disposal of hazardous waste, and corrective action for releases. Some of the other mandates of this law include increased enforcement authority for the EPA, more stringent hazardous waste management standards, and a comprehensive underground storage tank program.[49]

Government Code Section 65962.5

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

[48] United States Environmental Protection Agency. "Superfund: CERCLA Overview." Accessed May 11, 2020. https://www.epa.gov/superfund/superfund-cercla-overview.
[49] United States Environmental Protection Agency. "Summary of the Resource Conservation and Recovery Act." Accessed May 11, 2020. https://www.epa.gov/laws-regulations/summary-resource-conservation-and-recovery-act.

Water Resources Control Board (SWRCB).[50]

Toxic Substances Control Act

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

California Accidental Release Prevention Program

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

Asbestos-Containing Materials

Friable asbestos is any asbestos-containing material (ACM) that, when dry, can easily be crumbled or pulverized to a powder by hand, allowing the asbestos particles to become airborne. Common examples of products that have been found to contain friable asbestos include acoustical ceilings, plaster, wallboard, and thermal insulation for water heaters and pipes. Common examples of non-friable ACMs are asphalt roofing shingles, vinyl floor tiles, and transite siding made with cement. The EPA began phasing out use of friable asbestos products in 1973 and issued a ban in 1978 on manufacture, import, processing, and distribution of some asbestos-containing products and new uses of asbestos products.[51] The EPA is currently considering a proposed ban on on-going use of asbestos.[52] National Emission Standards for Hazardous Air Pollutants guidelines require that potentially friable ACMs be removed prior to building demolition or remodeling that may disturb the ACMs.

CCR Title 8, Section 1532.1

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

[50] California Environmental Protection Agency. "Cortese List Data Resources." Accessed July 5, 2022. https://calepa.ca.gov/sitecleanup/corteselist/.
[51] United States Environmental Protection Agency. "EPA Actions to Proect the Public from Exposure to Asbestos." Accessed April 19, 2022. https://www.epa.gov/asbestos/epa-actions-protect-public-exposure-asbestos
[52] Ibid.

Regional and Local

Municipal Regional Permit Provision C.12.f

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

With the adoption of the San Francisco Bay Region Municipal Regional Stormwater NPDES Permit (MRP) by the San Francisco Bay Regional Water Quality Control Board on November 19, 2015, Provision C.12.f requires that permittees develop an assessment methodology for applicable structures planned for demolition to ensure PCBs do not enter municipal storm drain systems.[53] Municipalities throughout the Bay Area are currently modifying demolition permit processes and implementing PCB screening protocols to comply with Provision C.12.f. Buildings constructed between 1950 and 1980 that are proposed for demolition must be screened for the presence of PCBs prior to the issuance of a demolition permit. Single family homes and wood-frame structures are exempt from these requirements.

Envision San José 2040 General Plan

The General Plan includes the following hazards and hazardous materials policies applicable to the proposed project.

Policy	Description
EC-7.1	For development and redevelopment projects, require evaluation of the proposed site's historical and present use to determine if any potential environmental conditions exist that could adversely impact the community or environment.
EC-7.2	Identify existing soil, soil vapor, groundwater, and indoor air contamination and mitigation for identified human health and environmental hazards to future users and provide as part of the environmental review process for all development and redevelopment projects. Mitigation measures for soil, soil vapor and ground water contamination shall be designed to avoid adverse human health and environmental risk, in conformance with regional, state, and federal laws, regulations, guidelines and standards.
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.
EC-7.8	When 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

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

	the soil, groundwater, soil vapor, or in existing structures.
EC-7.9	Ensure coordination with the County of Santa Clara Department of Environmental Health, Regional Water Quality Control Board, Department of Toxic Substances Control or other applicable regulatory agencies, as appropriate, on projects with contaminated soils and/or groundwater or where historical or active regulatory oversight exits.
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 of dispersion of dust and sediment runoff.
EC-7.11	Require sampling for residual agricultural chemicals, based on the history of land use, on sites to be used for any new development or redevelopment to account for worker and community safety during construction. Mitigation to meet appropriate end use such as residential or commercial/industrial shall be provided.
TR-14.2	Regulate development in the vicinity of airports in accordance with Federal Aviation Administration regulations to maintain the airspace required for the safe operation of these facilities and avoid potential hazards navigation.

4.9.1.2 *Existing Conditions*

The project site is currently developed with a two-story senior living facility, surface parking, and landscaping.

Historic Uses of the Project Site

Interviews with agency personnel, review of aerial photographs, maps, and title documents indicate that the project site was used for agricultural purposes between 1939 and 1968. The existing building was constructed around 1968 for use as a convent for nuns and was occupied by the Sisters of the Holy Family convent till 2004. The building has been used as a senior living facility since 2006.[54] According to records from the San José Fire Department, hazardous materials have not been used in substantial quantities onsite and there are no indications of spills or unlawful disposal of hazards materials by past tenants (Appendix G).

On-Site Sources of Contamination

Hazardous Materials Storage and Use

The Phase I ESA prepared for the proposed project did not identify any recognized environmental concerns on-site. There was no evidence of chemical storage or use on-site, nor was there evidence of underground storage tanks or above ground storage tanks on the project site.

Asbestos Containing Materials and Lead-Based Paint

Due to the age of the existing two-story senior living facility building (constructed in the early 1960's), ACMs and lead-based paint (LBP) may be present on-site. However, based on records from the Santa Clara County Environmental Health Department an asbestos removal project was completed at the current building in 2002 and the asbestos-containing material was sent to a licensed

[54] As noted in Section 3.1 Project Description, in April 2022, following the end of their lease agreement, the senior living facility relocated to another site and the building is unoccupied.

landfill under a Hazardous Waste Manifest.

Polychlorinated biphenyl

The existing two-story senior living facility is equipped with two hydraulic elevators. Based on the age of the building (constructed pre-1978), hydraulic fluids used in these elevators may contain toxic Polychlorinated biphenyls (PCBs). A survey of the elevator equipment completed for the Phase I ESA for the project concluded that they are in good condition, maintained regularly, and do not represent a significant environmental concern related to PCBs.

Underground Fuel Storage Tank

There are no records of past or present underground fuel storage tanks on the project site.

Cortese List

The project site is not located on the Cortese List as documented in the Phase I ESA.[55]

Off-Site Sources of Contamination

Two off-site properties were identified as potential environmental concerns to the project site: San José Water Meridian Avenue Station (1005 Meridian Avenue) and Park Cleaners/Willow Glen Dental Arts/Penco Association (1087 Meridian Avenue). The San José Water Meridian Avenue Station adjoins the project site to the east and includes drinking water supply wells owned by San José Water. No violations related to the release, handling, or generation of hazardous materials have been issued for this site. A paperwork violation was issued in January 2020 but this violation does not present a potential environmental concern. The Park Cleaners/Willow Glen Dental Arts/Penco Association source is approximately 200 feet southwest of the project site. A Phase II investigation found soil vapor beneath the site but remedial activities and a site management plan were prepared to manage the vapors. A recent sampling in November 2021 did not identify vapor levels that would exceed thresholds. Therefore, based on the remediation activities this site would not represent an environmental concern.

Other Hazards

Airports

The nearest public airport is the Norman Y. Mineta San José International Airport. The project site is approximately three miles south of the airport. Due to the distance of the airport, the project site is not within the airport influence area, aircraft noise contours, or the airport safety zones for the Norman Y. Mineta San José International Airport.[56] However, the project site is located within an area subject to Airspace Safety Review for structures exceeding certain height limits pursuant to CFR

[55] California Environmental Protection Agency. "Cortese List Data Resources." Accessed July 5, 2022. https://calepa.ca.gov/sitecleanup/corteselist/.
[56] Santa Clara County Airport Land Use Commission. *Comprehensive Land Use Plan Norman Y. Mineta San José International Airport*. Page 7. Amended November 16, 2016. https://stgenpln.blob.core.windows.net/document/ALUC_SJC_CLUP.pdf

Title 14 FAR Part 77.[57] The project site is located within the 233 feet amsl imaginary surface elevation screening contour and has an elevation of approximately 146 feet amsl.[58] Structures over 87 feet in height require FAA review and approval.

Wildfire Hazards

The project site is in an urban area surrounded by existing development that is not near any wildlands that could present a fire hazard. The site is not located within an identified Very High Fire Hazard Severity Zone in a State Responsibility Area (SRA) or a Local Responsibility (LRA).[59]

4.9.2 Impact Discussion

	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
Would the project:				
a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?	☐	☐	☒	☐
b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?	☐	☒	☐	☐
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?	☐	☒	☐	☐
d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?	☐	☐	☐	☒
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, result in a safety hazard or excessive noise for people residing or working in the project area?	☐	☐	☒	☐
f) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?	☐	☐	☐	☒

[57] City of San José. *Notice Requiring Criteria for Filing FAA Form 7460-1, San Jose International Airport.* July 21, 2020.
[58] Ibid. and AEI Consultants. Phase I Environmental Site Assessment, 1050 St. Elizabeth Drive, San Jose, Santa Clara County, California 95126. June 24, 2022.
[59] California Department of Forestry and Fire Protection. "Fire Hazard Severity Zones Maps". Accessed April 28, 2022. https://egis.fire.ca.gov/FHSZ/

	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
Would the project:				
g) Expose people or structures, either directly or indirectly, to a significant risk of loss, injury, or death involving wildland fires?	☐	☐	☐	☒

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

Construction of the proposed project would involve the use of materials that are generally regarded as hazardous, such as gasoline, hydraulic fluids, paint, and other similar materials. Operation of the proposed residential building would include the use and storage of cleaning supplies and maintenance chemicals in small quantities by future residents. No other hazardous materials would be used or stored on-site. In accordance with federal and State law, the project would be required to disclose hazardous materials handled at reportable amounts. The small quantities of cleaning supplies and materials would not pose a risk to site users or adjacent land uses. **(Less than Significant Impact)**

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

Construction

As described in Section 4.9.1.2 Existing Conditions, the existing two-story building currently occupied by a senior living facility was constructed in the early 1960s. In 2002 some ACM was removed. However, ACMs and LBP may still be present within the building and could be released into the environment during demolition activities associated with the proposed project. The project would be required to implement the following Standard Permit Conditions to ensure impacts associated with ACMs and LBP during construction are less than significant.

Standard Permit Conditions (Asbestos-Containing Materials and Lead-Based Paint):

- 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 ACMs shall be removed in accordance with National Emissions 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.

Implementation of the Standard Permit Conditions above would reduce on-site contamination impacts to a less than significant level during construction of the proposed project.

Furthermore, because the project site was used for previously used for agricultural purposes, there is potential that agricultural chemicals, such as pesticides, are present on-site. Soils on-site and groundwater beneath the site could be contaminated with agricultural chemicals, which could be released into the environment and expose construction workers and adjacent land uses to contamination.

Impact HAZ-1: Due to the agricultural history of the site, there is a potential that the shallow soil contains residual organochlorine pesticides and/or pesticide-based metals arsenic and lead from historic pesticide application. If pesticides are present and not mitigated, construction of the project could result in exposure of construction workers, adjacent properties, and future site occupants to pesticide contamination. **(Significant Impact)**

Mitigation Measures: The following mitigation measures would be implemented to reduce the risk of exposure to residual agricultural contamination on construction workers and adjacent properties:

MM HAZ-1.1: Following demolition of the existing building and pavement, but prior to issuance of any grading permits, the project applicant shall retain a qualified environmental professional to complete a Phase II soil contamination investigation to evaluate past agricultural use. The Phase II shall include shallow soil sampling and analysis for organochlorine pesticides and pesticide-based metals, arsenic and lead to determine if these chemicals are present above Regional Water Quality Control Board (RWQCB) environmental screening levels (ESLs) for construction worker safety and residential uses. The results of the soil sampling and testing must be provided to the Director of Planning, Building and Code Enforcement or the Director's designee, and the City's Environmental Compliance Officer. If the Phase II results indicate soil concentrations above the RWQCB ESLs, the project applicant must obtain regulatory oversight from the Department of Toxic Substances Control, or the Santa Clara County Department of Environmental

Health under their Site Cleanup Program. A Site Management Plan (SMP), Removal Action Plan (RAP), or equivalent document shall be prepared by a qualified environmental consultant under regulatory oversight and approval that identifies remedial measures and/or soil management practices to ensure construction worker safety and the health of future site occupants. The plan and evidence of regulatory oversight shall be provided to the Director of Planning, Building and Code Enforcement or Director's designee, and the City's Environmental Compliance Officer in the City of San José Environmental Services Department.

Through incorporation of mitigation measure MM HAZ-1.1, the level of soil contamination (if any) would be identified, and soils would be handled and disposed of in a safe manner. Therefore, the proposed project would not result in exposure to hazardous materials associated with historical agriculture operations during construction or long-term upon project occupancy.

As stated above the proposed project is not identified on regulatory databases for hazardous materials and would not result in accidental release of hazardous materials. During construction the construction workers would have risk of exposure to soil contaminants associated with historical agriculture uses. The proposed project would implement Mitigation Measure MM HAZ-1.1 to reduce the exposure of construction workers, adjacent school, and nearby residents to a less than significant impact. Therefore, the proposed project would result in a less than significant impact with mitigation incorporated. **(Less than Significant Impact with Mitigation Incorporated)**

Operations

As discussed under checklist question a) above, the small quantities of cleaning supplies and materials used during project operations would not result in a significant hazard to the public, nor result in upset or accident conditions involving the release of hazardous materials into the environment. **(Less than Significant Impact)**

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

The nearest school to the project site is the Morgan Autism Center, adjacent to the north of the project site. As discussed under checklist questions a and b, the project would not create a hazard to the public due to use, transport, or disposal of hazardous materials, nor through upset or accidental release of hazardous materials. For these reasons, the proposed residential project, with incorporation of Standard Permit Conditions and Mitigation Measure MM HAZ-1.1, would not emit hazardous materials, substances, or waste within 0.2- mile of an existing or proposed school. **(Less than Significant Impact with Mitigation Measures Incorporated)**

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

The project site is not listed on any hazardous materials sites compiled pursuant to Government Code Section 65962.5. Therefore, the project would not create a significant hazard to the public or the environment. **(No Impact)**

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

The nearest airport to the project site is the Norman Y. Mineta San José International Airport, approximately three miles north of the project site. The project site is not within an airport safety zone as shown in Figure 7 in the Comprehensive Land Use Plan for the Norman Y. Mineta San José International Airport.[60] However, as noted in Section 4.9.2.2 above, the project site is located within an area subject to Airspace Safety Review for structures exceeding certain height limits pursuant to CFR Title 14 FAR Part 77.[61] The project site is located within the 233 feet amsl imaginary surface elevation screening contour and has an elevation of approximately 146 feet amsl.[62] Structures exceeding 87 feet in height require FAA review and approval. The proposed residential building would have a maximum height of 93 feet, therefore, the proposed project is required to be submitted to the FAA for the FAR Part 77 Airspace Safety Review process. Provided the FAA review is complete, the project would not result in aircraft safety hazards and would not result in a substantial safety hazard for people residing or working in the project area. **(Less than Significant Impact)**

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

The City of San José adopted the Emergency Operations Plan in February 2019 to prepare the City to respond to emergencies in an efficient and effective manner.[63] The project would not interfere with the Emergency Operations Plan since the proposed residential building would be an infill development that would not result in closure, rerouting, or substantial alteration of streets or property access points during or after construction. All construction and construction staging would occur solely on the project site. Therefore, development of the proposed project would not physically interfere with an adopted emergency response or evacuation plan. **(No Impact)**

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

As noted in Section 4.20 Wildfire, the project site is not located in a State Responsibility Area or

[60] Santa Clara County Airport Land Use Commission. *Comprehensive Land Use Plan Norman Y. Mineta San José International Airport*. Page 7. Amended November 16, 2016. https://stgenpln.blob.core.windows.net/document/ALUC_SJC_CLUP.pdf

[61] City of San José. *Notice Requiring Criteria for Filing FAA Form 7460-1, San Jose International Airport.* July 21, 2020.

[62] Ibid. and AEI Consultants. Phase I Environmental Site Assessment, 1050 St. Elizabeth Drive, San Jose, Santa Clara County, California 95126. June 24, 2022.

[63] City of San José. *Emergency Operations Plan*. Adopted February 2019.

Very High Hazard Severity Zone for wildland fires.[64] The project site is within an urban, developed area of the city that is not subject to wildland fires. For these reasons, the project would not expose people or structures to a significant risk involving wildland fires. **(No Impact)**

[64] California Department of Forestry and Fire Protection. "Fire Hazard Severity Zones Maps". Accessed April 28, 2022. https://egis.fire.ca.gov/FHSZ/

4.10 HYDROLOGY AND WATER QUALITY

4.10.1 Environmental Setting

4.10.1.1 *Regulatory Framework*

Federal and State

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

Under Section 303(d) of the federal Clean Water Act, the SWRCB and RWQCBs are required to identify impaired surface water bodies that do not meet water quality standards and develop total maximum daily loads (TMDLs) for contaminants of concern. The list of the state's identified impaired surface water bodies, known as the "303(d) list" can be found on the on the RWQCB's website.[65]

National Flood Insurance Program

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

Statewide Construction General Permit

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

[65] San Francisco Regional Water Quality Control Board. "The 303(d) List of Impaired Water Bodies." Accessed April 27, 2022. https://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/TMDLs/303dlist.html.

Regional and Local

San Francisco Bay Basin Plan

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

Municipal Regional Permit Provision C.3

The San Francisco Bay RWQCB re-issued the MRP in 2015 to regulate stormwater discharges from municipalities and local agencies (co-permittees) in Alameda, Contra Costa, San Mateo, and Santa Clara Counties, and the cities of Fairfield, Suisun City, and Vallejo.[66] Under Provision C.3 of the MRP, new and redevelopment projects that create or replace 10,000 square feet or more of impervious surface area are required to implement site design, source control, and Low Impact Development (LID)-based stormwater treatment controls to treat post-construction stormwater runoff. LID-based treatment controls are intended to maintain or restore the site's natural hydrologic functions, maximizing opportunities for infiltration and evapotranspiration, and using stormwater as a resource (e.g., rainwater harvesting for non-potable uses). The MRP also requires that stormwater treatment measures are properly installed, operated, and maintained.

In addition to water quality controls, the MRP requires new development and redevelopment projects that create or replace one acre or more of impervious surface to manage development-related increases in peak runoff flow, volume, and duration, where such hydromodification is likely to cause increased erosion, silt pollutant generation, or other impacts to local rivers, streams, and creeks. Projects may be deemed exempt from these requirements if they do not meet the minimized size threshold, drain into tidally influenced areas or directly into the Bay, or drain into hardened channels, or if they are infill projects in subwatersheds or catchment areas that are greater than or equal to 65 percent impervious.

Municipal Regional Permit Provision C.12.f

Provision C.12.f of the MRP requires co-permittee agencies to implement a control program for PCBs that reduces PCB loads by a specified amount during the term of the permit, thereby making substantial progress toward achieving the urban runoff PCBs wasteload allocation in the Basin Plan by March 2030.[67] Programs must include focused implementation of PCB control measures, such as source control, treatment control, and pollution prevention strategies. Municipalities throughout the Bay Area are updating their demolition permit processes to incorporate the management of PCBs in demolition building materials to ensure PCBs are not discharged to storm drains during demolition.

[66] MRP Number CAS612008
[67] San Francisco Bay Regional Water Quality Control Board. *Municipal Regional Stormwater Permit, Provision C.12.* November 19, 2015.

Buildings constructed between 1955 and 1978 that are proposed for demolition must be screened for the presence of PCBs prior to the issuance of a demolition permit.

Water Resources Protection Ordinance and District Well Ordinance

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

2021 Groundwater Management Plan

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

Local groundwater resources make up the foundation of the county's water supply, but they need to be augmented by the District's comprehensive water supply management activities to reliably meet the county's needs. These include the managed recharge of imported and local surface water and in-lieu groundwater recharge through the provision of treated surface water and raw water, acquisition of supplemental water supplies, and water conservation and recycling.[68]

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

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

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

The City of San José's Policy No.8-14 implements the hydromodification management requirements of Provision C.3 of the MRP. Policy No. 8-14 requires new development and redevelopment projects that create or replace one acre or more of impervious surface area, and are located within a subwatershed that is less than 65 percent impervious, to manage development-related increases in

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

peak runoff flow, volume, and duration, where such hydromodification is likely to cause increased erosion, silt generation, or other impacts to local rivers, streams, and creeks. The policy requires these projects to be designed to control project-related hydromodification through a Hydromodification Management Plan (HMP). Projects that do not meet the minimum size threshold, drain into tidally influenced areas or directly into the Bay, or are infill projects in subwatersheds or catchment areas that are greater than or equal to 65 percent impervious would not be subject to the HMP requirement.

Construction Dewatering Waste Discharge Requirements

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

Envision San José 2040 General Plan

The General Plan includes the following hydrology and water quality policies applicable to the proposed project.

Policy	Description
ER-8.1	Manage stormwater runoff in compliance with the City's Post-Construction Urban Runoff (6-29) and Hydromodification Management (8-14) Policies.
ER-8.3	Ensure that private development in San José includes adequate measures to treat stormwater runoff.
ER-8.5	Ensure that all development projects in San José maximize opportunities to filter, infiltrate, store and reuse or evaporate stormwater runoff on-site.
ER-10.5	Protect groundwater recharge areas, particularly creeks and riparian corridors.
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.
EC-5.1	The City shall require evaluation of flood hazards prior to approval of development projects within a Federal Emergency management Agency (FEMA) designated flood plain. Review new development and substantial improvements to existing structures to ensure it is designed to provide protection from flooding with a one percent annual change of flood occurrence, commonly referred to as the "100-year" flood or whatever designated benchmark FEMA may adopt in the future. New development should also provide protection for less frequent flood events when required by the State.
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.
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.
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.
IN-3.9	Require developers to prepare drainage plans that define needed drainage improvements

for proposed developments per City standards.

4.10.1.2 *Existing Conditions*

Storm Drainage and Water Quality

The water quality of streams, creeks, ponds, and other surface water bodies can be greatly affected by pollution carried in contaminated surface runoff. Pollutants from unidentified sources, known as non-point source pollutants, are washed from streets, construction sites, parking lots, and other exposed surfaces into storm drains. Stormwater from urban uses contains metals, pesticides, herbicides, and other contaminants, including oil, grease, asbestos, lead, and animal wastes.

The project site is located within the Guadalupe River watershed. Runoff from the project site and the surrounding area enters the City's storm drainage system, which outfalls to Los Gatos Creek (a tributary of the Guadalupe River), located approximately 90 feet east of the nearest project site boundary. Stormwater generated on-site does not currently flow directly to the Los Gatos Creek, but enters the storm drain system and eventually discharges via outfall to the creek. The creek flows north, merges with the Guadalupe River, carrying runoff from the storm drains into the San Francisco Bay. Stormwater runoff often contains contaminants such as oil and grease, plant and animal debris (e.g., leaves, dust, and animal feces), pesticides, litter, and heavy metals.

The project site is currently developed with approximately 59 percent (57,936 square feet) impervious surfaces and 41 percent pervious surfaces (30,576 square feet) of pervious surfaces.

Flooding

Based on the FEMA Flood Insurance Rate Maps (Map 06085C0234H), the project site is located in Flood Zone D. Flood Zone D indicates areas where there is possible but undetermined flood hazards, as no analysis of the flood hazards has been conducted.[69] There are no City flood plain requirements for Flood Zone D.

Seiches, Tsunamis, and Mudflows

The project site is not located near a body of water such that it would be subject to inundation by a seiche or tsunami. The project site is flat and there are no mountains in proximity that would affect the site in the event of a mudflow.

Groundwater

Groundwater beneath the site has been found at a depth of 62 feet bgs. Historic high groundwater levels have been documented at 50 feet bgs. Fluctuations in the groundwater level may occur due to seasonal changes, variations in rainfall, and underground drainage patterns. For the purposes of this analysis, the groundwater is assumed to be 50 feet bgs.[70]

[69] Federal Emergency Management Agency. *Fact Sheet for Stakeholders, Unmapped Areas on Flood Hazard Maps, Understanding Zone D.* Accessed April 27, 2022. https://www.fema.gov/sites/default/files/2020-08/fema_understanding-zone-D-levees.pdf

[70] Geo-Engineering Solutions, Inc. *Geotechnical Engineering Study, 1050 St. Elizabeth Drive, San José, CA.* March 30, 2022. P. 7.

The project site is currently developed with a senior living facility and does not contribute to groundwater recharge. The project site is not located within a designated groundwater recharge area.[71]

Hydromodification

Based on the Santa Cara Valley Urban Runoff Prevention Program watershed map for the City of San José, the project site is exempt from the NPDES hydromodification requirements because it is located in a subwatershed greater than or equal to 65 percent impervious.[72]

4.10.2 Impact Discussion

	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
Would the project:				
a) Violate any water quality standards or waste discharge requirements or otherwise substantially degrade surface or ground water quality?	☐	☐	☒	☐
b) Substantially decrease groundwater supplies or interfere substantially with groundwater recharge such that the project may impede sustainable groundwater management of the basin?	☐	☐	☒	☐
c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river or through the addition of impervious surfaces, in a manner which would:	☐	☐	☒	☐
– result in substantial erosion or siltation on- or off-site;	☐	☐	☒	☐
– substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site;	☐	☐	☒	☐
– create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff; or	☐	☐	☒	☐
– impede or redirect flood flows?	☐	☐	☒	☐

[71] Santa Clara Valley Water District. *Ground Water Management Plan for the Santa Clara and Llagas Subbasins.* November 2021. Figure 2-3.
[72] Santa Clara Valley Urban Runoff Pollution Prevention Program. "Hydromodification management Applicability Maps." Accessed April 27, 2022. https://scvurppp.org/swrp/docs-maps/

	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
Would the project:				
d) In flood hazard, tsunami, or seiche zones, risk release of pollutants due to project inundation?	☐	☐	☒	☐
e) Conflict with or obstruct implementation of a water quality control plan or sustainable groundwater management plan?	☐	☐	☒	☐

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

Construction Impacts

Construction activities (e.g., grading and excavation) on the project site may result in temporary impacts to surface water quality. When disturbance of underlying soils occurs, the surface runoff that flows across the site may contain sediments that are discharged into the storm drainage system. Construction of the proposed project would disturb the entire approximately 2.22-acres of the project site. Since construction of the project would disturb more than one acre of soil, the project would be required to comply with the NPDES General Permit for Construction Activities. Because the project would include replacement of more than 10,000 square feet of impervious surfaces, the project would also be subject to the requirements of the RWQCB MRP. All development projects in San José are required to comply with the City's Grading Ordinance. The City of San José Grading Ordinance requires the use of erosion and sediment controls to protect water quality while a site is under construction. Prior to issuance of a permit for grading activity occurring during the rainy season (October 1st to April 30th), the applicant would be required to submit an Erosion Control Plan to the Director of Public Works for review and approval. The Erosion Control Plan must detail the BMPs that would be implemented to prevent the discharge of stormwater pollutants.

Pursuant to City requirements, the following Standard Permit Conditions would be required during construction to reduce potential construction-related water quality impacts.

Standard Permit Conditions:

- Consistent with the General Plan, measures shall be implemented to prevent stormwater pollution and minimize potential sedimentation during construction including, but not limited to, the following:
- Burlap bags filled with drain rock shall be installed around storm drains to route sediment and other debris away from the drains.
- Earthmoving or other dust-producing activities shall be suspended during periods of high winds.
- All exposed or disturbed soil surfaces shall be watered at least twice daily to control dust as necessary.
- Stockpiles of soil or other materials that can be blown away 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 shall be installed if requested by the City.
- The project applicant shall comply with the City of San José Grading Ordinance, including implementing erosion and dust control during site preparation and with the City of San José Zoning Ordinance requirements for keeping adjacent streets free of dirt and mud during construction.

With the implementation of the above Standard Permit Conditions, project construction would not result in significant construction-related water quality impacts.

Post-Construction Impacts

Construction of the project would replace more than 10,000 square feet of existing impervious surface area; therefore, it is considered a regulated project under Provision C.3 of the MRP. As such, numerically sized bioretention basins and self-retaining areas would be provided to meet the on-site runoff treatment requirements. Stormwater would be retained to reduce the amount and rate of stormwater runoff prior to discharge into the City's existing 30-inch storm drain main on St. Elizabeth Drive. Stormwater generated on-site would not be discharge directly to Los Gatos Creek, consistent with existing conditions. The project includes site design and pollutant source control measures such as the preservation of four existing trees, use of drought-tolerant and water-conserving landscape materials, and stenciled storm drain inlets. Implementation of these measures would reduce the rate of stormwater runoff while also removing the pollutants. For these reasons, the proposed project would not result in significant impacts. **(Less than Significant Impact)**

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

As discussed in Section 4.7 Geology and Soils, construction of the project would include excavation to a maximum depth of 11 feet bgs where groundwater is present approximately 50 feet bgs. Given the depth to groundwater at the site, dewatering during construction would not be required. As noted under Section 4.10.2.2 above, the project site is currently developed and is not used for groundwater recharge.[73] The proposed residential project does not include installation of new groundwater wells and would not be located on or adjacent to a SCVWD groundwater recharge facility, such that operation of the project would deplete groundwater supplies. For these reasons, development of the proposed project would not substantially decrease groundwater supplies or interfere substantially

[73] Santa Clara Valley Water District. *Ground Water Management Plan for the Santa Clara and Llagas Subbasins.* November 2021. Figure 2-3.

with groundwater recharge such that the project would impede implementation of a sustainable groundwater management plan. **(Less than Significant Impact)**

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

Construction of the project would replace an existing senior living facility with an apartment building on a site that is not within a designated special flood hazard area. As noted in Section 4.4 Biological Resources above, all proposed improvements would be located within the footprint of the existing development on-site. Because the site has already been leveled for the existing development, grading and site preparation would be limited and focused within the area of the proposed residential building. Construction activities on the perimeter of the site, including within the requested 45-foot riparian setback,[74] would be limited to landscaping, and construction of decomposed granite patios. Therefore, the project would not substantially alter the existing drainage pattern on the site or surrounding area. No improvements or construction activity is proposed within Los Gatos Creek.

Development of the proposed project would increase the total impervious surface area of the project site from 57,936 square feet to 75,370 square feet, an increase of approximately 30 percent above existing conditions. Thus, the project could increase the amount of runoff generated at the project site. However, within the 100-foot riparian setback, the project would result in a decrease of 2,799 square feet of impervious surfaces with removal of the carport and replacement of the existing paving.[75] Additionally, as discussed under checklist question a above, the project would include bioretention and self-retaining areas on the eastern and western project boundaries, consistent with the MRP and City of San José Policy 6-29. These stormwater features would reduce the rate and volume of runoff from the project site by capturing runoff generated on-site prior to discharge into the City's municipal stormwater system, reducing potential for downstream flooding. For these reasons, the proposed project would not result in substantial erosion and siltation on and off-site and would not substantially increase the rate or amount of runoff in a manner that would result in flooding on- or off-site or create or contribute to runoff water exceeding the capacity of the City's existing and planned storm drainage system. For these reasons, impacts would be less than significant. **(Less than Significant Impact)**

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

[74] This analysis assumes that the project applicant's request for a riparian setback reduction to 45 feet is approved.
[75] Existing impervious surfaces within 100-foot setback include 5,257 square feet pavement, and 5,538 square feet carport building for total of 10,795 square feet. Under the project, the existing carport would be demolished, and pavement replaced with 7,184 square feet and 812 square feet of the apartment building would overlap with the setback totaling 7,996 square feet of impervious surfaces. This is a net reduction of 2,799 square feet.

As noted in Section 4.10.1, Environmental Setting, the project site is designated by FEMA as Zone D, which is an area where flood hazards are undetermined but possible. However, there are no City flood plain requirements for Flood Zone D. The nearest special flood hazard area is located within Los Gatos Creek, approximately 50 feet east of the project site. Furthermore, the project site is not located within a designated tsunami or seiche inundation zone due to its location approximately nine miles from San Francisco Bay.[76] The proposed project would, therefore, not risk release of pollutants due to project inundation from a flood, tsunami, or seiche. **(Less than Significant Impact)**

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

As discussed in checklist questions a and b, the proposed residential project would implement Standard Permit Conditions and would be required to comply with the Post-Construction Urban Runoff Policy 6-29 and Provision C.3 of the RWQCB MRP requirements.

The project would not impact groundwater recharge, consistent with the SCVWD's 2021 Groundwater Management Plan. For these reasons, the project would not conflict with implementation of a water quality or groundwater management plan. **(Less than Significant Impact)**

[76] California Department of Conservation. *Santa Clara County Tsunami Inundation USGS 24K Quads.* Accessed May 10, 2022. https://www.conservation.ca.gov/cgs/tsunami/maps/santa-clara

4.11 LAND USE AND PLANNING

4.11.1 Environmental Setting

4.11.1.1 *Regulatory Framework*

Local

Envision San José 2040 General Plan

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

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

Zoning Ordinance

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

4.11.1.2 *Existing Conditions*

Project Site

The project site is located in the Willow Glen neighborhood of San José. The site is designated Urban Residential in the Envision San José General Plan and is zoned Multiple-Residential (R-M). The Urban Residential land use designation allows for medium density residential development and a fairly broad range of commercial uses including offices, hospitals, and private community gathering

facilities. The RM Zoning District is intended to support higher-density residential and residential/commercial mixed-use development.

4.11.2 Impact Discussion

	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
Would the project:				
a) Physically divide an established community?	☐	☐	☒	☐
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?	☐	☐	☒	☐

a) Would the project physically divide an established community?

Examples of projects that have the potential to physically divide an established community include new freeways and highways, major arterial streets, and railroad lines. The project would include construction of a new residential building and landscaping on an infill site. The proposed uses are allowed under the existing Urban Residential General Plan land use designation and RM Zoning and would not include construction of dividing infrastructure. The project site is located in a neighborhood with similar uses, and therefore, implementation of the project would not physically divide an established community. For these reasons, impacts would be less than significant. **(Less than Significant Impact)**

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

The Urban Residential General Plan land use designation for the site allows for medium density residential development with building heights up to 45 feet at densities of up to 30 to 95 dwelling units per acre. The RM - Multiple-Residential zoning allows for residential and residential/commercial mixed-use development and Municipal Code Section 20.85.020 (D) allows buildings with a maximum height of 100 feet on properties wholly or partially located within a 2,000-foot radius of an existing or planned passenger rail station.

The project proposes development of a 206 unit, seven-story residential building with a density of 93 units per acre and a maximum height of 87 feet on-site. The project site is located within 2,000 feet of the Fruitdale Light Rail Station. Therefore, the proposed project would be consistent with the current General Plan land use designation and zoning for the site.

Furthermore, with the implementation of applicable General Plan policies, mitigation measures, and Standard Permit Conditions identified throughout this Initial Study, the project would not result in a significant environmental effect due to a conflict with a land use plan or policy. The project is located outside of the AIA for Norman Y. Mineta San José International airport and, therefore, the

project would not conflict with any Airport Comprehensive Land Use Plan. However, as noted in Section 4.9 above, the project site is located within an area subject to Airspace Safety Review for structures exceeding certain height limits pursuant to CFR Title 14 FAR Part 77.[77] The project site is located within the 233 feet amsl imaginary surface elevation screening contour and has an elevation of approximately 146 feet amsl.[78] Structures exceeding 87 feet in height require FAA review and approval. The proposed residential building would have a maximum height of 93 feet; therefore, the proposed project is required to be submitted to the FAA for the FAR Part 77 Airspace Safety Review process. Provided the FAA review is complete, the project would not conflict with an adopted land use plan, policy, or regulation adopted for avoiding or mitigating an environmental effect and impacts would be less than significant. **(Less than Significant Impact)**

[77] City of San José. *Notice Requiring Criteria for Filing FAA Form 7460-1, San Jose International Airport.* July 21, 2020.
[78] Ibid. and AEI Consultants. Phase I Environmental Site Assessment, 1050 St. Elizabeth Drive, San Jose, Santa Clara County, California 95126. June 24, 2022.

4.12 MINERAL RESOURCES

4.12.1 Environmental Setting

4.12.1.1 *Regulatory Framework*

State

Surface Mining and Reclamation Act

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

4.12.1.2 *Existing Conditions*

Pursuant to the mandate of the SMARA, the SMGB has designated the Communications Hill Area (Sector EE), bounded generally by the Southern Pacific Railroad, Curtner Avenue, SR 87, and Hillsdale Avenue as containing mineral deposits that are of regional significance as a source of construction aggregate materials.[79] The project site is located approximately three miles northwest of Communications Hill. Neither the State Geologist nor the SMGB have classified any other areas in San José as containing mineral deposits of statewide significance or requiring further evaluation.

4.12.2 Impact Discussion

	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
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?	☐	☐	☐	☒
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?	☐	☐	☐	☒

[79] City of San José. *Envision San José 2040 General Plan*. Adopted November 1, 2011. As Amended on December 14, 2021. Page 36. Accessed April 28, 2022. https://www.sanjoseca.gov/home/showpublisheddocument/22359/637841721973600000

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

As discussed in Section 4.12.1.2 above, the only area in the City of San José containing mineral deposits is the Communications Hill area in central San José. The project site is not on or in proximity to Communication Hills. Therefore, the project would not result in the loss of availability of a known mineral resource that would be of value to the region and residents of the state. **(No Impact)**

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

As discussed under Impact A, the project site is not designated as an area containing mineral deposits. Therefore, the project would not result in the loss of availability of a mineral resource recovery site. **(No Impact)**

4.13 NOISE

The following discussion is based, in part on a Noise and Vibration Analysis prepared for the project by Illingworth & Rodkin, Inc. in December 2022 (Appendix H).

4.13.1 Environmental Setting

Noise

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

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

Vibration

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

4.13.1.1 *Regulatory Framework*

State and Local

California Building Standards Code

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

Envision San José 2040 General Plan

The 2040 General Plan includes the following noise policies applicable to the proposed project. The City's noise and land use compatibility guidelines are shown in Table 4.13-1, below. The City's 2040 General Plan establishes an acceptable exterior noise level of 60 dBA DNL or less for residential and most institutional land uses, including schools. Outdoor sports and recreation areas and playgrounds are considered acceptable in noise environments of 65 dBA DNL or less.

Table 4.13-1: General Plan Land Use Compatibility Guidelines

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

Notes: [1]Noise mitigation to reduce interior noise levels pursuant to Policy EC-1.1 is required.

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.

Policies	Description
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 Plan or Table 4.13-1 in this IS]. The acceptable exterior noise level objective is established for the City, except in the environs of the San José International Airport and the Downtown, as described below:
- For new multi-family residential projects and for the residential component of mixed-use development, use a standard of 60 dBA DNL in usable outdoor activity areas, excluding balconies and residential stoops and porches facing existing roadways. Some common use areas that meet the 60 dBA DNL exterior standard will be available to all residents. Use noise attenuation techniques such as shielding by buildings and structures for outdoor common use areas. On sites subject to aircraft overflights or adjacent to elevated roadways, use noise attenuation techniques to achieve the 60 dBA DNL standard for noise from sources other than aircraft and elevated roadway segments.

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 or Table 4.13-1 in this IS/Addendum] 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 5 dBA DNL or more where the noise levels would remain "Normally Acceptable"; or
- Cause the DNL at noise sensitive receptors to increase by 3 dBA DNL or more where noise levels would equal or exceed the "Normally Acceptable" level.

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.

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 building 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. Equipment or activities typical of generating continuous vibration include but are not limited to: excavation equipment; static compaction equipment; vibratory pile drivers; pile-extraction equipment; and vibratory compaction equipment. Avoid use of impact pile drivers within 125 feet of any buildings, and within 300 feet of historical buildings, or buildings 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. Transient vibration impacts may exceed a vibration limit of 0.08 in/sec PPV only when and 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.

4.13.1.2 *Existing Conditions*

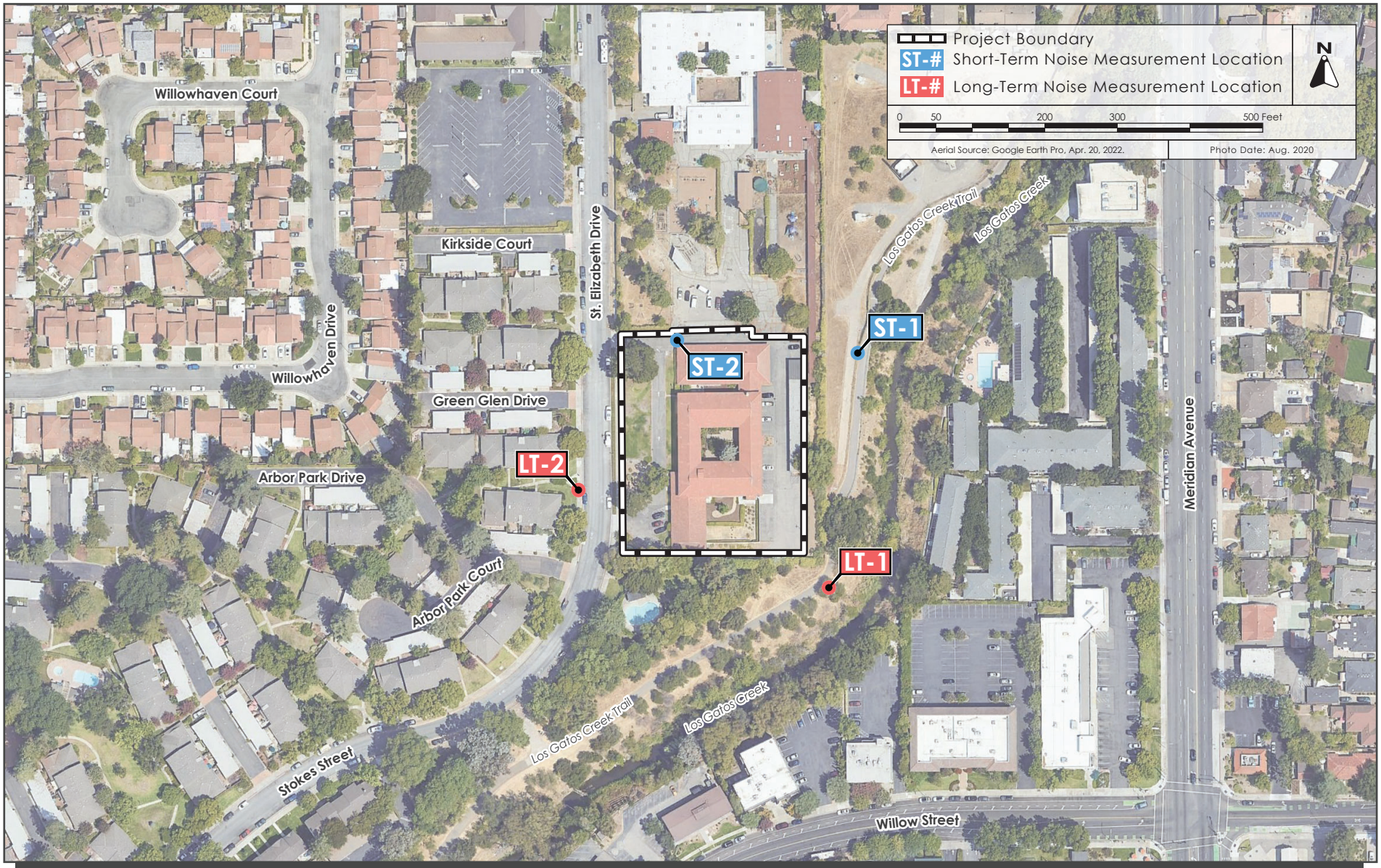
Existing Ambient Noise Levels

The project site is located on St. Elizabeth Drive in the Willow Glen neighborhood of San José. The site is surrounded by residential uses to the north, west and Los Gatos Creek trail to the east and south. Commercial and residential uses are located east and south across Los Gatos Creek from the project site. Table 4.13-2 shows the observed ambient noise levels within the project vicinity.[80] Figure 4.13-1 shows the location of these noise measurements.

Table 4.13-2: Existing Ambient Noise Levels

Noise Measurement Location	Date & Time	dBA DNL	Daytime dBA Leq	Nighttime dBA Leq
Short-Term Noise Measurements				
ST-1: Los Gatos Creek trail	11/29/2022 10:40 – 10:50	--	46	--
ST-2: 110 feet from the centerline of St. Elizabeth Dr. towards the north of the project site.	11/29/2022 11:00–11:10	--	51	--
Long-Term Noise Measurements				
LT-1: Los Gatos Creek trail	11/29/2022-11/30/2022	56	47-55	46-54
LT-2: St. Elizabeth Drive	11/29/2022-11/30/2022	62	56-63	48-57
Source: Noise and Vibration Analysis prepared by Illingworth & Rodkin, Inc, Appendix H				

[80] City of San José. *Envision San José 2040 General Plan Draft Program Environmental Impact Report.* Adopted November 1, 2011. As amended on December 14, 2021. P. 338.



AMBIENT NOISE MEASUREMENT LOCATIONS | FIGURE 4.13-1

Existing Noise-Sensitive Receptors

The nearest noise sensitive receptors to the project site are the residences located on St. Elizabeth Drive, approximately 220 feet from the center of proposed construction (54 feet from the nearest points on the property lines). Other sensitive receptors in the project area include a school (the Morgan Autism Center), approximately 375 feet from the center of construction (adjacent to the north of the proposed project), residences approximately 400 feet east of the center of construction, across Los Gatos Creek (approximately 145 feet from the nearest points on the property lines).

4.13.2 Impact Discussion

	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
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?	☐	☒	☐	☐
b) Generation of excessive groundborne vibration or groundborne noise levels?	☐	☐	☒	☐
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?	☐	☐	☒	☐

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

Construction Noise

Policy EC-1.7 of the City's General Plan requires that all construction activities within the City use best available noise suppression devices and techniques and to limit construction hours near residential uses per the Municipal Code, which are between 7:00 AM and 7:00 PM on weekdays when construction occurs within 500 feet of a residential land use. Further, the City considers a significant construction noise impact to occur if a project is located within 500 feet of a residential use or 200 feet of a commercial or office use and would involve substantial noise-generating activities continuing for a period of more than 12 months.

As noted in Section 2.0 Project Information and Description, project construction would occur from 7:00 AM to 7:00 PM Monday through Friday for a period of 21 months. The proposed project would

be located approximately 220 feet east of the nearest residential, as measured from the center of construction. Noise levels generated by project construction are shown in Table 4.13-3 below.

Table 4.13-3: Total Calculated Noise Levels at 50 Feet and Closest Residential Receptor

Construction Phase	Equipment	Total Calculated Leq (dBA)	
		At 50 Feet	At Closest Residential Receptor
Demolition	Excavator	82	69
	Tractors/Loaders/Backhoes		
Grading/Excavation	Excavators	86	73
	Graders		
	Tractors/Loaders/Backhoes		
Trenching/Foundation	Tractors/Loaders/Backhoes	80	67
Building – Exterior	Cranes	81	68
	Forklifts		
	Tractors/Loaders/Backhoes		
Building – Interior	Aerial Lift	73	60
Paving	Pavers	82	70
	Paving Equipment		
	Rollers		
	Tractors/Loaders/Backhoes		
Source: Appendix H.			

As shown in Table 4.13-3, noise levels generated during construction are estimated to range from 73 to 86 dBA Leq when construction activities occur approximately 50 feet from receptors and between 60 and 73 dBA Leq at the nearest residential receptor (along St. Elizabeth Drive). This represents an approximately 4 to 10 dBA L_{eq} increase over existing ambient noise levels at the nearest residential receptor (refer to Table 4.13-2 above). Project construction would exceed one year in duration and would occur within 500 feet of a residential use, resulting in a significant temporary increase in noise levels.

Impact NOI-1: Project construction would occur for more than one year and be located within 500 feet of residential uses, conflicting with General Plan EC-1.7 for construction noise impacts.

Mitigation Measures: The project applicant would be required implement the following mitigation measures to reduce noise impacts related to project construction.

MM NOI-1.1: Prior to the issuance of any grading or demolition permits, the project applicant shall submit and implement a construction noise logistics plan that specifies hours of construction, noise and vibration minimization measures, posting and notification of construction schedules, equipment to be used, and designation of a noise disturbance coordinator to respond to any local complaints about construction noise. The disturbance coordinator would determine the cause of the noise complaints (e.g., beginning work too early, bad muffler, etc.) and institute reasonable measures warranted to correct the problem. The noise disturbance coordinator shall be in place prior to the start of construction. The noise logistic plan shall be signed by a qualified acoustical specialist verifying that this plan meets the reduction to noise levels and shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee. As a part of the noise logistic plan, construction activities for the proposed project shall include, but are not limited to, the following best management practices:

- Limit construction hours to between 7:00 AM and 7:00 PM, Monday through Friday, unless permission is granted with a development permit or other planning approval. No construction activities are permitted on the weekends at sites within 500 feet of a residence. Construction outside of these hours may be approved through a development permit based on a site-specific "construction noise mitigation plan" and a finding by the Director of PBCE that the construction noise mitigation plan is adequate to prevent noise disturbance of affected residential uses
- Construct solid plywood fences around construction sites adjacent to operational business, residences, or other noise-sensitive land uses.
- Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment.
- Prohibit unnecessary idling of internal combustion engines.
- Locate stationary noise-generating equipment such as air compressors or portable power generators as far as possible from sensitive receptors. Construct temporary noise barriers to scree stationary noise-generating equipment when located near adjoining sensitive land uses.
- Utilize "quiet" are compressors and other stationary noise sources where technology exists.
- Control noise from construction workers' radios to a point where they are not audible at existing residences bordering the project site.
- Notify all adjacent business, residences, and other noise-sensitive land uses of the construction schedule, in writing, and provide a written schedule of "noisy" construction activities to adjacent land uses and nearby residences.
- If complaints are received or excessive noise levels cannot be reduced using the measures above, erect a temporary noise control blanket barrier along surrounding building facades that face the construction sites.

- Designate a "disturbance coordinator" who would be responsible for responding to any complaints about construction noise. The disturbance coordinator will determine the cause of the noise complaint (e.g., bad muffler, etc.) and will require that reasonable measures be implemented to current the problem, conspicuously post a telephone number for the disturbance coordinator at the construction site and include it in the notice sent to neighbors regarding the construction schedule.

Mitigation measure MM NOI-1.1 would reduce construction noise impacts in accordance with the General Plan Policy EC-1.7 to a less than significant level. **(Less than Significant Impact with Mitigation Incorporated)**

Operational Noise Impacts

Traffic Noise

Based on the General Plan Safety and Noise Policy 7.2, a significant impact would occur if the permanent noise level increase due to project-generated traffic was 3 dBA CNEL and exceeded the "normally acceptable" level of 60 dBA or if the noise level increase from the project was 5 dBA CNEL or greater and remained within the "normally acceptable" range.

As shown in Table 4.13-2 above, noise levels at the project site range from 46 to 63 dBA. Thus, if project-generated traffic noise would increase by three decibels or more (equal to a doubling of traffic on local roadways), impacts would be significant. Meridian Avenue[81] has an average daily traffic volume of 35,810 trips per day under existing conditions[82] and as noted in Section 4.17 below, the project would result in 805 new daily trips. Therefore, based on review of the existing and existing plus project traffic volumes, the project would not result in a doubling of traffic on roadway segments in the project vicinity.[83] The project alone, therefore, would not result in a significant, permanent noise increase. **(Less than Significant Impact)**

Mechanical Equipment Noise

The proposed project would include various mechanical equipment for heating, ventilation, and air conditioning, similar to those used by the existing senior living facility on-site. As discussed in Section 4.13.1.2 Existing Conditions above, existing ambient noise levels at the project site range from 46 to 63 dBA. In accordance with the General Plan Policy EC-1.3, noise levels from building equipment would be limited to 55 dBA DNL at the property line of noise-sensitive land uses.

The exact type, location, and operation of the project mechanical equipment are not known at this time. Therefore, operation of mechanical equipment associated with the proposed project could exceed the City's Municipal Code thresholds. The project would be required to implement the following Mitigation Measure NOI-2.1 to ensure mechanical equipment noise does not exceed the City's threshold of 55 dBA at the shared property lines of nearby noise sensitive land uses.

[81] Meridian Avenue is the nearest roadway in the project vicinity with reported average daily traffic volumes.
[82] City of San José. Traffic Volume Counts in San Jose, CA Map. Webmap. February 9, 2022. https://www.arcgis.com/home/item.html?id=723f618a25944d2b91bb382b61a84d2c
[83] Hexagon Transportation Consultants, Inc. *1050 St. Elizabeth Drive, Transportation Analysis*. July 20, 2022.

Impact NOI-2: The mechanical equipment for the project has the potential to exceed 55 dBA DNL at adjacent noise-sensitive land uses.

Mitigation Measure:

MM NOI-2.1: Prior to issuance of building permits, mechanical equipment shall be selected and designed to meet the City's 55 dBA DNL noise level requirements at the property line of nearby noise sensitive land uses. The applicant shall retain a qualified acoustical consultant to review the mechanical noise equipment to determine specific noise reduction measures needed to reduce equipment noise to comply with the City's noise levels requirements. Noise reduction measures could include, but are not limited to, selection of equipment that emits low noise levels and installation of noise barriers, such as enclosures and parapet walls, to block the line-of-sight between the noise source and the nearest receptors. Other alternate measures include locating equipment in less noise-sensitive areas (such as along the building facades farthest from the nearest residences) where feasible. The findings and recommendations from the acoustical consultant for noise reduction measures shall be submitted to the Director of Planning, Building and Code Enforcement or Director's designee for review and approval prior to the issuance of any building permits.

With implementation of NOI-2.1, the project would have a less than significant operational noise impact from mechanical equipment. **(Less than Significant Impact)**

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

Construction of the proposed project may generate perceptible vibration when heavy equipment or impact tools (e.g., jackhammers, hoe rams) are used in the vicinity of nearby sensitive land uses. As discussed in Section 3.1.5 Construction, construction activities would include site demolition work, preparation work, excavation, foundation work, and new building framing and finishing. Impact pile driving (which generates substantial vibration) is not proposed as a method of construction.

According to General Plan Policy EC-2.3, a continuous vibration limit of 0.2 in/sec PPV is used to minimize damage at buildings of conventional construction and a continuous vibration limit of 0.08 in/sec PPV is used to minimize the potential for cosmetic damage to historical structures. The vibration limits contained in this policy are conservative and designed to provide the ultimate level of protection for existing buildings in San José.

A review of the City of San José Historical Resources Inventory identified a residence at 1305 Willow Street, approximately 2,000 feet (0.4-miles) east of the project site, as the only historic resource in the site vicinity.

Based on the noise and vibration assessment prepared for the project, construction of the project would generate vibration levels would reach up to 0.06 in/sec PPV for a clam shovel drop and up to

0.063 in/sec PPV for a vibratory roller, which would not exceed the City's 0.2 in/sec PPV threshold for buildings of conventional construction. Additionally, these vibration levels would not exceed the City's threshold 0.08 in/sec PPV threshold for historic buildings (the nearest historic property is located 2,000 feet from the project site). For these reasons, the project would not result in generation of excessive ground borne vibration or ground borne noise and impacts would be less than significant. **(Less than Significant Impact)**

c) For a project located within the vicinity of a private airstrip or an airport land use plan or, where such a plan has not been adopted, within 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?

The nearest airport to the site Norman Y. Mineta San José International Airport, approximately three miles north of the site. The project site is not located within an adopted AIA and is not located within two miles of an airport.[84] The project would be located outside the noise contour levels of 65 dBA CNEL for the Norman Y. Mineta San José International Airport.[85] As a result, the project would not expose people residing or working in the project area to excessive noise levels, no impact. **(Less than Significant Impact)**

4.13.3 Non-CEQA Effects

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

Residential Outdoor Use Areas

The proposed development would be located in an urban area where ambient noise levels are approximately 46 to 63 dBA. Therefore, proposed residential exterior use areas would exceed the City's threshold of 60 dBA. The project would be required to implement the following Conditions of Approval to reduce noise levels at proposed residential outdoor use areas to below the City's threshold of 60 dBA.

Conditions of Approval:

- Prior to the issuance of any building permit, the project applicant shall ensure all outdoor use areas achieve future exterior noise levels at or below the City's "normally acceptable" threshold of 60 dBA DNL at the center of the spaces where reasonably achievable. For common outdoor use areas where 60 dBA DNL is not reasonably achievable, measures shall be incorporated to achieve reasonable "conditionally acceptable" noise levels at the centers of the outdoor use spaces.

[84] County of Santa Clara. *Comprehensive Land Use Plan, Norman Y. Mineta San José International Airport, Airport Influence Area Figure 8.* May 25, 2011. Amended November 16, 2016.
[85] Ibid. 2022 Aircraft Noise Contours, Figure 5.

- The project applicant shall retain a qualified acoustical consultant to review the final site plan in order to determine specific noise reduction measures to meet the City's requirements. Noise reduction measures could include increased setbacks, using the proposed building façades as noise barriers, the construction of traditional noise barriers, or a combination of these methods. The applicant's retained qualified acoustical consultant shall prepare a detailed acoustical study during final building design to evaluate the land use compatibility of the proposed common use outdoor spaces with the future noise environment at the site and to identify the necessary noise controls that are included in the design to meet the City's requirements. The study shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee prior to issuance of any building permit.

Residential Interior Use Areas

Future exterior noise levels at these residential outdoor use areas would be approximately 68 dBA. Standard residential construction provides 15 dBA of exterior-to-interior noise reduction, assuming the windows are partially open for ventilation. Standard construction with windows closed provides approximately 20 to 25 dBA of noise reduction in interior spaces. Therefore, assuming standard residential construction, interior noise levels at the project site would be approximately 53 dBA which would exceed the City's threshold of 45 dBA DNL for residential uses and the project would be required to implement the following Standard Permit Condition to reduce noise levels at proposed residential outdoor use areas to below the City's threshold.

Standard Permit Condition:

1. 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 ambient interior noise levels to 45 dBA DNL or lower and achieve the instantaneous noise objective of 50 dBA L_{max} in bedrooms and 55 dBA L_{max} in other rooms 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.

4.14 POPULATION AND HOUSING

4.14.1 Environmental Setting

4.14.1.1 *Regulatory Framework*

State

Housing-Element Law

State requirements mandating that housing be included as an element of each jurisdiction's general plan is known as housing-element law. The Regional Housing Need Allocation (RHNA) is the state-mandated process to identify the total number of housing units (by affordability level) that each jurisdiction must accommodate in its housing element. California housing-element law requires cities to: 1) zone adequate lands to accommodate its RHNA; 2) produce an inventory of sites that can accommodate its share of the RHNA; 3) identify governmental and non-governmental constraints to residential development; 4) develop strategies and a work plan to mitigate or eliminate those constraints; and 5) adopt a housing element and update it on a regular basis.[86] The City of San José Housing Element and related land use policies were last updated in 2015. The City is currently updating the Housing Element for the 2023 to 2031 cycle.[87]

Regional and Local

Plan Bay Area 2050

Plan Bay Area 2050 is a long-range plan for the nine-county San Francisco Bay Area that provides strategies that increase the availability of affordable housing, support a more equitable and efficient economy, improve the transportation network, and enhance the region's environmental resilience. Plan Bay Area 2050 promotes the development of a variety of housing types and densities within identified Priority Development Areas (PDAs). PDAs are areas generally near existing job centers or frequent transit that are locally identified for housing and job growth.[88]

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

[86] California Department of Housing and Community Development. "Regional Housing Needs Allocation and Housing Elements." Accessed April 28, 2022. http://hcd.ca.gov/community-development/housing-element/index.shtml.
[87] City of San José. "Housing Element Update." Accessed April 28, 2022. https://www.sanjoseca.gov/your-government/departments/planning-building-code-enforcement/planning-division/citywide-planning/housing-element
[88] Association of Bay Area Governments and Metropolitan Transportation Commission. *Plan Bay Area 2050*. October 21, 2021. Page 20.

4.14.1.2 *Existing Conditions*

The population of San José was estimated to be approximately 976,482 in January 2022 with an average of 2.9 persons per household.[89] The City currently has approximately 344,112 housing units[90] and, by 2040, the City's population is projected to reach 1,337,145 and 448,310 households.[91]

The project site is currently developed with a 40 unit, 28,223-square foot senior living facility. Data regarding residents and employees associated with the senior living facility were not available at the time of preparation of this Initial Study. Thus, for the purposes of this analysis, it is conservatively assumed that each unit is occupied by one resident and no employees are assumed, for a total existing population of 40 residents.

4.14.2 Impact Discussion

	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
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)?	☐	☐	☒	☐
b) Displace substantial numbers of existing people or housing, necessitating the construction of replacement housing elsewhere?	☐	☐	☒	☐

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

The project proposes to replace a 40-unit senior living facility with a seven story, 206-unit apartment building.[92] Assuming the City average household size of 2.9 persons per dwelling unit, the proposed project would generate approximately 597 residents, a net increase of 557 residents over existing conditions on-site. As discussed in Section 4.11 Land Use, the proposed project is consistent with the existing General Plan land use designation and growth projections for the site, and therefore, would not directly result in substantial unplanned population growth. Furthermore, the project would not indirectly result in substantial unplanned population growth as it would not extend a road or other infrastructure that would indirectly induce growth. For these reasons, impacts would be less than

[89] State of California, Department of Finance. *E-5 Population and Housing Estimates for Cities and Counties, and the State, 2020-2022.* Sacramento, California, May 2022.
[90] Ibid.
[91] ABAG. *Projections 2040: Forecasts for Population, Household, and Employment for the Nine County San Francisco Bay Area Region*. 2017.
[92] The senior living facility is currently unoccupied. However, for the purposes of this analysis, it is conservatively assumed to be occupied.

significant. **(Less than Significant Impact)**

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

The proposed project includes demolition of a 40-unit senior living facility and construction of 206 new residential units, resulting in a net increase of 166 residential units.[93] The project would result in temporary displacement of the existing residents during project construction. However, overall, the project would increase the housing stock in San José. Thus, the project would not displace substantial numbers of existing people or housing, necessitating the construction of replacement housing elsewhere. **(Less than Significant Impact)**

[93] The senior living facility is currently unoccupied. However, because the building could be reoccupied at any time without the need for substantial renovation, the baseline for this analysis was an occupied building.

4.15 PUBLIC SERVICES

4.15.1 Environmental Setting

4.15.1.1 *Regulatory Framework*

State

Government Code Section 66477

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

Government Code Section 65995 through 65998

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

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

Regional and Local

Countywide Trails Master Plan

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

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 on-site. For projects exceeding 50 units, the City decides whether the project will dedicate land for a new public park site or provide a fee in-lieu of land dedication. Affordable housing including low, very-low, and extremely-low income units are subject to the PDO and PIO at a rate of 50 percent of applicable parkland obligation. The acreage of parkland required is based on the minimum acreage dedication formula outlined in the PDO.

Envision San José 2040 General Plan

The following policies are specific to public services and are applicable to the proposed project:

Policies	Description
FS-5.7	Encourage school districts and residential developers to engage in early discussions regarding the nature and scope of proposed projects and possible fiscal impacts and mitigation measures early in the project planning stage, preferably immediately preceding or following land acquisition.
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 square feet of space per capita in library facilities.
ES-3.1	Provide rapid and timely Level of Service 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. 3. Enhance service delivery through the adoption and effective use of innovative, emerging techniques, technologies and operating models. 4. Measure service delivery to identify the degree to which services are meeting the needs of San José's community. 5. Ensure that development of police and fire service facilities and delivery of services keeps pace with development and growth in the city.
ES-3.9	Implement urban design techniques that promote public and property safety in new development through safe, durable construction and publicly-visible and accessible spaces.
ES-3.11	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.

PR-1.2	Provide 7.5 acres per 1,000 population of citywide /regional park and open space lands through a combination of facilities provided by the City of San José and other public land agencies.
PR-1.3	Provide 500 square feet per 1,000 population of community center space.
PR-2.4	To ensure that residents of a new project and existing residents in the area benefit from new amenities, spend Park Dedication Ordinance (PDO) and Park Impact Ordinance (PIO) fees for neighborhood serving elements (such as playgrounds/tot-lots, basketball courts, etc.) within a ¾ mile radius of the project site that generates the funds.

4.15.1.2 *Existing Conditions*

Fire Protection Services

Fire protection services for the project site are provided by the San José Fire Department (SJFD). The SJFD responds to all fires, hazardous materials spills, and medical emergencies (including injury accidents) in the City.[94] The closest station to the project site is San José Fire Department Station 04 located at 710 Leigh Avenue, approximately 1.1-mile northwest of the project site.[95] The General Plan identifies a service goal of eight minutes and a total travel time of four minutes or less for 80 percent of emergency incidents for fire protection.

Police Protection Services

Police protection services for the project site are provided by the San José Police Department (SJPD), which is headquartered at 201 West Mission Street, approximately 4.3-miles northeast of the project site. SJPD is divided into four geographic divisions: Central, Western, Foothill, and Southern. The project site is directly served by the SJPD Western Division.[96] The Western Division includes four police patrol districts that cover approximately 28 square miles.[97] The General Plan identifies a service goal of six minutes or less for 60 percent of all Priority 1 (emergency) calls and 11 minutes or less for 60 percent all Priority 2 (nonemergency) calls.

Schools

The project site is located in the Campbell Union School District and Campbell Union High School District. The Campbell Union School District is a pre-kindergarten through eighth grade school district that provides services to six cities in Santa Clara County. The district includes eight elementary schools, two transitional kindergarten through eighth grade schools, two middle schools, a home school program, and district operated preschools that serve approximately 7,000 students.[98] Campbell Union High School District includes five high schools and one alternative school that

[94] City of San José. "About SJFD". Accessed May 2, 2022. Available at: https://www.sanjoseca.gov/your-government/departments/fire-department
[95] City of San José. "Fire Stations". Accessed May 2, 2022. Available at: https://www.sanjoseca.gov/your-government/departments-offices/fire/stations
[96] San José Police Department. "Bureau of Field Operations". Accessed May 2, 2022. Available at: https://www.sjpd.org/about-us/organization/bureau-of-field-operations
[97] San José Police Department. "Western Division". Accessed May 2, 2022. Available at: https://www.sjpd.org/about-us/organization/bureau-of-field-operations/western-division
[98] Campbell Union School District. "About Us". Accessed May 2, 2022. Available at: https://www.campbellusd.org/about#facts

serves 8,300 students.

The project site is within the Blackford Elementary School, Monroe Middle School, and Del Mar High School attendance boundaries. The General Plan EIR found that Campbell Union School District had an available capacity of 78 students, while the Campbell Union High School District was operating above capacity by 374 students. No additional facilities are planned for either school district. [99]

Parks

The City of San José currently operates 209 parks, 41 community/neighborhood centers, and over 61 miles of trail. Of the total 209 parks, 199 are neighborhood parks and 10 are regional park. Some of the community amenities overseen by the Department of Parks, Recreation, and Neighborhood Services include bike parks, community gardens, park playgrounds, tennis courts, and swimming pools.[100] St. Elizabeth Park, located northeast of the St. Elizabeth Drive and McKinley Court intersection is a 0.7-acre local neighborhood park that is approximately 545 feet north of the project site.[101]

Libraries

The City of San José is served by the San José Public Library System. The San José Public Library System has a total of 25 facilities that serve a population of 1,029,782 persons.[102] The main library is the Dr. Martin Luther King, Jr. Library in downtown San José and there are 24 branch libraries. The nearest public library is the Bascom Branch Library at 1000 South Bascom Avenue, approximately 1.3-miles west of the project site. The Willow Glen Branch Library at 1157 Minnesota Avenue is also nearby with the library being approximately 1.6-miles southeast of the project site.[103]

[99] City of San José. *Envision San José 2040 General Plan Draft Program Environmental Impact Report.* Adopted November 1, 2011. As amended on December 14, 2021. Table 3.9-4. Available at: https://www.sanjoseca.gov/home/showpublisheddocument/22039/636688304347700000
[100] City of San José Parks, Recreation & Neighborhood Services. Fast Facts 2019-2020. Last Updated on November 12, 2020.
[101] City of San José. "San José Parks Finder". Accessed April 28, 2022. https://csj.maps.arcgis.com/apps/webappviewer/index.html?id=93ae7909fe8f4b758daa5a73baa895c3
[102] San José Public Library. "Facts and Awards". Accessed May 2, 2022. Available at: https://www.sjpl.org/facts
[103] San José Public Library. "Map Search". Accessed May 2, 2022. Available at: https://www.sjpl.org/locations-map-search?center%5Bcoordinates%5D%5Blat%5D=37.3053072&center%5Bcoordinates%5D%5Blng%5D=-121.9159766&center%5Bgeocoder%5D%5Bgeolocation_geocoder_address%5D=1050+St+Elizabeth+Dr%2C+San+Jose%2C+CA+95126%2C+USA&geo_proximity=1

4.15.2 Impact Discussion

	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
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?	☐	☐	☒	☐
b) Police Protection?	☐	☐	☒	☐
c) Schools?	☐	☐	☒	☐
d) Parks?	☐	☐	☒	☐
e) Other Public Facilities?	☐	☐	☒	☐

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

As discussed in Section 3.14 Population and Housing, the proposed project would result in a net increase of 557 residents compared to existing conditions, which would incrementally increase the demand for fire protection services compared to existing conditions. The General Plan EIR concluded that construction of new fire stations, other than those currently planned, would not be required to adequately serve the larger population.

As discussed in Section 4.11 Land Use and Planning, the proposed project is consistent with the General Plan land use designation and growth projections for the site and would, therefore, not require the construction of new or expanded fire protection facilities. 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, such as General Plan Policy ES-3.9, to promote public and property safety. For these reasons, the proposed project would not result in a substantial adverse physical impact associated with the provision of new or physically altered fire protection facilities. **(Less than Significant Impact)**

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

As discussed under checklist question a. above, increased development on-site resulting from the proposed project would incrementally increase the demand for police protection services compared to existing conditions. The General Plan EIR concluded that construction of new or expanded existing police facilities may be required to serve planned growth, however construction of these facilities would not result in significant adverse environmental impacts.

As discussed in Section 4.11 Land Use and Planning, the proposed project is consistent with the General Plan land use designation and growth projections for the site and would, therefore, demand for police protection generated by the proposed project was accounted for in the General Plan EIR and found to be less than significant. Furthermore, 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, such as General Plan Policy ES-3.9, to promote public and property safety. For these reasons, the proposed project would not result in a substantial adverse environmental effect associated with the provision of new or physically altered police protection facilities. **(Less than Significant Impact)**

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

Based on an average student generation rate of 0.34 for elementary students and 0.16 middle school students per unit in the Campbell Union School District[104], and a rate of 0.1004 for high school students in the Campbell Union High School District,[105] the number of students that would be generated as a result of the project would be 70 elementary students, 33 middle school students, and 21 high school students. This would total to 124 students. Campbell Union High School District is over capacity, but the project applicant will be required to pay a school impact fee to the school district to offset the increased demands on school facilities caused by the proposed project in accordance with California Government Code Section 65996. Therefore, the proposed project would not result in substantial adverse physical impacts associated with the provision of new or physically altered government facilities. **(Less than Significant Impact)**

d) Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically

[104] Yang, Nelly. Campbell Union School District. June 6, 2018.
[105] Campbell Union High School District. *Residential and Commercial/Industrial Development School Fee Justification Study*. April 3, 2020. Table 12.

altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times, or other performance objectives for parks?

New residents generated by the project would use existing recreational facilities in the area, including St. Elizabeth Park. The project could generate up to 557 new residents (refer to Section 4.14 Population and Housing of this Initial Study). The new residents would incrementally increase the use of existing recreational facilities in the project area. The proposed project would include amenity spaces which would reduce the use of existing parks by future residents of the proposed project. The project would conform to the City's Parkland Impact Ordinance (PIO) and/or Parkland Dedication Ordinance (PDO) and the project applicant would be required to pay the appropriate PIO and PDO fees to the City at the building permit stage, consistent with these ordinances and General Plan Policies PR-2.4 and PR-2.5. Compliance with the City's PIO/PDO and payment of fees would ensure impacts to existing parks and recreational facilities would be less than significant. **(Less than Significant Impact)**

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

Full build out of the General Plan would provide approximately 0.68 square feet of library space per capita for the anticipated resident population by 2035, which is above the City's service goal of 0.59 square feet of library space per capita (General Plan Policy ES-2.2). The proposed project is consistent with the existing General Plan designation. For this reason, the proposed project would not require new or expanded library facilities beyond what is already planned in the City to meet service goals or result in a significant impact to library facilities. **(Less than Significant Impact)**

4.16 RECREATION

4.16.1 Environmental Setting

4.16.1.1 *Regulatory Framework*

State

Government Code Section 66477

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

Envision San José 2040 General Plan Policies

The following policies are specific to recreational resources and are applicable to the proposed project:

Policy	Description
PR-1.1	Provide 3.5 acres per 1,000 population of neighborhood/community serving parkland through a combination of 1.5 acres of public park and 2.0 acres of recreational school grounds open to the public per 1,000 San José residents.
PR-1.2	Provide 7.5 acres per 1,000 population of citywide/regional park and open space lands through a combination of facilities provided by the City of San José and other public land agencies.
PR-1.3	Provide 500 SF per 1,000 population of community center space.
PR-2.4	To ensure that residents of a new project and existing residents in the area benefit from new amenities, spend Park Dedication Ordinance and Park Impact Ordinance 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.
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.

Greenprint

The Greenprint is a strategic plan to guide the City's expansion of parks, recreation facilities, and community services. The plan was first adopted by City Council in 2000 then updated in 2009.[106] The Greenprint contains strategies to support the overall mission of providing healthy communitieis

[106] City of San José. *Greenprint 2009 Update*. December 8, 2009. Accessed May 2, 2022. https://www.sanjoseca.gov/your-government/departments-offices/parks-recreation-neighborhood-services/general-information/policies-reports/residents

through people, parks, and programs. The Greenprint identifies areas of the City that are underserved by park and recreation facilities and includes policies and strategies to correct those deficiencies. The General Plan incorporated the Greenprint 2009 strategies.

ActivateSJ Strategic Plan (2020-2040)

The ActivateSJ Strategic Plan is the latest 20-year strategic plan for the City of San José's Department of Parks, Recreation, and Neighborhood Services.[107] This plan does not replace the Greenprint 2009 update but instead is a complements to the Greenprint document and focuses more on the daily operations of the Department of Parks, Recreation, and Neighborhood Services. ActivateSJ includes key plan outcomes to support the following guiding principles: stewardship, nature, equity and access, identify, and public life. These guiding principles also align with the specific goals and policies of the General Plan.

4.16.1.2 *Existing Conditions*

The project site is located within the Willow Glen Planning Area of San José, which is currently underserved with respect to parklands for the area's population. The nearest public park is St. Elizabeth Park, located northeast of the St. Elizabeth Drive and McKinley Court intersection. The park 0.7-acre park is a local neighborhood park that is approximately 545 feet north of the project site.[108] The park includes a youth playground and non-reservable picnic areas.

4.16.2 Impact Discussion

		Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
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?	☐	☐	☒	☐
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?	☐	☐	☒	☐

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

The project would generate a net increase of approximately 557 residents (refer to Section 4.14), who would utilize existing recreational facilities. The project would be required to conform to the City's PDO and PIO and would be required to pay PDO/PIO fees to offset the increased demand for parks

[107] City of San José. ACTIVATESJ Strategic Plan (2020-2040). 2020. Available at: https://www.sanjoseca.gov/home/showpublisheddocument/43503/637178743945470000
[108] City of San José. "San José Parks Finder". Accessed April 28, 2022. https://csj.maps.arcgis.com/apps/webappviewer/index.html?id=93ae7909fe8f4b758daa5a73baa895c3

and recreational facilities as discussed in Section 4.15, Public Services, and pursuant with the City of San José's Municipal Code Section 19.38.300.

With payment of the required impact fees discussed above, the proposed project would not result in physical impacts associated with the provision of new or physically altered government facilities, the construction of which could cause significant environmental impacts to parks. **(Less than Significant Impact)**

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

As discussed in Section 4.15 Public Services above, the project would result in a net increase in residents who would utilize existing park facilities. Compliance with the City's PIO/PDO and payment of fees would ensure impacts to existing parks and recreational facilities would be less than significant. New residents would be adequately served by existing parks in the area, including St. Elizabeth Park, 545 feet north of the project site. The proposed project would not result in the construction of new recreational facilities or expansion of recreational facilities which might have an adverse physical effect the environment and any impact would be less than significant. **(Less than Significant Impact)**

4.17 TRANSPORTATION

The following discussion is based, in part on a Local Transportation Analysis prepared for the project by Hexagon Transportation Consultants, Inc. in November 2022 (Appendix I).

4.17.1 Environmental Setting

4.17.1.1 *Regulatory Framework*

State

Regional Transportation Plan

MTC is the transportation planning, coordinating, and financing agency for the nine-county San Francisco Bay Area, including Santa Clara County. MTC is charged with regularly updating the Regional Transportation Plan, a comprehensive blueprint for the development of mass transit, highway, airport, seaport, railroad, bicycle, and pedestrian facilities in the region. MTC and ABAG adopted Plan Bay Area 2050 in October 2021, which includes a Regional Transportation Plan to guide regional transportation investment for revenues from federal, state, regional and local sources through 2050.

Senate Bill 743

SB 743 establishes criteria for determining the significance of transportation impacts using a vehicle miles traveled (VMT) metric intended to promote the reduction of GHG emissions, the development of multimodal transportation networks, and a diversity of land uses. Specifically, SB 743 requires analysis of VMT in determining the significance of transportation impacts. Local jurisdictions were required by Governor's Office of Planning and Research (OPR) to implement a VMT policy by July 1, 2020.

SB 743 did not authorize OPR to set specific VMT impact thresholds, but it did direct OPR to develop guidelines for jurisdictions to utilize. CEQA Guidelines Section 15064.3(b)(1) describes factors that might indicate whether a development project's VMT may be significant. Notably, projects located within 0.50 mile of transit should be considered to have a less than significant transportation impact based on OPR guidance.

Regional and Local

Congestion Management Program

VTA oversees the Congestion Management Program (CMP), which is aimed at reducing regional traffic congestion. The relevant state legislation requires that urbanized counties in California prepare a CMP in order to obtain each county's share of gas tax revenues. State legislation requires that each CMP define traffic LOS standards, transit service standards, a trip reduction and transportation demand management plan, a land use impact analysis program, and a capital improvement element. VTA has review responsibility for proposed development projects that are expected to affect CMP-designated intersections.

Transportation Analysis Policy (City Council Policy 5-1)

As established in City Council Policy 5-1, Transportation Analysis Policy, the City of San José uses VMT as the metric to assess transportation impacts from new development. According to the policy, a residential project's transportation impact would be less than significant if the project VMT is 15 percent or more below the existing average citywide VMT per capita. Screening criteria have been established to determine which projects require a detailed VMT analysis. If a project meets the relevant screening criteria, it is considered to a have a less than significant VMT impact.

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

Envision San José 2040 General Plan

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

Policy	Description
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 VMT.
TR-1.2	Consider impacts on overall mobility and all travel modes when evaluating transportation impacts of new developments or infrastructure projects.
TR-1.6	Require that public street improvements provide safe access for motorists and pedestrians along development frontages per current City design standards.
TR-2.8	Require new development where feasible to provide on-site facilities such as bicycle storage and showers, provide connections to existing and planned facilities, dedicate land to expand existing facilities or provide new facilities such as sidewalks and/or bicycle lanes/paths, or share in the cost of improvements.
TR-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.
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.
CD-2.3	Enhance pedestrian activity by incorporating appropriate design techniques and regulating uses in private developments, particularly in Downtown, Urban Villages, Main Streets, and other locations where appropriate. o Include attractive and interesting pedestrian-oriented streetscape features such as street furniture, pedestrian scale lighting, pedestrian oriented way-finding signage, clocks, fountains, landscaping, and street trees that provide shade, with

	improvements to sidewalks and other pedestrian ways. o Create easily identifiable and accessible building entrances located on street frontages or paseos. o Accommodate the physical needs of elderly populations and persons with disabilities. o Integrate existing or proposed transit stops into project designs.
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.

San José Bike Plan 2020

The San José Bike Plan 2020 also known as the Bicycle Master Plan, defines the City's vision to make bicycling an integral part of daily life in San José. The plan recommends policies, projects, and programs to realize this vision and create a San José community where bicycling is convenient, safe, and commonplace. The Bike Plan 2020 defines a 500-mile network of bikeways that focuses on connecting off-street bikeways with on-street bikeways. The City of San José is currently drafting a new bike plan called "Better Bike Plan 2025"[109] which will replace "Bike Plan 2020" when completed and approved by Council in spring 2020.

4.17.1.2 *Existing Conditions*

Regional access to the project site is provided via I-280 and SR 17. These facilities are described below.

I-280 is an eight-lane freeway in the vicinity of the site. It extends northwest to San Francisco and east to King Road in San José, at which point it makes a transition into I-680 to Sacramento. Access to northbound I-280 from the site and from southbound I-280 to the site is provided via ramps at Meridian Avenue. Access to southbound I-280 and from northbound I-280 to the site is provided via ramps at Southwest Expressway and Meridian Avenue.

SR 17 is a six-lane freeway in the vicinity of the site. It extends from Santa Cruz to I-880 in San José, at which point it makes a transition to I-880 to Oakland. Access to the site is provided via its interchange with Hamilton Avenue and I-280.

Local access to the site is provided by Southwest Expressway, Meridian Avenue, Fruitdale Avenue, Curci Drive, and St. Elizabeth Drive. These roadways are described below.

Southwest Expressway is a divided four-lane north-south roadway in the vicinity of the project site. It extends from I-280 in the north to Bascom Avenue in the south. In the project vicinity, Southwest Expressway has a posted speed limit of 40 mph. The VTA LRT Green Line runs parallel and along the west side of Southwest Expressway between I-280 and Hamilton Avenue. Access to the project site from Southwest Expressway is provided via Fruitdale Avenue and Stokes Street.

[109] City of San José. Draft San José Better Bike Plan 2025. September 2020. Accessed May 14, 2021. https://www.bikesanjose.com/.

Meridian Avenue is a four-to-five lane north-south roadway in the vicinity of the project site. South of Fruitdale Avenue, Meridian Avenue is two lanes in each direction with a two-way left-turn median. Meridian Avenue extends from Park Avenue in the north to Camden Avenue in the south, where it becomes Leyland Park Drive. Access to the project site from Meridian Avenue is provided via Fruitdale Avenue and Curci Drive.

Fruitdale Avenue is a divided four-lane east-west roadway in the vicinity of the project site. It extends from its terminus at the Los Gatos Creek in the east to Bascom Avenue in the west, where it becomes Enborg Lane. Access to the project site from Fruitdale Avenue is provided via St. Elizabeth Drive.

Curci Drive is a two-lane east-west roadway that connects Meridian Avenue to St. Elizabeth Avenue. In the project vicinity, Curci Drive has sidewalks and on-street parking on both sides of the street. Access to the project site from Curci Drive is provided via St. Elizabeth Drive.

St. Elizabeth Drive is a two-lane north-south roadway in the vicinity of the project site. It extends from its northern terminus at Fruitdale Avenue to several hundred feet south of the project site, where it becomes Stokes Street. In the project vicinity, St. Elizabeth Drive has sidewalks and on-street parking on both sides of the street. Access to the project site from St. Elizabeth Drive is provided via a full access driveway and an exit only driveway.

Existing Pedestrian Facilities

Pedestrian facilities in the study area consist of sidewalks along all the surrounding streets, including the project frontage along St. Elizabeth Drive. Crosswalks and pedestrian signal heads are present along the following legs at study intersections:

- North, east, and south legs of the Southwest Expressway/Fruitdale Avenue intersection
- West and south legs of the St. Elizabeth Drive/Fruitdale Avenue intersection
- West, south, and east legs of the Meridian Avenue/Fruitdale Avenue intersection
- West and south legs of the Meridian Avenue/Curci Drive intersection
- All legs of the Leigh Avenue/Stokes Street intersection

Additionally, crosswalks are provided at the east and south legs of the St. Elizabeth Drive/Curci Drive intersection. ADA-compliant curb ramps are located at most intersections within the project vicinity, with the exception of the southwest and northwest corners of the McKinley Avenue and St. Elizabeth Street intersection as well as the northwest corner of the Curci Drive and St. Elizabeth intersection.

Existing Bicycle Facilities

Class I Bikeway (Bike Path). The Los Gatos Creek trail is a 9.7-mile continuous Class I Bikeway from Meridian Avenue in the north to the Lexington Reservoir County Park in the south. This trail system can be accessed via a trailhead on St. Elizabeth Drive, approximately 250 feet south of the project site.

Class II Bikeway (Bike Lane). Class II bikeways are striped bike lanes on roadways that are marked by signage and pavement markings. Within the vicinity of the project site, striped bike lanes are present on the Southwest Expressway, south of Fruitdale Avenue; Fruitdale Avenue, between Bascom Avenue and Southwest Expressway; and on Bascom Avenue, between Fruitdale Avenue and Hamilton Avenue Class III Bikeway (Bike Route).

Class III bikeways are bike routes and only have signs to help guide bicyclists on recommended routes to certain locations. In the vicinity of the project site, St. Elizabeth Avenue, in its entirety and Stokes Street, east of Spruance Street are designated as bikeways.

Refer to Figure 4.17-1 for the location of existing bicycle facilities in the project area.

Existing Transit Facilities

Existing transit services in the project area are provided by the Valley Transportation Authority VTA. The closest bus stops to the project site is located along Meridian Avenue at Curci Drive, approximately 1,500 feet walking distance from the project site. The project site is located less than ½ -mile from the Fruitdale Light Rail Station. The project area is served by two bus lines, Frequent Route 25 and Local Route 64B. The bus lines that operate along Meridian Avenue in the project vicinity and have commute hour headways of 15 minutes and 30 minutes, respectively.

Refer to Figure 4.17-2 for the location of existing transit facilities in the project area.

4.17.2 Impact Discussion

	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
Would the project:				
a) Conflict with a program, plan, ordinance, or policy addressing the circulation system, including transit, roadways, bicycle lanes, and pedestrian facilities?	☐	☐	☒	☐
b) Conflict or be inconsistent with CEQA Guidelines Section 15064.3, subdivision (b)?	☐	☐	☒	☐
c) Substantially increase hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?	☐	☐	☒	☐
d) Result in inadequate emergency access?	☐	☐	☒	☐

Source: Hexagon Transportation Consultants, Inc., July 20, 2022.

EXISTING BICYCLE FACILITIES | FIGURE 4.17-1

Source: Hexagon Transportation Consultants, Inc., July 20, 2022.

EXISTING TRANSIT FACILITIES | FIGURE 4.17-2

a) Would the project conflict with a program, plan, ordinance, or policy addressing the circulation system, including transit, roadways, bicycle lanes, and pedestrian facilities?

Pedestrian Facilities

Pedestrian facilities in the study area consist of sidewalks, crosswalks, and pedestrian signals at signalized intersections. Pedestrian generators in the project vicinity include commercial areas and transit along the Southwest Expressway and Meridian Avenue corridors and nearby schools. The project site is approximately 0.5-mile from nearby Blackford Elementary School and Del Mar High School. Existing sidewalks along St. Elizabeth Drive, Curci Drive, and Fruitdale Avenue provide a pedestrian connection between the project site and pedestrian destinations in the project vicinity. However, there is a missing ADA-compliant ramp along the northwest corner of the St. Elizabeth Drive/McKinley Avenue intersection and the southwest and northeast corners of St. Elizabeth Drive/Curci Drive intersection.

The applicant proposes to replace the existing sidewalk along St. Elizabeth Drive with a new six-foot-wide sidewalk and street trees. Overall, the proposed sidewalk would provide adequate space and circulation along the project frontages. For these reasons, the project would not conflict with any plans, ordinances, or policies related to pedestrian facilities and impacts would be less than significant impact. **(Less than Significant Impact)**

Bicycle Facilities

The project site is directly served by a Class III bike route along St. Elizabeth Drive/Stokes Street. Additionally, the San José Bike Plan 2025 includes planned improvements within the project vicinity such as improvements to the Class III bike route on St. Elizabeth Drive/Stokes Street, improvements to the existing Class IV protected bike lanes on Southwest Expressway, south of Fruitdale Avenue and new protected bike lanes on Fruitdale Avenue, between Meridian Avenue and Southwest Expressway, Meridian Avenue, between Park Avenue and Willow Street, and on Leigh Avenue, between Fruitdale Avenue and East Hamilton Avenue.

The project would include bicycle storage lockers. There are no bicycle sharing stations located within walking distance of the project site. The nearest bicycle sharing station is located near the intersection of Race Street/Parkmoor Avenue, approximately one mile away. The proposed project would not conflict with implementation of San José Bike Plan 2025 or the impede implementation of the General Plan goals and policies related to bicycle facilities. For these reasons, the project would have a less than significant impact. **(Less than Significant Impact)**

Transit Facilities

The project site is served by two VTA bus routes (Frequent Route 25 and Local Route 64B) and one VTA light rail line (Green Line), which provides service between Old Ironsides Station in Santa Clara and Downtown Campbell. The nearest bus stops to the project site serves both routes and are located along both sides of Meridian Avenue (near Cruci Drive), approximately 1,500 feet walking distance from the project site. The Fruitdale Light Rail Station is located approximately 0.3-mile north and west of the project site. New transit trips generated by the project are not expected to create

demand in excess of the transit service that is currently provided. For these reasons, the project would not conflict with any plans, ordinances, or policies related to transit facilities and impacts would be less than significant impact. **(Less than Significant Impact)**

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

Project-Level VMT Impact Analysis

The project site is located within an area designated as a low-VMT area on the City's VMT heat map, indicating that VMT associated with existing residential uses is less than the Citywide average (refer to Appendix I). A project-level VMT analysis using the City's VMT Evaluation Tool was used to estimate the project VMT based on the project location, type of development, project description, and proposed trip reduction measures.

The City's Transportation Policy identifies an impact threshold of 15 percent below the citywide average per capita VMT of 11.91. Thus, projects with a VMT of 10.12 VMT per capita or more would have a significant transportation impact. According to the VMT evaluation completed for the proposed project, the project would generate 9.89 VMT per capita, which is below the established impact threshold. Therefore, the proposed project would have a less than significant transportation impact. **(Less than Significant Impact)**

c) Would the project substantially increase hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?

The following site access and circulation evaluation is based on a review of the project site plan. Site access was evaluated to determine the adequacy of the site's access points with regard to traffic volume, delays, vehicle queues, geometric design, and corner sight distance. On-site vehicular circulation was reviewed in accordance with the City of San José Zoning Code and generally accepted traffic engineering standards.

Site Access and Driveway Design

Vehicular access to the underground parking garage would be provided via a full access driveway along the northern project boundary at St. Elizabeth Drive. The project also proposes an exit-only driveway along the southern boundary of the project site. According to the City of San José Department of Transportation (DOT) Geometric Design Guidelines, the minimum width for a driveway serving a multi-family development is 20 feet wide.

The project site plan shows a full-access driveway measuring 26 feet wide along the northern boundary of the project site. The exit-only southern driveway is proposed to be 20-foot-wide. Therefore, both driveways meet the city's requirements for residential developments and the project would have adequate site access.

Sight Distance

The minimum acceptable sight distance is considered the AASHTO stopping sight distance. Sight distance requirements vary depending on the roadway speeds. St. Elizabeth Drive has a posted speed limit of 30 mph. The AASHTO stopping sight distance is 250 feet (based on a design speed of 35 mph). Thus, a driver must be able to see 250 feet in both directions to locate a sufficient gap to turn out of the driveway.

The site plan shows new street trees added along the project frontage on St. Elizabeth Drive. The trees would be maintained so that the vision of exiting drivers is not obstructed. The roadway north of the project driveways have no curvature and drivers can see several hundred feet to the north. South of the southern driveway, St. Elizabeth Drive has some roadway curvature. Exiting drivers have a clear line of sight of up to 260 feet south of the southern project driveway, which is adequate for a roadway design speed of 30 mph. Therefore, it can be concluded that the sight distance both project driveways are adequate.

Truck Access

Based on the site plan configuration, a loading zone is proposed along the rear drive aisle of the building. Large vehicles, such as delivery trucks and garbage trucks can access the rear uncovered drive aisle, but would not have access to the covered parking garage areas. The site plan indicates that the rear drive aisle would have an outer turning radius of 50 feet and an inner turning radius of 34 feet, which is adequate for a standard sized single-unit truck.

The site plan shows two trash enclosures: one adjacent to the lobby and one located near the adjacent to the rear drive aisle. The site plan does not designate an area for trash pick-up operations, and it is assumed pick-up operations would occur near the trash room at the rear of the building, where the loading space is provided. Therefore, truck access would be adequate to accommodate the needs of the proposed project. **(Less than Significant Impact)**

d) Would the project result in inadequate emergency access?

The SJFD requires that all portions of proposed buildings be within 150 feet of a fire department access road and requires a minimum six-foot setback from all sides of the building to the property line.

Emergency vehicle access to the project site would be provided along St. Elizabeth Drive. Furthermore, as discussed under checklist question c) above, large vehicles could access the site via the rear uncovered drive aisle which has an outer turning radius of 50 feet and an inner turning radius of 34-feet, which is adequate for a standard sized single-unit truck. For these reasons, the project would not result in inadequate emergency access and would comply with City guidelines for emergency access. **(Less than Significant Impact)**

4.17.3 Non-CEQA Effects

While the evaluation of project CEQA impacts on the transportation system is focused on vehicle miles traveled (VMT), in accordance with the City of San José Transportation Policy (Council Policy 5-1), the following discussion is included for informational purposes because City Council Policy 5-1

requires preparation of a Local Transportation Analysis (LTA) to analyze non-CEQA transportation issues, including local transportation operations, intersection level of service, site access and circulation, and neighborhood transportation issues such as pedestrian and bicycle access, and recommend needed transportation improvements.

Consistent with City requirements, an LTA was completed for the project. The Institute of Transportation Engineers (ITE) Trip Generation Manual, 11th Edition (2021) was utilized to calculate the vehicle trips generated by the proposed project.

Trip Generation

In accordance with San José's Transportation Analysis Handbook, the project is eligible for adjustments and reductions from the gross trip generation (refer to Appendix I for additional details). As shown in Table 4.17-1, after applying the ITE trip rates, appropriate trip reductions, it is estimated that the project would generate 805 daily vehicle trips, with 66 trips (15 inbound and 51 outbound) occurring during the AM peak hour and 68 trips (42 inbound and 26 outbound) occurring during the PM peak hour.

Table 4.17-1: Project Trip Generation Estimates

Land Use[1]	Daily Trips	AM Peak Hour			PM Peak Hour		
		In	Out	Total	In	Out	Total
Proposed Land use							
Multi-Family Housing (Mid-Rise)	935	17	59	76	49	31	80
Location Based Reduction[2]	(112)	(2)	(7)	(9)	(6)	(4)	(10)
VMT Reduction[3]	(19)	(0)	(1)	(1)	(1)	(1)	(2)
Project Trips After Reductions	805	15	51	66	42	26	68

Notes:
[1] Source: ITE Trip Generation Manual, 11th Edition 2021, average trip generation rates. All land uses are located within a General Urban/Suburban setting.
[2] The project site is located within a Suburban with Multi-Family Homes area based on the City of San José VMT Evaluation Tool (February 29, 2019). The location-based vehicle mode share are obtained from Table 6 of the City of San José Transportation Analysis Handbook (April 2020). The trip reductions are based on the percent of mod share for all of the other modes of travel besides vehicle.
[3] VMT per capita for residential use. Existing project VMTs were estimated using the City of San José VMT Evaluation Tool. It is assumed that every percent reduction in VMT per-capita is equal to one percent reduction in peak-hour vehicle trips. Consistent with the City of San José Transportation Analysis Handbook (April 2020), VMT from existing uses is not credited against proposed developments. Therefore, no trip credit was applied for the purposes of determining the project's VMT impact.

Intersection Operations Analysis

Traffic conditions at five signalized intersections in the project area were evaluated using LOS and compared to the City's Transportation Analysis Handbook standards. LOS is a qualitative description of operating conditions ranging from LOS A, or free-flow conditions with little or no delay, to LOS F, or jammed conditions with excessive delays. As shown in Table 4.17-2 below, all study intersections are operating at acceptable levels and would continue to operate at acceptable levels under the project conditions.

Table 4.17-2: Intersection Operations Analysis Results									
# Intersection	Peak Hour	Existing			Background				
		No Project			No Project	With project			
		Average Delay (sec)	LOS	Average Delay (sec)	LOS	Average Delay (sec)	LOS	Increase in Critical Delay (sec)	Increase in Critical V/C
Southwest Expressway/ Fruitdale Avenue	AM	30.2	C	29.9	C	30.4	C	0.6	0.006
	PM	36.5	D	37.8	D	38.1	D	0.0	0.001
St. Elizabeth Drive/Fruitdale Avenue	AM	17.5	B	17.5	B	18.0	B	0.5	0.011
	PM	17.5	B	17.9	B	18.4	B	0.4	0.014
Meridian Avenue/ Fruitdale Avenue	AM	43.2	D	46.6	D	47.5	D	1.3	0.009
	PM	48.6	D	51.9	D	52.0	D	0.1	0.002
Meridian Avenue/ Curci Drive	AM	10.4	B	13.3	B	14.3	B	1.1	0.009
	PM	13.0	B	15.6	B	16.4	B	1.0	0.010
Leigh Avenue/ Stokes Street	AM	26.6	C	26.6	C	26.9	C	0.4	0.008
	PM	27.5	C	27.5	C	27.6	C	0.2	0.003
Source: Appendix I									

On-Site Circulation

On-site vehicular circulation was reviewed in accordance with the City of San José Zoning Code and generally accepted traffic engineering standards. In general, the proposed site plan would provide vehicle traffic with adequate connectivity throughout the parking garage.

The proposed parking floor plan shows most on-site drive aisles would be approximately 26 feet wide with an approximately 24-foot-wide one-way drive aisle at the rear of the building. A 22-foot-wide ramp would be provided to both the second parking level and the underground parking level. City standards require 26-foot-wide minimum drive aisles for two-way access and 20-foot-wide minimum drive aisles for one-way access.

Typical engineering standards require garage ramps to have no greater than a 20 percent grade, and slopes over 10 percent requires transition slopes so that vehicles do not “bottom out”. The project site plan shows an approximate 100-foot ramp and a 12-foot elevation between the first and second levels, indicating a 12-13 percent slope. It is assumed that the elevation between the ground level and

basement level is smaller. The site plan does not indicate whether transition slopes[110] are provided. Transition slopes would be reviewed for adequacy by the Department of Public Works during the building permit review process.

Bicycle Parking

Bicycle Parking

According to the City's Bicycle Parking Standards (Chapter 20.90, Table 20-190 and 20-210), bicycle parking for the 206 residential units is required at a rate of one bicycle parking space per four residential units. Based on the City's bicycle parking requirements, the project would be required to provide a total of 52 bicycle parking spaces. Of the required residential bicycle parking, City standards require that at least 60 percent be secured long-term bicycle spaces and at most 40 percent be short term bicycle spaces.

The project would include 74 bicycle parking spaces. The site plan indicates that 52 long-term bicycle locker spaces would be provided within a bicycle storage room on the ground level, and 22 short-term bicycle parking spaces would be provided at the front of the building, near the lobby. Therefore, the project would meet and exceed the City's bicycle parking requirements.

[110] A transition slope is a short portion (approximately 10 feet) of a garage ramp near the top and bottom where the slope angle is less than the slope of the main portion of the garage ramp.

4.18 TRIBAL CULTURAL RESOURCES

4.18.1 Environmental Setting

4.18.1.1 *Regulatory Framework*

State

Assembly Bill 52

AB 52, effective July 2015, established a new category of resources for consideration by public agencies called Tribal Cultural Resources (TCRs). AB 52 requires lead agencies to provide notice of projects to tribes that are traditionally and culturally affiliated with the geographic area if they have requested to be notified. Where a project may have a significant impact on a tribal cultural resource, consultation is required until the parties agree to measures to mitigate or avoid a significant effect on a tribal cultural resource or until it is concluded that mutual agreement cannot be reached.

Under AB 52, TCRs are defined as follows:

- Sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe that are also either:
    - Included or determined to be eligible for inclusion in the California Register of Historic Resources, or
    - Included in a local register of historical resources as defined in Public Resources Code Section 5020.1(k).
- A resource determined by the lead agency to be a TCR.

Local

Envision San José 2040 General Plan

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

Policy	Description
ER-10.1	For proposed development sites that have been identified as archaeologically or paleontologically sensitive, require investigation during the planning process in order to determine whether potentially significant archeological or paleontological information may be affected by the project and then require, if needed, that appropriate mitigation measures be incorporated into the project design.
ER-10.2	Recognizing that Native American human remains may be encountered at unexpected locations, impose a requirement on all development permits and tentative subdivision maps that upon their discovery during construction, development activity will cease until professional archaeological examination confirms whether the burial is human. If the remains are determined to be Native American, applicable state laws shall be enforced.
ER-10.3	Ensure that City, State, and Federal historic preservation laws, regulations, and codes are enforced, including laws related to archaeological and paleontological resources, to ensure the adequate protection of historic and pre-historic resources.

4.18.1.2 *Existing Conditions*

There are no known tribal cultural resources on-site. A records search of the Native American Heritage Commission (NAHC) Sacred Lands File was completed for the site and the results were negative.[111] The City routinely notifies all tribes who are traditionally and culturally affiliated with the geographic area of the City based on the latest list from the NAHC when project documents are available for public review.

4.18.2 Impact Discussion

	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
Would the project cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code Section 21074 as either a site, feature, place, cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American tribe, and that is:				
a) Listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code Section 5020.1(k)?	☐	☐	☒	☐
b) A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code Section 5024.1? In applying the criteria set forth in subdivision (c) of Public Resources Code Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe.	☐	☐	☒	☐

[111] Appendix D.

a) Would the project cause a substantial adverse change in the significance of a tribal cultural resource that is listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code Section 5020.1(k)?

The project site is located in an archaeologically sensitive area. Even though the site is developed, excavation for the proposed building would extend up to 11 feet bgs and could uncover archaeological resources during project construction.

Assembly Bill (AB) 52 requires lead agencies to complete formal consultations with California Native American tribes during the CEQA process to identify tribal cultural resources that may be significantly impacted by a project. Where a project may have a significant impact on a tribal cultural resource, the lead agency's environmental document must discuss the impact and whether feasible alternatives or mitigation measures could avoid or substantially lessen the impact. This consultation requirement applies only if the tribes have sent written requests for notification of projects to the Lead Agency. In 2017, the City had sent a letter to tribal representatives in the area to welcome participation in the AB 52 consultation process for all ongoing, proposed, or future projects within the City's Sphere of Influence or specific areas of the City.

On June 17, 2021, Chairwoman Geary of the Tamien Nation verbally requested AB 52 notification of projects in accordance with Public Resources Code Section 21080.3.1 subd (b), for all proposed projects that require a Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report. Accordingly, AB 52 notification for this particular project was sent electronically to Tamien Nation on June 8, 2022, followed by a standing meeting on June 9, 2022 with Tamien Nation's Chairwoman Geary. She concurred that the site is located in an archaeologically sensitive area. However, no formal consultation was received.

Indian Canyon Band of Costanoan Ohlone People also verbally requested notification. Accordingly, AB 52 notification for the project was sent to on May 15, 2022. The Indian Canyon Band of Costanoan Ohlone requested consultation and tribal cultural sensitivity training be required for the project via an email dated May 25, 2022. A follow-up email with technical reports was electronically on July 21, 2022, and a follow up email was sent on September 6, 2022. No further consultation requests were received from the Indian Canyon Band of Costanoan Ohlone People.

Based on the City's consultation with Tamien Nation and Indian Canyon Band of Costanoan Ohlone People, completed in accordance with AB 52, and with implementation of City Standard Permit Conditions and mitigation measures MM CUL-1.1 through MM CUL-1.2, the project's impact on tribal cultural resources would be reduced to a less than significant level. **(Less than Significant Impact with Mitigation Incorporated)**

b) Would the project cause a substantial adverse change in the significance of a tribal cultural resource that is determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code Section 5024.1?

As discussed under checklist question a above, no tribal cultural resources were identified during the

Native American consultation process. If cultural resources are encountered during construction, City Standard Permit Conditions and mitigation measures MM CUL 1.1 through MM CUL 1.2 would reduce cultural resource impacts to a less than significant level. For these reasons, the project would not result in a substantial adverse change to a tribal cultural resource. **(Less than Significant Impact with Mitigation Incorporated)**

4.19 UTILITIES AND SERVICE SYSTEMS

4.19.1 Environmental Setting

4.19.1.1 *Regulatory Framework*

State

State Water Code

Pursuant to the State Water Code, water suppliers providing water for municipal purposes to more than 3,000 customers or supplying more than 3,000 acre-feet (approximately 980 million gallons) of water annually must prepare and adopt an urban water management plan (UWMP) and update it every five years. As part of a UWMP, water agencies are required to evaluate and describe their water resource supplies and projected needs over a 20-year planning horizon, water conservation, water service reliability, water recycling, opportunities for water transfers, and contingency plans for drought events. San José Water Company (the water provider for the project site) adopted its most recent UWMP in June 2021.[112]

Assembly Bill 939

The California Integrated Waste Management Act of 1989, or AB 939, established the Integrated Waste Management Board, required the implementation of integrated waste management plans, and mandated that local jurisdictions divert at least 50 percent of solid waste generated (from 1990 levels), beginning January 1, 2000. Projects that would have an adverse effect on waste diversion goals are required to include waste diversion mitigation measures.

Assembly Bill 341

AB 341 sets forth the requirements of the statewide mandatory commercial recycling program. Businesses that generate four or more cubic yards of garbage per week and multi-family dwellings with five or more units in California are required to recycle. AB 341 sets a statewide goal for 75 percent disposal reduction by the year 2020.

Assembly Bill 1826

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 610

SB 610 amended state law, effective January 1, 2002, to improve the link between information on water supply availability and certain land use decisions made by cities and counties. SB 610 requires preparation of a WSA containing detailed information regarding water availability to be provided to the decision-makers prior to approval of specified large development projects that also require a

[112] San Jose Water Company. *2020 Urban Water Management Plan.* June 2021. https://www.sjwater.com/sites/default/files/2021-06/2020%20UWMP%20FINAL%20with%20Appendices.pdf

General Plan Amendment. This WSA must be included in the administrative record that serves as the evidentiary basis for an approval action by the city or county on such projects. Under SB 610, WSAs must be furnished to local governments for inclusion in any environmental documentation for certain projects subject to CEQA. Pursuant to the California Water Code (Section 10912[a]), projects that require a WSA include any of the following:

- A proposed residential development of more than 500 dwelling units;
- A proposed shopping center or business establishment employing more than 1,000 persons or having more than 500,000 square feet of floor space;
- A proposed commercial office building employing more than 1,000 persons or having more than 250,000 square feet of floor space;
- A proposed hotel or motel, or both, having more than 500 rooms;
- A proposed industrial, manufacturing, or processing plant, or industrial park planned to house more than 1,000 persons, occupying more than 40 acres of land, or having more than 650,000 square feet of floor area;
- A mixed-use project that includes one or more of the projects identified in this list; or
- A project that would demand an amount of water equivalent to, or greater than, the amount of water required by a 500 dwelling unit project.

Senate Bill 1383

SB 1383 establishes targets to achieve a 50 percent reduction in the level of the statewide disposal of organic waste from the 2014 level by 2020 and a 75 percent reduction by 2025. The bill grants CalRecycle the regulatory authority required to achieve the organic waste disposal reduction targets and establishes an additional target that at least 20 percent of currently disposed edible food is recovered for human consumption by 2025.

California Green Building Standards Code Compliance for Construction, Waste Reduction, Disposal and Recycling

In January 2010, the State of California adopted the California Green Building Standards Code (CALGreen), establishing mandatory green building standards for all buildings in California. The code covers five categories: planning and design, energy efficiency, water efficiency and conservation, material conservation and resources efficiency, and indoor environmental quality. These standards include the following mandatory set of measures, as well as more rigorous voluntary guidelines, for new construction projects to achieve specific green building performance levels:

- Reducing indoor water use by 20 percent;
- Reducing wastewater by 20 percent;
- Recycling and/or salvaging 65 percent of nonhazardous construction and demolition debris (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
- Providing readily accessible areas for recycling by occupants.

Local

Envision San José 2040 General Plan

The 2040 General Plan contains the following policies which are specific to utilities and service systems and applicable to the proposed project:

Policy	Description
IN-3.3	Meet the water supply, sanitary sewer and storm drainage level of service objectives through an orderly process of ensuring that, before development occurs, there is adequate capacity. Coordinate with water and sewer providers to prioritize service needs for approved affordable housing projects.
IN-3.5	Require development which will have the potential to reduce downstream LOS to lower than "D", or development which would be served by downstream lines already operating at a LOS lower than "D", to provide mitigation measures to improve the LOS to "D" or better, either acting independently or jointly with other developments in the same area or in coordination with the City's Sanitary Sewer Capital Improvement Program.
IN-3.7	Design new projects to minimize potential damage due to stormwaters and flooding to the site and other properties.
IN-3.9	Require developers to prepare drainage plans that define needed drainage improvements for proposed developments per City standards.
MS-3.1	Require water-efficient landscaping, which conforms to the State's Model Water Efficient Landscape Ordinance, for all new commercial, institutional, industrial, and developer-installed residential development unless for recreation needs or other area functions.
MS-3.2	Promote use of green building technology or techniques that can help to reduce the depletion of the City's potable water supply as building codes permit.
MS-3.3	Promote the use of drought tolerant plants and landscaping materials for nonresidential and residential uses.
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.
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.

In addition to the above-listed San José General Plan policies, new development in San José is also required to comply with programs that mandate the use of water-conserving features and appliances and the Santa Clara County Integrated Watershed Management (IWM) Program, which minimizes solid waste.

San José Zero Waste Strategic Plan/Climate Smart San José

The Climate Smart San José provides a comprehensive approach to achieving sustainability through new technology and innovation. The Zero Waste Strategic Plan outlines policies to help the City of

San José foster a healthier community and achieve its Climate Smart San José goals, including 75 percent waste diversion by 2013 and zero waste by 2022. The Climate Smart San José also includes ambitious goals for economic growth, environmental sustainability, and enhanced quality of life for San José residents and businesses.

San José Sewer System Management Plan

The purpose of the Sewer System Management Plan (SSMP) is to provide guidance to the City in the operation, maintenance, and rehabilitation of the sewer assets of the City of San José. The SSMP includes construction standards and specifications for the installation and repair of the collection system and its associated infrastructure.

Private Sector Green Building Policy

The City of San José's Green Building Policy for new private sector construction encourages building owners, architects, developers, and contractors to incorporate meaningful sustainable building goals early in the design process. This policy establishes baseline green building standards for private sector construction and provides a framework for the implementation of these standards. It is also intended to enhance the public health, safety, and welfare of San José residents, workers, and visitors by fostering practices in the design, construction, and maintenance of buildings that will minimize the use and waste of energy, water, and other resources.

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 C&D materials were reused, donated, or recycled at a City-certified processing facility. Reuse and donation require acceptable documentation, such as photos, estimated weight quantities, and receipts from donations centers stating materials and quantities.

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 qualify under CALGreen, which is more stringent than the state requirement of 65 percent (San José Municipal Code Section 9.10.2480).

4.19.1.2 *Existing Conditions*

Water Services

Water services to the project site would be supplied by the San José Water Company (SJWC).[113] The service area of SJWC is 139 square miles, including most of the cities of San José and Cupertino, entire cities of Campbell, Monte Sereno, Saratoga, the Town of Los Gatos, and parts of unincorporated Santa Clara County. Potable water provided to the service area is sourced from groundwater, imported treated water and local surface water. Approximately 55 percent of SJWC's water supply is purchased from the Valley Water, 37 percent is pumped from local groundwater aquifers, and eight percent comes from local surface water sources. Based on 2020 through 2021 per capita water demand estimates from the Bay Area Water Supply and Conservation Agency, residential per capita water demand in San José is approximately 43.6 gallons per day (gpd) per capita.[114] There are currently no recycled water lines in the immediate site vicinity. The project site is currently developed with a 40-unit senior living facility. The estimated water use for the site is 1,744 gpd.[115]

Sanitary Sewer/ Wastewater Treatment

Wastewater from the City is treated at the San José/ Santa Clara Regional Wastewater Facility (RWF) which is administered and operated by the City Department of Environmental Services. The RWF provides primary, secondary, and tertiary treatment of wastewater and has the capacity to treat 167 million gpd of wastewater. The RWF treats an average of 110 million gpd of wastewater and serves 1.4 million residents and 17,000 businesses in eight cities and four sanitation districts.[116] The RWF is currently operating under a 120 million gpd dry weather effluent flow constraint and in 2021 the average dry weather effluent flow was 66 million gpd.[117]

The RWF has an excess treatment capacity of 38.8 million gpd.[118] This requirement is based upon the SWRCB and the RWQCB concerns over the effects of additional freshwater discharges on the saltwater marsh habitat and pollutant loading to the Bay from the RWF. Approximately 10 percent of the plant's effluent is recycled for non-potable uses. The remainder is discharged into the San Francisco Bay after treatment. For the purposes of this initial study, wastewater flow rates are assumed to be 95 percent of the total site water use due to the limited landscaping. The existing senior living facility on-site is estimated to generate approximately 1,657 gpd of wastewater total. The project site currently connects to an existing six-inch sanitary sewer line on St. Elizabeth Drive.

[113] San José Water Company. "Service Area and Water Supply Sources". March 5, 2019. Accessed May 3, 2022. Available at: https://www.sjwater.com/sites/default/files/2019-03/Service%20Area%20and%20Water%20Supply%20Sources%20Map_11x17.pdf
[114] BAWSCA. Per Capita Water Use: 2020-2021 BAWSCA Annual Survey. Accessed May 3, 2022. Available at: http://bawsca.org/water/use/percapita.
[115] Note that 43.6 gallons per capita per day x 40 persons = 1,744 gallons per day
[116] City of San José. "San José-Santa Clara Regional Wastewater Facility". Accessed May 3, 2022. Available at: https://www.sanjoseca.gov/your-government/environment/water-utilities/regional-wastewater-facility
[117] San José-Santa Clara Regional Wastewater Facility. 2021 Annual Self-Monitoring Report. Accessed May 3, 2022. Available at: https://www.sanjoseca.gov/home/showpublisheddocument/83092/637825263792500000
[118] City of San José. *Envision San José 2040 General Plan Draft Program Environmental Impact Report.* Adopted November 1, 2011. As amended on December 14, 2021. Page 631.

Stormwater Drainage

The project site is located in a developed area served by storm drainage systems. The project site currently contains a senior housing multi-family residence, paved driveways, and landscaping, with 57,936 square feet of impervious surfaces (i.e.,60 percent of the total site area). Storm drainage lines in the project area are owned and maintained by the City of San José.

Runoff from the project site and the surrounding area enters the City's storm drainage system, which outfalls to Los Gatos Creek (a tributary of the Guadalupe River), located approximately 90 feet east of the nearest project site boundary. The creek flows north, merges with the Guadalupe River, carrying runoff from the storm drains into the San Francisco Bay.

Solid Waste

Santa Clara County's IWMP was approved by the California Integrated Waste Management Board in 1996 and reviewed in 2004, 2007, 2011, and 2016. 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.[119] Solid waste generated within the County is transported to Guadalupe Mines, Kirby Canyon, Newby Island, and Zanker Road landfills. The existing senior living facility on-site is estimated to generate approximately 212 pounds of waste per day.[120,121]

4.19.2 Impact Discussion

	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
Would the project:				
a) Require or result in the relocation or construction of new or expanded water, wastewater treatment or stormwater drainage, electric power, natural gas, or telecommunications facilities, the construction or relocation of which could cause significant environmental effects?	☐	☐	☒	☐
b) Have insufficient water supplies available to serve the project and reasonably foreseeable future development during normal, dry and multiple dry years?	☐	☐	☒	☐
c) Result in a determination by the wastewater treatment provider which serves or may serve the project that it does not have adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?	☐	☐	☒	☐

[119] Santa Clara County. *Five -Year CIWMP/ RAIWMP Review Report.* June 2016.
[120] CalRecycle. "Estimated Solid Waste Generation Rates." Accessed May 3, 2022. Available at: https://www2.calrecycle.ca.gov/WasteCharacterization/General/Rates
[121] Assuming a rate of 5.31 pounds per dwelling unit per day, the total waste per day would equate to 212 pounds per day.

	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
Would the project:				
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?	☐	☐	☒	☐
e) Be noncompliant with federal, state, or local management and reduction statutes and regulations related to solid waste?	☐	☐	☒	☐

a) Would the project require or result in the relocation or construction of new or expanded water, wastewater treatment or stormwater drainage, electric power, natural gas, or telecommunications facilities, the construction or relocation of which could cause significant environmental effects?

Water

The proposed project would generate a water demand of approximately 26,029 gpd of water.[122] The proposed project would rely on the existing water delivery system to supply water to the site, similar to existing conditions. As discussed under checklist question b. below, the project would incrementally increase water demand in the City but would not require additional water supply other than what is currently estimated in the most recently adopted UWMP. No relocation or construction of water facilities is required by the proposed project. The project proposes lateral connections to the existing water line in St. Elizabeth Drive. Lateral connections to existing water lines would occur during grading of the site and would not result in significant environmental effects.

Wastewater

The project would generate approximately 24,728 gpd of wastewater.[123] The project has been reviewed by the City of San José Public Works department and it was determined that sanitary sewer lines in the project area would have adequate capacity for sewer services required by the proposed project.[124] The RWF currently has approximately 38.8 million gpd of excess wastewater treatment capacity. Plan EIR, full build out under the General Plan would increase average dry weather flows by approximately 30.8 million gpd. Wastewater from the proposed project would be treated at the RWF which has adequate capacity to accommodate the increased demand created by the project. Since the proposed development is consistent with planned growth in the City, the project would not require expansion or relocation of the existing City infrastructure. In addition, the project would comply with CALGreen requirements and the City's Private Sector Green Building Policy. As a result, relocation or construction of new or expanded water facilities would not be needed.

[122] Note that 43.6 gallons per capita per day x 597 residents = 26,029 gallons per day
[123] Assumes wastewater generation is 95 percent of total water demand, then the daily wastewater generation would equate to 24,728 gpd (26,029 gpd * 0.95 = 24,728 gpd).
[124] Wilton Chang, Associate Engineer. City of San Jose. Personal Communication. September 28, 2022.

Stormwater Drainage

The project site is currently developed with a senior living facility and associated paved parking. Runoff from the project site currently enters the storm drainage system untreated and unimpeded. The project proposes to construct a new multi-family residence with 206 units. The project would increase impervious surfaces on-site by 17,434 square feet, resulting in a total of 83,639 square feet of impervious surfaces (86 percent of total area), and 13,142 square feet (14 percent) of pervious surfaces. The proposed project would connect to the existing storm drain in St. Elizabeth Drive that discharges to the Los Gatos Creek to the east. While the project would increase the impervious surfaces on-site, the project would include a bioretention area and the impervious surfaces would be designed to drain to a self-retaining area prior to discharge into the storm drainage system, consistent with the MRP. For these reasons, development of the project site would improve the water quality of runoff from the site and would not exceed the capacity of the existing storm drainage system serving the project site.

Electric Power, Natural Gas, and Telecommunication Facilities

The project would utilize existing utility connections to connect to the City's electric, and telecommunications systems. Although the project would increase the demand on existing facilities in the City, the relocation of existing or construction of new facilities would not be needed to serve the proposed project. As a result, the proposed project would have a less than significant impact on these facilities.

As discussed above, the proposed project would not require or result in relocation or construction of new or expanded water, wastewater treatment or stormwater drainage, electric power, natural gas, or telecommunications facilities. **(Less Than Significant Impact)**

b) Would the project have insufficient water supplies available to serve the project and reasonably foreseeable future development during normal, dry and multiple dry years?

As mentioned above, the existing senior living facility is estimated to use approximately 1,744 gpd of water. The proposed project would result in the construction of 206 new residential units and would use approximately 24,728 gpd of water, a net increase of 22,984 gpd.

As discussed above, San José Water Company provides water service to the project site. San José Water Company adopted an UWMP in June 2021 to assess water supply and demand requirements within the service area. The UWMP accounted for existing and planned growth analyzed in the General Plan FEIR (including the proposed project) and found sufficient water supplies would be available during normal, single-dry, and multiple-dry years within its service area without conservation measures.[125] For these reasons, sufficient water supply would be available to serve the project during normal, single-dry, and multiple-dry years. Nonetheless, in accordance with Section 10632(a) of the California Water Code, the UWMP included a water shortage contingency plan that includes measures such as annual water supply and demand assessment and conservation measures to

[125] The San Jose Water Company has a service goal of developing water supplies to meet 100% of annual water demand during non-drought years and at least 80% of annual water demand in drought years. Therefore, there may be a call for up to 20% mandatory conservation during multi-year drought. San Jose Water Company. 2020 Urban Water Management Plan. June 2021. Pages 7-11 through 7-15.

address supply deficiencies, should one occur. Conservation measures include mandatory and voluntary measures such as reductions in the amount and time when landscaping can be irrigated, requiring automatic hose shutoffs, requiring restaurants to only provide water on request, requiring hotels to offer opt out of linen service, and restricting water use for decorative water features such as fountains and pools.

For the reasons discussed above, sufficient water supplies would be available to serve the proposed project and reasonably foreseeable future development during normal and dry years. **(Less than Significant Impact)**

c) Would the project result in a determination by the wastewater treatment provider which serves or may serve the project that it does not have adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?

Sanitary sewer lines serving the site are owned and maintained by the City of San José. The project would include connections to the existing six-inch sanitary sewer main in St. Elizabeth Drive. As discussed above, existing development on the site generates 1,657 gpd of wastewater. Redevelopment of the site under the proposed project would result in wastewater generation of approximately 23,492 gpd, an increase of 21,835 gpd wastewater compared to current baseline conditions.[126]

As noted in Section 4.19.1.2, the RWF has an excess treatment capacity of 38.8 million gpd. Thus, increased wastewater generation resulting from the proposed project would represent less than one percent of the available wastewater treatment capacity, and the project would be adequately served by the existing Facility. Therefore, the project would not have a significant impact related to provision of wastewater treatment service for the project site. **(Less than Significant Impact)**

d) Would the project generate solid waste in excess of state or local standards, or in excess of the capacity of local infrastructure, or otherwise impair the attainment of solid waste reduction goals?

Solid waste would be generated during project construction and operations. Construction of the proposed project would involve the generation of construction debris from demolition of the existing building and the removal of hardscaped surfaces, trees, and other landscaping. Through the process of acquiring building, utility, and site permits from the City, the proposed project would be required to comply with the City's C&D Diversion Program, which ensures that at least 75 percent of the construction waste is diverted from landfills. Material that cannot be recycled or reused would be transported to the Guadalupe Landfill, located in the City, or to other appropriate regional landfills.

During operations, the project is estimated to generate approximately 197 tons of solid waste per year, an increase of 158 tons per year compared to baseline conditions.[127] The project would comply

[126] Proposed project wastewater generation 23,492 – existing use wastewater generation 1,657 = 21,835 net increase
[127] Proposed project waste generation assumes 5.31 lbs per unit per day x 206 units = 1,093 lbs per day or 0.54 tons per day. 0.54 tons per day x 365 = 197 tons per year. Existing uses 212 lbs per day = 0.106 tons per day x 365 = 38.69 tons per year. Source: CalRecycle. "Estimated Solid Waste Generation Rates." Accessed May 3, 2022. Available at: https://www2.calrecycle.ca.gov/WasteCharacterization/General/Rates

with policies in the Zero Waste Strategic Plan which includes measures to reduce solid waste generation from development projects. According to the IWMP, the County has adequate disposal capacity beyond 2022. The total permitted landfill capacity of the five operating landfills in the City is approximately 5.3 million tons per year. Therefore, the project would not generate solid waste in excess of state or local standards, or in excess of the capacity of local infrastructure. **(Less than Significant Impact)**

e) Would the project be noncompliant with federal, state, or local management and reduction statutes and regulations related to solid waste?

The proposed project with a greater resident population would generate additional solid waste compared to existing conditions on-site. The project would be required to conform to City plans and policies to reduce solid waste generation, including the City's Construction and Demolition Diversion Program, Zero Waste Strategic Plan, and 75 percent diversion goal. By ensuring that future development meets the standards set forth by City policies and plans, the proposed project would not prevent solid waste reduction goals from being reached or interfere with the provision of solid waste services. **(Less than Significant Impact)**

4.20 WILDFIRE

4.20.1 Environmental Setting

4.20.1.1 *Regulatory Framework*

State

Fire Hazard Severity Zones

CAL FIRE is required by law to map areas of significant fire hazards based on fuels, terrain, weather, and other relevant factors. Referred to as Fire Hazard Severity Zones (FHSZs), these maps influence how people construct buildings and protect property to reduce risk associated with wildland fires. FHSZs are divided into areas where the state has financial responsibility for wildland fire protection, known as state responsibility areas (SRAs), and areas where local governments have financial responsibility for wildland fire protection, known as local responsibility areas (LRAs). Homeowners living in an SRA are responsible for ensuring that their property is in compliance with California's building and fire codes. Only lands zoned for very high fire hazard are identified within LRAs.

4.20.1.2 *Existing Conditions*

The project site is located in an urbanized area of San José. The project site is not located in or near State responsibility areas or lands classified as very high fire hazard severity zones.[128]

4.20.2 Impact Discussion

	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
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?	☐	☐	☐	☒
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?	☐	☐	☐	☒
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?	☐	☐	☐	☒

[128] California Department of Forestry & Fire Protection. *Santa Clara County Very High Fire Hazard Severity Zones.* October 8, 2008. Accessed January 14, 2022. https://egis.fire.ca.gov/FHSZ/

	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
If located in or near state responsibility areas or lands classified as very high fire hazard severity zones, Would the project:				
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?	☐	☐	☐	☒

Based on the California Department of Forestry and Fire Protection Fire Hazard Severity Zone Viewer mapping tool, the project site is not located in or near state responsibility areas or lands classified as very high fire hazard severity zones.[129] Therefore, the project would not result in wildfire impacts. **(No Impact)**

[129] California Department of Forestry and Fire Protection. "Fire Hazard Severity Zones Maps". Accessed April 28, 2022. https://egis.fire.ca.gov/FHSZ/

4.21 MANDATORY FINDINGS OF SIGNIFICANCE

		Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
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?	☐	☒	☐	☐
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.)	☐	☒	☐	☐
c)	Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?	☐	☐	☒	☐

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?

As discussed in the individual resource sections of this Initial Study, the proposed project would not degrade the quality of the environment with the implementation of identified standard conditions of approval and mitigation measures. The project would implement mitigation measures MM BIO-1.1 through MM BIO-1.4 to reduce potential disturbance to nesting birds and raptors and mitigation measures MM BIO-2.1 through MM BIO-2.5 to reduce potential disturbance of Townsend's big-eared bats in the project vicinity (see Section 4.4 Biological Resources), MM CUL-1.1 and CUL-1.2 to reduce potential impacts buried cultural resources to a less than significant level (see Section 4.5 Cultural Resources), and MM HAZ-1.1 to reduce impacts from exposure of construction workers to residual pesticides during excavation and grading activities. **(Less than Significant Impact with Mitigation Incorporated)**

b) Does the project have impacts that are individually limited, but cumulatively considerable?

Under Section 15065(a)(3) of the CEQA Guidelines, a lead agency shall find that a project may have a significant effect on the environment where there is substantial evidence that the project has potential environmental effects "that are individually limited, but cumulatively considerable." As defined in Section 15065(a)(3) of the CEQA Guidelines, cumulatively considerable means "that the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects." In addition, under Section 15152(f) of the CEQA Guidelines, where a lead agency has determined that a cumulative effect has been adequately addressed in a prior EIR, the effect is not treated as significant for purposes of later environmental review and need not be discussed in detail.

Because criteria air pollutant and GHG emissions would contribute to regional and global emissions of such pollutants, the BAAQMD thresholds used by the City of San José were developed such that a project-level impact would also be a cumulatively considerable impact. The project would not result in a significant emissions of criteria air pollutants or GHG emissions under BAAQMD thresholds and, therefore, would not make a substantial contribution to cumulative air quality or GHG emissions impacts. The discussion of project criteria pollutant impacts presented in Section 4.3 also reflects cumulative conditions, and the project would not contribute to significant cumulative impacts. The project's contribution to cumulative climate change impacts was presented in Section 4.8 as less than cumulatively considerable. Similarly, the discussion of the project's energy impact also reflects cumulative conditions, since the project's consumption of electricity, natural gas, and gasoline was assessed in comparison with consumption at the state and county level. Therefore, the proposed project would not make a substantial contribution to cumulative air quality, energy use, or GHG emissions impacts.

The project would not impact agricultural or forestry resources or mineral resources, therefore there is no potential for cumulative impacts to these resources. Nor are there any cumulative impacts associated with wildfire risk, as the project site is not located in or near a state responsibility area or lands classified as very high fire hazard severity zones.

The project would result in less than significant impacts to aesthetics, hydrology and water quality, land use, population and housing, public services, recreational facilities, transportation, and utilities and service systems without the imposition of mitigation measures. As noted in Section 4.17 Transportation, the project's VMT impacts are less than significant and below the City's significant impact threshold, and therefore the project would not contribute to cumulative VMT impacts.
The proposed project would result in highly localized and temporary air quality, biological, cultural, geology and soils, hazards and hazardous materials, and noise impacts during construction. The timing of construction of the proposed development relative to other pending or approved development projects in the vicinity, which could contribute to cumulative air quality and noise impacts, is unknown. However, none of the pending or approved projects identified in Appendix G (Transportation Analysis) are located within 1,000 feet of the project site, which is the effective area for localized air quality and noise impacts, and therefore the project would not contribute to a

cumulatively significant impact.[130] All planned or approved projects would be subject to the restrictions placed on the taking of birds protected by the Migratory Bird Treaty Act and California Fish and Game Code and special-status species bats, and any trees removed by other projects within the City would be replaced in accordance with the City's Municipal Code. Cumulative projects would also be subject to Standard Permit Conditions that protect subsurface archaeological and paleontological resources. Accordingly, with implementation of the mitigation measures identified in this Initial Study, construction-level impacts would be mitigated to a less than significant level and would not be considered cumulatively considerable. Therefore, the project would not contribute to a significant cumulative impact on these resources. **(Less than Significant Impact with Mitigation Incorporated)**

c) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?

Consistent with Section 15065(a)(4) of the CEQA Guidelines, a lead agency shall find that a project may have a significant effect on the environment where there is substantial evidence that the project has the potential to cause substantial adverse effects on human beings, either directly or indirectly. Under this standard, a change to the physical environment that might otherwise be minor must be treated as significant if people would be significantly affected. This factor relates to adverse changes to the environment of human beings generally, and not to effects on particular individuals. While changes to the environment that could indirectly affect human beings would be represented by all of the designated CEQA issue areas, those that could directly affect human beings include construction TACs and noise. However, implementation of Standard Permit Conditions, and City policies would reduce these impacts to a less than significant level. No other direct or indirect adverse effects on human beings have been identified. **(Less than Significant Impact)**

[130]Meridian Apartments Project is an approximately 2.09-acre, mixed-use project with up to 1,780 square feet of commercial space and 230 residential units at 961 Meridian Avenue, approximately 1,025 feet northeast of the proposed project site. Source: City of San José. Key Economic Development Projects. Map. Accessed August 2, 2022. https://csj.maps.arcgis.com/apps/Shortlist/index.html?appid=c4051ffa5efb4f4dbf8b6d8ec29cfabd

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SECTION 6.0 LEAD AGENCY AND CONSULTANTS

6.1 LEAD AGENCY

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SECTION 7.0 ACRONYMS AND ABBREVIATIONS

ACM	asbestos-containing material
ABAG	Association of Bay Area Governments
BAAQMD	Bay Area Air Quality Management District
bgs	below ground surface
BMPs	Best Management Practices
BRE	Biological Resources Evaluation
Btu	British thermal units
2017 CAP	Bay Area 2017 Clean Air Plan
CalARP	California Accidental Release Prevention Program
CalEPA	California Environmental Protection Agency
CAL FIRE	California Department of Forestry and Fire Protection
Cal/OSHA	California Department of Industrial Relations, Division of Occupational Safety and Health
Caltrans	California Department of Transportation
CARB	California Air Resources Board
CARE	Community Air Risk Evaluation Program
CCR	California Code of Regulations
CDFW	California Department of Fish and Wildlife
CalGreen	California Green Building Standards Code
CEC	California Energy Commission
CERCLA	The Comprehensive Environmental Response, Compensation, and Liability Act
CFCs	Chlorofluorocarbons
CEQA	California Environmental Quality Act
CGA	California Geological Survey
CH_4	methane
CMP	Congestion Management Program
CRHR	California Register of Historical Resources
CO	carbon monoxide
CO_2	carbon dioxide
CO_2e	CO_2 equivalents

Construction General Permit	NPDES General Construction Permit for the State of California
CUPA	Certified Unified Program Agency
DTSC	Department of Toxic Substances Control
EIR	Environmental Impact Report
EPA	United States Environmental Protection Agency
ESA	Phase I Environmental Assessment
ESLs	environmental screening levels
EO	Executive Order
FAA	Federal Aviation Administration
The Facility	San José/Santa Clara Regional Wastewater Facility
FAR Part 77	Federal Aviation Regulations, Part 77 Objects Affecting Navigable Airspace
FEMA	Federal Emergency Management Agency
FHSZ	Fire Hazard Severity Zones
FMMP	Farmland Mapping and Monitoring Program
GHG	greenhouse gases
gpd	Gallons per day
GWh	gigawatt hours
GWP	global warming potential
Habitat Plan	Santa Clara Valley Habitat Plan/Natural Community Conservation Plan
HFC	hydrofluorocarbons
HMP	Hydromodification Management Plan
HWSA	Federal Hazardous and Solid Waste Amendments
I-280	Interstate 280
IWMP	Santa Clara County Integrated Watershed Management
LEED	Leadership in Engineering and Environmental Design
LBP	lead-based paint
LID	Low Impact Development
LOS	level of service
LRA	local responsibility areas
MBTA	Migratory Bird Treaty Act
MLD	Most Likely Descendant
$MMTCO_2e$	million metric tons of CO_2e

MND	Mitigated Negative Declaration
MPG	miles per gallon
MRP	Municipal Regional Permit
MTC	Metropolitan Transportation Commission
NAHC	Native American Heritage Commission
NFIP	National Flood Insurance Program
NHPA	National Historic Preservation Act of 1966
N_2O	nitrous oxide
NOI	Notice of Intent
NOD	Notice of Determination
NO_x	nitrogen oxides
NPDES	National Pollutant Discharge Elimination System
NRHP	National Register of Historic Places
O_3	ozone
OPR	Office of Planning and Research
OITC	Outdoor-Indoor Transmission Class
PBCE	City of San José Department of Planning, Building, and Code Enforcement
PCB	polychlorinated biphenyls
PDA	Priority Development Areas
PDO	Parkland Dedication Ordinance
PFC	Perfluorocarbons
PG&E	Pacific Gas and Electric Company
PIO	Park Impact Ordinance
PM	particulate matter
$PM_{2.5}$	Fine Particulate Matter
PM_{10}	Coarse Particulate Matter
PPV	Peak Particle Velocity
RAP	Removal Action Plan
Reach Code	Reach Code Ordinance
RHNA	Regional Housing Need Allocation
ROG	Reactive organic gases
RTP	Regional Transportation Plan
RWQCB	Regional Water Quality Control Board

SB	Senate Bill
SBWR	South Bay Water Recycling
SCIA	Sewer Capacity Impact Analysis
SCS	Sustainable Communities Strategy
SF_6	sulfur hexafluoride
SFHA	Special Flood Hazard Areas
SFPUC	San Francisco Public Utilities Commission
SHMA	Seismic Hazards Mapping Act
SJCE	San José Clean Energy
SJFD	San José Fire Department
SJPD	San José Police Department
SJWD	San José Water Company
SMARA	Surface Mining and Reclamation Act
SMGB	State Mining and Geology Board
SMP	Site Management Plan
SO_x	sulfur oxides
SSMP	Sewer System Management Plan
STC	Sound Transmission Class
SR	State Route
SRA	State Responsibility Area
SWPPP	Storm Water Pollution Prevention Plan
SWRCB	State Water Resources Control Board
TACs	Toxic Air Contaminants
TCM	Treatment Control Measures
TCR	Tribal Cultural Resources
TDM	Transit Demand Management
TMDLs	total maximum daily loads
USACE	United States Army Corps of Engineers
USFWS	United States Fish and Wildlife Service
UWMP	urban water management plan
Valley Water	Santa Clara Valley Water District
VMT	vehicle miles traveled
VTA	Santa Clara Valley Transportation Authority

Williamson Act	California Land Conservation Act (Williamson Act)
ZNE	Zero Net Carbon Emissions