Initial Study

1207 N. Capitol Avenue Daycare

Prepared by

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

In Consultation with

DAVID J. POWERS & ASSOCIATES, INC.
ENVIRONMENTAL CONSULTANTS & PLANNERS

April 2023

MITIGATED NEGATIVE DECLARATION

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

PROJECT NAME: 1207 N. Capitol Avenue Daycare Project

PROJECT FILE NUMBER: SP22-020 and ER22-176

PROJECT DESCRIPTION: Special Use Permit to demolish an existing single-family residence and construct a new 14,379 square-foot daycare center. The project will also include the construction of a new driveway, parking lot with 37 vehicle spaces, landscaping, planting of 50 new trees, removal of an existing septic system, extension of the sanitary sewer and storm drain mains in N. Capitol Avenue, and widening of the frontage sidewalk.

PROJECT LOCATION: The project site is located at 1207 N. Capitol Avenue, in the City of San José.

ASSESSORS PARCEL NO.: 245-05-015 **COUNCIL DISTRICT:** 4

APPLICANT CONTACT INFORMATION: Capitol Equity LP (Atten: Daniel Morrar); 991 W. Hedding Street, #103, San José, California 95126; (858) 431-6261; dmorrar@insiteefs.com

FINDING

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

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

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

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

C. **AIR QUALITY**.

Impact AIR-1: Project construction activities would result in a cancer risk of 15.39 cases per

million (infant) which would exceed BAAQMD single-source thresholds for increased cancer risk (10 cases in one million).

MM AIR-1.1: Prior to the issuance of any demolition or grading permits (whichever occurs first), a qualified air quality consultant shall prepare a construction operations plan demonstrating that the construction equipment with low diesel particulate matter exhaust or other means reduces the project's Diesel Particular Matter exhaust by 50 percent or more such that the increased cancer risk and annual $PM_{2.5}$ concentrations from construction would be reduced below TAC significance levels. Namely, the project's cancer risk levels shall be reduced below 10 cases in one million. The plan shall be accompanied by a letter signed by a qualified air quality specialist certifying the plan meets the reduction requirement:

1. All construction equipment larger than 25 horsepower used at the site for more than two continuous days or 20 hours total shall meet U.S. EPA Tier 4 emission standards for PM (PM10 and $PM_{2.5}$), if feasible, otherwise,

    - If use of Tier 4 equipment is not available, alternatively use equipment that meets U.S. EPA emission standards for Tier 3 engines and include particulate matter emissions control equivalent to CARB Level 3 verifiable diesel emission control devices that altogether achieve a 50 percent reduction in particulate matter exhaust in comparison to uncontrolled equipment; alternatively (or in combination).
    - Use of electrical or non-diesel fueled equipment.

2. Alternatively, the applicant may submit another construction operations plan prepared by a California state-licensed contractor with written confirmation from a qualified air quality specialist demonstrating that the construction equipment used on-site would achieve a reduction in construction diesel particulate matter emissions by 50 percent or greater. Elements of the plan could include a combination of some of the following measures:

    - Implementation of No. 1 above to use Tier 4 engines or alternatively fueled equipment,
    - Installation of electric power lines during early construction phases to avoid use of diesel generators and compressors,
    - Use of electrically-powered equipment,
    - Forklifts and aerial lifts used for exterior and interior building construction shall be electric or propane/natural gas powered,
    - Change in construction build-out plans to lengthen phases, and
    - Implementation of different building techniques that result in less diesel equipment usage.

The plan shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee prior to the issuance of any demolition, grading and/or building permits (whichever occurs earliest) for review and approval. Implementation of this mitigation measure will reduce the project's construction cancer risk impact from 15.39 cases per million to 4.56 chances per million, consistent with BAAQMD thresholds.

D. BIOLOGICAL RESOURCES

Impact BIO-1: Development of the proposed project would result in impacts to nesting birds, if present on the site at the time of construction.

MM BIO-1.1: The project applicant shall schedule demolition and construction activities to avoid the nesting season. The nesting season for most birds, including most raptors in the San Francisco Bay area, extends from February 1st through August 31st (inclusive). Construction activities include any site disturbance such as, but not limited to, tree trimming or removal, demolition, grading, and trenching.

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.

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.

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

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

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

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

I. HAZARDS AND HAZARDOUS MATERIALS.

Impact HAZ-1: The sub-surface soils on-site are contaminated with lead levels that exceed residential screening criteria due to the site's history of agricultural uses. Development of the project could expose construction workers, adjacent land uses, and future occupants to residual agricultural soil contamination.

MM HAZ-1.1: Prior to issuance of a grading permit, the project applicant shall retain a qualified environmental professional to further investigate the extent of the identified lead impacts in the on-site soils. The qualified environmental professional shall determine if lead, or other hazardous materials, are present above Regional Water Quality Control Board (RWQCB) environmental screening levels (ESLs) for construction worker safety and the proposed daycare 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 Santa Clara County Department of Environmental Health ("SCCDEH") 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.

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

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

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

M. NOISE.

Impact NOI-1: Project mechanical equipment placed within 50 feet of the nearest residential property would result in an exceedance of the City's performance standard of 55 dBA DNL at the property line.

MM NOI-1.1: Noise-generating HVAC equipment shall be placed at a minimum distance of 150 feet from the northwestern and southwestern property lines. Alternatively, the equipment may be fully shielded from direct exposure to the northwestern and southwestern property lines via a structure such as a parapet wall such that the line of sight between the equipment and the property lines is fully obscured.

The project applicant shall submit a mechanical equipment operations plan that identifies the location of the HVAC equipment and details the shielding used to surround the mechanical equipment (if any). The plan shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee prior to the issuance of any demolition, grading and/or building permits (whichever occurs earliest) for review and approval.

Impact NOI-3: Heavy construction within 25 feet of the southwest and northwest property lines would have the potential to generate excessive vibration.

MM NOI-3.1: Prior to issuance of any demolition or grading permit, the project applicant shall submit a construction operations plan prepared by the construction contractor that identifies

measures to be implemented to reduce vibration impacts to the nearby residences below 0.2 in/sec PPV. The measures shall include, but are not limited, to the following:

- Avoid using heavy construction equipment such as vibratory rollers, hoe rams, large bulldozers, and tampers within 30 feet of nearby structures.
- Avoid dropping heavy objects or materials within 30 feet of nearby structures.
- Place operating equipment on the construction site as far as possible from vibration-sensitive receptors.
- Use smaller equipment to minimize vibration levels below the limits.
- Select demolition methods not involving impact tools.
- Designate a "disturbance coordinator" who would be responsible for responding to any complaints about construction vibration. The disturbance coordinator will determine the cause of the vibration complaint and will require that reasonable measures be implemented to correct the problem. Conspicuously post a telephone number for the disturbance coordinator at the construction site and include it in the notice sent to neighbors regarding the construction schedule.

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

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

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

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

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

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

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

U. MANDATORY FINDINGS OF SIGNIFICANCE.

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

PUBLIC REVIEW PERIOD

Before 5:00 p.m. on **Sunday, May 14, 2023** any person may:

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

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

CHRISTOPHER BURTON, Director
Planning, Building and Code Enforcement

4/19/23

Date

Deputy

Nhu Nguyen
Environmental Project Manager

Circulation period: April 24, 2023 to May 14, 2023

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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 1207 N. Capitol Avenue Daycare 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 San José, California.

The project proposes to redevelop the parcel at 1207 N. Capitol Avenue with a new daycare center. 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:

Nhu Nguyen, Planner I
Department of Planning, Building and Code Enforcement
City of San José
200 E. Santa Clara Street
San José, CA 95113
Nhu.nguyen@sanjoseca.gov

1.3 CONSIDERATION OF THE INITIAL STUDY AND PROJECT

Following the conclusion of the public review period, the City San José 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 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

1207 N. Capitol Avenue Daycare

2.2 LEAD AGENCY CONTACT

Nhu Nguyen, Planner I
Department of Planning, Building and Code Enforcement
City of San José
200 E. Santa Clara Street
San José, CA 95113
Nhu.nguyen@sanjoseca.gov
(408) 535-6894

2.3 PROJECT APPLICANT

Daniel Morrar
Capitol Equity LP
991 W. Hedding Street, #103
San José, CA 95126
dmorrar@insiteefs.com
(858) 431-6261

2.4 PROJECT LOCATION

The approximately 1.51-acre project site is located at 1207 N. Capitol Avenue in the City of San José. Regional, vicinity, and aerial maps of the project site can be seen in Figure 2.4-1 through Figure 2.4-3.

2.5 ASSESSOR'S PARCEL NUMBER

245-05-015

2.6 GENERAL PLAN DESIGNATION AND ZONING DISTRICT

General Plan Designation: Neighborhood/Community Commercial
Zoning District: Single Family Residential (R-1-8)[1]

[1] Through a separate process independent of the proposed project, the City has initiated a rezoning of the site from R-1-8 to CN (Commercial Neighborhood), conforming with the existing General Plan land use designation of NCC. Daycare centers are permissible under the CN zoning district with the issuance of a Special Use Permit. The project would be required to conform with the development standards of the CN zoning district.

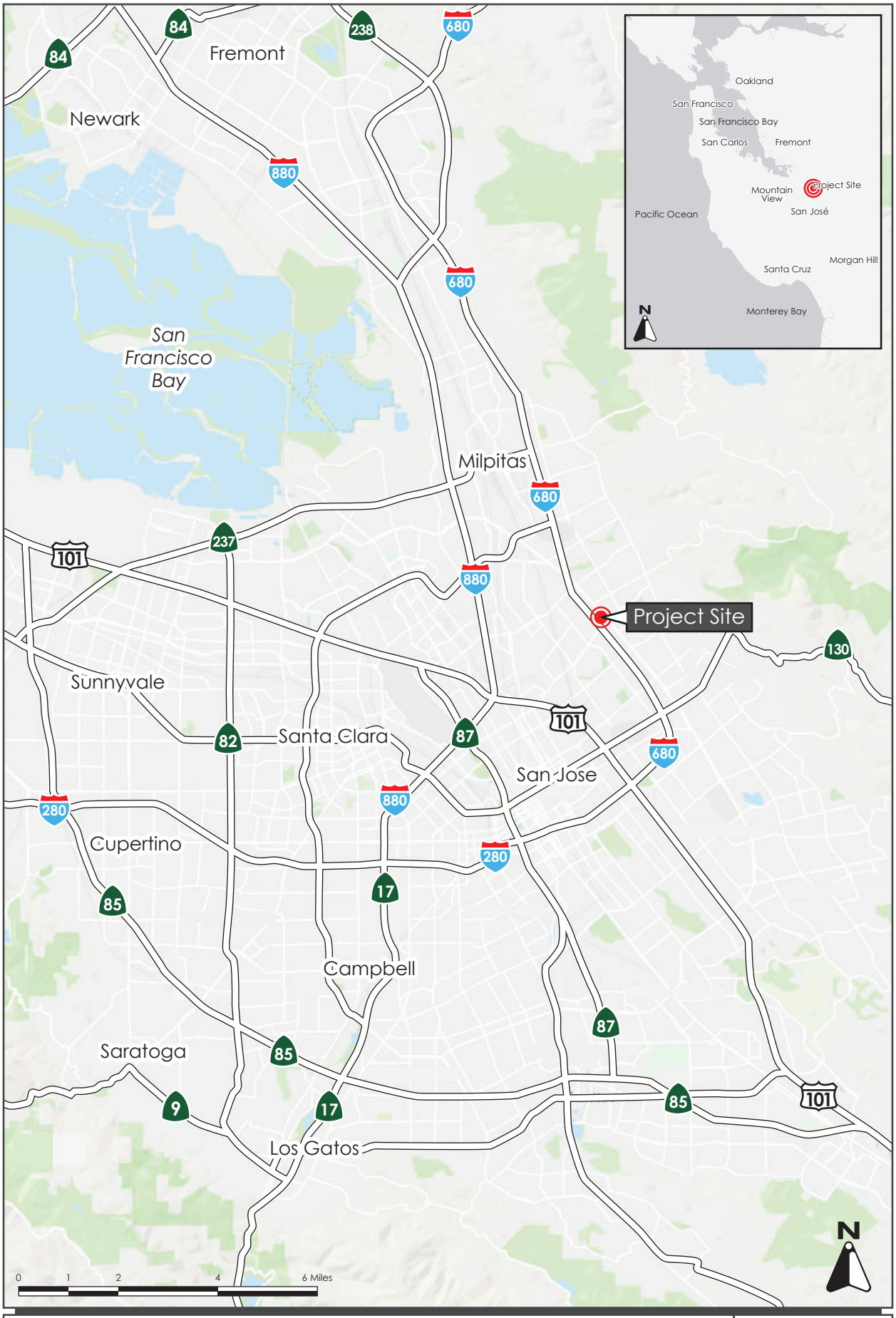
2.7 HABITAT PLAN DESIGNATION

The project site is designated Private Development Area 4: Urban development equal to or greater than 2.0 acres covered (0.4 acres) on the Santa Clara Valley Habitat Plan and has a Land Cover designation of Urban-Suburban. The site is not in a designated land cover fee zone.

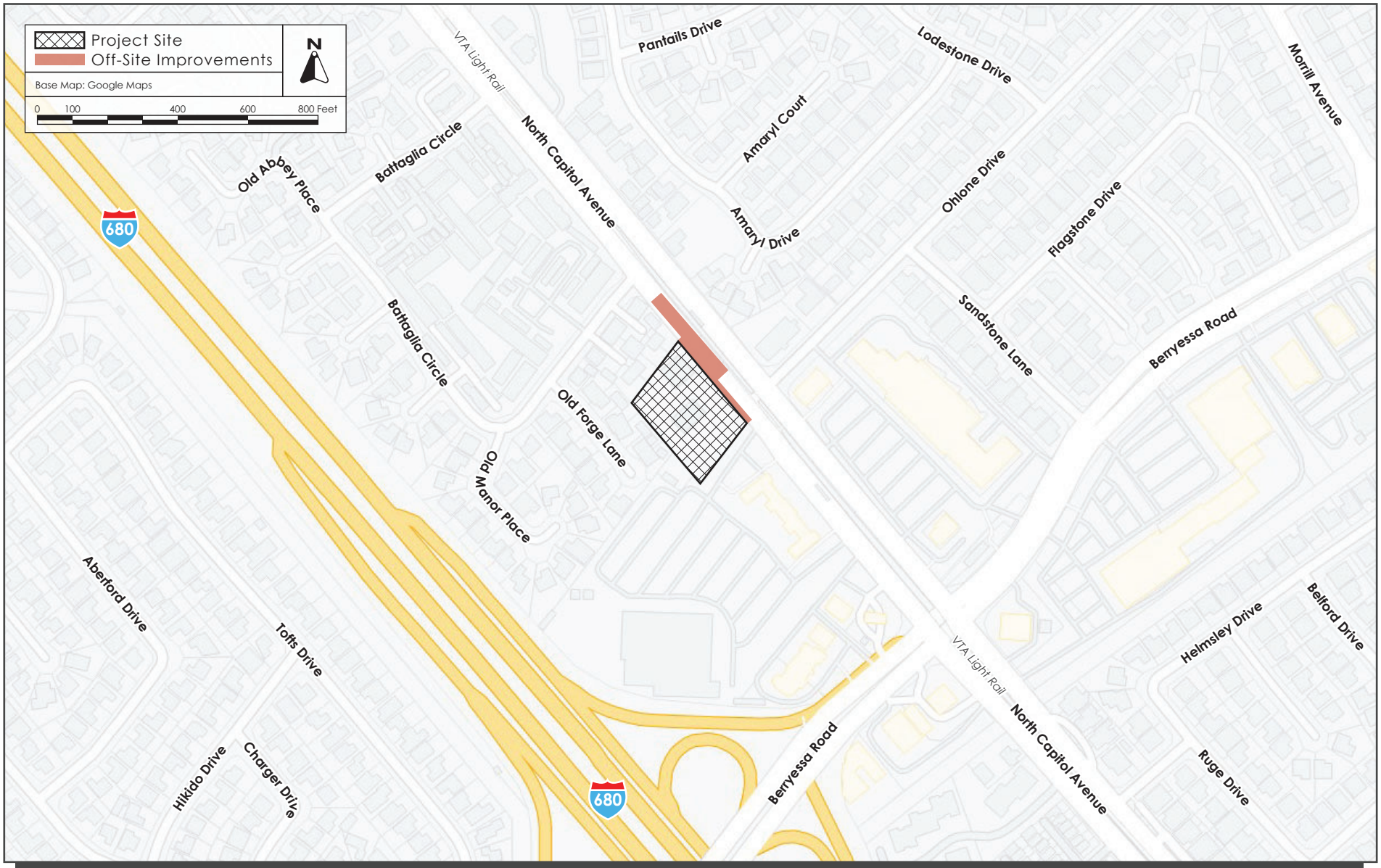
2.8 PROJECT-RELATED APPROVALS, AGREEMENTS, AND PERMITS

The discretionary actions for the project include, but are not limited to, the following:

- Special Use Permit
- Grading Permit and Other Public Works Clearances

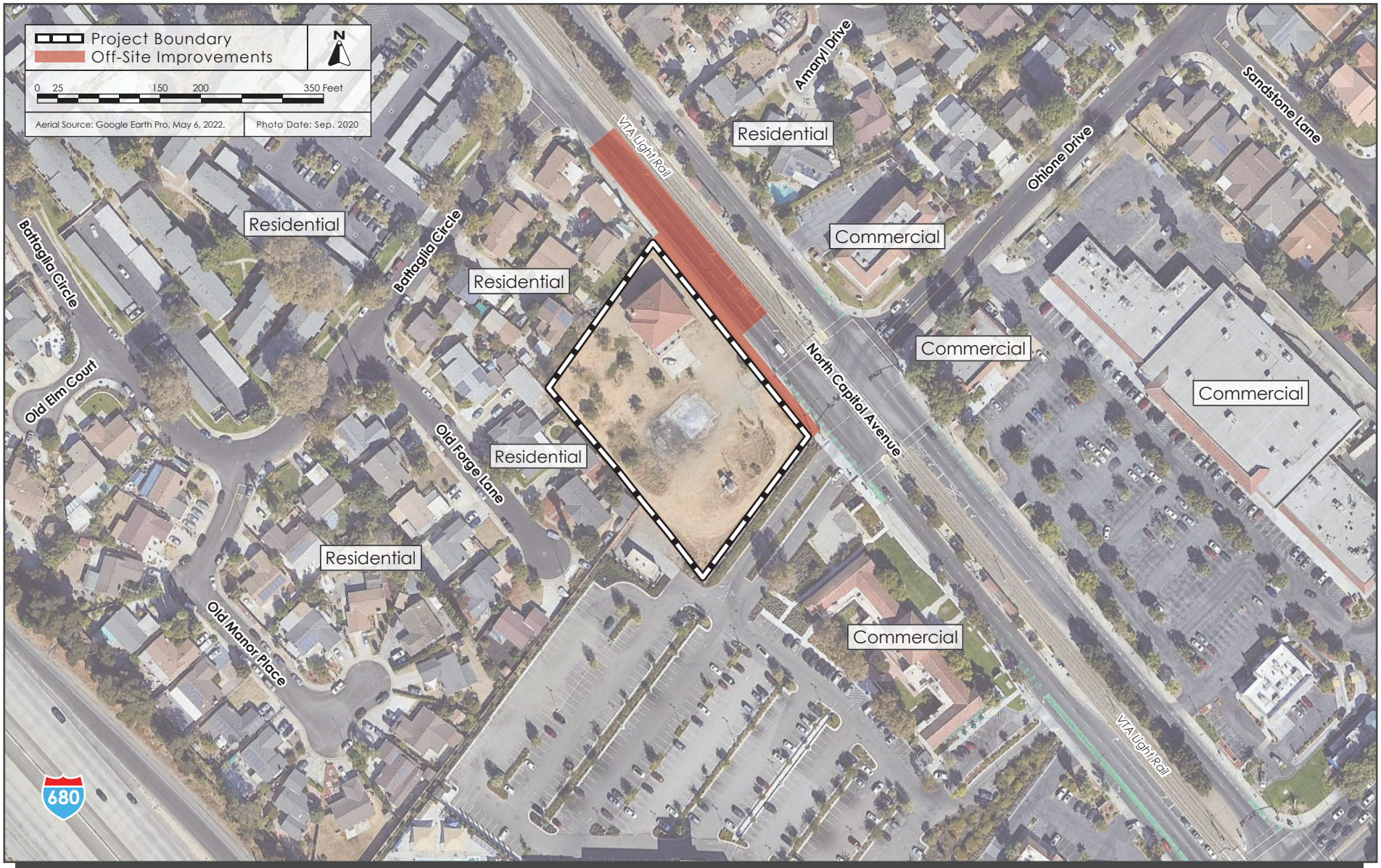


REGIONAL MAP | FIGURE 2.4-1



VICINITY MAP

FIGURE 2.4-2



AERIAL PHOTOGRAPH AND SURROUNDING LAND USES | FIGURE 2.4-3

SECTION 3.0 PROJECT DESCRIPTION

3.1 PROJECT OVERVIEW AND LOCATION

The approximately 1.51-acre project site is located at 1207 N. Capitol Avenue (Assessor's Parcel Number 245-05-015) in the City of San José (see Figures 1 through 3). The project site is located within the North Capitol Avenue/Berryessa Road Urban Village growth area (VR13); no urban village plan has been created for this growth area to date. The project site is bounded by North Capitol Avenue to the northeast, a commercial property to the south and southeast, and single-family residences to the west and northwest.

The project site is currently developed with an approximately 3,680 square foot single-family residence. The project proposes to demolish the existing residence and redevelop the site with a daycare center. The project components, including the proposed daycare center, utility improvements, and construction details, are described below.

3.2 PROJECT COMPONENTS

3.2.1 Special Use Permit

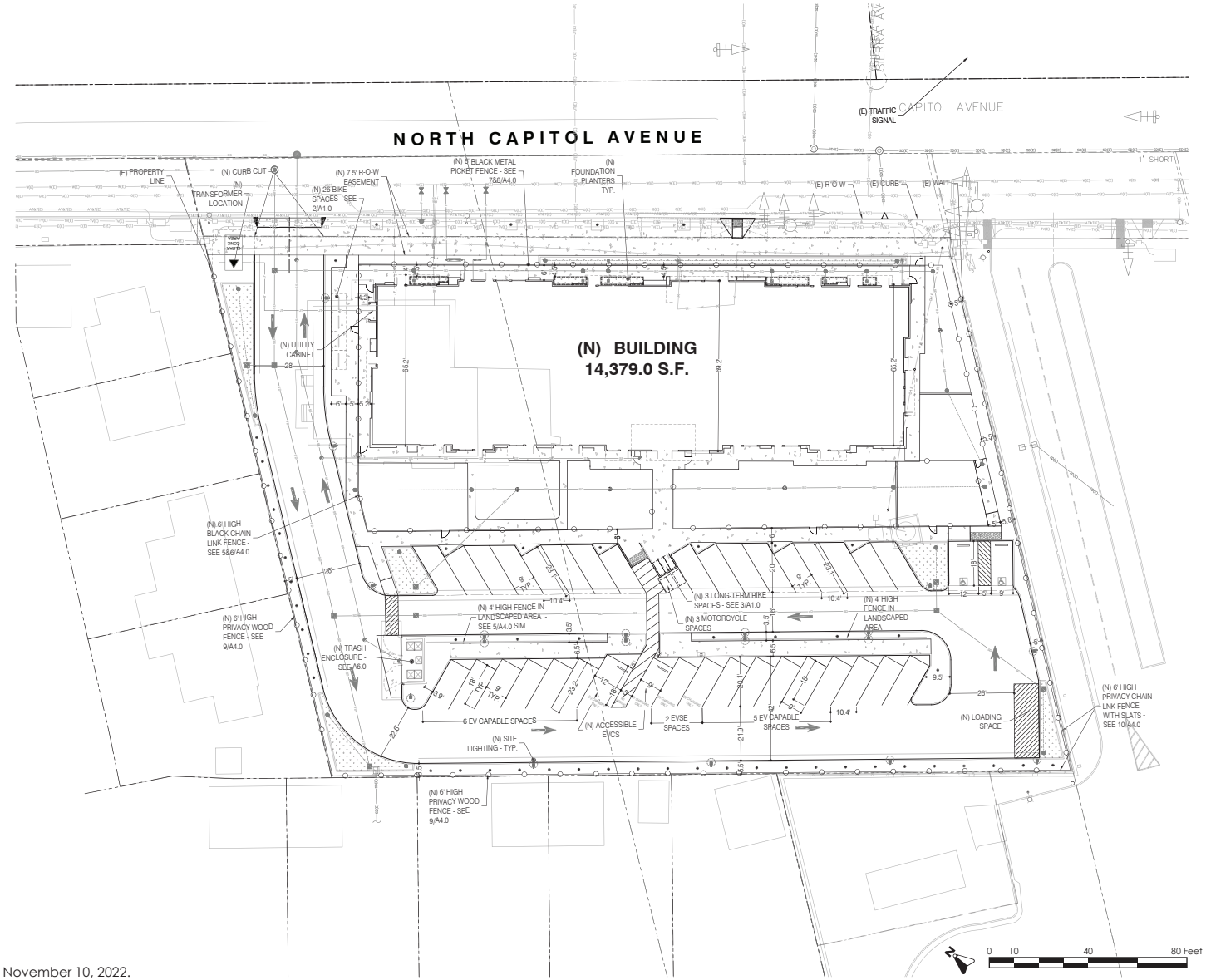
Through a separate process independent of the proposed project, the City has initiated a rezoning of the site from R-1-8 to CN (Commercial Neighborhood), conforming with the existing General Plan land use designation of NCC. Daycare centers are permissible under the CN zoning district with the issuance of a Special Use Permit. The project would be required to conform with the development standards of the CN zoning district.

3.2.2 Daycare Center

The project proposes to demolish the existing 3,680 square-foot single-family residence in order to construct a new, approximately 14,379 square foot daycare center. The project would also include an approximately 9,424 square foot outdoor play area, located behind the new building and divided into three separate spaces. The proposed daycare center would include a preschool program serving ages six weeks to five years old. The daycare center would operate Monday through Friday between the hours of 7:00 AM and 6:00 PM. The proposed daycare would have a maximum capacity of 252 children. Operation of the proposed daycare center would require approximately 33 to 34 full- and part-time employees. A site plan, floor plan, and conceptual building elevations for the proposed project are provided in Figure 3.2-1 through Figure 3.2-4.

3.2.3 Site Access and Parking

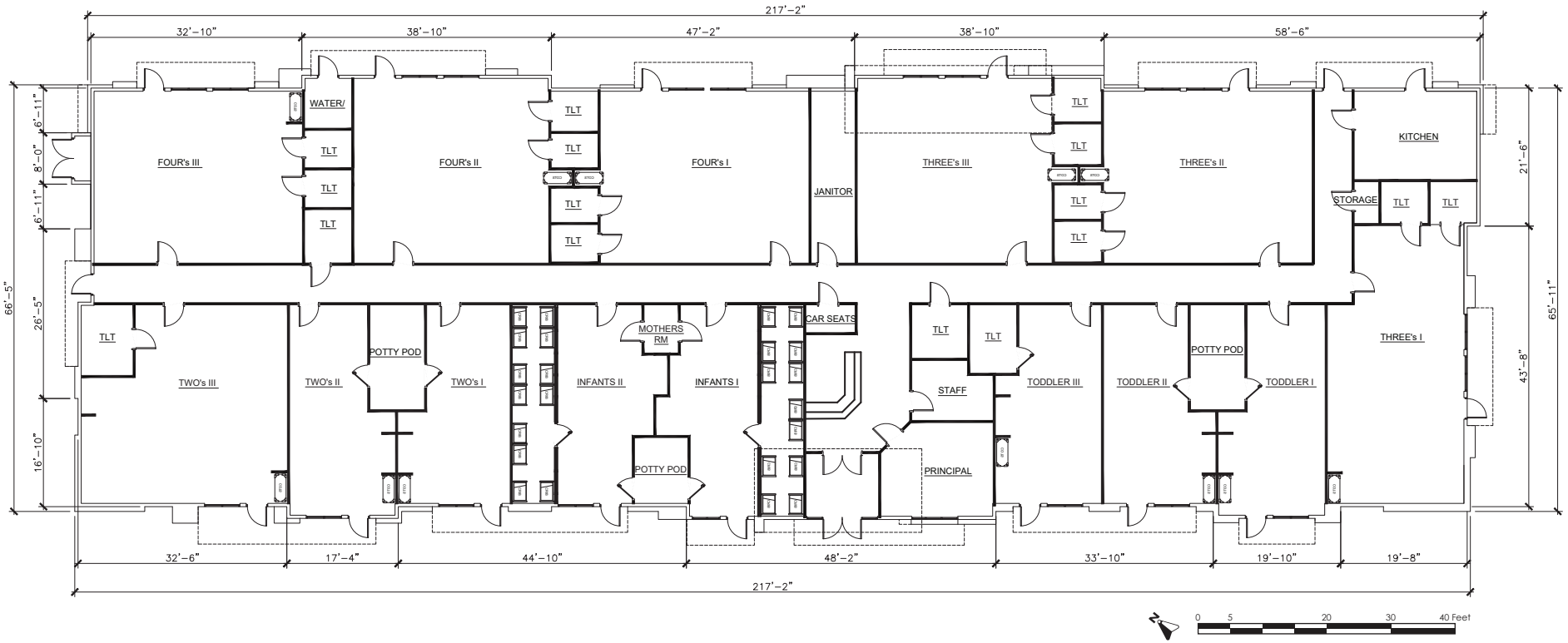
Access to the proposed daycare center would be provided via a new 26-foot-wide, two-way, right-in, right-out driveway along North Capitol Avenue. A parking area would be located west of the daycare center and would include approximately 37 vehicle parking spaces and three motorcycle parking spaces.



Source: GreenbergFarrow, November 10, 2022.

SITE PLAN

FIGURE 3.2-1



Source: GreenbergFarrow, June 30, 2022.

FLOOR PLAN

FIGURE 3.2-2

NORTHEAST ELEVATION

NORTHWEST ELEVATION

Source: GreenbergFarrow, June 30, 2022.

CONCEPTUAL BUILDING ELEVATIONS – NORHEAST AND NORTHWEST | FIGURE 3.2-3

SOUTHEAST ELEVATION

SOUTHWEST ELEVATION

Source: GreenbergFarrow, June 30, 2022.

CONCEPTUAL BUILDING ELEVATIONS – SOUTHEAST AND SOUTHWEST | FIGURE 3.2-4

Of the 37 parking spaces, four would include electric vehicle (EV) charging stations and 15 would be EV capable[2]. The project would also provide three long-term bicycle storage spaces and 26 short-term bicycle storage spaces. One loading space would be located at the southern corner of the property. The proposed parking lot would include eight-foot light poles in areas adjacent to neighboring residences and 20-foot light poles in the center of the parking lot.

3.2.4 Landscaping and Trees

The project would require the removal of fourteen trees, four of which are ordinance-size, and would plant approximately 50 trees on-site and four street trees, resulting in a net increase of 40 trees. The proposed trees would be primarily located along the western and southern boundaries of the project site and the project frontage. The project would also include landscaping and shrubs throughout the project site and synthetic turf in the playground areas. All proposed landscaping, including trees, shrubs, and groundcover, would be climate adapted and/or low water use. The project would include the use of bioretention basins and self-retaining areas to treat stormwater runoff on-site.

3.2.5 Noise Screening Wall

As described further in Section 4.13 Noise and shown in Figure 4.13-2, the project would include a noise screening wall along the northwestern and southwestern property lines. The proposed screening wall would reach a minimum height of six feet and would be constructed without gaps or cracks. The proposed screening wall would eliminate the line of sight between the residential uses to the northwest and southwest and noise noise-generating components of the project including the playgrounds and parking lot.

3.2.6 Vapor Intrusion System

As described further in Section 4.9 Hazards and Hazardous Materials, contaminated soil vapor exists on-site. Therefore, the project proposes to implement a vapor intrusion mitigation (VIM) system to ensure the health and safety of the future project occupants. The project would submit a VIM system design and construction quality assurance plan to the Santa Clara County Department of Environmental Health (SCCDEH) for review and approval prior to the start of construction. The proposed VIM system could include one or more of the following remediation measures: 1) sub-grade and/or sub-slab membranes, 2) gas-permeable gravel beneath the concrete slab/membrane, and 3) passive sub-slab ventilation.

3.2.7 Utility Improvements

There is an existing septic system on-site that previously served the existing single-family residence. The septic system would be removed from the project site and the project would connect to the existing sanitary sewer main in North Capitol Avenue via a 300-foot extension to be implemented by the project (described further below in Section 3.2.6 Off-Site Improvements). The project would also remove the existing utility poles and overhead utility lines that run through the eastern side of the project site. The proposed daycare building would include rooftop solar panels.

[2] EV capable parking spaces provide an electrical service panel to the parking space and sufficient physical space to accommodate a future charging station.

3.2.8 Off-Site Improvements

The project would replace and widen the existing sidewalk along the project frontage on North Capitol Avenue. The existing sidewalk is currently 13 feet wide and would be widened an additional five feet along the project frontage. As a result, the project would dedicate approximately 0.05 acres to public right-of-way. The project would also extend the existing storm drain and sanitary sewer mains in North Capitol Avenue from Battaglia Circle to the project frontage. The project would result in an approximately 300-foot extension of both the storm drain and sanitary sewer mains.

3.2.9 Construction Details

The project's construction phase, which includes demolition, site preparation, and construction of the project, is estimated to take approximately 12 months to complete. The project would export approximately 350 cubic yards of soil and import approximately 650 cubic yards of soil on-site. The project would excavate to a maximum depth of approximately one foot for the building foundation, approximately nine feet for utility improvements, and approximately up to 10 feet for the removal of the existing septic system.

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

Streets and Highway Code Sections 260 through 263

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

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

Local

Envision San José 2040 General Plan

The 2040 General Plan includes the following policies applicable specifically to development projects in San José:

Envision San José 2040 General Plan Relevant Aesthetic Policies

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.

[3] California Department of Transportation. "Scenic Highways." Accessed August 10, 2022. https://dot.ca.gov/programs/design/lap-landscape-architecture-and-community-livability/lap-liv-i-scenic-highways.

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-1.22 Include adequate, drought-tolerant landscaped areas in development and require provisions for ongoing landscape maintenance.

CD-1.23 Further the Community Forest Goals and Policies in this Plan by requiring new development to plant and maintain trees at appropriate locations on private property and along public street frontages. Use trees to help soften the appearance of the built environment, help provide transitions between land uses, and shade pedestrian and bicycle areas.

CD-1.27 When approving new construction, require the undergrounding of distribution utility lines serving the development. Encourage programs for undergrounding existing overhead distribution lines. Overhead lines providing electrical power to light rail transit vehicles and high tension electrical transmission lines are exempt from this policy.

CD-4.1 Maintain and update design guidelines adopted by the City and abide by them in the development of projects.

CD-4.4 In non-growth areas, design new development and subdivisions to reflect the character of predominant existing development of the same type in the surrounding area through the regulation of lot size, street frontage, height, building scale, siting/setbacks, and building orientation.

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).

CD-8.1 Ensure new development is consistent with specific height limits established within the City's Zoning Ordinance and applied through the zoning designation for properties throughout the City. Land use designations in the Land Use/Transportation Diagram provide an indication of the typical number of stories expected for new development, however specific height limitations for buildings and structures in San José are not identified in the *Envision General Plan*.

City of San José Outdoor Lighting Policy (Policy 4-3)

The City of San José's Outdoor Lighting Policy requires outdoor lighting on private properties to be directed downward and include shielding to reduce light pollution and spill light. The policy also requires the use of energy efficient lighting fixtures.[4]

4.1.1.2 *Existing Conditions*

The project site is flat and fronts North Capitol Avenue. The site is currently developed with a two-story single-family residence. Landscaping consists of ruderal vegetation and grasses as well as trees and shrubs. There are aboveground powerlines and two utility poles that run through the eastern side of the project site.

Surrounding Area

The project site is in an area developed with predominantly residences (single-family and multi-family residences to the north, west, and east). Residences in the project vicinity generally range from one to two stories in height, primarily consist of stucco exteriors, and generally have gable roofs topped with shingles. South of the project are commercial strip malls, an athletic club facility, and the historic Berryessa Elementary School building, which is currently used as a commercial building with dental and medical offices and commercial retail uses. The Berryessa Elementary School building is more architecturally distinct from other buildings in the project vicinity. The Berryessa Elementary School has two stories at its tallest portion, has a hip roof topped with tiles, and is characterized by a recessed entrance, decorative archways, and decorative window features. The athletic club is set back further from North Capitol Avenue than other nearby buildings and is not easily viewable from the street.

To the east, across North Capitol Avenue is a shopping center and a medical office building. The shopping center across North Capitol Avenue contains a large surface parking lot in the center and its associated commercial buildings are generally one story in height, have hip roofs topped with tiles, and have exteriors characterized by wood siding, stone, and/or stucco. The medical building office building across North Capitol Avenue is two stories in height, is characterized by a stucco exterior, and also has a hip roof topped with tiles. This building has more architectural features than other buildings in the area, such as columns and window trim.

The project vicinity is also visually characterized by trees, landscaping, overhead utilities, traffic lights, streetlights, and the light rail line and Berryessa Light Rail Station in the center of North Capitol Avenue. Foothills to the east are intermittently visible between the surrounding buildings.

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

[4] City of San José. "Outdoor Lighting on Private Developments, Policy Number 4-3". Revised June 20, 2020. Accessed May 11, 2022. Available at: https://www.sanjoseca.gov/home/showpublisheddocument/12835/636669964179500000#:~:text=Outdoor%20lighting%20shall%20be%20fully,of%20business%2C%20whichever%20is%20later.

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. The Berryessa Elementary School building, located approximately 145 feet southeast of the project site, is a City-designated Historic Landmark and is visible from the project site. The Berryessa Elementary School building is more architecturally distinct from other buildings in the project vicinity.

Scenic Corridors

The project site is not located along a State-designated scenic highway. The nearest State-designated scenic highway is SR 9, approximately 13 miles southwest of the site. The nearest eligible State scenic highways are Interstate 280 (I-280) (at the Interstate 85 interchange), approximately six miles southwest of the site and SR 17, approximately 10 miles southwest of the project site.[5] The designated scenic and eligible State scenic highways are not visible from the project site. The City's General Plan identifies Gateways and Urban Throughways (urban corridors) where preservation and enhancement of views of the natural and man-made environment are crucial. The General Plan identifies Berryessa Road as a scenic gateway from Flickinger Avenue/North Jackson Avenue through North Capitol Avenue. The General Plan defines gateways as locations which announce to a visitor or resident that they are entering the City or a unique neighborhood. Views from this gateway include sporadic glimpses of the foothills in the east, urban development, trees, and landscaping.

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?[6] If the project is in an urbanized area, would the project conflict with applicable zoning and other regulations governing scenic quality?	☐	☐	☒	☐

[5] Caltrans. "California State Scenic Highway System Map". Accessed August 10, 2022. https://caltrans.maps.arcgis.com/apps/webappviewer/index.html?id=465dfd3d807c46cc8e8057116f1aacaa

[6] Public views are those that are experienced from publicly accessible vantage points.

	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: 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 single-family residence with an approximately 14,379 square foot daycare center. The project would also include an approximately 9,424 square foot outdoor play area divided into three separate spaces.

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. The nearest scenic resource is the Berryessa Road and Capitol Avenue Gateway; which is approximately 700 feet south of the project site and separated by intervening commercial buildings. The surrounding area also has sporadic views of the eastern foothills. As proposed, the single-story commercial building would be comparable in size, height, and massing to surrounding commercial properties along North Capitol Avenue and would not block views to surrounding scenic vistas or the nearest scenic gateway. For these reasons, the project would not have a substantial adverse effect on a scenic vista. **(No Impact)**

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

The project site is not located on a State Designated Scenic Highway. The nearest State Designated Scenic Highway to the project site is SR 9, approximately 13 miles southwest of the site. The site is not visible from SR 9. Since 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?

The project site is located in an urbanized area. The project would change the existing visual character of the site by replacing the two-story residence with a single-story daycare building fronting North Capitol Avenue. However, the proposed development would not conflict with the applicable zoning development standards of the CN Zoning District. Additionally, the project would be subject to a design review process, including the Citywide Design Guidelines, conducted as part

of the development permit review process to ensure that it conforms with all adopted design guidelines and other relevant policies and ordinances. For these reasons, the proposed project would not conflict with applicable zoning and other regulations governing scenic quality. **(Less than Significant Impact)**

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

The project site is located in an urban area with existing residential and commercial development and vehicular traffic. The project site is currently developed with a single-family residence. The surrounding uses result in light and glare from building-mounted security lights, streetlights, and vehicle headlights. The proposed commercial building would include security lights and would incrementally increase the amount of nighttime lighting on the project site. The proposed parking lot would include eight-foot light poles in areas adjacent to neighboring residences and 20-foot light poles in the center of the parking lot. The parking lot lights would increase the amount of nighttime lighting visible at neighboring residences. However, 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 substantial 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.[7]

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.[8]

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.[9] 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.[10]

4.2.1.2 *Existing Conditions*

The Santa Clara County Important Farmland 2016 Map designates the project site as Urban and Built-Up Land.[11] Urban and Built-Up Land is defined as land occupied by structures with a building

[7] California Department of Conservation. "Farmland Mapping and Monitoring Program." Accessed May 27, 2022. http://www.conservation.ca.gov/dlrp/fmmp/Pages/Index.aspx.
[8] California Department of Conservation. "Williamson Act." http://www.conservation.ca.gov/dlrp/lca.
[9] 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)).
[10] California Department of Forestry and Fire Protection. "Fire and Resource Assessment Program." Accessed May 27, 2022. http://frap.fire.ca.gov/.
[11] California Department of Conservation. "Santa Clara County Important Farmland 2016 Map." Accessed May 27, 2022. https://santaclaralafco.org/sites/default/files/scl16.pdf

density of at least one unit per 1.5 acres, or approximately six structures to a 10-acre parcel. The site is currently developed with a single-family residence. There is no agricultural or forest land located on or adjacent to the project site and the site is not subject to a Williamson Act contract.[12]

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 designated as Urban and Built-Up Land, as discussed in Section 4.2.1.2 Existing Conditions, and is not designated as farmland of any type. There is no farmland in the vicinity of the project site. For these reasons, the project would not convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance to non-agricultural use. **(No Impact)**

[12] Santa Clara County. "Williamson Act Properties". Interactive Map. Accessed May 27, 2022. Williamson Act Properties (arcgis.com)

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

The project site is not zoned for agricultural use. The project site is not under a Williamson Act contract. The project, therefore, would not conflict with existing zoning for agricultural use or a 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 and surrounding properties are not zoned for forestland or timberland. The project, therefore, would not conflict with existing zoning for, or cause rezoning of, forest land, timberland, or timberland zoned Timberland Production. **(No Impact)**

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

The project site and surrounding properties do not contain forest land. The project, therefore, would not result in a loss of forest land or conversion of forest land to non-forest use. **(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?

As previously discussed, the project site and surrounding properties are not designated, zoned, or used for agricultural or forest land uses. Therefore, the project would not involve changes in the existing environment which could result in conversion of farmland to non-agricultural use or conversion of forest land to non-forest use. **(No Impact)**

4.3 AIR QUALITY

The following discussion is based, in part, on a Construction and Community Risk Assessment prepared by Illingworth & Rodkin, Inc, dated October 2022. A copy of this report is included in Appendix A of this Initial Study.

4.3.1 Environmental Setting

4.3.1.1 *Background Information*

Criteria Pollutants

The project site is located in Santa Clara County, which is in the San Francisco Bay Area Air Basin. 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.[13] 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 4.3-1. 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

[13] 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.

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 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).[14] 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.

[14] California Air Resources Board. "Overview: Diesel Exhaust and Health." Accessed October 4, 2022. https://ww2.arb.ca.gov/resources/overview-diesel-exhaust-and-health.

4.3.1.2 *Regulatory Framework*

Federal and State

Clean Air Act

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

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

Risk Reduction Plan

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

Regional

2017 Clean Air Plan

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

climate pollutants in the near-term, and to decrease emissions of carbon dioxide by reducing fossil fuel combustion.[15]

CEQA Air Quality Guidelines

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

4.3.1.3 *Existing Conditions*

The Bay Area is designated nonattainment-marginal for the 8-hour ozone National Ambient Air Quality Standard (NAAQS), nonattainment-moderate for the $PM_{2.5}$ NAAQS, and maintenance for CO. The Bay Area is designated nonattainment for the O_3, $PM_{2.5}$, and PM_{10} California Ambient Air Quality Standards (CAAQS). As part of an effort to attain and maintain ambient air quality standards for O_3, PM_{10}, and $PM_{2.5}$, 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

The nearest sensitive receptors to the project site are the residents in the adjacent single-and multi-family houses to the north and west. The residences adjacent to the project site are located as close as approximately 20 feet from the boundary of the project site. Additional sensitive receptors are located within a 1,000-foot radius of the project site.

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?	☐	☒	☐	☐

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

	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
Would the project:				
d) Result in other emissions (such as those leading to odors) adversely affecting a substantial number of people?	☐	☐	☒	☐

4.3.2.1 *Thresholds of Significance*

Impacts from the Project

As discussed in CEQA Guidelines Section 15064(b), the determination of whether a project may have a significant effect on the environment calls for judgment on the part of the lead agency and must be based to the extent possible on scientific and factual data. The City of San José has considered the air quality thresholds updated by BAAQMD in May 2017 and regards these thresholds to be based on the best information available for the San Francisco Bay Area Air Basin and conservative in terms of the assessment of health effects associated with TACs and $PM_{2.5}$. The BAAQMD CEQA Air Quality thresholds used in this analysis are identified in Table 4.3-2 below.

Table 4.3-2: BAAQMD Air Quality Significance Thresholds			
Pollutant	**Construction Thresholds**	**Operation Thresholds**	
	Average Daily Emissions (pounds/day)	**Average Daily Emissions (pounds/day)**	**Annual Average Emissions (tons/year)**
Criteria Air Pollutants			
ROG, NO_x	54	54	10
PM_{10}	82 (exhaust)	82	15
$PM_{2.5}$	54 (exhaust)	54	10
CO	Not Applicable	9.0 ppm (eight-hour) or 20.0 ppm (one-hour)	
Fugitive Dust	Dust Control Measures/Best Management Practices	Not Applicable	
Health Risks and Hazards for New Sources (within a 1,000-foot Zone of Influence)			
Health Hazard	**Single Source**	**Combined Cumulative Sources**	

Excess Cancer Risk	10 per one million	100 per one million
Hazard Index	1.0	10.0
Incremental Annual $PM_{2.5}$	0.3 $\mu g/m^3$*	0.8 $\mu g/m^3$ (average)
* $\mu g/m^3$ = micrograms per cubic meter		

Additionally, BAAQMD has screening criteria for construction-related and operational-related criteria air pollutants emissions. If a project meets the screening criteria listed the BAAQMD CEQA Air Quality Guidelines, then the project would not exceed the criteria air pollutant thresholds established in Table 4.3-2. Construction and operational criteria air pollutant emissions would be considered less than significant. For a daycare center, the land use screening size for construction-related impacts is 277,000 square feet and for operational-related impacts the land use screening size is 53,000 square feet. The project includes a 14,379 square foot daycare center, which is below both land use screening sizes. However, since the project would include demolition, the construction-related screening criteria cannot be used. The operational screening criteria is, however, applicable to the project.

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

As described in Section 4.3.1.3 Regulatory Framework, the most current air quality plan from BAAQMD is the 2017 CAP. The goals of the 2017 CAP include protecting public health (as it relates to air quality) and protecting the climate. The BAAQMD Air Quality Guidelines states that a determination of consistency with the 2017 CAP should demonstrate that the project supports the primary goals of the 2017 CAP, including applicable control measures, and does not disrupt or hinder implementation of any 2017 CAP control measures.

The proposed project would not conflict with the latest Clean Air planning efforts. The project would not exceed the BAAQMD significance thresholds related to criteria air pollutant emissions (refer to Table 4.3-3); therefore, the project would not conflict with 2017 CAP's goal of attaining the NAAQS and CAAQS. The project would also support the air quality control measures that focus on reducing emissions in the transportation, building, and energy sectors. The project would be constructed in compliance with the California Green Building Standards Title 24 building code, the building would be fully electrified pursuant to the City of San José's Natural Gas Infrastructure and Reach Code Ordinances, and the project would provide electric vehicle capable parking spaces. Additionally, the project site is within walking distance of a Santa Clara County Valley Transportation Authority (VTA) Light Rail Station, which would encourage the use of public transit and reduce VMT. Therefore, the project would not conflict with or obstruct the implementation of an applicable air quality plan and the project would have a less than significant impact. The project's consistency with relevant 2017 CAP control measures is provided below in Table 4.3-3. **(Less than Significant Impact)**

Table 4.3-3: Bay Area 2017 Clean Air Plan Applicable Control Measures		
Control Measures	**Description**	**Project Consistency**
Transportation Measures		
Bicycle and Pedestrian Access and Facilities	Encourage planning for bicycle and pedestrian facilities in local plans, e.g., general and specific plans, fund bike lanes, routes, paths and bicycle parking facilities.	The project would replace and widen the existing sidewalk along the project frontage on North Capitol Avenue. The project is consistent with this measure.
Building Measures		
Green Buildings	Identify barriers to effective local implementation of CALGreen (Title 24) statewide building energy code; develop solutions to improve implementation/ enforcement. Engage with additional partners to target reducing emissions from specific types of buildings.	The project would comply with Building Energy Efficiency Standards (Title 24), the City's Green Building Ordinance, and the most recent CALGreen requirements. The project is consistent with this measure.
Urban Heat Island Mitigation	Develop and urge adoption of a model ordinance for "cool parking" that promotes the use of cool surface treatments for new parking facilities, 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 project would be required to comply with the City's Green Building Ordinance and the most recent CALGreen requirements which would increase building efficiency over standard construction. In addition, new trees and landscaping would absorb solar radiation and would contribute to the reduction of heat island effect. Therefore, the project is consistent with this control measure.
Natural and Working Lands Measures		
Urban Tree Planting	Develop or identify an existing model municipal tree planting ordinance and encourage local governments to adopt such an ordinance. Include tree planting recommendations, the Air District's technical guidance, best management practices for local plans, and CEQA review.	The project would be required to adhere to the City's tree replacement policy. Therefore, the project is consistent with this control measure.
Waste Management Measures		
Recycling and Waste Reduction	Develop or identify and promote model ordinances on community-wide zero waste goals and	The City adopted the Zero Waste Strategic Plan which outlines policies to help the

Table 4.3-3: Bay Area 2017 Clean Air Plan Applicable Control Measures		
Control Measures	**Description**	**Project Consistency**
	recycling of construction and demolition materials in commercial and public construction projects.	City foster a healthier community and achieve its Green Vision goals. 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.

Construction Criteria Pollutant Emissions

As described in Section 4.3.2.1 Thresholds of Significance, the project is precluded from using the construction screening criteria because demolition would be involved; therefore, construction criteria air pollutant emissions were modeled. The California Emissions Estimator Model (CalEEMod) Version 2020.4.0 was used to estimate emissions from on-site construction activity, construction vehicle trips, and evaporative emissions. The model provides emission estimates for both on-site and off-site construction activities. On-site activities are primarily made up of construction equipment emissions, while off-site activity includes worker, hauling, and vendor traffic. The project land use types and size, and anticipated construction schedule described in Section 3.0 Project Description, were input to CalEEMod. The CARB EMission FACtors 2021 (EMFAC2021) model was used to predict emissions from construction traffic, which includes worker travel, vendor trucks, and haul trucks. The CalEEMod model output along with construction inputs are included in Appendix A.

Average daily emissions were annualized for one year of construction by dividing the annual construction emissions by the number of active construction workdays that year. Table 4.3-3 shows the annualized average daily construction emissions of ROG, NO_X, PM_{10} exhaust, and $PM_{2.5}$ exhaust during construction of the project.

Table 4.3-4: Average Daily Construction Criteria Pollutant Emissions				
Year	**Emissions (pounds/day)***			
	ROG	**NO_x**	**PM_{10} Exhaust**	**$PM_{2.5}$ Exhaust**
2024	1.20	4.82	4.68	0.20
BAAQMD Significance Threshold	**54**	**54**	**82**	**54**
Significant?	***No***	***No***	***No***	***No***
*Based on 262 construction workdays				

As indicated in Table 4.3-4, predicted average daily project construction emissions would not exceed the BAAQMD significance thresholds during the construction time period. Therefore, project construction would have a less than significant construction-related criteria pollutant emissions impact and would not conflict with or obstruct implementation of the Bay Area 2017 CAP.

Operational Criteria Pollutant Emissions

As described in Section 4.3.2.1 Thresholds of Significance, the project is below the operational criteria pollutant screening size of 53,000 square feet. Therefore, average daily and annual operational criteria pollutant emissions would be below the BAAQMD significance thresholds and impacts would be less than significant. The project would have a less than significant operational-related criteria pollutant emissions impact and would not conflict with or obstruct implementation of the Bay Area 2017 CAP. **(Less than Significant Impact)**

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

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

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

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 CEQA Air Quality Guidelines consider these impacts to be less than significant if best management practices (BMPs) are implemented to reduce the emissions. As described below, the project includes Standard Permit Conditions to reduce this impact to a less than significant level.

Standard Permit Condition:

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.
- 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.

Toxic Air Contaminants

Construction TAC Sources

Construction equipment and associated heavy-duty truck traffic emit DPM, which is a known TAC. Construction exhaust emissions pose health risks for sensitive receptors such as the residents in the adjacent single-and multi-family houses to the north and west. The primary community risk impact issues associated with construction emissions are cancer risk and exposure to DPM and $PM_{2.5}$.

Operational TAC Sources

The project would not include common sources of operational TAC, such as diesel generators on-site or diesel-powered vehicles traveling to and from the site. Therefore, no operational TAC sources were analyzed.

Summary of Project TAC Health Risks and Hazards

The health risk assessment for the project evaluated potential health effects from the project's TAC sources during construction upon nearby sensitive receptors (e.g., residences). The project maximally exposed individual (MEI) is identified as the sensitive receptor that is most impacted by the project's construction TAC sources. Results of this assessment indicated that the construction MEIs were located at the same location on two different levels. The MEIs were identified as receptors in an adjacent building along the northwest site boundary, with the cancer risk MEI located on the second floor (15 feet above ground) and the $PM_{2.5}$ concentration MEI located on the first floor (five feet above ground). The health risk impacts related to the project's construction TAC emissions are summarized in Table 4.3-5 and the location of the MEI is shown in Figure 4.3-4 below.

Table 4.3-5: Project Risk Impacts at the Off-Site MEI

Source	Cancer Risk (per million)	Annual $PM_{2.5}$ ($\mu g/m^3$)	Hazard Index
Project Construction	15.39 (infant)	0.23	0.02
BAAQMD Single-Source Threshold	*10*	*0.3*	*1.0*
Exceed Threshold?	**Yes**	**No**	**No**

Note: The maximum cancer risk and $PM_{2.5}$ concentration occur at the same receptor location on different levels.

Source: Illingworth & Rodkin, Inc. 1207 N. Capitol Avenue Construction Community Risk Assessment, San José, California. September 29, 2022.

Source: Illingworth & Rodkin, Inc., September 29, 2022.

LOCATIONS OF OFF-SITE SENSITIVE RECEPTORS AND MEI | FIGURE 4.3-1

As shown in Table 4.3-5, the construction risk impacts associated with the proposed project would exceed the BAAQMD single-source threshold for cancer risk. The $PM_{2.5}$ concentration and hazard index are below their respective BAAQMD threshold. Therefore, the project construction activities would result in a significant air quality impact due to increased cancer risk.

Impact AIR-1: Project construction activities would result in a cancer risk of 15.39 cases per million (infant) which would exceed BAAQMD single-source thresholds for increased cancer risk (10 cases in one million) **(Significant Impact)**

Mitigation Measures: The following mitigation measures would require the use of construction equipment with low diesel particulate matter emissions to reduce the construction related cancer risk impacts to a less than significant level.

MM AIR-1.1 Prior to the issuance of any demolition or grading permits (whichever occurs first), a qualified air quality consultant shall prepare a construction operations plan demonstrating that the construction equipment with low diesel particulate matter exhaust or other means reduces the project's Diesel Particulate Matter exhaust by 50 percent or more such that the increased cancer risk and annual $PM_{2.5}$ concentrations from construction would be reduced below TAC significance levels. Namely, the project's cancer risk levels shall be reduced below 10 cases in one million. The plan shall be accompanied by a letter signed by a qualified air quality specialist certifying the plan meets the reduction requirement:

1. All construction equipment larger than 25 horsepower used at the site for more than two continuous days or 20 hours total shall meet U.S. EPA Tier 4 emission standards for PM (PM_{10} and $PM_{2.5}$), if feasible, otherwise,
   - If use of Tier 4 equipment is not available, alternatively use equipment that meets U.S. EPA emission standards for Tier 3 engines and include particulate matter emissions control equivalent to CARB Level 3 verifiable diesel emission control devices that altogether achieve a 50 percent reduction in particulate matter exhaust in comparison to uncontrolled equipment; alternatively (or in combination).
   - Use of electrical or non-diesel fueled equipment.

2. Alternatively, the applicant may submit another construction operations plan prepared by a California state licensed contractor and confirmed with written confirmation from a qualified air quality specialist demonstrating that the construction equipment used on-site would achieve a reduction in construction diesel particulate matter emissions by 50 percent or greater. Elements of the plan could include a combination of some of the following measures:

- Implementation of No. 1 above to use Tier 4 engines or alternatively fueled equipment,
- Installation of electric power lines during early construction phases to avoid use of diesel generators and compressors,
- Use of electrically-powered equipment,
- Forklifts and aerial lifts used for exterior and interior building construction shall be electric or propane/natural gas powered,
- Change in construction build-out plans to lengthen phases, and
- Implementation of different building techniques that result in less diesel equipment usage.

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

CalEEMod was used to compute emissions associated with the implementation of Mitigation Measure AIR-1.1 assuming that all equipment met U.S. EPA Tier 4 Interim engine standards and BAAQMD best management practices for construction were included. With these measures implemented, the project's construction cancer risk levels (using infant exposure) would be reduced to 4.56 cases per million. As a result, the project's construction related health risks and hazards would be reduced below the BAAQMD single-source thresholds. As discussed in the regulatory setting section, BAAQMD's thresholds are set to be protective of human health, and therefore the project's criteria TAC emissions from construction, with mitigation, would not cause significant adverse health impacts. **(Less than Significant with Mitigation Incorporated)**

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

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. 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 has highly diffusive properties, and the odors would be localized and temporary. Construction-related emissions leading to odors would be less than significant. During operations, the proposed daycare center would not generate objectionable odors. Therefore, the project would not create objectionable odors that would affect the existing land uses near the site. **(Less than significant)**

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 San

José has a policy (General Plan Policy MS-11.1) that address existing air quality conditions affecting a proposed project.

The same TAC sources identified in checklist question c) were used in the on-site health risk assessment. For the roadway dispersion modeling, a five-year exposure period was used in calculating cancer risks assuming the daycare students would include infants and children and were assumed to be in the daycare for 12 hours per day for 250 days per year. CARB's Gasoline Service Station Risk Assessment Tool cannot adjust risks based on exposure duration, therefore, the risks at the daycare are assuming a 30-year exposure duration but the risks were adjusted for infant and child exposure. All on-site community task results are listed in Table 4.3-6. Figure 4.3-2 shows the locations of the nearby TAC sources.

Table 4.3-6: Cumulative Risk Impacts at the Project Site

Source	Cancer Risk (per million)	Annual $PM_{2.5}$ ($\mu g/m^3$)	Hazard Index
I-680, ADT[1] 159,600	3.09	0.05	<0.01
N. Capitol Avenue, ADT 16,090	1.62	0.08	<0.01
Berryessa Road, ADT 34,235	0.39	0.02	<0.01
Arco Facility #07079 (Facility ID #112552_1, GDF), MEIs at 770 feet	2.82	-	0.20
Capitol Chevron (Facility ID #111785_1, GDF), MEIs at +1,000 feet	0.33	-	0.04
Shell SS#68206 (Facility ID #111828_1, GDF), MEIs at +1,000 feet	1.00	-	0.05
BAAQMD Single-Source Threshold	*10*	*0.3*	*1.0*
Exceed Threshold?	**No**	**No**	**No**
Cumulative Total	9.25	0.15	<0.32
BAAQMD Cumulative Source Threshold	*100*	*0.8*	*10.0*
Exceed Threshold?	**No**	**No**	**No**

Some numbers may not add up precisely due to rounding considerations

Source: Illingworth & Rodkin, Inc. *1207 N. Capitol Avenue Construction Community Risk Assessment, San José, California*. September 29, 2022.

[1]ADT = Average daily traffic

As shown in Table 4.3-6, the risks from the singular TAC sources are compared against the BAAQMD single-source threshold. Then the risks from all the sources are combined and compared against the BAAQMD cumulative-source threshold. None of the existing TAC sources exceed the single-source or cumulative-source thresholds at the location of the project. Therefore, the project would be consistent with Policy MS-11.1.

Source: Illingworth & Rodkin, Inc., September 29, 2022.

LOCATIONS OF EXISTING TAC SOURCES | FIGURE 4.3-2

4.4 BIOLOGICAL RESOURCES

The following discussion is based, in part, on a Tree Evaluation Summary prepared for the project by William Sowa, Certified Arborist. A copy of this report is included in Appendix B of this Initial Study.

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. This includes direct and indirect acts, except for harassment and habitat modification, which are not included unless they result in direct loss of birds, nests, or eggs. The CDFW also protects migratory and nesting birds under California Fish and Game Code Sections 3503, 3503.5, and 3800. The CDFW defines taking as causing abandonment and/or loss of reproductive efforts through disturbance.

Sensitive Habitat Regulations

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

Fish and Game Code Section 1602

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

Regional and Local

Santa Clara Valley Habitat Plan/Natural Community Conservation Plan

The Santa Clara Valley Habitat Plan/Natural Community Conservation Plan (Habitat Plan) covers approximately 520,000 acres, or approximately 62 percent of Santa Clara County. It was developed and adopted through a partnership between Santa Clara County, the Cities of San José, Morgan Hill, and Gilroy, Santa Clara Valley Water District (Valley Water), 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 General Plan includes policies for the purpose of avoiding or mitigating impacts resulting from planned development projects in the City. The proposed project would be subject to General Plan biological resources policies, including the ones listed below.

Policies	Description
ER-4.4	Require that development projects incorporate mitigation measures to avoid and minimize impacts to individuals of special-status species.
ER-5.1	Avoid implementing activities that result in the loss of active native birds' nests, including both direct loss and indirect loss through abandonment, of native birds. Avoidance activities that could result in impacts to nests during the breeding season or maintenance of buffers between such activities and active nests would avoid such impacts.
ER-5.2	Require that development projects incorporate measures to avoid impacts to nesting migratory birds.
ER-6.5	Prohibit use of invasive species, citywide, in required landscaping as part of the discretionary review of proposed development.
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

Policies	Description
	preservation of native oaks and native sycamores. When tree preservation is not feasible, include appropriate tree replacement, both in number and spread of canopy.
MS-21.6	As a condition of new development, require, where appropriate, the planting and maintenance of both street trees and trees on private property to achieve a level of tree coverage in compliance with and that implements City laws, policies 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 replacements or alternative mitigation measures in the project to maintain and enhance our Community Forest.

San José Tree Removal 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.

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

4.4.1.2 *Existing Conditions*

The project site is developed with a single-family residence and portions of the property are covered with cement pads. The remainder of the project site is vacant and covered with grasses and some scattered trees and shrubs. The project site is surrounded by urban land uses and does not connect to any high-quality wildlife or plant habitat areas. It is possible that common wildlife species adapted to the urban environment pass through the project site: however, the project site does not currently support any special status plant or wildlife species due to the urban nature of the surrounding environment and the partially developed conditions on-site.

The project site is located within the SCVHP area and is designated Urban-Suburban. The Urban-Suburban designation is for areas where native vegetation has been cleared for residential, commercial, industrial, transportation, or recreational structures, and are defined as having one or more structures per 2.5 acres.

Trees

There are a total of 14 trees on-site, four of which are classified as ordinance trees under the City of San José Tree Ordinance. All of the trees on-site are non-native, orchard tree species. The tree

species and ordinance status are summarized below in Table 4.4-1. Detailed information on each tree surveyed (DBH, circumference, health, preservation suitability) is included in Appendix B.

Table 4.4-1: Summary of Existing Trees On-Site		
Species	**Number of Trees**	**Number of Ordinance Trees**
Orange tree (*Citrus x sinensis*)	2	--
Fig tree (*Ficus carica*)	3	2
Persimmon tree (*Diospyros kaki*)	3	--
Apple tree (*Malus domestica*)	1	--
Apricot tree (*Prunus armeniaca*)	4	2
Japanese cherry (*Prunus serrulate*)	1	--
Total	14	4

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?	☐	☐	☐	☒

	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
Would the project:				
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?

Based on the highly urbanized and developed nature of the project site, natural communities or habitats for special-status plant and wildlife species are not present and would not be impacted, with the exception of nesting birds (described further below).

Nesting Birds

Development of the project would result in the removal of all trees on the project site. Trees could provide nesting habitat for birds, including migratory birds. Nesting birds are protected under provisions of the MBTA and CDFW code. Construction disturbance during the breeding season could result in the incidental loss of fertile eggs or nestlings, or otherwise lead to nest abandonment. Disturbance that causes abandonment and/or removal and site grading that disturb a nesting bird on-site or immediately adjacent to the construction zone would constitute a significant impact.

Impact BIO-1: Development of the proposed project would result in impacts to nesting birds, if present on the site at the time of construction.

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: 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). Construction activities include any site disturbance such as, but not limited to, tree trimming or removal, demolition, grading, and trenching.

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.

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 less than significant. **(Less than Significant Impact with Mitigation Incorporated)**

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

As discussed in Section 4.4.1.2 Existing Conditions, there are no sensitive habitats (including riparian habitat) on or adjacent to the project site. Therefore, the project would not have any impact on riparian habitat or other sensitive natural communities. **(No Impact)**

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

As discussed in Section 4.4.1.2 Existing Conditions, the project site is developed and located in an urbanized area surrounded by development. There are no state or federally protected wetlands within, or adjacent to, the project site. For this reason, the proposed project would not adversely affect protected wetlands. **(No 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 developed and surrounded by urban development. Migratory movements of animal species can be associated with riparian corridors, and the project site is not adjacent to any streams or waterways. There are no native wildlife nursery sites in the vicinity. In addition, the proposed building would not be constructed primarily of glass or reflective materials. Glass surfaces, which have the potential to disorient birds and cause accidental collisions, would be limited to windows and doors. The proposed building would also have some metal panels on the exterior and metal as well as metal door frames, canopy, and coping. The project would primarily consist of a stucco exterior and some wood appearance siding board. For these reasons, the project would not substantially interfere with the movement of any native resident or migratory fish or wildlife species. **(Less than Significant Impact)**

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

Removal of trees would be required to conform to the replacement requirements as identified in the Municipal Code Section 13.28.300, General Plan Policies MS-21.4, MS-21.5, and MS-21.6 and City of San José Tree Removal Control (Municipal Code Section 13.31.010 to 13.32.100).

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

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**	
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.				

The project would remove all 14 trees on-site. Four out of the 14 trees are ordinance-sized trees (greater than 38-inches in circumference). Seven trees on-site are between 19 and 38 inches in circumference, and the rest are less than 19 inches in circumference. As mentioned previously, there are no native trees on-site. All of the existing trees on-site site are orchard trees. Therefore, removal of the four existing ordinance-sized trees would require 12 new 15-gallon replacement trees at a 3:1 ratio, and the remaining tree removals would not require replacement. 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). The project proposes to plant 5 new trees on-site and street trees, and thus, would meet the requirement of replacement trees. Therefore, the project would not conflict with the City of San José Tree Removal Ordinance or other local policies protecting biological resources. **(Less than Significant Impact)**

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

The project site has a land cover designation of Urban-Suburban land, and the proposed development would be a covered activity under the SCVHP. The project site is not located in a SCVHP survey area for any special-status plant or wildlife species. The SCVHP considers covered activities to result in a certain amount of indirect impacts from urban development, mostly in the form of increased impervious surfaces and from the effects of nitrogen deposition.

Urban development that increases the intensity of land use results in increased air pollutant emissions from passenger and commercial vehicles and other industrial and nonindustrial sources. Emissions from these sources are known to increase airborne nitrogen, of which a certain amount is converted into forms that can fall to earth as depositional nitrogen. It has been shown that increased nitrogen in serpentine soils can favor the growth of nonnative annual grasses over native serpentine species and these nonnative species, if left unmanaged, can overtake the native serpentine species, which are host

plants for larval Bay Checkerspot butterfly. As such, covered projects within the SCVHP area are subject to paying a "Nitrogen Deposition Impact Fee" which is calculated based on the number of daily vehicle trips attributed to the activity and collected prior to the commencement of the use.

Consistent with the SCVHP, the proposed project shall implement the following standard permit condition.

Standard Permit Condition:

> The project is subject to applicable SCVHP conditions and fees (including the nitrogen deposition fee) prior to issuance of any grading permits. The project applicant would be required to submit the Santa Clara Valley Habitat Plan Coverage Screening Form to the Director of Planning, Building and 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.

With implementation of the standard permit condition described above, the project would not conflict with the provisions of the SCVHP. **(Less than Significant Impact)**

4.5 CULTURAL RESOURCES

The following discussion is based in part on an Archaeological Sensitivity Assessment prepared by Archaeological/Historical Consultants on July 16, 2022. This document is on file with the City of San José Department of Planning, Building and Code Enforcement and available for review 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.[16]

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

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

[16] California Office of Historic Preservation. "CEQA Guidelines Section 15064.5(a)(3) and California Office of Historic Preservation Technical Assistance Series #6." Accessed August 23, 2022. https://ohp.parks.ca.gov/pages/1069/files/technical%20assistance%20bulletin%206%202011%20update.pdf

California Native American Historical, Cultural, and Sacred Sites Act

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

Public Resources Code Sections 5097 and 5097.98

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

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

Local

Envision San José 2040 General Plan

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

Envision San José 2040 General Plan Relevant Cultural Resources Policies

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.
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 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.

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 the project site, but four resources were identified within 0.25 miles of the project site. The project area was concluded to have low sensitivity for prehistoric archaeological resources.

Historic-Era Resources

The project site contains a single-family residence that was constructed in 2003. Given the fact that the existing residence is less than 50 years old, it is not eligible for listing as a designated historic resource. Previously the project site included a house, barn, shed, garage, well, and water tank that was constructed in the 1920s and were present on-site until the structures were demolished in late 2020. There is a possibility that historic-era trash deposits may be found on-site but the 20th century date of construction and the lack of any outhouses visible in historic topographic and aerial photos makes it unlikely that well-stratified deposits with information potential are present on the property. The project area was concluded to have low sensitivity for historic-era archaeological resources.

The nearest designated historic resource (City Landmark) is Berryessa Elementary School at 1171 North Capitol Avenue, adjacent to the project site. The Berryessa Elementary School building is located approximately 120 feet south from the project site boundary, separated by a driveway.

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?

Pursuant to CEQA Guidelines Section 15064.5 (b)(1), a "substantial adverse change" in the significance of a historical resource means physical demolition, destruction, relocation, or alteration of the resource or its immediate surroundings such that the significance of a historical resource would

be materially impaired. The vacant single-family house on-site does not meet the criteria for eligibility because it was constructed in 2003 and thus, is less than 50 years old.

The proposed project would completely redevelop the 1.51-acre site, including the demolition of the existing structure and the conversion of land use to a daycare use. The redevelopment of the site would not disturb or result in substantial adverse changes to the adjacent historic resource, the Berryessa Elementary School building. Therefore, the proposed project would not result in a significant impact to historical 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 discussed in Section 4.5.1.2 Existing Conditions, the 1.51-acre site is considered to have low sensitivity for prehistoric and historic archaeological resources. While the project site is not known to contain an archaeological site or buried deposits, construction operations could result in the inadvertent exposure of buried prehistoric or historic archaeological materials that could be eligible for inclusion on the California Register and/or meet the definition of a unique archaeological resource as defined in Section 21083.2 of the Public Resources Code. In accordance with General Plan policy ER-10.3, the proposed project would be required to implement the following condition to reduce or avoid impacts to subsurface cultural resources.

Standard Permit Condition:

> 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 shall examine the find. The archaeologist shall 1) evaluate the find(s) to determine if they meet the definition of a historical or archaeological resource; and (2) make appropriate recommendations regarding the disposition of such finds prior to issuance of building permits. Recommendations could include collection, recordation, and analysis of any significant cultural materials. A report of findings documenting any data recovery shall be submitted to 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.

Therefore, through the compliance with the above standard permit condition, the proposed project would protect any archaeological resources discovered during construction and would result in a less than significant impact. **(Less than Significant Impact)**

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

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.

Standard Permit Conditions:

If any human remains are found during any field investigations, grading, or other construction activities, all provisions of California Health and Safety Code Sections 7054 and 7050.5 and Public Resources Code Sections 5097.9 through 5097.99, as amended per Assembly Bill 2641, shall be followed. 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.

Compliance with the standard permit condition above, the proposed project would result in less than significant impacts to human remains which may be present on site. **(Less than Significant Impact)**

4.6 ENERGY

4.6.1 Environmental Setting

4.6.1.1 *Regulatory Framework*

Federal and State

Energy Star and Fuel Efficiency

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

Renewables Portfolio Standard Program

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

Executive Order B-55-18 To Achieve Carbon Neutrality

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

California Building Standards Code

The Energy Efficiency Standards for Residential and Nonresidential Buildings, as specified in Title 24, Part 6 of the California Code of Regulations (Title 24), was established in 1978 in response to a legislative mandate to reduce California's energy consumption. Title 24 is updated approximately

every three years.[17] Compliance with Title 24 is mandatory at the time new building permits are issued by city and county governments.[18]

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.[19]

Local

Climate Smart San José

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

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

Sustainable City Strategy

The Sustainable City Strategy is a statement of the City's commitment to becoming an environmentally friendly and economically sustainable city by ensuring that development is designed

[17] California Building Standards Commission. "California Building Standards Code." Accessed May 13, 2022. https://www.dgs.ca.gov/BSC/Codes#@ViewBag.JumpTo.
[18] California Energy Commission (CEC). "2019 Building Energy Efficiency Standards." Accessed May 13, 2022. https://www.energy.ca.gov/programs-and-topics/programs/building-energy-efficiency-standards/2019-building-energy-efficiency.
[19] California Air Resources Board. "The Advanced Clean Cars Program." Accessed August 8, 2022. https://www.arb.ca.gov/msprog/acc/acc.htm.

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.

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.

Envision San José 2040 General Plan Relevant Energy Resources Policies

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.
MS-19.1	Require new development to contribute to the cost-effective expansion of the recycled water system in proportion to the extent that it receives benefit from the development of a fiscally and environmentally sustainable local water supply.
MS-19-4	Require the use of recycled water wherever feasible and cost-effective to serve existing and new development.

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.
PR-6.4	Consistent with the Green Vision, complete San José's trail network and where feasible, develop interconnected trails with bike lanes to facilitate bicycle commuting and recreational uses.
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.

4.6.1.2 *Existing Conditions*

Total energy usage in California was approximately 6,9567 trillion British thermal units (Btu) in the year 2020, the most recent year for which this data was available.[20] 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 22 percent (1,508 trillion Btu) for residential uses, 19.6 percent (1,358 trillion Btu) for commercial uses, 25 percent (1,701 trillion Btu) for industrial uses, and 34 percent (2,356 trillion Btu) for transportation.[21] 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.[22]

San José Clean Energy (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

[20] United States Energy Information Administration. "California Energy Consumption by End-Use-Sector, 2020." Accessed July 20, 2022. https://www.eia.gov/state/?sid=CA#tabs-2.
[21] Ibid.
[22] California Energy Commission. Energy Consumption Data Management System. "Electricity Consumption by County." Accessed July 25, 2022. http://ecdms.energy.ca.gov/elecbycounty.aspx.

GreenSource program, which provides 80 percent GHG emission-free electricity. Customers can choose to enroll in SJCE's TotalGreen program at any time to receive 100 percent GHG emission-free electricity from entirely renewable sources.

Natural Gas

Pacific Gas and Electric Company (PG&E) provides natural gas services within the City of Santa Clara. 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.[23] In 2020 California used 2,144 trillion Btu of natural gas.[24] In 2020, Santa Clara County used less than one percent of the state's total consumption of natural gas.[25]

Fuel for Motor Vehicles

In 2019, 15.4 billion gallons of gasoline were sold in California.[26] 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.[27] 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. [28,29]

[23] California Gas and Electric Utilities. 2020 *California Gas Report.* Accessed July 20, 2022. https://www.socalgas.com/sites/default/files/2020-10/2020_California_Gas_Report_Joint_Utility_Biennial_Comprehensive_Filing.pdf.
[24] United States Energy Information Administration. "California Energy Consumption Estimate, 2020." Accessed July 20, 2022. https://www.eia.gov/state/?sid=CA#tabs-2.
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[26] California Department of Tax and Fee Administration. "Net Taxable Gasoline Gallons." Accessed July 20, 2022. https://www.cdtfa.ca.gov/dataportal/dataset.htm?url=VehicleTaxableFuelDist.
[27] 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=P1013L1O.pdf
[28] United States Department of Energy. *Energy Independence & Security Act of 2007.* Accessed July 20, 2022. http://www.afdc.energy.gov/laws/eisa.
[29] United States Department of Transportation. USDOT Announces New Vehicle Fuel Economy Standards for Model Year 2024-2026." Accessed July 20, 2022. https://www.nhtsa.gov/press-releases/usdot-announces-new-vehicle-fuel-economy-standards-model-year-2024-2026

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

Construction of the project would require energy for the manufacture and transportation of building materials, preparation of the project site (i.e., demolition and grading), and the construction of the buildings. Construction energy usage is temporary and would not result in excessive energy consumption because construction processes are generally designed to be efficient to avoid excess monetary costs. The project would be constructed in an urbanized area with close access to roadways, construction supplies, and workers, making the project more efficient than construction occurring in outlying, more isolated areas. The construction process is already efficient and opportunities for increasing energy efficiency during construction are limited.

Per the City's Standard Permit Conditions, the project would be required to implement BAAQMD Best Management Practices (see Section 4.3 Air Quality), which would restrict unnecessary idling of construction equipment and require the applicant to post signs on the project site reminding workers to shut off idle equipment, thus reducing the potential for energy waste. Pursuant with General Plan Policy MS-14.3 and MS-2.11, the project would implement the City's Green Building Policies to ensure that construction of the project meets industry best practices and techniques are applied to maximize energy performance at the construction stage. The City's Zero Waste Strategic Plan would be implemented at a project level to enhance construction and demolition debris recycling, thus increasing diversion from landfills and further contributing to the energy efficiency of the project's construction activities. For these reasons, construction of the project would not result in wasteful or inefficient use of energy. **(Less than Significant Impact)**

Operation

The project site is currently unoccupied but is developed with a single-family residence. The proposed project would result in an increase in energy use at the site. Energy would be consumed via

heating and cooling of the proposed buildings, lighting, water use, solid waste disposal and gasoline consumption from vehicles traveling to and from the site. The project is in an urban area and would connect to existing utilities and use existing roadways for access.

The proposed project would consume approximately 156,878 kWh of electricity per year.[30] In compliance with the City's Reach Code, the project would be 100 percent electric and would not use any natural gas. The project is an infill development that would bring new employees and customers to an area of the City where commercial, retail, and transit services, such the VTA Berryessa light rail, are readily available. The project's proximity to these services would reduce transportation energy demand.

The project would be required to comply with all standards set in the latest iteration of the California Building Standards Code (California Code of Regulations Title 24), which would minimize the wasteful, inefficient, or unnecessary consumption of energy resources by the built environment during operation. California's CALGreen standards (California Code of Regulations Title 24, Part 11) require implementation of energy-efficient light fixtures and building materials into the design of new construction projects. Therefore, project operation would not result in wasteful, inefficient, or unnecessary energy consumption upon implementation of General Plan policies and existing regulations. Furthermore, although the project would use energy, the consumption would not be wasteful, inefficient, or unnecessary. The project would comply with City's Reach Code.

By complying with the mandatory provisions of CALGreen that pertain to energy consumption and energy efficiency, and City of San José's policies and ordinances related to energy, the project would not result in wasteful, inefficient, or unnecessary consumption or wasteful use of energy resources. **(Less than Significant Impact)**

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

The proposed project would be required to be built in conformance with City of San José policies and plans, including Council Policy 6-32 which governs green building requirements for private development. The project would be required to comply with existing regulations, including applicable measures from the City's General Plan and the City's Reach Code, which requires all new development to be all-electric with no natural gas infrastructure. As such, the proposed project would not conflict with any other state-level regulations pertaining to energy. The proposed project would comply with existing State energy standards and would not conflict with or obstruct a state or local plan for renewable energy or energy efficiency. Therefore, the proposed project would result in a less than significant impact. **(Less than Significant Impact)**

[30] Illingworth & Rodkin, Inc. *1207 N. Capitol Avenue Daycare Construction Community Risk Assessment. Attachment 2: CalEEMod Modeling Inputs and Outputs.* September 29, 2022.

4.7 GEOLOGY AND SOILS

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 California Building Code (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.

Envision San José 2040 General Plan Relevant Geology and Soil Policies

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 2019 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*

On-Site Geologic Conditions

The City of San José is located in the northern Santa Clara Valley, an alluvial basin underlain by sedimentary and metamorphic rocks of the Franciscan Complex. These alluvial deposits consist of unconsolidated to semi-consolidated sand, silt, clay, and gravel. The Santa Clara Valley is bounded by the Diablo Range to the east and the Santa Cruz Mountains to the west. The Valley was formed when sediments derived from both mountain ranges were exposed by tectonic uplift and regression of the inland sea which previously inundated this area.

Topography and Soils

The project site is located in a relatively flat area on the floor of the Santa Clara Valley. The soils on-site consist of Urban land-Still complex with zero to two percent slopes. The Urban land-Still complex consists of loam, sandy loam, silt loam, and very fine sandy loam. The on-site soils have moderate shrink-swell (expansiveness) potential. [31]

Groundwater

Groundwater beneath the site has been found at a depth of 80 to 100 feet below ground surface. Groundwater flows toward the west-northwest.[32] Groundwater levels at the site may fluctuate with time due to seasonal conditions, rainfall, and irrigation practices.

Seismicity and Seismic Hazards

The project site is located within the seismically active San Francisco Bay region. The San Francisco Bay Area contains several faults that are capable of generating earthquakes of magnitude 7.0 or

[31] United States Department of Agriculture, Natural Resources Conservation Service. *Custom Soil Resource Report for Santa Clara Area Western Part.* August 10, 2022. https://websoilsurvey.sc.egov.usda.gov/WssProduct/hg2gf0atv0tdk5dtgioiqbqv/GN_00001/20220810_170920058618_Soil_Report.pdf

[32] Partner Engineering and Science, Inc. *Phase I Environmental Site Assessment Report APN 245-05-015 1207 North Capitol Avenue*. Page 5. July 13, 2022

higher. The San Andreas Fault system spans the Coast Ranges from the Pacific Ocean to the San Joaquin Valley. Faults within five miles of the project site include the Arroyo Aguage, Calaveras, Hayward, and Silver Creek. The nearest fault zone is the Hayward fault, approximately two miles northeast of the project site.[33] The project site is not located within an Alquist-Priolo Earthquake Fault Zone or a Santa Clara County Fault Rupture Hazard Zone for any of the faults.[34,35]

Liquefaction

Liquefaction can be defined as ground failure or loss of strength that causes otherwise solid soil to take on the characteristics of a liquid. This phenomenon is triggered by earthquakes or ground shaking that causes saturated or partially saturated soils to lose strength, potentially resulting in the soil's inability to support structures. Liquefaction can result in adverse impacts to human and building safety and is typically addressed at the building design stage of a project. The project site is not located in a Liquefaction Hazard Zone, as identified in maps prepared by the California Geological Survey.[36]

Paleontological Resources

Paleontological resources are the fossilized remains of organisms from prehistoric environments found in geologic strata. Most of the City of San José is situated on alluvial fan deposits of Holocene age that have a low potential to contain significant nonrenewable paleontological resources; however, older Pleistocene sediments present at or near the ground surface at some locations have high potential to contain these resources. These older sediments, often found at depths greater than 10 feet below the ground surface, have yielded the fossil remains of plants and extinct terrestrial Pleistocene vertebrates. Based on Figure 3.11-1 of the 2040 General Plan EIR, Palaeontologic Sensitivity of City of San José Geologic Units, the proposed project is located in an area of high paleontological sensitivity at depth.[37]

[33] United States Geological Survey. "U.S. Quaternary Faults". Map. Accessed July 13, 2022. https://usgs.maps.arcgis.com/apps/webappviewer/index.html?id=5a6038b3a1684561a9b0aadf88412fcf.
[34] California Geological Survey. "Earthquake Zones of Required Investigation." Accessed July 13, 2022. https://maps.conservation.ca.gov/cgs/EQZApp/app/.
[35] County of Santa Clara Department of Planning and Development. "Santa Clara County Geologic Hazard Zones." Accessed August 10, 2022. Page 13. https://stgenpln.blob.core.windows.net/document/GEO_GeohazardATLAS.pdf.
[36] California Geological Survey. "Earthquake Zones of Required Investigation." Accessed August 10, 2022. https://maps.conservation.ca.gov/cgs/EQZApp/app/.
[37] City of San José. *Integrated Final Program Environmental Impact Report for the Envision San José 2040 General Plan.* September 2011. Figure 3.11-1.

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

As described in Section 4.7.1.2 Existing Conditions, the site is not located within an Earthquake Fault Zone as defined by the California Geological Survey in accordance with the Alquist-Priolo Earthquake Fault Zone Act of 1972. There are active faults within five miles of the site, but the project site is located outside their fault rupture zones. For these reasons, the project would not directly or indirectly cause potential substantial adverse effects from rupture of a known earthquake fault.

Strong Seismic Shaking

The project site would be subject to strong seismic ground shaking. 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.

Therefore, through compliance with the standard permit condition above the proposed project would not experience a substantial risk of loss of life or property as a result of seismic activity causing ground failure or strong shaking.

Liquefaction and Lateral Spreading

As discussed previously in Section 4.7.1.2 Existing Conditions, the project site is not located within a designated liquefaction hazard zone. Adherence to the current CBC and the recommendations in the site-specific geotechnical report would reduce the risk of liquefaction at the project site. There are no adjacent bodies of water, channels, or excavations in the vicinity of the site that would increase the

potential for lateral spreading. The site is also underlain with shallow bedrock, which reduces the potential for lateral spreading. For these reasons, the project would not cause potential substantial adverse effects related to liquefaction and lateral spreading. Impacts would be less than significant.

Landslides

As discussed under Section 4.7.1.2 Existing Conditions, the project site is not located in an area susceptible to landslides and the site is relatively flat. Construction of the project would not include substantial earthwork that would create unstable slopes that would exacerbate any existing landslide risks. The project would be required to adhere to the current CBC and the recommendations in the site-specific geotechnical report in accordance with the City's standard permit conditions. Therefore, the proposed project would not result in instability which may cause landslides, and impacts would be less than significant. **(Less than Significant Impact)**

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

Construction of the proposed project would involve ground disturbing activities, such as soil excavation. These activities would increase exposure of soil to wind and water erosion and increase sedimentation. The City's NPDES Municipal Permit, urban runoff policies, and the Municipal Code are the primary means of enforcing erosion control measures through the grading and building permit process. The Draft Program EIR for the General Plan concluded that with the regulatory programs currently in place, the possible impacts of accelerated erosion during construction would be less than significant[38]. The City shall require all phases of the project to comply with all applicable City regulatory programs pertaining to construction related erosion, including 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.

Therefore, through compliance with the NPDES Municipal Permit, the proposed project would have a less than significant impact on soil erosion or 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?

Strong shaking during an earthquake can result in ground failure such as that associated with soil liquefaction and differential compaction. The project site is not within a liquefaction or landslide

[38] City of San José. *Draft Program Environmental Impact Report for the Envision San José 2040 General Plan.* SCH# 2009072096. Page 515.

zone, but a portion of the northwest site is within a liquefaction landslide overlap zone. Impacts related to these geological hazards would be reduced with implementation of the City's Standard permit condition, which requires future developments be designed and constructed in accordance with the recent CBC.

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.

A design-level geotechnical investigation will also be prepared for the proposed development that identifies site-specific ground failure hazards such as liquefaction and lateral spreading and appropriate techniques to minimize risks to people and structures. Development of the project site would not change or exacerbate the geologic conditions of the project area. Therefore, the project would not 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. **(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 moderate expansion potential. Nonetheless, the project would be constructed in accordance with the most recent CBC, as set forth in the standard permit condition described under checklist question c), above.

In addition to the condition described above, the project would adhere to the recommendations of a design-specific geotechnical investigation and be reviewed by the City Geologist 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 existing septic system on-site would be removed, and the project would connect to the existing sanitary sewer main in North Capitol Avenue by extending the main by 300 feet to the project frontage. 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 would be excavated to a maximum depth of approximately one foot for the building foundation, approximately nine feet for utility improvements, and up to 10 feet for the removal of the existing septic system. The project site has high sensitivity at depth for paleontological resources.[39] As previously noted, 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.[40] Therefore, there is potential for encountering unrecorded paleontological resources during project grading and excavation. Consistent with General Plan Policy ER-10.3, the project shall implement the following standard permit conditions 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 PBCE 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)**

[39] 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
[40] Ibid. P.706.

4.8 GREENHOUSE GAS EMISSIONS

The following discussion is based, in part, on the City's 2030 Greenhouse Gas Reduction Strategy Compliance Checklist as completed by the project applicant. A copy of this checklist is included in Appendix C of this Initial Study.

4.8.1 Environmental Setting

4.8.1.1 *Background Information*

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

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

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

4.8.1.2 *Regulatory Framework*

State

Assembly Bill 32

Under the California Global Warming Solutions Act, also known as AB 32, CARB established a statewide GHG emissions cap for 2020, adopted mandatory reporting rules for significant sources of GHGs, and adopted a comprehensive plan, known as the Climate Change Scoping Plan, identifying how emission reductions would be achieved from significant GHG sources.

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

Senate Bill 375

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

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

Regional and Local

2017 Clean Air Plan

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

CEQA Air Quality Guidelines

The BAAQMD CEQA Air Quality Guidelines are intended to serve as a guide for those who prepare or evaluate air quality impact analyses for projects and plans in the San Francisco Bay Area. The jurisdictions in the San Francisco Bay Area Air Basin utilize the thresholds and methodology for assessing GHG impacts developed by BAAQMD within the CEQA Air Quality Guidelines. The

guidelines include information on legal requirements, BAAQMD rules, methods of analyzing impacts, and recommended mitigation measures.

Climate Smart San José

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

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

Reach Building Code

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

San José 2030 Greenhouse Gas Reduction Strategy

The 2030 Greenhouse Gas Reduction Strategy (GHGRS) is the latest update to the City's GHGRS and is designed to meet statewide GHG reduction targets for 2030 set by Senate Bill 32. As a qualified Climate Action Plan, the 2030 GHGRS allows for tiering and streamlining of GHG analyses under CEQA. The GHGRS identifies General Plan policies and strategies to be implemented by development projects in the areas of green building/energy use, multimodal transportation, water conservation, and solid waste reduction. Projects that comply with the policies and strategies outlined in the 2030 GHGRS, would have less than significant GHG impacts under CEQA.[41]

Envision San José 2040 General Plan

The following General Plan policies are related to GHG emissions and are applicable to the proposed project:

[41] 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.

Envision San José 2040 General Plan Relevant Greenhouse Gas Policies

Policy	Description
Action 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 systems, selection of materials and resources, water efficiency, sustainable site selection, passive solar building design, and planting of trees and other landscape materials to reduce energy consumption.

City of San José Municipal Code

The City's Municipal Code includes the following regulations designed to reduce GHG emissions from development:

- Green Building Ordinance (Chapter 17.84)
- Water Efficient Landscape Standards for New and Rehabilitated Landscaping (Chapter 15.10)
- Construction and Demolition Diversion Deposit Program (Chapter 9.10)
- Wood Burning Ordinance (Chapter 9.10)

4.8.1.3 *Existing Conditions*

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

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?	☐	☐	☒	☐

4.8.2.1 *BAAQMD Significance Thresholds*

The BAAQMD's CEQA Air Quality Guidelines do not use quantified thresholds for projects that are in a jurisdiction with a qualified adopted GHG reductions plan (i.e., a Climate Action Plan). Such a qualified Climate Action Plan should address emissions reductions with the associated period that the project would operate (e.g., beyond the year 2020). As described previously, the City updated its GHG Reduction Strategy to account for GHG emissions reduction targets through 2030.

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

GHG emissions associated with development of the proposed project would occur over the short-term from construction activities, consisting primarily of emissions from equipment exhaust and worker and vendor trips. There would also be long-term operational emissions associated with vehicular traffic, energy and water usage, and solid waste disposal. Emissions for the proposed project are discussed below and were analyzed for consistency with the City's 2030 GHGRS.

Construction Emissions

Construction-related GHG emissions vary depending on the level of activity, length of the construction period, specific construction operations, types of equipment, and number of personnel. Construction of the proposed project would occur over a period of 12 months which would result in a temporary increase in GHG emissions associated with construction activities including operation of construction equipment and emissions from construction workers' personal vehicles traveling to and from the project site.

Operational Emissions

Per CEQA Guidelines Section 15064(b), the determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the Lead Agency and must be based to the extent possible on scientific and factual data. Pursuant to the latest CEQA Air Quality Guidelines, 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, the project would not have significant GHG emissions under CEQA. The proposed project would comply with the 2030 GHGRS, as discussed below under checklist question b. Therefore, the project would result in a less than significant GHG emissions impact.

The proposed project would result in a temporary increase in GHG emissions during construction. During operation of the proposed project, the project would comply with the 2030 GHGRS (refer discussion under checklist question b); therefore, the project would result in a less than significant GHG emissions impact. **(Less Than Significant Impact)**

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

CARB

The proposed project would not conflict or otherwise interfere with the statewide GHG reduction measures identified in CARB's Scoping Plan. For example, the proposed building would be constructed in conformance with CALGreen and the Title 24 Building Code, which requires high-efficiency water fixtures and water-efficient irrigation systems.

Envision San José 2040 General Plan

The project is consistent with the General Plan policies identified in Section 4.8.1.2 Regulatory Framework to reduce GHG emissions by:

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

Additionally, the project site is served by existing pedestrian, bicycle, and transit facilities with regional connections. The alternative modes of transportation available in the area would help reduce GHG emissions. The proposed project would be consistent with the City's General Plan policies intended to reduce GHG emissions.

For these reasons, the project would not conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing the emissions of GHGs.

2030 Greenhouse Gas Reduction Strategy Compliance Checklist

As mentioned under checklist question a), if a project is consistent with the City's GHGRS, the project would not have significant GHG emissions under CEQA. The proposed project's consistency with the City's 2030 GHGRS is summarized below.

Table 4.8-1: Summary of Project Consistency with the 2030 GHGRS

GHGRS Strategy	Project Consistency
Zero Net Carbon Residential Construction	The project is non-residential and therefore, this strategy does not apply to the project.
Renewable Energy Development	The project will include rooftop solar panels.
Building Retrofits – Natural Gas	The project proposes new construction and will not include any retrofitting of existing buildings. Therefore, this strategy does not apply to the project.

Zero Waste Goal	The project will include organic waste collection and will comply with the City's construction and demolition waste diversion requirements.
Caltrain Modernization	The project will be located near public transit with regional connections and will include three long-term bicycle storage spaces and 26 short-term bicycle storage spaces to promote active transportation methods.
Water Conservation	The project will include water efficient landscaping.

The project is consistent with the General Plan designation and planned growth analyzed in the General Plan EIR. The proposed project would be required to comply with City Council Policy 6-32, the City's Private Sector Green Building Policy, 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. The project would comply with Climate Smart San José, achieve the City's REACH Code and minimum LEED certification, Title 24, and receive electricity services from SJCE. The project would implement all applicable GHGRS consistency options intended to reduce GHG emissions.

Climate Smart San José

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

As discussed previously, the project would be designed and constructed in compliance with the City of San José Council Policy 6-32 and 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 through site design, architectural design, and construction techniques. The project would also receive electricity from SJCE. The proposed project is located near transit with regional connections. For these reasons, the project is consistent with the City's climate action goals as set forth in Climate Smart San José.

The project would be consistent with applicable GHGRS strategies, General Plan policies and would comply with Climate Smart San José and CARB's Scoping Plan. Therefore, the proposed 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), a Shallow Soil Investigation Report, and a Soil Gas Investigation Report prepared for the project by Partner Engineering and Science, Inc. (Partner Engineering), dated July 2022, September 2020, and February 2023, respectively. Copies of these reports are included in Appendix D, Appendix E, and Appendix F of this Initial Study, respectively.

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 (NCP). The NCP provided the guidelines and procedures needed to respond to releases and threatened releases of hazardous substances, pollutants, or contaminants. The NCP also established the National Priorities List. CERCLA was amended by the Superfund Amendments and Reauthorization Act on October 17, 1986.[42]

Resource Conservation and Recovery Act

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

The Federal Hazardous and Solid Waste Amendments (HSWA) are the 1984 amendments to RCRA that focused on waste minimization, phasing out land disposal of hazardous waste, and corrective action for releases. Some of the other mandates of this law include increased enforcement authority for the EPA, more stringent hazardous waste management standards, and a comprehensive underground storage tank program.[43]

[42] United States Environmental Protection Agency. "Superfund: CERCLA Overview." Accessed October 14, 2022. https://www.epa.gov/superfund/superfund-cercla-overview.
[43] United States Environmental Protection Agency. "Summary of the Resource Conservation and Recovery Act." Accessed October 14, 2022. https://www.epa.gov/laws-regulations/summary-resource-conservation-and-recovery-act.

Government Code Section 65962.5

Section 65962.5 of the Government Code requires CalEPA to develop and update a list of hazardous waste and substances sites, known as the Cortese List. The Cortese List is used by state and local agencies and developers to comply with CEQA requirements. The Cortese List includes hazardous substance release sites identified by the Department of Toxic Substances Control (DTSC) and State Water Resources Control Board (SWRCB).[44]

Toxic Substances Control Act

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

California Accidental Release Prevention Program

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

Asbestos-Containing Materials

Friable asbestos is any asbestos-containing material (ACM) that, when dry, can easily be crumbled or pulverized to a powder by hand, allowing the asbestos particles to become airborne. Common examples of products that have been found to contain friable asbestos include acoustical ceilings, plaster, wallboard, and thermal insulation for water heaters and pipes. Common examples of non-friable ACMs are asphalt roofing shingles, vinyl floor tiles, and transite siding made with cement. The EPA began phasing out use of friable asbestos products in 1973 and issued a ban in 1978 on manufacture, import, processing, and distribution of some asbestos-containing products and new uses of asbestos products.[45] The EPA is currently considering a proposed ban on on-going use of asbestos.[46] National Emission Standards for Hazardous Air Pollutants (NESHAP) guidelines require that potentially friable ACMs be removed prior to building demolition or remodeling that may disturb the ACMs.

[44] California Environmental Protection Agency. "Cortese List Data Resources." Accessed August 11, 2022. https://calepa.ca.gov/sitecleanup/corteselist/.
[45] United States Environmental Protection Agency. "EPA Actions to Protect the Public from Exposure to Asbestos." Accessed April 19, 2022. https://www.epa.gov/asbestos/epa-actions-protect-public-exposure-asbestos
[46] Ibid.

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.

Local

Envision San José 2040 General Plan

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

Envision San José 2040 General Plan Relevant Hazards Policies

Policy	Description
EC-6.6	Address through environmental review for all proposals for new residential, park and recreation, school, day care, hospital, church or other uses that would place a sensitive population in close proximity to sites on which hazardous materials are or are likely to be located, the likelihood of an accidental release, the risks posed to human health and for sensitive populations, and mitigation measures, if needed, to protect human health.
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 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 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.
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*

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 through 2004 with the land being undeveloped prior. When the site was used for agricultural purposes, there were three associated buildings operating on-site. The existing single-family residence was constructed between 2005 and 2006.

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. The site currently uses a septic system (installed in 2005) to dispose of domestic wastewater generated on-site but based on the reported regular maintenance of the system there are no significant environmental concerns associated with the septic system.

Asbestos Containing Materials (ACMs) and Lead-Based Paint

Due to the age of the existing single-family residence (constructed in 2005), Partner Engineering did not perform an asbestos evaluation on-site. Partner Engineering noted that the drywall systems, floor tiles, and floor tile mastic of the existing residence are suspect ACMs because they are materials commonly known to potentially contain asbestos.

Underground Fuel Storage Tank

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

Lead in Soil

The Shallow Soil Investigation conducted on-site investigated the potential impact of organochlorine pesticides, arsenic, and/or lead released from the historical on-site agricultural-related activities. Based on the result of the soil sampling, arsenic and organochlorine pesticides were detected but the concentrations were within the environmental screening levels. Lead was also detected in two of the

eight soil samples with concentrations of lead that would exceed the residential environmental screening levels.

Cortese List

The project site is not located on the Cortese List.[47]

Off-Site Sources of Contamination

No sources of hazardous substances, petroleum products, ASTs, USTs, PCBs, strong or noxious odors, pools of liquids, sumps or clarifiers, pits or lagoons, stressed vegetation, or any other potential environmental hazards were identified or observed at the adjoining properties to the project site. There are also no historical violations or documented releases to the subsurface that would have the potential to migrate to the project site.

One off-site property was identified as a potential environmental concern to the project site: Royal Cleaners (1192-1198 North Capitol Avenue), located approximately 530 feet southeast of the project site. This is a former drycleaner that had a release which was issued a case closure in 1997. The case was re-opened in 2018, however, due to detection of elevated levels of trichloroethylene and tetrachloroethylene in the soil, soil vapor, and groundwater. The groundwater impacts were determined to not pose a risk to human health or the environment beyond the footprint of the building due to the low volume of groundwater that exists at the site. Additionally, remediation via soil vapor extraction is on-going at the site.

Soil Investigation

Due to the potential off-site impacts from the solvent release at the Royal Cleaners location, a soil gas investigation (see Appendix F) was completed to sample for chlorinated solvents on-site. Six borings were made to analyze for chlorinated solvents, specifically tetrachloroethene (PCE), trichloroethene (TCE), cis-1,2-dichloroethene (DCE), trans-1,2-DCE, 1,1-DCE, and vinyl chloride. Based on the laboratory analysis, PCE was detected in one soil sample at a concentration of 290 micrograms per $\mu g/m^3$, which exceeds the residential and commercial/industrial Environmental Screening Levels (ESLs) of 15 $\mu g/m^3$ and 67 $\mu g/m^3$, respectively. In this same soil sample, PCE exceeded regulatory screening criteria.

[47] California Environmental Protection Agency. "Cortese List Data Resources." Accessed August 11,2022. https://calepa.ca.gov/sitecleanup/corteselist/.

Other Hazards

Airports

The nearest public airport is the Norman Y. Mineta San José International Airport. The project site is approximately four miles east 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.[48]

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).[49]

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?	☐	☐	☐	☒

[48] 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

[49] California Department of Forestry and Fire Protection. "Fire Hazard Severity Zones Maps". Accessed August 11, 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:				
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?	☐	☐	☐	☒
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?

Operation of the proposed daycare facility would not involve the routine transport, use, or disposal of hazardous materials. The project may use small quantities of fertilizers and pesticides for landscaping, as well as household cleansers and other chemicals for cleaning. These materials would be stored and used in accordance with the manufacturer's specifications. 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?

As described in Section 4.9.1.2 Existing Conditions, the existing single-family residence was constructed between 2005 and 2006. Lead-based paint (LBP) would not be present in the structure; however, there is a possibility that ACMs could be present on-site given that several building materials in the existing structure are known to commonly contain asbestos. An ACM survey is required to ensure that that the drywall systems, floor tiles, and floor tile mastic do not contain ACMs. If present, ACMs could then 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 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 ACSMs and/or 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 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 BAAQMD regulations. Removal of materials containing more than one-percent asbestos shall be completed in accordance with BAAQMD requirements and notifications.
- Based on Cal/OSHA rules and regulations, the following conditions are required to limit impacts to construction workers.
    - Prior to commencement of demolition activities, a building survey, including sampling and testing, shall be completed to identify and quantify building materials containing lead-based paint.
    - During demolition activities, all building materials containing lead-based paint shall be removed in accordance with Cal/OSHA Lead in Construction Standard, Title 8, 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 waste being disposed.

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.

In addition, the soil on-site is contaminated with levels of lead that exceed the residential screening criteria due to its agricultural history. Ground-disturbing activities may expose workers and adjacent land uses to the contaminated soil. If not remediated, the soil on-site would pose as a potential health risk to future occupants.

Impact HAZ-1: The sub-surface soils on-site are contaminated with lead levels that exceed residential screening criteria due to the site's history of agricultural uses. Development of the project could expose construction workers, adjacent land uses, and future occupants to residual agricultural soil 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: Prior to issuance of a grading permit, the project applicant shall retain a qualified environmental professional to further investigate the extent of the identified lead impacts in the on-site soils. The qualified environmental professional shall determine if lead, or other hazardous materials, are present above Regional Water Quality Control Board (RWQCB) environmental screening levels (ESLs) for construction worker safety and the proposed daycare 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 Santa Clara County Department of Environmental Health ("SCCDEH") 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.

Through incorporation of mitigation measure MM HAZ-1.1, the level of soil contamination would be further investigated, 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 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)**

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 Cherrywood Elementary School, approximately 1,490 feet (0.28 mile) northwest of the project site. Additionally, as discussed under checklist question a), the project would not result in hazardous emissions or hazardous materials being transported to and

from the site, nor would hazardous waste be produced or disposed of during operation of the project Therefore, the project would not emit hazardous materials, substances, or waste within 0.25 mile of an existing or proposed school. **(No Impact)**

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

The project site is 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 four miles west 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.[50] For these reasons, 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. **(No 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.[51] The project would not interfere with the Emergency Operations Plan since the proposed daycare facility 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. The project would be constructed in accordance with current building and fire codes to ensure structural stability and safety. In addition, the San José Fire Department (SJFD) would review the site development plans to ensure fire protection design features are incorporated and adequate emergency access is provided. Therefore, development of the project site under the proposed project would not physically interfere with an adopted emergency response or evacuation plan. **(No Impact)**

[50] 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

[51] City of San José. *Emergency Operations Plan*. Adopted February 2019. https://www.sanjoseca.gov/home/showpublisheddocument/48699/637118311982470000

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 4.9.1.2 Existing Conditions, the project site is not located in a State Responsibility Area or Very High Hazard Severity Zone for wildland fires.[52] 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)**

4.9.3 Non-CEQA Effects

Per *California Building Industry Association v. Bay Area Air Quality Management District,* 62 Cal. 4th 369 *(BIA v. BAAQMD)*, effects of the environment on the project are not considered CEQA impacts. The following discussion is included for informational purposes because the City of San José has policies (General Plan Policies EC-6.6, EC-7.1, EC-7.2, EC-7.8) that address existing hazardous materials conditions affecting a proposed project.

Vapor Intrusion

As discussed in Section 4.9.1.2 Existing Conditions, the project site contains soil vapor contamination exceeding the respective residential and commercial ESLs. Future occupants, such as the employees and children attending the proposed daycare, have the potential to be adversely affected by the intrusion of soil vapor from beneath the building. As previously described in Section 3.0 Project Description, the project will implement remediation measures as part of project construction to avoid vapor intrusion into the proposed building. The following condition of approval, consistent with the project description, will be required to reduce the potential health effect of soil vapor intrusion.

Condition of Approval

Vapor intrusion measures (VIM) will be implemented during construction of the project. A VIM System Plan will be submitted to the Santa Clara County Department of Environmental Health (SCCDEH) for review and approval prior to the start of construction. The VIM system would include one or more of the following remediation measures: 1) sub-grade and/or sub-slab membranes, 2) gas-permeable gravel beneath the concrete slab/membrane, and 3) passive sub-slab ventilation. The VIM System Plan will also outline the requirements for pre-occupancy interior sampling to confirm the vapor remediation measures are operating as designed to reduce vapor gas below applicable thresholds. Prior to issuance of any building permits, the applicant shall submit the SCCDEH approved VIM System Plan to the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee, and the City's Environmental Services Department (ESD) for review and approval. Upon completion of the

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

project, the results of the pre-occupancy sampling will be provided to the SCCDEH and the Director of PBCE (or the Director's designee) and ESD for review and approval. A Certificate of Occupancy will be issued after verification of the systems effectiveness.

With implementation of the above condition of approval, the health and safety of future occupants would be protected from soil vapor intrusion by requiring regulatory agency oversight to review the project, require any additional investigations, and implement vapor remediation measures as necessary to prevent exposure of future occupants to contaminants in indoor air as a result of vapor intrusion.

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

Under Section 303(d) of the federal Clean Water Act, the SWRCB and RWQCBs are required to identify impaired surface water bodies that do not meet water quality standards and develop total maximum daily loads (TMDLs) for contaminants of concern. The list of the state's identified impaired surface water bodies, known as the "303(d) list" can be found on the on the RWQCB's website.[53]

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.

[53] San Francisco Regional Water Quality Control Board. "The 303(d) List of Impaired Water Bodies." Accessed August 11, 2022. https://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/TMDLs/303dlist.html.

Regional and Local

San Francisco Bay Basin Plan

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

Municipal Regional Permit Provision C.3

The San Francisco Bay RWQCB re-issued the Municipal Regional Stormwater NPDES Permit (MRP) in 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.[54] 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.

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.

[54] MRP Number CAS612008

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.[55]

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

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

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

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

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

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.

Envision San José 2040 Relevant Hydrology and Water Quality Policies

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-3.1	Achieve minimum levels of service: • For sanitary sewers, achieve a minimum level of service "D" or better as described in the Sanitary Sewer Level of Service Policy and determined based on the guidelines provided in the Sewer Capacity Impact Analysis (SCIA) Guidelines. • For storm drainage, to minimize flooding on public streets and to minimize the potential for property damage from stormwater, implement a 10-year return storm design standard throughout the City, and in compliance with all local, State and Federal Regulatory requirements.
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. Stormwater from the project site drains into the Coyote Creek, which is part of the Coyote watershed.[56] The project site, including public street and sidewalk areas, currently consists of approximately 7,727 square feet (11 percent) of impervious surface area and approximately 59,989 square feet (89 percent) of pervious surface area.

Flooding

Based on the FEMA Flood Insurance Rate Maps (Map 06085C0088J), the project site is located in Flood Zone X. Flood Zone X indicates that there is a 0.2 percent annual chance of a flood hazard.[57] There are no City flood plain requirements for Flood Zone X. The project site is not located in a 100-year or 500-year flood plain.

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 80 to 100 feet below ground surface.

[56] City of San José. "Utility Viewer". Accessed August 11, 2022. https://gis.sanjoseca.gov/maps/utilityviewer/
[57] Federal Emergency Management Agency. "FEMA Flood Map Service Center". Effective February 19, 2014. Accessed August 11, 2022. https://msc.fema.gov/arcgis/rest/directories/arcgisjobs/nfhl_print/mscprintb_gpserver/j6d9b4395a73f4b58a52466b3d8d0dfe2/scratch/FIRMETTE_1f107f6c-4bd1-4d4e-909d-102c7c2671c7.pdf

Groundwater in the project vicinity generally flows toward the west-northwest.[58] Fluctuations in the groundwater level may occur due to seasonal changes, variations in rainfall, and underground drainage patterns.

Hydromodification

Based on the SCVUPPP 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.[59]

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?	☐	☐	☒	☐

[58] Partner Engineering and Science, Inc. *Phase I Environmental Site Assessment Report APN 245-05-015 1207 North Capitol Avenue*. Page 5. July 13, 2022

[59] Santa Clara Valley Urban Runoff Pollution Prevention Program. "Classification of Subwatersheds and Catchment Areas for Determining Applicability of HMP Requirements." Accessed August 11, 2022. https://scvurppp.org/wp-content/uploads/2019/08/San_Jose_HMP_Map.pdf

	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 approximately 1.51-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. 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 have been included in the project 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

The project would increase the impervious surface area on the project site from 7,727 square feet to 55,149 square feet (a net increase of approximately 47,422 square feet compared to existing conditions). Impervious surfaces would make up approximately 81 percent of the project site, a net increase of approximately 70 percent compared to existing conditions. 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, the project proposes the use of numerically sized bioretention basins and self-retaining areas to meet the on-site runoff treatment requirements. Stormwater would be treated and then directed to the City's existing storm inlets on North Capitol Avenue. The project includes site design and pollutant source control measures such as flow-through planters and self-retaining areas. 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?

Groundwater beneath the site is estimated to be approximately 80 to 100 feet below ground surface (bgs) based on the Phase I ESA prepared for this project.[60] The project would include excavation to depths of approximately nine feet bgs for the proposed utility improvements and 10 feet bgs for the removal of the existing septic system. Groundwater would not be encountered at the site during construction.

[60] Partner Engineering and Science, Inc. *Phase I Environmental Site Assessment Report APN 245-05-015 1207 North Capitol Avenue*. Page 5. July 13, 2022

The project site located is within the Santa Clara Groundwater Subbasin. The project is not within a designated groundwater recharge zone for the groundwater basin. The project would not pump groundwater from the site and would not interfere with groundwater recharge. For these reasons, the project would not deplete groundwater supplies or interfere with groundwater. **(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 not substantially alter the existing drainage pattern on the site or surrounding area. Development of the proposed project would increase the total impervious surface area of the project site by approximately 47,422 square feet compared to existing conditions. As a result, the project could increase the amount of runoff generated at the project site. However, as discussed under checklist question a) above, the project would include bioretention and self-treatment areas on the eastern and western project boundaries, consistent with the MRP and City of San José Policy 6-29. The proposed bioretention and self-treatment areas would remove pollutants and reduce the rate and volume of runoff from the project site by capturing and filtering runoff generated on-site prior to discharge into the City's municipal stormwater system. For these reasons, the proposed project would reduce the potential for erosion and siltation on and off-site and would not 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?

As noted in Section 4.10.1.2 Existing Conditions, the project site is designated Zone X and is outside of the 100- and 500-year floodplain. As a result, the project would not place structures in a flood hazard area that would impede or redirect flows. Furthermore, the project site is not located within a designated tsunami or seiche inundation zone.[61] The proposed project would, therefore, not risk release of pollutants due to project inundation from a flood, tsunami, or seiche. **(Less than Significant Impact)**

[61] California Department of Conservation. *Santa Clara County Tsunami Inundation USGS 24K Quads.* Accessed August 11, 2022. https://maps.conservation.ca.gov/cgs/informationwarehouse/ts_evacuation/?extent=-13597903.6729%2C4493258.9735%2C-13569239.7873%2C4508871.2366%2C102100&utm_source=cgs+active&utm_content=santaclara

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 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)**

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.

Envision San José 2040 Relevant Land Use Policies

Policy	Description
CD-1.1	Require the highest standards of architectural and site design, and apply strong design controls for all development projects, both public and private, for the enhancement and development of community character and for the proper transition between areas with different types of land uses.
CD-1.7	Require developers to provide pedestrian amenities, such as trees, lighting, recycling and refuse containers, seating, awnings, art, or other amenities, in pedestrian areas along project frontages. When funding is available, install pedestrian amenities in public rights-of-ways.
CD-1.8	Create an attractive street presence with pedestrian-scaled buildings and landscape elements that provide an engaging, safe, and diverse walking environment. Encourage compact urban design, including use of smaller building footprints, to promote pedestrian activity through the City.
CD-1.12	Use building design to reflect both the unique character of a specific site and the context of surrounding development and to support pedestrian movement throughout the building site by providing convenient means of entry from public streets and transit facilities where applicable, and by designing ground level building frontages to create an attractive pedestrian environment along building frontages. Unless it is appropriate to the site and context, franchise-style architecture is strongly discouraged.
CD-1.23	Further the Community Forest Goals and Policies in this Plan by requiring new development to plant and maintain trees at appropriate locations on private property and along public street frontages. Use trees to help soften the appearance of the built environment, help provide transitions between land uses, and shade pedestrian and bicycle areas.
CD-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.

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*

Existing Land Uses

The 1.51-acre project site (APN 245-05-015) consists of a single-family residence with associated landscaping.

Surrounding Land Uses

The project site is located in a commercial and residential area. Single-family residences are located to the north and west of the site. Commercial uses, such as an athletic facility and retail strip malls, are south and east of the project.

Existing Land Use Designations and Zoning

General Plan Land Use Designation

The Neighborhood/Community Commercial General Plan land use designation for the site allows for commercial activity and neighborhood serving retail and services and commercial/professional office development. Developments with this land use designation provide services and amenities for the nearby community and should be designed to promote that connection with an appropriate urban form that supports walking, transit use and public interaction. Developments allowed under this designation include offices uses, hospitals, and private community gathering facilities. This designation also supports one hundred percent deed restricted affordable housing developments that are consistent with General Plan Policy H-2.9 and Policy IP-5.12. The density for this land use designation is a floor area ratio up to 3.5 and a maximum height of five stories. The project site is within the North Capitol Avenue/Berryessa Road Urban Village growth area as designated by the General Plan.

Zoning District

The project site is located in the R-1-8 residential zoning district, but the site will be rezoned to CN by the City prior to implementation of the proposed project. The CN District is a zoning district intended to provide for neighborhood serving commercial uses without an emphasis on pedestrian orientation except within the context of a single development. The type of development supported by this zoning district includes neighborhood centers, multi-tenant commercial development along city connector and main streets, and small corner commercial establishments. Daycare centers are permissible under the CN zoning district with the issuance of a Special Use Permit.

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 construct a new daycare facility, parking, and landscaping on an infill site. The proposed use is allowed under the existing Neighborhood/Community Commercial land use designation and would be consistent with the rezoning from R-1-8 to CN. The proposed project would not include construction of dividing infrastructure. The project site is located in a neighborhood with compatible uses. 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?

As described in Section 4.11.1.2 Existing Conditions, a Neighborhood/Community Commercial General Plan land use designation and a CN zoning district allow for commercial uses that serve the local neighborhood. The project proposes development of a daycare facility with a 0.22 FAR and a maximum height of 21 feet on-site. The project would provide a daycare service in an area with residential neighborhoods. 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 as 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. For the reasons described above, the project would not conflict with an adopted land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect and impacts would be less than significant. **(Less than Significant Impact)**

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.

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

4.12.1.2 *Existing Conditions*

The Communications Hill area in central San José is the only area within the City of San José that is designated by the State Mining and Geology Board as containing mineral deposits of regional significance. The project site is not located in or adjacent to Communications Hill.

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?	☐	☐	☐	☒

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 previously discussed in Section 4.12.1.2 Existing Conditions, the Communications Hill area in central San José is the only area within the City designated by the SMGB as containing mineral deposits of regional significance. The project site is not in or adjacent to Communications Hill; it is approximately six miles north of the Communications Hill area. For this reason, the project would not result in the loss of a known mineral resource that would be of value to the region and residents of the state. **(No Impact)**

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

The project site is not identified in the General Plan or other land use plan as a locally important mineral resource recovery site. For this reason, the project would not result in the loss of availability of a locally important mineral resource recovery site delineated on a local general plan, specific plan, or other land use plan. **(No Impact)**

4.13 NOISE

The following discussion is based, in part, on a Noise and Vibration Assessment prepared for the project by Illingworth & Rodkin, Inc. in October 2022. This report is available as Appendix G of this Initial Study.

4.13.1 Environmental Setting

4.13.1.1 *Background Information*

Noise

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

Since excessive noise levels can adversely affect human activities and human health, federal, state, and local governmental agencies have set forth criteria or planning goals to minimize or avoid these effects. Noise guidelines are generally expressed using one of several noise averaging methods, including L_{eq}, DNL, or CNEL.[62] These descriptors are used to measure a location's overall noise exposure, given that there are times when noise levels are higher (e.g., when a jet is taking off from an airport or when a leaf blower is operating) and times when noise levels are lower (e.g., during lulls in traffic flows on freeways or in the middle of the night). L_{max} is the maximum A-weighted noise level during a measurement period.

Vibration

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

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

4.13.1.2 *Regulatory Framework*

State and Local

California Green Building Standards Code

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

California Collaborative for High Performance School (CHPS)

CHPS provides criteria for interior noise levels in learning spaces of schools due to exterior noise sources, summarized in Table 4.13-1. The CHPS criteria shown in the table refer to hourly average noise levels ($L_{eq(h)}$) during the loudest hour of the school day.

Table 4.13-1: Exterior-To-Interior Noise Intrusion Criteria for Schools

School Room Use	CHPS Prerequisite	CHPS Enhanced Acoustics
Core learning spaces	45 dB(A) or less indoors	35 dB(A) or less indoors
Ancillary learning & assembly spaces	N/A	40 dB(A) or less indoors

Envision San José 2040 General Plan

The General Plan includes policies for the purpose of avoiding or mitigating impacts resulting from planned development projects with the City. The following policies are specific to noise and vibration and are applicable to the proposed project.

Envision San José 2040 Relevant Noise Policies

Policies	Description
Policy EC-1.1	Locate new development in areas where noise levels are appropriate for the proposed uses. Consider federal, State and City noise standards and guidelines as a part of new development review. Applicable standards and guidelines for land uses in San José include: Interior Noise Levels • The City's standard for interior noise levels in residences, hotels, motels, residential care facilities, and hospitals is 45 dBA DNL. Include appropriate site and building design, building construction and noise attenuation techniques in new development to meet this standard. For sites with exterior noise levels of 60 dBA DNL or more, an acoustical analysis following protocols in the City-adopted California Building Code is required to demonstrate that development projects can meet this standard. The acoustical

Envision San José 2040 Relevant Noise Policies

Policies	Description
	analysis shall base required noise attenuation techniques on expected 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 Initial Study). 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.
Policy EC-1.3	Mitigate noise generation of new nonresidential land uses to 55 dBA DNL at the property line when located adjacent to existing or planned noise-sensitive residential and public/quasi-public land uses.
Policy EC-1.2	Minimize the noise impacts of new development on land uses sensitive to increased noise levels (Categories 1, 2, 3 and 6) by limiting noise generation and by requiring use of noise attenuation measures such as acoustical enclosures and sound barriers, where feasible. The City considers significant noise impacts to occur if a project would: • Cause the DNL at noise sensitive receptors to increase by five dBA DNL or more where the noise levels would remain "Normally Acceptable;" or • Cause the DNL at noise sensitive receptors to increase by three dBA DNL or more where noise levels would equal or exceed the "Normally Acceptable" level.
Policy EC-1.6	Regulate the effects of operational noise from existing and new industrial and commercial development on adjacent uses through noise standards in the City's Municipal Code.
Policy EC-1.7	Require construction operations within San José to use best available noise suppression devices and techniques and limit construction hours near residential uses per the City's Municipal Code. The City considers significant construction noise impacts to occur if a project located within 500 feet of residential uses or 200 feet of commercial or office uses would: • Involve substantial noise generating activities (such as building demolition, grading, excavation, pile driving, use of impact equipment, or building framing) continuing for more than 12 months.

Envision San José 2040 Relevant Noise Policies

Policies	Description
	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-2.1	Near light and heavy rail lines or other sources of ground-borne vibration, minimize vibration impacts on people, residences, and businesses through the use of setbacks and/or structural design features that reduce vibration to levels at or below the guidelines of the Federal Transit Administration. Require new development within 100 feet of rail lines to demonstrate prior to project approval that vibration experienced by residents and vibration sensitive uses would not exceed these guidelines.
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.

Table 4.13-2: 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.

San José Municipal Code

The City's Municipal Code limits noise levels at adjacent properties. Chapter 20.40.600 states that sound pressure levels generated by any use or combination of uses on a property shall not exceed 55 dB at any property line shared with land zoned for residential use and shall not exceed 60 dB at any property line shared with land zoned for commercial use, except upon issuance and in compliance with a Special Use Permit. This code is not explicit in terms of the acoustical descriptor associated with the noise level limit. Consistent with General Plan policy E.C.-1.3, a reasonable interpretation of this standard would identify the ambient base noise level criteria as the day/night noise level (DNL) for continuously operating noise sources such as mechanical equipment.

For noise sources that are not operating on a 24-hour per day basis, a reasonable interpretation of this standard would identify the ambient base noise level criteria as the hourly average noise level (L_{eq}). Chapter 20.100.450 of the Municipal Code establishes allowable hours of construction within 500 feet of a residential unit between 7:00 AM and 7:00 PM Monday through Friday, unless permission

is granted with a development permit or other planning approval. No construction activities are permitted on the weekends at sites within 500 feet of a residence.

Santa Clara County Airport Land Use Commission Comprehensive Land Use Plan

The Comprehensive Land Use Plan (CLUP) adopted by the Santa Clara County Airport Land Use Commission (ALUC) contains standards for projects within the vicinity of San José International Airport, which are relevant to this project:

Policies	Description
Policy N-3	Noise impacts shall be evaluated according to the Aircraft Noise Contours presented on Figure 5 (2022 Aircraft Noise Contours).
Policy N-4	No residential or transient lodging construction shall be permitted within the 65 dB CNEL contour boundary unless it can be demonstrated that the resulting interior sound levels will be less than 45 dB CNEL and there are no outdoor patios or outdoor activity areas associated with the residential portion of a mixed use residential project or a multi-unit residential project. (Sound wall noise mitigation measures are not effective in reducing noise generated by aircraft flying overhead.)

4.13.1.3 *Existing Conditions*

Existing Noise Environment

The existing noise environment at the site results primarily from vehicular traffic along N. Capitol Avenue, VTA train pass-bys, vehicular traffic along I-680, and aircraft flyovers associated with the Norman Y. Mineta San José International Airport.

Existing Ambient Noise Levels

A noise monitoring survey was conducted between Wednesday, September 7, 2022, and Friday, September 9, 2022, to document ambient noise levels at the site and in the surrounding area. The survey included one long-term measurement and three short-term measurements. Table 4.13-3 lists the short-term noise measurements. All measurement locations are shown in Figure 4.13-1.

Table 4.13-3: Short-Term Noise Measurements

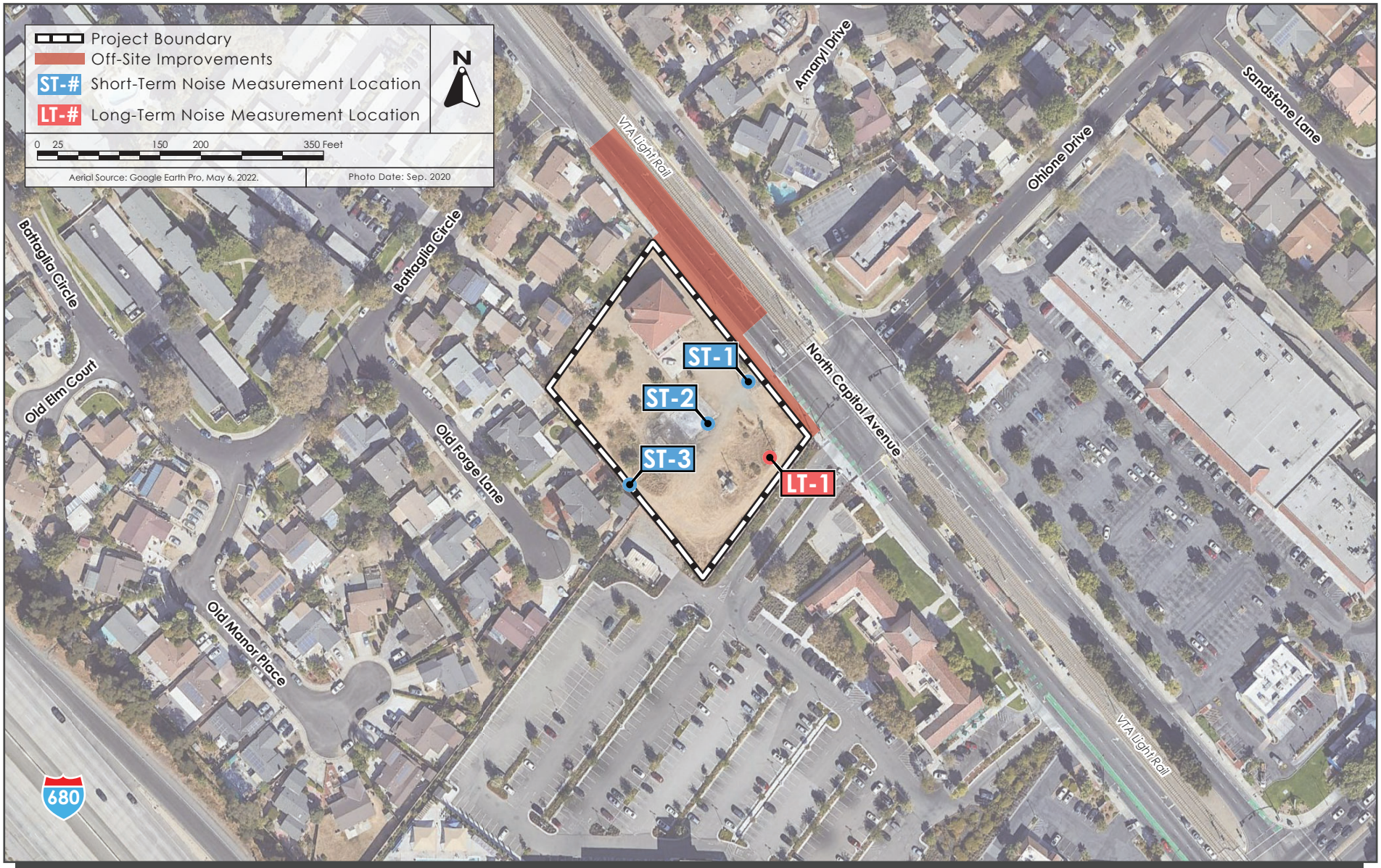
Noise Measurement Location	Date, Time	Measured Noise Level, dBA					
		Calculated Peak Hour, dBA Leq*	Calculated DNL, dBA*	$L_{(10)}$	$L_{(50)}$	$L_{(90)}$	L_{eq}
ST-1: Approximate location of northeastern façade of proposed building, ~85 feet southwest of N. Capitol Avenue centerline	10:20-10:30 AM, Wednesday, September 7, 2022	65	66	64	57	53	63

Table 4.13-3: Short-Term Noise Measurements							
Noise Measurement Location	**Date, Time**	**Measured Noise Level, dBA**					
		Calculated Peak Hour, dBA Leq*	**Calculated DNL, dBA***	**$L_{(10)}$**	**$L_{(50)}$**	**$L_{(90)}$**	**L_{eq}**
ST-2: Approximate location of playground area, ~155 feet southwest of N. Capitol Avenue centerline.	10:30-10:40 AM, Wednesday, September 7, 2022	58	59	59	55	53	57
ST-3: Southwestern property line near residence, ~275 feet southwest of N. Capitol Avenue centerline.	10:40-10:50 AM, Wednesday, September 7, 2022	54	55	54	51	49	52
*Peak Hour and DNL levels calculated through comparison between short-term and long-term noise levels. dBA = A-weighted decibel; ST = short-term; $L_{(10)}$, $L_{(50)}$, $L_{(90)}$ = The A-weighted noise levels that are exceeded 1%, 10%, 50%, and 90% of the time during the measurement period; L_{eq} = The average A-weighted noise level during the measurement period. Source: Illingworth & Rodkin Inc. *1207 N. Capitol Noise and Vibration Assessment.* September 2022							

Long-term measurement LT-1 was made starting on Wednesday, September 7, 2022, and concluding on Friday, September 9, 2022. Measurement LT-1, located near the northeastern corner of the project site, was made to quantify ambient noise levels at the site. The day-night average noise level on Thursday, September 8, 2022, was 65 dBA DNL.

Existing Noise-Sensitive Receptors

The nearest noise sensitive receptors to the project site are the residents in the adjacent single- and multi-family houses to the north and west.



NOISE MEASUREMENT LOCATIONS | FIGURE 4.13-1

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?	☐	☐	☐	☒

4.13.2.1 *Significance Criteria*

For the purposes of this analysis, the following criteria were used to quantitatively evaluate noise and vibration impacts resulting from the project:

A significant noise impact would be identified if the project would generate a substantial temporary or permanent noise level increase over ambient noise levels at existing noise sensitive receptors surrounding the project site and that would exceed applicable noise standards presented in the following Envision San José 2040 General Plan policies at existing noise-sensitive receptors surrounding the project site.

- **Policy EC-1.2.** Minimize the noise impacts of new development on land uses sensitive to increased noise levels (Categories 1, 2, 3 and 6) by limiting noise generation and by requiring use of noise attenuation measures such as acoustical enclosures and sound barriers, where feasible. The City considers significant noise impacts to occur if a project would:
    - Cause the DNL at noise sensitive receptors to increase by five dBA DNL or more where the noise levels would remain "Normally Acceptable;" or
    - Cause the DNL at noise sensitive receptors to increase by three dBA DNL or more where noise levels would equal or exceed the "Normally Acceptable" level.
- **Policy EC-1.3.** Mitigate noise generation of new non-residential land uses to 55 dBA DNL at the property line when located adjacent to existing or planned noise-sensitive residential and public/quasi-public land uses.
- **Policy EC-1.7**. 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.

A significant vibration impact would be identified if project construction of the project would generate excessive vibration levels surrounding receptors, and that would exceed applicable noise standards presented in the following Envision San José 2040 General Plan policy at existing noise-sensitive receptors surrounding the project site.

- **Policy 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 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.

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.

Furthermore, 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.

The construction of the project would take approximately 12 months to complete. Since construction would not be more than 12 months, impacts related to construction noise would be less than significant.

For additional information, the construction noise levels at nearby land uses in proximity to the project are listed in Table 4.13-4. The noise levels do not assume reductions due to intervening buildings or existing barriers. Since the City of San José does not establish noise level thresholds for construction activities, this analysis uses the noise limits established by the Federal Transit Administration (FTA) to identify the potential for impacts due to substantial temporary construction noise. The FTA identifies construction noise limits in the *Transit Noise and Vibration Impact Assessment Manual*. During daytime hours, an exterior threshold of 80 dBA L_{eq} shall be applied at residential land uses and 90 dBA L_{eq} shall be applied at commercial and industrial land uses. Table 4.13-4 lists the noise level estimates are nearby land uses in proximity to the project. The noise levels do not assume reductions due to intervening buildings or existing barriers.

Table 4.13-4: Estimated Construction Noise Levels at Nearby Land Uses

Phase of Construction	Calculated Hourly Average Noise Levels, L_{eq} (dBA)			
	Residential Northwest (110 feet)	**Residential Southwest (150 feet)**	**Commercial Southeast (150 feet)**	**Commercial and Residential Across North Capitol Ave. Northeast (250 feet)**
Demolition	77	74	74	70
Site Preparation	76	73	73	69
Grading/Excavation	77	74	74	70
Trenching/Foundation	77	74	74	70
Building –Exterior	75	72	72	68
Building – Interior/ Architectural Coating	70	67	67	63
Paving	77	74	74	70

L_{eq} = The average A-weighted noise level during the measurement period.

Source: Illingworth & Rodkin Inc. *1207 N. Capitol Noise and Vibration Assessment.* September 2022

As shown in Table 4.13-4, construction noise levels originating from the center of the site would range from 70 to 77 dBA L_{eq} at the residential property line to the northwest, from 67 to 74 dBA L_{eq} at the residential property line to the southwest and commercial property line to the southeast, and from 63 to 70 dBA L_{eq} at the residential and commercial uses across North Capitol Avenue to the northeast. Construction noise levels would exceed the exterior threshold of 80 dBA L_{eq} at residential land uses on occasion when construction activity is centered closer to shared property lines, but overall construction duration would be less than one year and would not be considered a significant construction impact pursuant with Policy EC-1.7 of the City's General Plan. However, to ensure that noise from project construction is attenuated to the greatest reasonable extent, the project would be required to implement the following standard permit condition to minimize construction-related noise impacts.

Standard Permit Condition:

Pursuant to General Plan Policy EC-1.7, project construction operations shall use best available noise suppression devices and techniques including, but not limited to the following:

- Limit construction hours to between 7:00 AM and 7:00 PM, Monday through Friday, unless permission is granted with a development permit or other planning approval. No construction activities are permitted on the weekends at sites within 500 feet of a residence. Construction outside of these hours may be approved through a development permit based on a site-specific "construction noise mitigation plan" and a finding by the Director of PBCE that the construction noise mitigation plan is adequate to prevent noise disturbance of affected residential uses
- Construct solid plywood fences around construction sites adjacent to operational business, residences, or other noise-sensitive land uses.
- Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment.
- Prohibit unnecessary idling of internal combustion engines.
- Locate stationary noise-generating equipment such as air compressors or portable power generators as far as possible from sensitive receptors. Construct temporary noise barriers to screen stationary noise-generating equipment when located near adjoining sensitive land uses.
- Utilize "quiet" 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 businesses, 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 correct the problem. Conspicuously post a telephone number for the disturbance coordinator at the construction site and include it in the notice sent to neighbors regarding the construction schedule.

Based the above, project construction would not exceed 12 months in duration and with implementation of the standard permit condition, General Plan Policy EC-1.7, and Municipal Code requirements, the proposed project would not result in a significant construction noise impact.

Operational Noise

The proposed project would create new sources of noise in the project vicinity. Major sources of noise associated with the proposed project include the following: vehicular traffic, play areas, a parking lot, and mechanical equipment.

The City of San José's performance standards (Municipal Code Section 20.40.600) for a commercial use adjacent to a property used or zoned for residential purposes is 55 dBA L_{eq} at the property line.

Vehicular Traffic

Based on the Transportation Analysis prepared for the project by Hexagon Transportation Consultants, Inc. (see Appendix H) the existing and future cumulative traffic volumes at the following five study intersections were examined including North Capitol Avenue/Sierra Road, North Capitol Avenue/Ohlone Drive, North Capitol Avenue/Berryessa Road, the I-680 Northbound Off-Ramp/ Berryessa Road, and North Capitol Avenue and Penitencia Creek Road. Project-generated traffic was found to result in a traffic noise increase of up to one dBA during the AM peak hour, which would correspond to a traffic noise level increase of up to one dBA DNL. A one dBA increase in ambient noise levels would not be perceptible. The proposed project would not result in a significant operational vehicular traffic noise impact.

Parking Lot

Parking lots generate noise via low-speed vehicle circulation, car engines, car alarms, squealing tires, door slams, and human voices. The greatest noise levels originating from the parking lot would occur during periods when children are being picked up or dropped off to the full day programs. The children's arrival time would be spread out over a two and a half hour period beginning at 7:00 AM and concluding at 9:30 AM. The typical departure time would vary depending on the age of the children and the length of the program, but would conclude by 6:30 PM. A potential full attendance of 252 children could be dropped off each day. Additionally, when at full capacity, a total of about 34 employees would be employed at the daycare. Most of the staff would begin the workday at 9:00 AM but 50 percent of the staff would arrive earlier in the day for shifts beginning as early as 7:00 AM This equates to approximately 286 parents and employees using the parking lot between the hours of 7:00 AM and 9:30 AM during a day of full capacity attendance and assuming no carpooling or other means of transportation.

Typical noise levels associated with parking lots of this size would reach 40 to 45 dBA L_{eq} at a distance of 50 feet from the parking area. The center of the nearest parking space is located about 40 feet from the southwest property line shared with residences. At this distance, and assuming four active hours of parking lot use per day resulting from 2.5 hours of drop-offs and 1.5 hours of pickups, parking lot activities would be expected to generate a noise level of 38 dBA DNL at the most-affected property line to the southwest. Noise levels resulting from parking activities would be below the City threshold of 55 dBA DBL, established by General Plan Policy EC-1.3, for adjacent residential properties at the property line. The proposed project would not result in a significant operational noise impact related to parking lot activities.

Mechanical Equipment

Project-specific mechanical equipment information was not available at the time of the analysis. Therefore, it was assumed that the project would include heating, ventilation, and air conditioning (HVAC) equipment on the rooftop of the daycare center building at the northwest corner, approximately 50 feet from the northwestern property line shared with residences. At this distance, assuming 24-hour operation, noise from HVAC equipment could reach 62 dBA DNL at the nearest property line. Therefore, the operational noise generated from the mechanical equipment would exceed the City threshold of 55 dBA DBL for adjacent residential properties at the property line without mitigation measures.

Impact NOI-1: Project mechanical equipment placed within 50 feet of the nearest residential property would result in an exceedance of the City's performance standard of 55 dBA DNL at the property line. **(Significant Impact)**

Mitigation Measures: To reduce noise generated from mechanical equipment operation at nearby sensitive structures, the following project design mitigation measures shall be implemented.

MM NOI-1.1: Noise-generating HVAC equipment shall be placed at a minimum distance of 150 feet from the northwestern and southwestern property lines. Alternatively, the equipment may be fully shielded from direct exposure to the northwestern and southwestern property lines via a structure such as a parapet wall such that the line of sight between the equipment and the property lines is fully obscured.

The project applicant shall submit a mechanical equipment operations plan that identifies the location of the HVAC equipment and details the shielding used to surround the mechanical equipment (if any). The plan shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee prior to the issuance of any demolition, grading and/or building permits (whichever occurs earliest) for review and approval.

Through incorporation of mitigation measure MM NOI-1.1, the operational noise levels from the mechanical equipment would be reduced to 52 dBA DBL at the property lines of the northwest and southwest residences. Therefore, the proposed project would not result in excessive mechanical equipment noise exposure with implementation of Mitigation Measure NOI-1.1. **(Less than Significant Impact with Mitigation Incorporated)**

Play Areas

Programs for children are offered Monday through Friday generally between the hours of 7:00 AM and 6:00 PM. Use of the play areas would not occur outside of these hours. The Noise and Vibration Assessment assumed a worst-case scenario of full attendance and use of all playgrounds. There would be a total capacity of 60 children within the six weeks to 23 months age group and 192 children within the two to five year age group, totaling a potential 252 children attending during a given day. The potentially most-affected residence is located along the southwest property line. This

residence and area along the shared property line could be exposed to noise from all three playgrounds throughout a full day of operation. At this residential location, the total noise exposure from a full attendance day and full use of all three playgrounds without any mitigation would reach up to 55 dBA DNL. Therefore, noise generated by children on the playgrounds, by itself, would not exceed the City's noise threshold of 55 dBA DNL at the adjacent property lines.

Total Operational Noise

The noise levels from the parking lot, mechanical equipment, and play areas were combined at the property lines. Neither the northeast nor the southeast property lines would be directly exposed to substantial project-generated operational noise. At the northwest property line, the total operational noise exposure would be over 55 dBA DNL and at the southwest property line the total operational noise exposure would be 57 dBA DBL. The total operational noise levels at both property lines would exceed the City of San José performance standard (General Plan Policy EC-1.3) of 55 dBA L_{eq} at the property line. As described in Section 3.0 Project Description and the condition of approval below, the project would include a noise screening wall along these property lines.

Condition of Approval: To reduce total operational noise levels at the property lines of adjacent residential uses, the project shall implement the following condition of approval consistent with the project description.

> The project applicant shall have a screening wall constructed along the northwestern and southwestern property lines. The screening wall shall reach a minimum height of six feet. The wall must be constructed without gaps or cracks, eliminating the line of sight between the residential uses to the northwest and southwest and noise-generating components of the project including the playgrounds and parking lot. Appropriate wall construction materials should have a minimum surface weight of three pounds per square foot such as one-inch thick wood, masonry block, or concrete. Alternate materials such as metal (20 gage), glass (1/8-inch), or plexiglass (1/4-inch) could also be considered suitable for the barrier. An architectural site plan outlining and showing the details of the screening wall shall be prepared by a qualified architect. The plan shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee prior to the issuance of any demolition, grading and/or building permits (whichever occurs earliest) for review and approval. Construction of the screening wall must be completed prior to issuance of the occupancy permit.

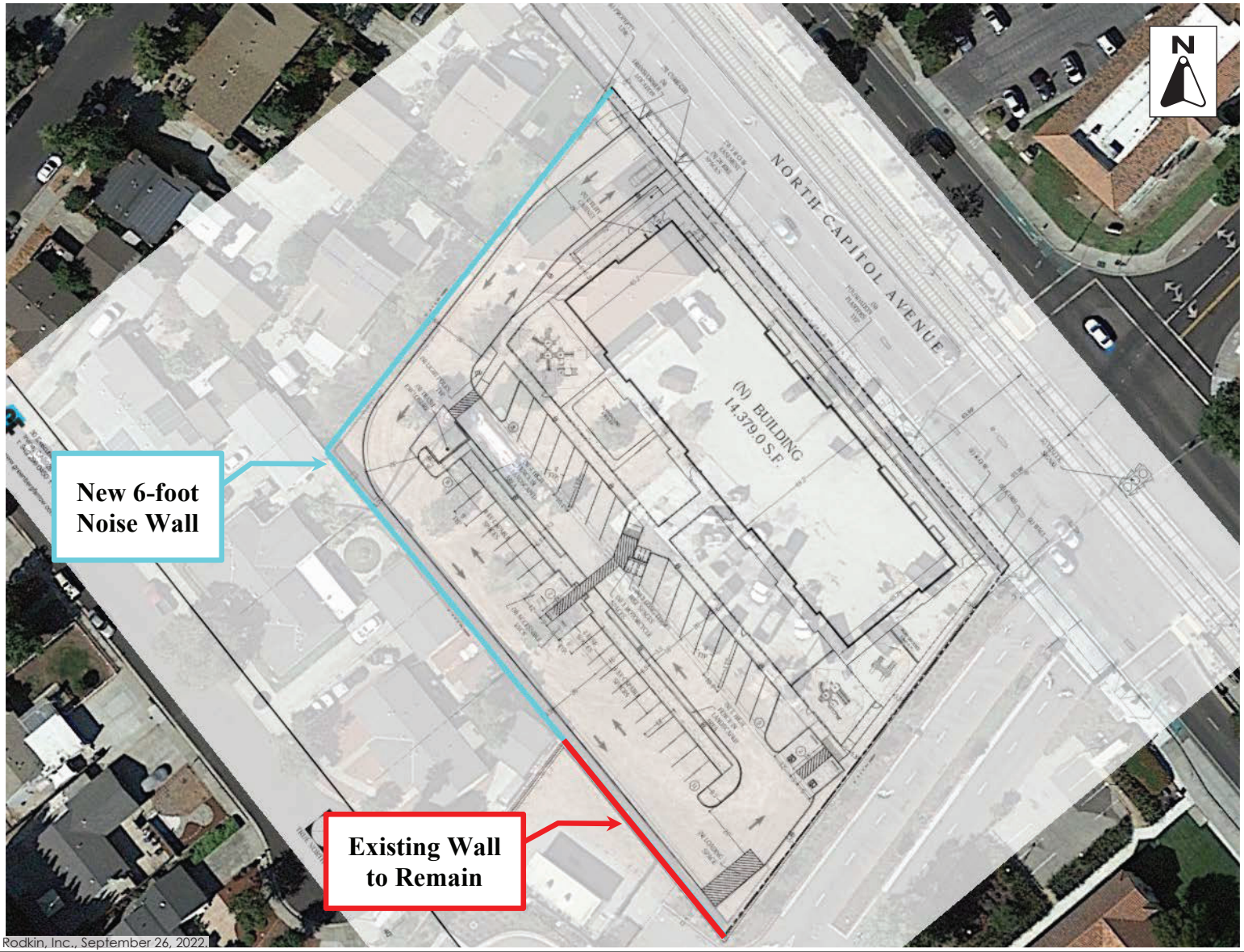
Through implementation of the condition of approval listed above, the total operational noise levels at the northwestern and southwestern property lines would be reduced to a level below 55 dBA DNL. The southeastern property line is bordered with an access road leading to a VTA property with no noise-sensitive receptors that would be affected by project operational noise. This portion of the fence would not need to be replaced. The location of the proposed noise wall is shown in Figure 4.13-2. Therefore, the proposed project would not result in excessive operational noise exposure. **(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. 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. As described in Section 4.5 Cultural Resources, the nearest historical building is the Berryessa Elementary School located approximately 110 feet south from the project site boundary. All other buildings in the immediate vicinity of the project site would consist of normal conventional construction materials and would be subject to the City's 0.2 in/sec PPV threshold.

Table 4.13-5 lists the construction vibration levels calculated at distances representative of the nearest structures along the project property line. These include residential structures located as close as five feet from the southwest property line, residential structures approximately 20 feet from the northwest property line, the Berryessa Elementary School building located approximately 110 feet from the southeast property line, and the nearest commercial and residential buildings located approximately 145 feet from the northeastern property line.



Source: Illingworth & Rodkin, Inc., September 26, 2022.

LOCATION OF REQUIRED NOISE WALL | FIGURE 4.13-2

Table 4.13-5: Vibration Levels at Adjacent Buildings Surrounding the Project Site						
Equipment		**Reference Distance 25 feet**	**Residential Structures to SW ~5 feet**	**Residential Structures to NW ~20 feet**	**Historic Structure to SE ~110 feet**	**Residential and Commercial Structures to NE ~145 feet**
Vibratory Roller		0.210	**2.348**	**0.293**	0.023	0.015
Clam shovel drop		0.202	**2.258**	**0.282**	0.022	0.014
Hoe Ram		0.089	**0.995**	0.124	0.010	0.006
Large bulldozer		0.089	**0.995**	0.124	0.010	0.006
Caisson drilling		0.089	**0.995**	0.124	0.010	0.006
Loaded trucks		0.076	**0.850**	0.106	0.008	0.005
Jackhammer		0.035	**0.391**	0.049	0.004	0.003
Hydromill (slurry wall)	in soil	0.008	0.190	0.024	0.002	0.001
	in rock	0.017	0.089	0.011	0.001	0.001
Small bulldozer		0.003	0.034	0.004	0.000	0.000

Bold = Exceedance
Source: Illingworth & Rodkin Inc. *1207 N. Capitol Noise and Vibration Assessment*. September 2022

As shown in Table 4.13-5, vibration levels from specific construction equipment would have the potential to exceed the San José General Plan Policy EC-2.3 limit of 0.2 in/sec PPV for buildings of normal, conventional construction at residential structures located near the southwest and northwest property lines. Vibration levels at the historic former Berryessa Elementary School building would not exceed the 0.08 in/sec PPV limit.

Impact NOI-2: Heavy construction within 25 feet of the southwest and northwest property lines would have the potential to generate excessive vibration. **(Significant Impact)**

Mitigation Measures: To reduce construction vibration at nearby sensitive structures, the following construction vibration mitigation measures shall be implemented

MM NOI-2.1: Prior to issuance of any demolition or grading permits, the project applicant shall submit a construction operations plan prepared by the construction contractor that identifies measures to be implemented to reduce vibration

impacts to the nearby residences below 0.2 in/sec PPV. The measures shall include, but are not limited, to the following:

- Avoid using heavy construction equipment such as vibratory rollers, hoe rams, large bulldozers, and tampers within 30 feet of nearby structures.
- Avoid dropping heavy objects or materials within 30 feet of nearby structures.
- Place operating equipment on the construction site as far as possible from vibration-sensitive receptors.
- Use smaller equipment to minimize vibration levels below the limits.
- Select demolition methods not involving impact tools.
- Designate a "disturbance coordinator" who would be responsible for responding to any complaints about construction vibration. The disturbance coordinator will determine the cause of the vibration complaint and will require that reasonable measures be implemented to correct the problem. Conspicuously post a telephone number for the disturbance coordinator at the construction site and include it in the notice sent to neighbors regarding the construction schedule.

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

Through incorporation of mitigation measure MM NOI-3.1, the construction noise vibration levels at the nearby buildings would be reduced to a level below 0.2 in/sec PPV. Therefore, the proposed project would not result in excessive vibration exposure generate when heavy equipment or impact tools are used with implementation of MM NOI-3.1 **(Less than Significant Impact with Mitigation Incorporated)**

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 project site is approximately four miles east of the Norman Y. Mineta San José International Airport, the nearest airport to the project site. 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. Therefore, the proposed project would not be constructed withing two miles of a public or private airport and would not expose people working in the project area to excessive noise. **(No 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 General Plan Policies EC-1.1 and EC-2.1 address existing noise conditions affecting a proposed project.

Daycare Center Exterior Areas

The proposed daycare center is located in an urban area where the ambient noise levels along the northwestern and southwestern property lines are 66 and 55 dBA DNL, respectively. The future noise level with the project would increase by one dBA DNL (56 and 67 dBA DNL). The project would include three play areas. Two of the play areas would be located along the southwestern side of the proposed daycare center building and would be shielded from direct exposure to traffic noise originating from North Capitol Avenue. A third play area would be located along the southeastern side of the proposed daycare center building and would extend northeast towards North Capitol Avenue.

The two play areas along the southwestern side of the daycare center would be exposed to a noise level of 60 dBA DBL assuming no shielding from the building. However, with the shielding from the building, the noise level would be reduced by 10 dBA DBL to result in an exposure of 50 dBA DNL. In the northwestern and southeastern ends of the building where the shielding is less, the noise levels would increase to 56 dBA DNL. Overall, the two playgrounds in this area would be exposed to noise levels below the City's exterior noise threshold of 60 dBA DNL.

The third play area along the southeastern side of the proposed daycare center building would be subjected to direct exposure to traffic noise originating from vehicular traffic along North Capitol Avenue. Assuming no attenuating factors, noise levels at the northeastern end of the play area would reach up to 60 dBA DNL, which meets the City's exterior noise threshold. The exterior noise levels at this location would be further reduced by three to four dBA DNL due to the construction of five-foot property line walls that would be constructed in compliance with the City of San José Municipal Code Section 20.40.560. The walls would be constructed along the southeastern property line of the project site as far as possible in the northeastern direction approaching North Capitol Avenue to shield the play area to the greatest extent possible from direct noise exposure.

Daycare Center Interior Use Areas

The project plans indicate a modern construction with façade materials including stucco, metal panels, and artificial wood panels. Typical modern school building construction can be expected to provide between 20 and 25 dBA of exterior-to-interior noise reduction assuming windows in a closed position. Applying this reduction to the northeastern façade of the proposed building where noise exposure would be greatest, interior noise levels attributable to exterior sources would reach 42 to 47 dBA DNL. Peak hour noise levels measured during the noise survey were found to be one dBA lower than the measured day-night average noise level. Therefore, noise levels would be expected to reach 41 to 46 dBA L_{eq} within rooms located along the northeastern building façade. These noise

levels would be compatible with the Cal Green Code standard of 50 dBA $L_{eq\ (1\text{-}hr)}$ for occupied areas of non-residential uses. Therefore, the project would be in compliance with General Plan Policy EC-1.1.

Daycare Center Vibration Environment

Policy EC-2.1 of the City's General Plan requires new development within 100 feet of rail lines to demonstrate prior to project approval that vibration experienced by vibration-sensitive uses would not exceed FTA guidelines. The project is within 70 feet of the nearest VTA Orange Line light rail train track. In the FTA's Transit Noise and Vibration Impact Assessment Manual, the vibration impact criterion for frequent vibration events, such as those caused by VTA trains, at institutional uses like schools is set at 75 VdB. To be conservative, a threshold of 72 VdB intended for residences and buildings where people normally sleep is used since daycare centers have naptimes for students. At a distance of 70 feet, using an operating speed of 50 mph, and assuming normal track conditions and vibration propagation for at-grade light rail vehicles, a vibration level of 71 VdB would be expected along the nearest façade of the daycare building. This would not exceed the 72 VdB criterion for buildings where people normally sleep. Therefore, the project would be in compliance with General Plan Policy EC-2.1.

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

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.[64]

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 growth forecasts and land use models upon which Plan Bay Area 2050 is based.

[63] California Department of Housing and Community Development. "Regional Housing Needs Allocation and Housing Elements" Accessed August 10, 2022. http://hcd.ca.gov/community-development/housing-element/index.shtml.

[64] 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 2.91 persons per household.[65] The City had approximately 344,112 housing units as of January 1, 2022. The ABAG estimates that there will be an approximate City population of 1,377,145 and 448,310 households by the year 2040.[66]

The jobs/housing balance refers to the ratio of employed residents to jobs in a given community or area. When the ratio reaches 1.0, a balance is struck between the supply of local housing and jobs. The jobs/housing resident ratio is determined by dividing the number of local jobs by the number of employed residents that can be housed in local housing.

The City currently has a higher number of employed residents than jobs, with a jobs/housing ratio of approximately 0.8. However, upon full build out of the General Plan, this trend is projected to reverse. The General Plan assumptions, as amended in the first Four-Year Review in 2016, envision a Jobs/Employee Resident ratio of 1.1/1 or 382,200 new jobs by 2040. To meet the current and projected housing needs in the City, the Envision San José 2040 General Plan identifies areas for mixed-use and residential development to accommodate 120,000 new dwelling units by 2040.

There is an existing single-family residence on-site. However, the residence is vacant.

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?	☐	☐	☒	☐

[65] California Department of Finance. "E-5 Population and Housing estimates for Cities, Counties, and the State, 2020-2022." May 2022. https://dof.ca.gov/forecasting/demographics/estimates/e-5-population-and-housing-estimates-for-cities-counties-and-the-state-2020-2022/

[66] Association of Bay Area Governments. "Projections 2040." Accessed August 10, 2022. Available at: http://projections.planbayarea.org/.

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

A project can induce substantial population growth in a variety of ways, including the following:

- Proposing new housing beyond projected or planned development levels;
- Generating demand for housing as a result of new business;
- Extending roads or other infrastructure to previously undeveloped areas; or
- Removing obstacles to population growth (i.e., expanding capacity of a wastewater treatment plant beyond that necessary to serve planned growth).

The project proposes construction of a new daycare center with a maximum capacity for 252 children. Operation of the proposed daycare center would require approximately 33 to 34 full- and part-time employees. The project does not include any residential component and would not generate a substantial number of jobs so as to exceed the level of job growth anticipated by the General Plan. No new road extensions or other infrastructure would be constructed, nor would any obstacles to unplanned population growth be removed. For these reasons, the proposed project would not induce substantial unplanned population growth. **(Less than Significant Impact)**

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

The project would demolish the existing single-family residence on-site. The existing residence is currently vacant; therefore, the project would displace any people. The loss of one housing unit, would not be regionally significant and would not require the construction of replacement housing. **(Less than Significant Impact)**

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.

Envision San José 2040 General Plan

The General Plan includes policies for the purpose of avoiding or mitigating impacts resulting from planned development projects in the City. The following policies are specific to public services and are applicable to the proposed project.

Envision San José 2040 General Plan Relevant Public Service Policies

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 SF of space per capita in library facilities.
ES-3.1	Provide rapid and timely Level of Service (LOS) response time to all emergencies: 1. For police protection, use as a goal a response time of six minutes or less for 60 percent of all Priority 1 calls, and of eleven minutes or less for 60 percent of all Priority 2 calls. 2. For fire protection, use as a goal a total response time (reflex) of eight minutes and a total travel time of four minutes for 80 percent of emergency incidents.
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 SF per 1,000 population of community center space.
PR-1.12	Regularly update and utilize San José's Parkland Dedication Ordinance/Parkland Impact Ordinance (PDO/PIO) to implement quality facilities.

4.15.1.2 *Existing Conditions*

Fire Protection Services

Fire protection services in San José 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. The SJFD protects 206 square miles and approximately 1.2 million residents in both City and county areas. There are 33 fire stations that service the residents of San José. The SJFD has

established the goal of responding to Priority 1 incidents (emergencies) within eight minutes, 80 percent of the time, and Priority 2 incidents (non-emergencies) within 13 minutes, 80 percent of the time. For 2020-2021, the SJFD responded to 73 percent of Priority 1 incidents within eight minutes and 93 percent of Priority 2 incidents within 13 minutes.[67]

The nearest fire stations to the project site are Station No. 19, located at 3292 Sierra Road, and Station No. 23, located at 1771 Via Cinco De Mayo. Station No. 19 is approximately 1.5 miles northwest of the project site and Station No. 23 is approximately 1.9 miles northeast of the project site.

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 four miles southwest 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 Foothill Division. The SJPD has established the goal of responding to Priority 1 calls (present or imminent danger to life or major damage to/loss of property) within six minutes, and responding to Priority 2 calls (involving injury or property damage, or the potential for either to occur) within 11 minutes. In 2020-2021, the citywide average response time for Priority 1 calls was 7.12 minutes, and the average response time for Priority 2 calls was 22.8 minutes.[68]

Schools

The City of San José includes 22 public school districts that serve students in San José through 222 public schools. The project area is located in the Berryessa Union Elementary District (K-8) and East Side Union High School District (ESUHSD). Students within the project vicinity attend Cherrywood Elementary School, Sierramont Middle School, and Independence High School.[69,70] The nearest school to the project site is Cherrywood Elementary, located approximately one mile north of the project site.

Parks

The City of San José currently operates 199 neighborhood parks, 41 community/neighborhood centers, 10 regional parks, and over 61 miles of trails.[71] The City's Department of Parks, Recreation, and Neighborhood Services is responsible for development, operation, and maintenance of all City park facilities. The nearest public parks to the site are Penitencia Creek, located approximately 0.75 miles southwest of the site, and Flickinger Park, located approximately 0.5 miles northeast of the site.

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[67] City of San José. *Annual Report on City Services 2020-2021*. December 2021. https://www.sanjoseca.gov/your-government/appointees/city-auditor/services-report/current-report
[68] Ibid.
[69] Berryessa Union Elementary District. "School Finder." Accessed August 17, 2022. http://www.schfinder.com/berryessaunionsd/
[70] East Side Union High School District. "District Boundary Map." Accessed August 17, 2022. https://www.esuhsd.org/Community/Boundaries/index.html
[71] City of San José Department of Parks, Recreation, and Neighborhood Services. "Fast Facts." Accessed May 7, 2020.

Libraries

The San José Public Library System consist of one main library and 19 branch libraries. The Dr. Martin Luther King Jr. Main Library is located on the corner of San Fernando and Fourth Street in downtown San José. The nearest branch library to the project site is the Berryessa Branch Library at 3355 Noble Avenue, located approximately 1.7 miles northeast of the project site.

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?

The proposed project would result in more people on-site compared to existing conditions, due to its capacity for students and employees in the proposed daycare space. This would incrementally increase the demand for fire protection and other emergency response services in the area. The proposed project would be constructed in accordance with current building codes and would be required to be maintained in accordance with applicable City policies to avoid unsafe building conditions and promote public safety. Existing fire protection facilities would be capable of meeting the increased demand for services due to the project without construction or expansion of facilities. The project would be consistent with the site's General Plan designation and thus, would not be beyond the capacity for fire protection services anticipated by the City's General Plan. Therefore, the project would not result in a physical impact on the environment due to the construction of additional 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?

The proposed daycare center would marginally increase the demand for police protection services in the project area. The proposed project would be constructed in accordance with current building codes and would be required to be maintained in accordance with applicable City policies to avoid unsafe building conditions and promote public safety. Existing police protection facilities would be capable of meeting the increased demand for services due to the project without construction or expansion of facilities. The project would be consistent with the site's General Plan designation and thus, would not be building beyond the capacity for police protection services anticipated by the City's General Plan. The small increase in demand for police protection services would not prevent the SJPD from meeting their service goals or performance objectives. The project would not necessitate the construction of new or expanded police facilities; therefore, the project would have a less than significant impact on the environment in order to maintain acceptable police protection services. **(Less than Significant Impact)**

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

The proposed project would construct a daycare center and would not include any residential units. No new students would be generated by the proposed project, and new or expanded facilities would not need to be constructed to maintain acceptable provision of school services within the project area. Therefore, the proposed project would have a less than significant impact on the environment due to the construction of new or expanded school 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 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?

As mentioned above, the proposed development would place more people on-site during regular business hours than exist currently. Although there would be an increase in the daily employee population in the City and future employees may use local parks or trails, up to 34 weekday employees would not place a major physical burden on these facilities requiring new or upgraded facilities. Therefore, the proposed project would not result in substantial adverse physical impacts on park facilities in the City. **(Less than Significant Impact)**

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

The proposed project would construct a daycare center and would not include any residential uses. Although future employees may use library facilities within the City, the approximately 34 employees would not place a major physical burden on these library facilities such that new facilities would be required or existing facilities expanded to meet performance objectives. Therefore, implementation of the proposed project would not result in substantial adverse physical impacts to library facilities in the City. **(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.

Local

Activate SJ Strategic Plan

The Activate SJ Strategic Plan serves an outline of goals and policies of the Department of Parks, Recreation and Neighborhood Services. The Plan is intended to serve as a 20-year strategic plan aligned with the Envision San José 2040 General Plan, to be updated at five-year intervals. The plan identifies a mission for the department of connecting people through parks, recreation and neighborhood services for an active San José. In order to support this mission, the plan identifies five guiding principles, each associated with a key plan outcome. The principles and outcomes of the Activate SJ Strategic Plan are as follows:

- **Stewardship:** We will ensure 100% of our parks are in good or excellent condition by reaching a Park Condition Assessment score of 4.0 or higher.
- **Nature:** We will cultivate a park and recreation system that preserves nature, supports wildlife, and enhances community wellbeing.
- **Equity & Access:** We will achieve a 10-minute walk to a quality park for all San Joséans.
- **Identity:** We will complete Regional Master Plans to ensure our system reflects the culture and history of San José's unique and diverse neighborhoods.
- **Public Life:** We will develop self-sustaining, quality spaces and programs to strengthen community pride and unity.

Envision San José 2040 General Plan

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

Envision San José 2040 General Plan Relevant Recreation Policies

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.

4.16.1.2 *Existing Conditions*

The City of San José currently operates 199 neighborhood parks, 41 community/neighborhood centers, 10 regional parks, and over 61 miles of trails.[72] The City's Department of Parks, Recreation, and Neighborhood Services is responsible for development, operation, and maintenance of all City park facilities. The nearest public parks to the site are Penitencia Creek, located approximately 0.75 miles southwest of the site, and Flickinger Park, located approximately 0.5 miles northeast of the site.

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 proposed daycare center would place more people (approximately 33 to 34 full- and part-time employees) on-site during regular business hours compared to existing conditions. It can be reasonably assumed that the employees would use nearby parks or recreational facilities during breaks or after hours, thereby increasing demand for such facilities. However, the increase in demand would be marginal and substantial physical deterioration of these facilities would not occur as a

[72] City of San José Department of Parks, Recreation, and Neighborhood Services. "Fast Facts." Accessed May 7, 2020.

result of the project. The proposed project would not increase the use of existing parks and other recreational facilities such that construction of new facilities or expansion of existing recreational facilities would be required. **(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?

No public recreational facilities are included as a component of the project. The project would include approximately 9,424 square feet of outdoor play area divided into three separate spaces. These play areas would be private, exclusively for the use of the proposed daycare center itself. The construction of the proposed play areas is included in the analysis of this Initial Study and therefore, would not have an adverse physical effect on the environment. **(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. A copy of this report is included in Appendix H of this Initial Study.

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, an employment (e.g., office or research and development) project's transportation impact would be less than significant if the project VMT is 15 percent or more below the existing average regional VMT per employee. Screening criteria have been established to determine which projects require a detailed VMT analysis. If a project meets the relevant screening criteria, it is considered to have a less than significant VMT impact.

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

Envision San José 2040 General Plan

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

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.

	○ 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. ○ Create easily identifiable and accessible building entrances located on street frontages or paseos. ○ Accommodate the physical needs of elderly populations and persons with disabilities. ○ 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 2025

The City of San José adopted the San José Better Bike Plan 2025 in October 2020.[73] The plan focuses on building new bikeways and enhancing existing bikeways through the implementation of supportive programs and policies. The overall goal of the City is to make bicycling safe and convenient for all ages and abilities in all parts of the city. The plan includes the following goals for improving bicycle access and connectivity: 1) Build a 100-mile low stress connected network, 2) achieve a 15 percent bike mode share by 2040 and a 20 percent bike mode share by 2050, 3) eliminate all roadway facilities and major inquiries to align with Vision Zero San José, 4) Expand the availability of sidewalk bike parking, secure bike parking, and end-of-trip facilities at transit stops, 5) achieve Gold-Level Bicycle Friendly Community Status, and 6) Expand shared micromobility. Planned bicycle facilities identified in the Better Bike Plan 2025 in the project area include a planned Class IV bike lanes over 0.54 mile of North Capitol Avenue from McKee Road to North White Road

4.17.1.2 *Existing Conditions*

Existing Roadway Network

Regional access to the project site is provided via I-680. Local access to the site is provided via North Capitol Avenue, Berryessa Road, Sierra Road, Ohlone Drive, and Penitencia Creek Road. These facilities are described below.

I-680 is an eight-lane freeway providing regional access between San Ramon Valley and San José. It extends in a north-south direction from its junction with I-280 and US 101 near downtown San José through the East Bay to its junction with I-80 in Fairfield. I-680 provides access to and from the project site via its full interchange with Berryessa Road and N. Capitol Avenue.

North Capitol Avenue is a north-south four-lane Grand Boulevard with a light rail transit line within the center median in the study area. North Capitol Avenue has striped bike lanes on both sides of the street. North Capitol Avenue has sidewalks on both sides of the street with pedestrian signal heads

[73] City of San José. *San José Better Bike Plan 2025*. October 2020. Accessed July 14, 2022. https://www.sanjoseca.gov/home/showpublisheddocument/68962/637477999451470000

and push buttons at all signalized intersections. To the north, North Capitol Avenue transitions into Great Mall Parkway north of Montague Expressway in the City of Milpitas. To the south, North Capitol Avenue becomes South Capitol Avenue south of Alum Rock Avenue and then terminates at Capitol Expressway. Being the eastern project site boundary, North Capitol Avenue provides direct access to and from the project site via a right-turn only driveway.

Berryessa Road is an east-west street that begins where it transitions from Suncrest Avenue at its intersection with Piedmont Road. Berryessa Road is six lanes in the vicinity of the project site and four lanes west of Commercial Street where it becomes Hedding Street after crossing over US 101. Berryessa Road has striped bike lanes and sidewalks on both sides of the street. Berryessa Road provides access to the project site via its intersection with North Capitol Avenue.

Sierra Road is a four-lane divided east-west Local Connector Street with sidewalks on both sides. Sierra Road begins at North Capitol Avenue and extends eastward into the east foothills north of Alum Rock Park. It has striped bike lanes on both sides of the street. Sierra Road provides access to the project site via its intersection with North Capitol Avenue.

Ohlone Drive is a two-lane undivided east-west local roadway extending from North Capitol Avenue eastward to east of Morrill Avenue. In the vicinity of the project, Ohlone Drive has sidewalks on both sides of the street. Ohlone Drive provides access to and from the project site via its intersection with North Capitol Avenue.

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

Existing Pedestrian Facilities

Pedestrian facilities in the project area consist of sidewalks along the public streets and crosswalks with pedestrian signal heads at intersections. Sidewalks are found along all previously described local roadways in the study area, with the exception of some segments of Penitencia Creek Road where a paved multi-use trail is provided. The existing network of sidewalks provides good connectivity for pedestrians between the project site and other surrounding land uses and transit stops. Crosswalks with pedestrian signal heads and push buttons are located at all the signalized intersections in the study area. Americans with Disabilities Act (ADA) compliant curb ramps are provided at all the signalized intersections along N. Capitol Avenue, although not all the curb ramps at the North Capitol Avenue/Penitencia Creek Road intersection meet current ADA standards.

Existing Bicycle Facilities

Bicycle facilities are divided into four classes of relative significance. Class I bikeways are bike paths that are physically separated from motor vehicles and offer two-way bicycle travel on a

separate paved path. Class II bikeways are striped bike lanes on roadways that are marked by signage and pavement markings. Class III bikeways are bike routes and only have signs and/or Sharrows (bike route shared lane markings) to help guide bicyclists on recommended routes to certain locations. Class IV bikeways are on-street bicycle facilities that incorporate physical barriers (e.g., raised curbs, flexible bollards, vehicle parking, grade separation, etc.) to separate bicycles from the flow of vehicular traffic. There are no existing Class III or Class IV bikeways in the project vicinity.

Class II bike lanes currently exist on the following roadways:

- Capitol Avenue
- Berryessa Road
- Penitencia Creek Road
- Sierra Road
- Morrill Avenue

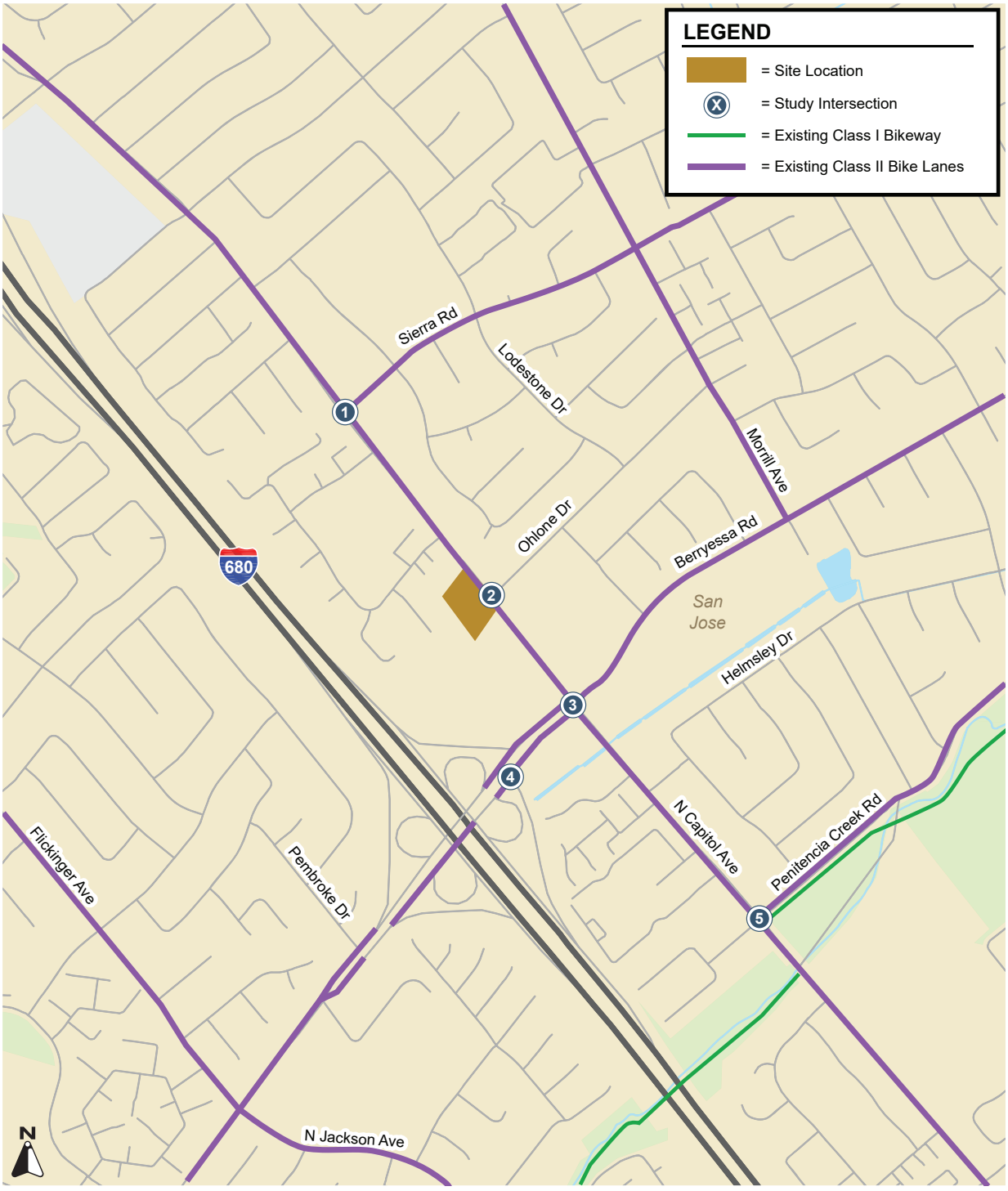
The Penitencia Creek multi-use trail system (Class I bikeway) runs alongside Penitencia Creek and separates bicyclists from motor vehicle traffic. Access to the four-mile multi-use trail is provided via N. Capitol Avenue. This trail system provides access to Penitencia Creek Park and Alum Rock Park. Figure 4.17-1 shows the locations of the existing bicycle facilities in the project vicinity.

Existing Transit Services

Existing transit services near the project site are provided by the VTA. The Berryessa Light Rail Station is located approximately 300 feet from the project site and is served by the Light Rail Orange Line and VTA local bus route 61.

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

Local bus route 61 operates along Berryessa Road with stops located approximately 0.2 mile south of the project site. Route 61 provides service between Good Samaritan Hospital and the Piedmont Road/Sierra Road intersection with 15-minute headways during the weekday AM and PM peak commute hours. Figure 4.17-2 shows the locations of the existing transit services in the project vicinity.



Source: Hexagon Transportation Consultants, Inc., August 31, 2022.

EXISTING BICYCLE FACILITIES | FIGURE 4.17-1

Source: Hexagon Transportation Consultants, Inc., August 31, 2022.

EXISTING TRANSIT SERVICES | FIGURE 4.17-2

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?	☐	☐	☒	☐

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 project area consist of sidewalks, crosswalks, and pedestrian signals at signalized intersections. There are sidewalks along North Capitol Avenue that connect to smaller roadways that connect to the existing residences and commercial uses. In addition, there are crosswalks across the stretch of North Capitol Avenue that allow access to the VTA Berryessa light rail Berryessa station and to the commercial business to the northeast. These pedestrian facilities would provide future employees and parents/students with connectivity and access to transit stops, residential neighborhoods, and commercial uses.

The existing sidewalk along the project frontage on North Capitol Avenue is currently 13 feet wide. To meet the Urban Village requirements, the project would reconstruct the sidewalks along the project frontage to be 15 feet wide with tree wells. Overall, the proposed sidewalks provide adequate space and circulation along the project frontage. 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.

Bicycle Facilities

The project site is directly served by a Class II bike lane along North Capitol Avenue and there are additional Class II bike lanes on Berryessa Road, Penitencia Creek Road, Sierra Road, and Morrill Avenue. Additionally, the San José Bike Plan 2025 includes planned improvements within the project vicinity such as reconstructing the Class II bike lanes on North Capitol Avenue to Class IV protected bike lanes. As required under the San José Bike Plan 2025, the project would need to make

a fair-share monetary contribution toward the Class IV protected bike lanes that are planned along the project frontage on N. Capitol Avenue. The proposed project would not conflict with implementation of San José Bike Plan 2025 or 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.

Transit Facilities

The project site is approximately 300 feet northwest of the Berryessa light rail station. Due to the proximity of the light rail station to the project site, it is reasonable that some employees would utilize the transit services provided. New transit trips generated by the project would not 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)?

The proposed project would construct an approximately 14,379 square foot daycare center that would serve a maximum of 252 children. The San José City Council Policy 5-1 establishes guidelines for the generation of VMT by new development in the City and has determined screening criteria for different land uses. The VMT evaluation tool is limited to the evaluation of the general land use categories of residential, office, and industrial. Based on direction from City staff, the VMT analysis was conducted by converting vehicle trips generated by the proposed daycare center to an equivalent amount of retail square footage, for which the City has established a screening criterion and threshold of significance. The City of San José Travel Demand Model (TDM) data show that local retail developments less than 100,000 square feet in size generate VMT below the CEQA threshold of significance for retail uses, resulting in a less than significant impact.

The conversion of the daycare center to retail would be 18,900 square feet, which is below the screening threshold of 100,000 square feet for retail developments. Therefore, since the project meets the City's screening criteria, the project's VMT-related impacts would be less than significant. **(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)?

Site Access and On-Site Circulation

Site Access

The site would be accessed via a new one right-turn in/out driveway on North Capitol Avenue. The driveway would be 26 feet wide, meeting the City's standard width requirement for a two-way driveway according to the City of San José Department of Transportation Geometric Design Guidelines. In addition, the project driveway would have adequate inbound stacking space since the

drive aisle between the sidewalk on N. Capitol Avenue and the north-south intersecting drive aisle (approximately 150 feet) would exceed the City's stacking space requirement (approximately 50 feet). Thus, vehicles would be prevented from queuing onto the sidewalk or the street. Therefore, the driveway meets the City's requirements, and the project would have adequate site access.

On-Site Circulation

The site plans show that the 26-foot-wide project driveway would lead to an L-shaped one-way drive aisle running along the north edge and west edge of the project site, with angled parking spaces along the east side of the drive aisle. The one-way drive aisle would be approximately 22 feet, which would be adequate for one-way vehicular circulation and would provide sufficient room for vehicles to back out of the angled parking spaces. At the south end of the parking lot, the drive aisle continues in a counter-clockwise direction and ultimately transitions into a north-south one-way drive aisle with diagonal parking spaces along the east side of the drive aisle. The one-way drive aisle measures 16 feet wide, which meets the City's standard minimum width for one-way drive aisles. The site plan shows adequate on-site circulation with no dead-end drive aisles.

Sight Distance

Providing the appropriate sight distance reduces the likelihood of a collision at a driveway or intersection and provides drivers with the ability to locate sufficient gaps in traffic to exit a driveway. As part of the building permits project review, the City's Public Works Department shall review the project plans to ensure that the project driveway will be free and clear of any obstructions to provide adequate sight distance, thereby ensuring that exiting vehicles can see pedestrians on the sidewalk and vehicles and bicycles traveling on N. Capitol Avenue. Any landscaping and signage shall be located in such a way to ensure an unobstructed view for drivers exiting the site. The minimum acceptable sight distance is determined by Caltrans. The Caltrans stopping sight distance is 360 feet (based on a design speed of 45 mph); therefore, a driver must be able to see 360 feet along N. Capitol Avenue to stop and avoid a collision. There are no roadway curves or tall structures that would obstruct a driver's ability to see 360 feet to the north on N. Capitol Avenue. Therefore, the sight distance looking north on N. Capitol Avenue is adequate for cars exiting the project site.

Drop-Off and Pick-Up Queuing

As a day care facility, there would be a staggered morning peak drop-off period and a PM peak pick-up period that would overlap some of the regular peak hour periods. The facility would operate from 7:00 AM through 6:00 PM. Students would be dropped off between 7:00 AM and 9:30 AM and picked up anytime between 12:00 PM and 6:30 PM. Due to longer pick-up time opportunities during the PM period, queuing issues are not anticipated during the PM peak hour period.

It is expected parents would park on-site to drop-off and pick-up their students. The LTA assumed that 17 out of the 37 total parking spaces would be occupied by staff members and there would be 20 spaces remaining for parents to drop-off and pick-up their student. Approximately 240 AM peak hour period vehicle trips could be accommodated by the 20 available spaces. The project is expected to generate 90 inbound vehicle trips during the AM peak period. Therefore, there are sufficient parking spaces and vehicles queues would not back up and affect traffic operations along N. Capitol Avenue. **(Less than Significant Impact)**

d) Would the project result in inadequate emergency access?

Emergency vehicle access to the project site would be provided via a 26-foot driveway along North Capitol Avenue. Emergency vehicles in addition to trucks (e.g., delivery trucks and vans and garbage trucks) would be able to enter the project driveway, circulate through the surface parking lot, and exit the driveway without operational issues. The project would also comply with the San José Fire Department standards to provide adequate emergency access. 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 G 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 897 daily vehicle trips, with 171 trips occurring during the AM peak hour and 173 trips occurring during the PM peak hour.

Table 4.17-1 Project Trip Generation											
				AM Peak Trips				PM Peak Trips			
Land Use	**Project Size**	**Total Daily Rate**	**Total Daily Trips**	**Rate**	**In**	**Out**	**Total**	**Rate**	**In**	**Out**	**Total**
Day Care Facility[1]	252 Students	4.09	1,031	0.78	104	93	197	0.79	94	105	199
Location Based Vehicle Mode Share[2]			-134	--	-14	-12	-26	--	-12	-14	-26
Project Trips After Reduction			**897**	**--**	**90**	**81**	**171**	**--**	**82**	**91**	**173**
Trips of Non-Working Parents[3]			*269*	*--*	*27*	*24*	*51*	*--*	*25*	*27*	*52*
Trips by Working Parents[3]			*628*	*--*	*63*	*57*	*120*	*--*	*57*	*64*	*121*

[1] Average trip rates (in trips per student) for "Day Care Center" (ITE Land Use 565) are used.

[2] A 13 percent reduction was applied based on the location-based vehicle mode share percentage outputs (Table 6 of TA Handbook) produced from the San José Travel Demand Model for retail development in an Urban Low-Transit Area.

[3] It was assumed to percent and 70 percent of the total trips are generated by non-working and working parents, respectively.

Source*:* Hexagon Transportation Consultants, Inc. *1207 N. Capitol Avenue Day Care Local Transportation Analysis*. November 2022

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 except for N. Capitol Avenue/Berryessa Road intersection during the PM peak hour. The intersection of N. Capitol Avenue and Berryessa Road currently operates at an unacceptable LOS E during the PM peak hour and would continue to do so under background and background plus project conditions. However, the addition of project trips would not cause the average critical delay to increase by four seconds or more. Therefore, the project would not create an adverse effect on intersection operations.

Table 4.17-2: Intersection Operations Analysis Results										
Intersection	**LOS Standard**	**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**
N. Capitol Avenue/Sierra Road	D	AM	23.2	C	23.1	C	23.4	C	-0.1	0.009
		PM	15.3	B	15.2	B	17.9	B	4.5	0.046
N. Capitol Avenue/Ohlone Drive	D	AM	33.1	C	33.2	C	32.9	C	1.3	0.044
		PM	28.0	C	27.8	C	28.1	C	-0.6	0.017
N. Capitol Avenue/Berryessa Road	D	AM	47.3	D	49.0	D	50.7	D	3.1	0.024
		PM	55.5	E	56.4	E	56.8	E	1.0	0.021
I-680 Northbound Off-Ramp/Berryessa Road	D	AM	7.3	A	7.2	A	7.2	A	0.0	0.007
		PM	15.3	B	14.4	B	14.5	B	0.1	0.007
N. Capitol Avenue/Penitencia Creek Road	D	AM	24.9	C	24.8	C	24.9	C	0.1	0.011
		PM	17.5	B	17.7	B	17.8	b	0.1	0.009
Source: Hexagon Transportation Consultants, Inc. *1207 N. Capitol Avenue Day Care Local Transportation Analysis*. November 2022										

Parking

Vehicle Parking

According to the City of San José's off-street parking requirements (Chapter 20.90, Table 20-190 of the City's Zoning Code), the vehicle parking requirement for a day care center is one space per six children, up to five spaces, and one space per 10 children thereafter. This includes employee parking. The day care center would serve up to 252 children; therefore, the project would be required to provide 28 vehicle parking spaces. The project proposes to provide a total of 37 parking spaces, which meets the City's minimum parking requirement.

Bicycle Parking

According to the City of San José's off-street parking requirements (Chapter 20.90, Table 20-190 of the City's Zoning Code), the bicycle parking requirements for a day care center is one per 10 full-time employees and children. This equates to 29 bicycle parking spaces required. Furthermore, based on the City's code, at least eighty percent of the bicycle parking spaces (24 spaces) shall be provided in short-term bicycle parking facilities and at most twenty percent (five spaces) shall be provided in long-term bicycle facilities. According to the site plan, the project is proposing to provide 26 short-term bicycle parking spaces and three long-term bicycle parking spaces (bike lockers), which meets the City's bicycle parking requirement.

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.

At the time of the preparation of this Initial Study, three tribes have sent written requests for notification of projects to the City of San José and one verbal request has been made. The Ohlone Indian Tribe, Inc., requested notification of projects in accordance with Public Resources Code Section 21080.3.1 subdivision (b) for projects in the City of San José that involve ground-disturbing activities in Downtown. Chairwoman Geary of the Tamien Nation and Kanyon Sayers-Roods of the Indian Canyon Mutsun Band of Costanoan have requested AB 52 consultations for all projects.

4.18.1.2 *Existing Conditions*

As previously described in Section 4.5, Cultural 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 cultural resources literature search completed for the project site did not identify any recorded archaeological resources within the project site, but four resources were identified within 0.25-mile of the project site. The project would not disturb or affect the four identified resources. The project area was concluded to have low sensitivity for prehistoric archaeological resources.

The City of San José sent AB 52 Notification letters to Kanyon Sayers-Roods of the Indian Canyon Mutsun Band of Costanoan on August 3, 2022, and Chairwoman Geary of the Tamien Nation on August 8, 2022, notifying them of the proposed project and giving an opportunity for the tribes to request consultation under AB 52. However, no responses were received within the 30-day window and no further consultation efforts were required for the project.

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.	☐	☐	☒	☐

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 currently developed and there are no known tribal cultural resources on-site. In the event that an inadvertent discovery of a tribal cultural resource is made, the City's standard permit conditions regarding the discovery of cultural resources would be implemented, as stated in Section 4.5 Cultural Resources of this Initial Study. **(Less Than Significant Impact)**

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?

Please see response to Impact TCR-1. **(Less than Significant Impact)**

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. Water is provided to the project site by San José Water Company (SJWC); the SJWC adopted its most recent UWMP in June 2021.

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 ("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.

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 1826 (2014)

AB 1826 sets forth the requirements of the statewide mandatory commercial organics recycling program for businesses and multi-family dwelling with five or more units that generate four or more (two or more by December 31, 2020) 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.

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.

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.

Local

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

The City of San José requires 75 percent diversion of nonhazardous construction and demolition debris for projects that quality under CALGreen, which is more stringent than the state requirement of 65 percent (San José Municipal Code Section 9.10.2480).

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 $5000 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.

Envision San José 2040 General Plan

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

Envision San José 2040 General Plan Relevant Utilities and Service System Policies

Policies	Description
MS-1.4	Foster awareness in San José's business and residential communities of the economic and environmental benefits of green building practices. Encourage design and construction of environmentally responsible commercial and residential buildings that are also operated and maintained to reduce waste, conserve water, and meet other environmental objectives.
MS-3.1	Require water-efficient landscaping, which conforms to the State's Model Water Efficient Landscape Ordinance, for all new commercial, institutional, industrial, and developer-installed residential development unless for recreation needs or other area functions.
MS-3.2	Promote use of green building technology or techniques that can help to reduce the depletion of the City's potable water supply as building codes permit.
MS-3.3	Promote the use of drought tolerant plants and landscaping materials for nonresidential and residential uses.
MS-19.1	Require new development to contribute to the cost-effective expansion of the recycled water system in proportion to the extent that it receives benefit from the development of a sustainable local water supply.
MS-19.3	Expand the use of recycled water to benefit the community and the environment.
MS-19.4	Require the use of recycled water wherever feasible and cost-effective to serve existing and new development.
IN-1.5	Require new development to provide adequate facilities or pay its fair share of the cost for facilities needed to provide services to accommodate growth without adversely impacting current service levels.
IN-3.7	Design new projects to minimize potential damage due to storm waters and flooding to the site and other properties.
IN-3.9	Require developers to prepare drainage plans that define needed drainage improvements for proposed developments per City standards.
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).
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.

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.

4.19.1.2 *Existing Conditions*

Water Services

Water service is provided to the City of San José by three water retailers, San José Water Company, the City of San José Municipal Water System, and the Great Oaks Water Company. Water services to the project site are provided by the San José Water Company (SJWC).[74] The service area of SJWC is 145 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 50 percent of SJWC's water supply is purchased from Valley Water, 30 to 40 percent is pumped from local groundwater aquifers, and less than 10 percent comes from local surface water sources.[75]

The existing single-family residence on-site is currently vacant and does not have any water demand.

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 gallons of wastewater a day (mgd). The RWF treats an average of 110 mgd and serves 1.4 million residents.[76] The City of San José is allocated 108.6 mgd of existing capacity at the RWF. The City of San José generates approximately 69.8 mgd of dry weather average flow, leaving 38.8 of excess treatment capacity at the RWF for the City's wastewater treatment demands.[77]

[74] City of San José. "Utility Services Lookup". Accessed October 7, 2022. https://www.sanjoseca.gov/your-government/environment/recycling-garbage/residents/residential-services-lookup
[75] San José Water. *2020 Urban Water Management Plan*. June 2021.
[76] City of San José. "San José – Santa Clara Regional Wastewater Facility". Accessed October 7, 2022. https://www.sanjoseca.gov/your-government/environment/water-utilities/regional-wastewater-facility
[77] City of San José. *Envision San José 2040 General Plan FEIR.* September 2011. Page 648.

The existing single-family residence on-site is currently vacant, and no wastewater is generated on-site. There is an eight-inch sanitary sewer line in North Capitol Avenue which serves the project site.

Stormwater Drainage

The City of San José owns and maintains the municipal stormwater drainage system which serves the project site. The site is predominantly pervious and generates minimal stormwater runoff. Runoff that does leave the site is captured in storm inlets in N. Capitol Avenue and conveyed to the City's drainage system. The storm drain line ultimately discharges to Coyote Creek.

Solid Waste

Santa Clara County's Integrated Waste Management Plan (IWMP) was approved by the California Integrated Waste Management Board (CIWMB) in 1996 and was reviewed in 2004 and 2007. Each jurisdiction in the county has a diversion requirement of 50 percent for 2000 and each year thereafter. 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.

The City of San José's Zero Waste Strategic Plan outlines policies to achieve its Climate Smart San José goals, including 75 percent diversion of waste from the landfill by 2013 and zero waste by 2022.

The existing single-family residence on-site is currently vacant and does not generate any solid waste.

Electric Power, Natural Gas, and Telecommunications

The existing single-family residence on-site is vacant and does not generate demand for electric power, natural gas, or telecommunications services.

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?	☐	☐	☒	☐

	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
Would the project:				
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?	☐	☐	☒	☐
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?

The proposed daycare center would connect to existing utilities in North Capitol Avenue. The project would not exceed wastewater treatment requirements or require the construction or expansion of wastewater treatment facilities, as described further under checklist question c. As described in Section 4.10 Hydrology and Water Quality, the proposed project would result in a substantial increase in impervious surface coverage over existing conditions, however, the project would implement construction and post-construction BMPs and runoff treatment controls to address the resulting changes in runoff volume and water quality. The project would not require the construction of new stormwater drainage facilities or expansion of existing facilities. The project would not generate a substantial demand for water, electricity, or telecommunications such that new facilities would need to be constructed. The project would not use any natural gas. Thus, the project would not result in the relocation or construction of new utility 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?

Valley Water's baseline projection in the Integrated Water Resources Planning Study estimates Countywide water demand to grow from approximately 382,000 acre-feet per year (AFY) to approximately 475,000 AFY in 2040, an increase of approximately 24 percent. Over this same period, Countywide population is expected to grow by 54 percent, from 1.7 million people to 2.6 million. San José's population growth and associated water demand, as represented by the General Plan, are included in these projections. Although Valley Water forecasts that supplies will be

adequate to meet needs in wet and average years, there are expected to be dry-year shortages that grow over time from approximately 50,000 acre-feet in 2010 to 75,000 acre-feet by 2040.[78]

As previously stated, SJWC is the water retailer for the project site. Their most recent Urban Water Management Plan (adopted in June 2021) determined that the SJWC has sufficient supplies to meet demands through 2045 under average, single-dry, and five consecutive dry years.[79] During future droughts, SJWC will enact their Water Shortage Contingency Plan to ensure customer demand is met.

The project is estimated to generate a water demand of approximately 2.2 million gallons per year, or approximately 5,977 gallons per day (gpd).[80] While water demand would be increased relative to the existing conditions on-site, the increased demand from the project would be incremental compared to the increased demand that is anticipated upon General Plan build out. The project site is consistent with General Plan growth projections used to analyze future water supply and demand in SJWC's 2020 UWMP. Therefore, there would be adequate water supplies available to serve the project and reasonably foreseeable future development during normal, dry, and multiple 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?

In 2011, the 2040 General Plan FEIR identified an excess treatment capacity at the RWF of 38.8 million gallons per day from San José wastewater sources. The RWF has millions of gallons of daily wastewater treatment capacity remaining for the City of San José. The project is estimated to generate approximately 5,080 gallons of wastewater per day.[81] The wastewater demand of the project would be incremental in relation to the expected increases in wastewater treatment demand at the RWF. Therefore, the project would not result in a determination by the wastewater treatment provider that it does not have adequate capacity to serve the project's demand. **(Less than Significant Impact)**

d) Would the project generate solid waste in excess of state or local standards, or in excess of the capacity of local infrastructure, or otherwise impair the attainment of solid waste reduction goals?

The project is estimated to generate approximately 46 tons of solid waste per year.[82] The project would comply with policies in the Zero Waste Strategic Plan to reduce its generation of solid waste. According to the IWMP, the County has adequate disposal capacity beyond 2022. The total

[78] Valley Water. *Integrated Water Resources Planning Study 2003.* December 2005. Accessed October 7, 2022. https://www.valleywater.org/sites/default/files/IWRPStudy2003_Final.pdf
[79] San José Water. *2020 Urban Water Management Plan*. June 2021. Page 8-1.
[80] Illingworth & Rodkin, Inc. *1207 N. Capitol Avenue Daycare Construction Community Risk Assessment – Attachment 2: CalEEMod Modeling Inputs and Outputs*. September 29, 2022.
[81] Based on the standard wastewater generation rate of 85 percent of total water usage.
[82] Illingworth & Rodkin, Inc. *1207 N. Capitol Avenue Daycare Construction Community Risk Assessment – Attachment 2: CalEEMod Modeling Inputs and Outputs*. September 29, 2022.

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 project would be required to conform to City plans and policies to reduce solid waste generation, including the City's 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 and Local

California Fire Code

The California Fire Code, codified as California Code of Regulations, Title 24, Part 9, includes provisions associated with emergency planning and preparedness, fire protection systems, and means of egress. In addition, the Fire Code provides appendices detailing fire-flow requirements for new buildings, fire hydrant locations and distribution, and fire apparatus access roads. Local governments administer the Fire Code. New development projects must demonstrate compliance with applicable Fire Code requirements at the time building permits are issued.

Envision San José 2040 General Plan

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

Envision San José 2040 General Plan Relevant Hazards Policies

Policy	Description
EC-8.1	Minimize development in very high fire hazard zone areas. Plan and construct permitted development so as to reduce exposure to fire hazards and to facilitate fire suppression efforts in the event of a wildfire.

4.20.1.2 *Existing Conditions*

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 (FHSZ), these maps influence how people construct buildings and protect property to reduce risk associated with wildland fires. The project site is surrounded by urban development and is not located within a fire hazard severity zone.[83]

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?	☐	☐	☐	☒

[83] California Department of Forestry and Fire Protection. Santa Clara County FHSZ Map. November 7, 2007. Accessed May 27, 2022. https://osfm.fire.ca.gov/divisions/wildfire-planning-engineering/wildland-hazards-building-codes/fire-hazard-severity-zones-maps/

	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:				
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?	☐	☐	☐	☒
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?	☐	☐	☐	☒

Impacts a)-d): The project site is not located in or near state responsibility areas or lands classified as very high fire hazard severity zones; therefore, the project would not result in wildfire impacts. **(No Impact)**

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 sections, the proposed project would not degrade the quality of the environment with implementation of the identified standard permit conditions, conditions of approval, and mitigation measures.

As discussed in Section 4.3 Air Quality, construction activities on-site would include grading and site preparation, trenching, building construction, architectural coating, and paving. The project would be required to implement the identified standard permit conditions during all phases of construction to reduce dust and other particulate matter emissions. The project would also implement MM AIR-1.1 to reduce health risk impacts on nearby sensitive receptors.

As discussed in Section 4.4 Biological Resources, the project would not impact sensitive habitats or species. The project would implement mitigation measures MM BIO-1.1 through MM BIO-1.4 to reduce impacts to nesting birds to less than significant levels. Additionally, the project would adhere

to the required standard permit conditions for tree removal to ensure the project would not significantly impact the community forest. All trees removed would be required to be replaced in accordance with all applicable laws, policies, and guidelines. The project is a covered activity under the SCVHP and would be required to pay applicable fees prior to issuance of any grading permits.

As discussed in Section 4.5 Cultural Resources, the proposed project site is located in an area with low potential for buried prehistoric archaeological deposits or features and a low potential for historic archaeological resources. Implementation of the City's standard permit conditions in the event of discovering buried cultural resources during construction would ensure that impacts to archaeological resources and human remains are less than significant. Historic buildings, structures, or sites would not be impacted by the proposed project.

Implementation of the standard permit conditions listed in Section 4.7 Geology and Soils would reduce construction related erosion impacts and address seismic hazards in the project's design. Further, the project would implement standard permit conditions to ensure that paleontological resources are not significantly impacted if discovered during construction activities.

As discussed in Section 4.9 Hazards and Hazardous Materials, the project site has been impacted by its historical agricultural use. Implementation of MM HAZ-1.1 would ensure that construction of the project would not expose construction workers and the public to hazardous materials.

As discussed in Section 4.10 Hydrology and Water Quality, the project would be required to implement standard permit conditions to reduce potential construction and post-construction water quality impacts. Implementation of these conditions, in accordance with regional and local regulations, would ensure the project would not degrade water quality or introduce polluted sources of runoff.

As discussed in Section 4.13 Noise and Vibration, vibration impacts from construction of the proposed project could potentially impact nearby buildings. Implementation of mitigation measure MM NOI-3.1 would reduce these impacts to less than significant. **(Less than Significant with Mitigation Incorporated)**

b) Does the project have impacts that are individually limited, but cumulatively considerable?

The proposed project would have no impacts to agriculture and forestry resources, or mineral resources. The proposed development would result in temporary biological resources, water quality and noise and vibration impacts during construction. With implementation of standard permit conditions, BMPs, mitigation measures, and consistency with adopted City policies, construction impacts would be reduced to a less than significant level. Because the nature of the identified impacts is temporary and would be mitigated, the proposed project would not have a cumulatively considerable impact on biological resources, water quality, and noise.

Because criteria air pollutant and GHG emissions would contribute to regional and global emissions of such pollutants, the identified thresholds developed by BAAQMD and used by the City of San José were designed such that a project impact would also be a cumulatively considerable impact. As

discussed in Sections 4.3 Air Quality and 4.8 Greenhouse Gas Emissions, the project would result in less than significant project (and, therefore, cumulative) criteria air pollutant and GHG impacts. Cumulative health risk impacts are discussed below.

Cumulative Health Risk Impact at the Project MEI

The community health risk assessment conducted by Illingworth & Rodkin, Inc. (see Appendix A) considered all substantial sources of TACs that could affect sensitive receptors located within 1,000 feet of the project site. Cumulative community risk sources within 1,000 feet of the project site include Interstate 680, North Capitol Avenue, Berryessa Road, and three permitted stationary sources (gasoline dispensing facilities). Dispersion modeling was used to model the health risk associated with the roadways assuming a 30-year exposure duration starting at infancy. CARB's Gasoline Service Station Risk Assessment Tool was used to estimate the health risks from the gasoline dispensing facilities. Table 4.21-1 reports both the project and cumulative community risk impacts at the project MEI. With implementation of MM AIR-1.1, the project would have a less than significant cumulative health risk impact. Figure 4.3-2 shows the locations of the cumulative TAC sources in relation to the Project MEI.

Table 4.21-1: Cumulative Risk Impacts at the Off-Site MEI

Source	Cancer Risk (per million)	Annual $PM_{2.5}$ ($\mu g/m^3$)	Hazard Index
Project Impacts			
Project Construction - Mitigated	4.56	0.09	0.01
Cumulative Impacts			
I-680, ADT[2] 159,600	4.56	0.12	<0.01
N. Capitol Avenue, ADT 16,090	0.94	0.08	<0.01
Berryessa Road, ADT 34,235	0.42	0.03	<0.01
Arco Facility #07079 (Facility ID #112552_1, GDF), MEIs at 770 feet	1.21	-	0.06
Capitol Chevron (Facility ID #111785_1, GDF), MEIs at +1,000 feet	0.21	-	0.01
Shell SS#68206 (Facility ID #111828_1, GDF), MEIs at +1,000 feet	0.57	-	0.02
Combined Sources - Mitigated	12.47	0.32	<0.13
BAAQMD Cumulative Source Threshold	*100*	*0.8*	*10.0*
Exceed Threshold?	**No**	**No**	**No**

[1]Some numbers may not add up precisely due to rounding considerations

Source: Illingworth & Rodkin, Inc. *1207 N. Capitol Avenue Construction Community Risk Assessment, San José, California*. September 29, 2022.

[2]ADT = average daily traffic

Similar to GHG emissions, a project's impact to energy resources would also be considered a cumulative impact. Build out of the General Plan will result in increased energy use in the form of electricity, natural gas and other fuels. Implementation of energy efficiency requirements in building codes, including the recently adopted CALGreen requirements, local Green Building ordinances and program measures in local General Plans and various sustainability and conservation policies would avoid the wasteful and inefficient use of energy. Local programs of PG&E and Valley Water also are improving energy and water conservation in the South Bay and Northern California, which ultimately will reduce energy demand per capita. Through these measures, build out of the General Plan and cumulative projects would not result in significant cumulative energy impacts associated with the built environment. Therefore, the proposed project's contribution of energy consumption would not represent a cumulatively considerable impact.

Envision San José 2040 General Plan EIR

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.

The Envision San José 2040 General Plan EIR identifies Significant Unavoidable Cumulative Impacts to population and housing and transportation associated with implementation of the General Plan. As discussed in Section 4.14 Population and Housing, the project does not propose to construct any new dwelling units, but would result in the creation of approximately 33 to 34 full- and part-time new jobs. This increase in citywide job capacity would not exceed the anticipated General Plan level because the project is consistent with the General Plan land use designation of the site. In addition, the project does not propose to construct new road extensions or other infrastructure, and would not result in the displacement of a substantial number of existing housing that would require the construction of replacement housing elsewhere. For these reasons, the project's population and housing impacts would be less than significant, and the project's contribution to a cumulative significant unavoidable impact would be minimal.

The General Plan EIR states that under cumulative conditions, which assumes build-out of all planned growth in the region, including the City's General Plan, regional roadways and highways would experience levels of service in excess of those standards identified by responsible agencies, for which no feasible mitigation exists because roadways cannot continue to be expanded without adversely impacting adjacent land uses, and other transportation modes. Despite the City's ongoing efforts to work with adjacent jurisdictions including VTA and Caltrans to improve roadway operations and to expand capacity of alternate transportation modes, the cumulative transportation impacts are significant and unavoidable. Since the adoption of the General Plan, however, the City of San José has adopted a new Transportation Analysis Policy (Council Policy 5-1) that replaces its predecessor (Council Policy 5-3) and establishes the thresholds for transportation impacts under CEQA based on vehicle miles traveled (VMT) instead of intersection level of service (LOS). Since

the effective date of Policy 5-1 in March 2018, all new projects have been required to analyze transportation impacts using the VMT metric and conform to Council Policy 5-1. Policy 5-1 aligns with the Envision San José 2040 General Plan which seeks to focus new development growth within Planned Growth Areas to internalize trips and reduce VMT.

As discussed in Section 4.17 Transportation, the VMT generated by the project would have a less than significant VMT impact, therefore, the project's contribution to a significant unavoidable cumulative transportation impact would be less than significant.

According to the GP EIR, buildout of the General Plan would result in less than significant impacts to cultural resources, geology and soils, hazards and hazardous materials, hydrology and water quality, public services and facilities, and utilities. The proposed project's impacts to these resource areas, as well as Tribal Cultural Resources and Wildfire, were analyzed throughout Section 4.0 Environmental Setting, Checklist, and Impact Discussion, and found to be less than significant with implementation of the City's standard conditions of approval and mitigation measures, as necessary. Their contribution to cumulative impacts on these resources would also be less than significant. **(Less than Significant 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 hazardous materials and noise. Implementation of General Plan policies, mitigation measures, and standard conditions described in their respective sections would, however, 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 with Mitigation Incorporated)**

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SECTION 6.0 LEAD AGENCY AND CONSULTANTS

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SECTION 7.0 ACRONYMS AND ABBREVIATIONS

AB	Assembly Bill
ABAG	Association of Bay Area Governments
ACM	Asbestos containing material
ADT	Average daily traffic
AIA	Airport Influence Area
BAAQMD	Bay Area Air Quality Management District
bgs	Below ground surface
BMPs	Best Management Practices
Btu	British thermal units
CalARP	California Accidental Release Prevention
CalEEMod	California Emissions Estimator Model
CAL FIRE	California Department of Forestry and Fire Protection
CALGreen	California Green Building Standards Code
Cal/OSHA	California Department of Industrial Relations, Division of Occupational Safety and Health
CalRecycle	California Department of Resource Recycling and Recovery
CAP	Clean Air Plan
CARB	California Air Resources Board
Caltrans	California Department of Transportation
CDFW	California Department of Fish and Wildlife
CEC	California Energy Commission
CEQA	California Environmental Quality Act
CFCs	Chlorofluorocarbons
CFR	Code of Federal Regulations
CGS	California Geological Survey
CH_4	Methane
CLUP	Comprehensive Land Use Plan
CMP	Congestion Management Program
CNEL	Community Noise Equivalent Level
CO	Carbon monoxide
CO_2	Carbon dioxide
CO_2e	Carbon dioxide equivalents

CUPA	Certified Unified Program Agency
dB	Decibel
dBA	A-weighted sound level
DCE	Dichloroethane
DNL	Day-Night Level
DTSC	Department of Toxic Substances Control
EIA	U.S. Energy Information Administration
EIR	Environmental Impact Report
EO	Executive Order
EPA	Environmental Protection Agency
ESA	Environmental Site Assessment
ESL	Environmental Screening Level
FAA	Federal Aviation Administration
FAR	Federal Aviation Regulations
FAR	Floor-area ratio
FEIR	Final Environmental Impact Report
FEMA	Federal Emergency Management Agency
FHSZ	Fire Hazard Severity Zone
FHWA	Federal Highway Administration
FIRM	Flood Insurance Rate Map
FMMP	Farmland Mapping and Monitoring Program
GHG	Greenhouse gas
Gwh	Gigawatt hours
GWP	Global warming potential
HFCs	Hydrofluorocarbons
HI	Hazard Index
HMP	Hydromodification Management Plan
HOV	High-occupancy vehicle
in/sec	Inches per second
ITE	Institute of Transportation Engineers
kW	Kilowatt
kWh	Kilowatt hours
LBP	Lead-based paint

L_{dn}	Day-Night Level
LEED	Leadership in Energy and Environmental Design
L_{eq}	Noise Equivalent Level
LID	Low Impact Development
LOS	Level of Service
MBTA	Migratory Bird Treaty Act
MEI	Maximally Exposed Individual
mgd	Million gallons per day
MLD	Most Likely Descendant
$MMTCO_2e$	Million metric tons of CO_2e
MND	Mitigated Negative Declaration
mpg	Miles per gallon
mph	Miles per hour
MRP	Municipal Regional Stormwater Permit
MT	Metric tons
MTC	Metropolitan Transportation Commission
NAHC	Native American Heritage Commission
NESHAP	National Emissions Standards for Hazardous Air Pollutants
NFIP	National Flood Insurance Program
NHPA	National Historic Preservation Act
N_2O	Nitrous oxide
NOD	Notice of Determination
NOI	Notice of Intent
NO_x	Nitrogen oxides
NPDES	National Pollutant Discharge Elimination System
NRHP	National Register of Historic Places
O_3	Ozone
OITC	Outdoor Indoor Transmission Class
OPR	Governor's Office of Planning and Research
OSHA	Occupational Safety and Health Administration
PCBs	Polychlorinated biphenyls
PCE	Tetrachloroethylene
PDAs	Priority Development Areas

PDO	Parkland Dedication Ordinance
PFCs	Perfluorocarbons
PG&E	Pacific Gas and Electric Company
PIO	Park Impact Ordinance
$PM_{2.5}$	Fine particulate matter
PM_{10}	Respirable particulate matter
PPM	Parts per million
PPV	Peak Particle Velocity
RCRA	Resource Conservation and Recovery Act
RHNA	Regional Housing Need Allocation
ROG	Reactive organic gases
RWQCB	Regional Water Quality Control Board
SB	Senate Bill
SCH	State Clearinghouse
SCIA	Sewer Capacity Impact Analysis
SCS	Sustainable Communities Strategy
sf	Square foot/feet
SF_6	Sulfur hexafluoride
SFHA	Special Flood Hazard Area
SHMA	Seismic Hazards Mapping Act
SJCE	San José Clean Energy
SJFD	San José Fire Department
SJPD	San José Police Department
SJWC	San José Water Company
SLIC	Spills, Leaks, Investigations & Cleanup
SMARA	Surface Mining and Reclamation Act
SMGB	State Mining and Geology Board
SMP	Site Management Plan
SO_x	Sulfur oxides
SR	State Route
STC	Sound Transmission Class
SWPPP	Stormwater Pollution Prevention Plan
SWRCB	State Water Resources Control Board

TAC	Toxic Air Contaminants
TCE	Trichloroethylene
TCM	Treatment Control Measure
TCRs	Tribal Cultural Resources
TDM	Transportation Demand Management
UFMP	Urban Forest Management Plan
USACE	United States Army Corps of Engineers
USFWS	United States Fish and Wildlife Service
USGBC	United States Green Building Council
USTs	Underground storage tanks
UWMP	Urban Water Management Plan
VMT	Vehicle miles traveled
VOC	Volatile organic compounds
VTA	Santa Clara Valley Transportation Authority
WM	Waste Management
WPCP	Water Pollution Control Plant
WSA	Water Supply Assessment
$\mu m/m^3$	Micrograms per cubic meter
ZNE	Zero Net Carbon Emissions